

Technical Package Cover Page

This file contains the following documents:

- 1. Summary of application (in plain language)
 - English
 - Alternative Language (Spanish)
- 2. First notice (NORI-Notice of Receipt of Application and Intent to Obtain a Permit)
 - English
 - Alternative Language (Spanish)
- 3. Second notice (NAPD-Notice of Preliminary Decision)
 - English
 - Alternative Language (Spanish)
- 4. Application materials *
- 5. Draft permit *
- 6. Technical summary or fact sheet *
- * **NOTE:** This application was declared Administratively Complete before June 1, 2024. The application materials, draft permit, and technical summary or fact sheet are available for review at the Public Viewing Location provided in the NAPD.

Plain Language Summary Template and Instructions for Texas Pollutant Discharge Elimination System (TPDES) and Texas Land Application (TLAP) Permit Applications

This template is a guide to assist applicant's in developing a plain language summary as required by <u>30 Texas Administrative Code Chapter 39 Subchapter H</u>. Applicant's may modify the template as necessary to accurately describe their facility as long as the summary includes the following information: (1) the function of the proposed plant or facility; (2) the expected output of the proposed plant or facility; (3) the expected pollutants that may be emitted or discharged by the proposed plant or facility; and (4) how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment.

Fill in the highlighted areas below to describe your facility and application in plain language. Instructions and examples are provided below. Make any other edits necessary to improve readability or grammar and to comply with the rule requirements.

If you are subject to the alternative language notice requirements in <u>30 Texas Administrative</u> <u>Code §39.426</u>, you must provide a translated copy of the completed plain language <u>summary in the appropriate alternative language as part of your application package</u>. For your convenience, a Spanish template has been provided below. -NOT APPLICABLE

ENGLISH TEMPLATE FOR TPDES or TLAP NEW/RENEWAL/AMENDMENT APPLICATIONS INDUSTRIAL WASTEWATER/STORMWATER

The following summary is provided for this pending water quality permit application being reviewed by the Texas Commission on Environmental Quality as required by 30 Texas Administrative Code Chapter 39. The information provided in this summary may change during the technical review of the application and are not federal enforceable representations of the permit application.

Victoria Port II LLC (CN605568807) operates Victoria Port II LLC RN110451648. a combustion turbine generator (CTG) electric generation facility. The facility is located 2050 Old Bloomington Rd N, in Victoria, Victoria County, Texas 77905.

Discharges from the facility have not commenced, and subsequently no wastewater is available to be sampled. Upon discharge from the facility, required sampling will take place. Washdown and minimal amounts of stormwater will come into contact with oil from equipment operation or maintenance and will be discharged intermittently after treatment in an oil/water separator to Outfall 001.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN WATER QUALITY PERMIT RENEWAL

PERMIT NO. WQ0005263000

APPLICATION. Victoria Port Power II LLC, 24 Waterway Avenue, Suite 400, The Woodlands Texas 77380, which own(s) an electric generation facility, has applied to the Texas Commission on Environmental Quality (TCEQ) to renew Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005263000 (EPA I.D. No. TX0138801) to authorize the discharge of treated wastewater and stormwater at a volume not to exceed a daily average flow of 144,000 gallons per day. The facility is located at 2050 Old Bloomington Road North, in the city of Victoria, in Victoria County, Texas 77905. The discharge route is from the plant site via Outfall 001 to a series of ditches, thence to Victoria Barge Canal, thence to Victoria Barge Canal Tidal. TCEQ received this application on January 30, 2024. The permit application will be available for viewing and copying at Victoria Public Library, 302 North Main Street, Victoria, Texas prior to the date this notice is published in the newspaper. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.945,28.696666&level=18

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. **Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.**

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who**

submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.

TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at <u>www.tceq.texas.gov/goto/cid</u>. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at <u>https://www14.tceq.texas.gov/epic/eComment/</u>, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will

become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040 or visit their website at <u>www.tceq.texas.gov/goto/pep</u>. Si desea información en Español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Victoria Port Power II LLC at the address stated above or by calling Mr. Kurt Lammrish, Plant Manager, at (979) 248-8026.

Issuance Date: April 30, 2024

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR TPDES PERMIT FOR INDUSTRIAL WASTEWATER

RENEWAL

Permit No. WQ0005263000

APPLICATION AND PRELIMINARY DECISION. Victoria Port Power II LLC, 24 Waterway Avenue Suite 400, The Woodlands, Texas 77380, which proposes to operate Victoria Port II Peaking Facility, a power generation facility utilizing natural gas to fuel a combustion turbine generator, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005263000, which authorizes the discharge of water treatment wastes, stormwater, and facility and equipment wash water at a daily average flow not to exceed 144,000 gallons per day via Outfall 001. The TCEQ received this application on January 30, 2024.

The facility is located at 2050 Old Bloomington Road, in the City of Victoria, Victoria County, Texas 77905. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.945,28.696666&level=18

The effluent is discharged via Outfall 001 to a series of ditches, thence to Victoria Barge Canal Tidal in Segment No. 1701 of the Lavaca-Guadalupe Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for the series of ditches. The designated uses for Segment No. 1701 are non-contact recreation and high aquatic life use.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Victoria Public Library, 302 North Main Street, Victoria, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the application. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. **The response to comments, along with the Executive Director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be added to: (1) the permanent list for a specific applicant name and permit number; and (2) the mailing list for a specific county. If you wish to be placed on the permanent and the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at https://www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at <u>https://www.tceq.texas.gov/goto/cid/</u>. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at <u>https://www.tceq.texas.gov/goto/comment</u>, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address, and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040 or visit their website at <u>https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation</u>. Si desea información en Español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Victoria Port Power II LLC at the address stated above or by calling Mr. Kurt Lammrish, Plant Manager, at (979) 248-8026.

Issued: May 21, 2025



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY P.O. Box 13087 Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES

under provisions of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code TPDES PERMIT NO. WQ0005263000 [For TCEQ office use only -EPA I.D. No. TX0138801]

This renewal replaces TPDES Permit No. WQ0005263000, issued on July 31, 2019.

Victoria Port Power II LLC

whose mailing address is

24 Waterway Avenue Suite 400 The Woodlands, Texas 77380

is authorized to treat and discharge wastes from Victoria Port II Peaking Facility, a power generation facility utilizing natural gas to fuel a combustion turbine generator (SIC 4911)

located at 2050 Old Bloomington Road, in the City of Victoria, Victoria County, Texas 77905

via Outfall 001 to a series of ditches, thence to Victoria Barge Canal Tidal in Segment No. 1701 of the Lavaca-Guadalupe Coastal Basin

only according to effluent limitations, monitoring requirements, and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, five years from the date of permit issuance.

ISSUED DATE:

For the Commission

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning upon the date of permit issuance and lasting through the date of permit expiration, the permittee is authorized to discharge water treatment wastes ¹, stormwater, and facility and equipment wash water subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.144 million gallons per day (MGD). The daily maximum flow shall not exceed 0.288 MGD.

	Disc	charge Limitations	Minimum Self-Monitoring Requirements			
Effluent Characteristics	Daily Average	Daily Maximum	Single Grab	Report Daily Average and Daily Maximum		
	mg/L	mg/L	mg/L	Measurement Frequency	Sample Type	
Flow	0.144 MGD	0.288 MGD	N/A	Continuous ²	Meter	
Total Organic Carbon	N/A	75	75	1/week ²	Grab	
Oil and Grease	N/A	15	15	1/week ²	Grab	
Total Dissolved Solids	Report	Report	N/A	1/week ²	Grab	

- 2. The pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored 1/week ² by grab sample.
- 3. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
- 4. Effluent monitoring samples must be taken at the following location: At Outfall 001, once all wastewaters are commingled, after final treatment, and prior to entering the draining ditches adjacent to the discharge point.

¹ See Other Requirement No. 2. ² When discharging.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in Texas Water Code §26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

- 1. Flow Measurements
 - a. Annual average flow the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder, and limited to major domestic wastewater discharge facilities with a one million gallons per day or greater permitted flow.
 - b. Daily average flow the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
 - c. Daily maximum flow the highest total flow for any 24-hour period in a calendar month.
 - d. Instantaneous flow the measured flow during the minimum time required to interpret the flow measuring device.
 - e. 2-hour peak flow (domestic wastewater treatment plants) the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
 - f. Maximum 2-hour peak flow (domestic wastewater treatment plants) the highest 2-hour peak flow for any 24-hour period in a calendar month.
- 2. Concentration Measurements
 - a. Daily average concentration the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
 - i. For domestic wastewater treatment plants When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
 - ii. For all other wastewater treatment plants When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
 - b. 7-day average concentration the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
 - c. Daily maximum concentration the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
 - d. Daily discharge the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total

mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Bacteria concentration (Fecal coliform, *E. coli*, or Enterococci) the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the nth root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substitute value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
- f. Daily average loading (lbs/day) the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD × Concentration, mg/L × 8.34).
- g. Daily maximum loading (lbs/day) the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
- 3. Sample Type
 - a. Composite sample For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9(a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9(c).
 - b. Grab sample an individual sample collected in less than 15 minutes.
- 4. Treatment Facility (facility) wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
- 5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
- 6. Bypass the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§319.4 - 319.12. Unless otherwise specified, effluent monitoring data shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge that is described by this permit whether or not a discharge is made for that month. Monitoring results must be submitted online using the NetDMR reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. Monitoring results must be signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act; TWC Chapters 26, 27, and 28; and THSC Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

- 2. Test Procedures
 - a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
 - b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.
- 3. Records of Results
 - a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.
 - b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
 - c. Records of monitoring activities shall include the following:

 - i. date, time, and place of sample or measurement; ii. identity of individual who collected the sample or made the measurement;
 - iii. date and time of analysis;
 - iv. identity of the individual and laboratory who performed the analysis;
 - v. the technique or method of analysis; and
 - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the regional office and the Enforcement Division (MC 224).

- 7. Noncompliance Notification
 - a. In accordance with 30 TAC §305.125(9) any noncompliance that may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the regional office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. For Publicly Owned Treatment Works (POTWs), effective September 1, 2020, the permittee must submit the written report for unauthorized discharges and unanticipated bypasses that exceed any effluent limit in the permit using the online electronic reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
 - b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
 - i. unauthorized discharges as defined in Permit Condition 2(g).
 - ii. any unanticipated bypass that exceeds any effluent limitation in the permit.
 - iii. violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
 - In addition to the above, any effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the regional office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
 - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
- 8. In accordance with the procedures described in 30 TAC §§35.301 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.
- 9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the regional office, orally or by facsimile transmission within 24 hours, and both the regional office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- That any activity has occurred or will occur that would result in the discharge, on a routine or a. frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

 - i. one hundred micrograms per liter (100 μg/L);
 ii. two hundred micrograms per liter (200 μg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - iii. five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. the level established by the TCEQ.

- b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. five hundred micrograms per liter (500 μ g/L);

 - ii. one milligram per liter (1 mg/L) for antimony;
 iii. ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. the level established by the TCEO.
- 10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

- 11. All POTWs must provide adequate notice to the Executive Director of the following:
 - a. any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA §301 or §306 if it were directly discharging those pollutants;
 - any substantial change in the volume or character of pollutants being introduced into that b. POTW by a source introducing pollutants into the POTW at the time of issuance of the permit: and
 - c. for the purpose of this paragraph, adequate notice shall include information on:
 - i. the quality and quantity of effluent introduced into the POTW: and
 - ii. any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

- 1. General
 - a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
 - b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:

 - i. violation of any terms or conditions of this permit; ii. obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 - iii. a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
 - The permittee shall furnish to the Executive Director, upon request and within a reasonable c. time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.
- 2. Compliance
 - a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
 - b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment,

revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§305.62 and 305.66 and TWC §7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC §305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility that does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code §§7.051 7.075 (relating to Administrative Penalties), 7.101 7.111 (relating to Civil Penalties), and 7.141 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA §402, or any requirement imposed in a pretreatment program approved under the CWA §§402(a)(3) or 402(b)(8).
- 3. Inspections and Entry
 - a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC Chapter 361.
 - b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC §7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

- 4. Permit Amendment or Renewal
 - a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
 - i. the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC §305.534 (relating to New Sources and New Dischargers); or
 - ii. the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9; or
 - iii. the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
 - b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
 - c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
 - d. Prior to accepting or generating wastes that are not described in the permit application or that would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
 - e. In accordance with the TWC §26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
 - f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA §307(a) for a toxic pollutant that is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA §307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- 5. Permit Transfer
 - a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
 - b. A permit may be transferred only according to the provisions of 30 TAC §305.64 (relating to Transfer of Permits) and 30 TAC §50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to Texas Water Code Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

- 11. Notice of Bankruptcy.
 - a. Each permittee shall notify the Executive Director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
 - i. the permittee;
 - ii. an entity (as that term is defined in 11 USC, §101(15)) controlling the permittee or listing the permit or permittee as property of the estate; or
 - iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.
 - b. This notification must indicate:
 - i. the name of the permittee; ii. the permit number(s);

 - iii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iv. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

- The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process 1. control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
- 2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC \$\$319.21 - 319.29 concerning the discharge of certain hazardous metals.

- 3. Domestic wastewater treatment facilities shall comply with the following provisions:
 - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
 - b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment or other treatment unit regulated by this permit.
- 4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.
- 5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
- 6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC §7.302(b)(6).
- 7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

- 8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
 - a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion or upgrading of the domestic wastewater treatment or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 219) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission, and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.
- c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
- 9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
- 10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
- 11. Facilities that generate industrial solid waste as defined in 30 TAC §335.1 shall comply with these provisions:
 - a. Any solid waste, as defined in 30 TAC §335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
 - b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
 - c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC §335.8(b)(1), to the Corrective Action Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
 - d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC §335.5.
 - e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
 - f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
 - i. volume of waste and date(s) generated from treatment process;
 - ii. volume of waste disposed of on-site or shipped off-site;
 - iii. date(s) of disposal;

- iv. identity of hauler or transporter;v. location of disposal site; andvi. method of final disposal.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Code Chapter 361.

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OTHER REQUIREMENTS

- 1. Wastewater discharged via Outfall 001 must be sampled and analyzed as directed below for those parameters listed in Tables 1, 2, and 3 of Attachment A of this permit. Analytical testing for Outfall 001 must be completed within 60 days of initial discharge. Results of the analytical testing must be submitted within 90 days of initial discharge to the TCEQ Compliance Monitoring Team (MC-224) and Industrial Wastewater Permits Team (MC-148). Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations, monitoring requirements, or both.
 - Table 1:Analysis is required for all pollutants in Table 1. Wastewater must be sampled and
analyzed for those parameters listed in Table 1 for a minimum of four sampling
events that are each at least one week apart.
 - Table 2:Analysis is required for all metal pollutants in Table 2. Sampling and analysis must
be conducted for a minimum of four sampling events that are each at least one
week apart.
 - Table 3:For all pollutants listed in Table 3, the permittee shall indicate whether each
pollutant is believed to be present or absent in the discharge. Sampling and analysis
must be conducted for each pollutant believed present for a minimum of one
sampling event.

The permittee shall report the flow at Outfall 001 in MGD in the attachment. The permittee shall indicate on each table whether the samples are composite (C) or grab (G) by checking the appropriate box.

- 2. The term *water treatment wastes* includes, but is not limited to: cold lime water treatment wastes, demineralizer backwash, filter backwash, ion exchange water treatment system wastes, membrane regeneration wastes, and reverse osmosis reject water.
- 3. Violations of daily maximum limitations for the following pollutants shall be reported orally or by facsimile to TCEQ Region 14 within 24 hours from the time the permittee becomes aware of the violation, followed by a written report within five working days to TCEQ Region 14 and Compliance Monitoring Team (MC 224): None.
- 4. This permit does not authorize the discharge of domestic wastewater. All domestic wastewater must be disposed of in an approved manner, such as routing to an approved on-site septic tank and drainfield system or to an authorized third party for treatment and disposal.

Attachment A

Outfall No.:		E	ffluent C	oncentra	tion (mg	;/L)
Pollutant		Samp.	Samp.	Samp.	Samp.	Average
Flow (MGD)						
BOD (5-day)						
CBOD (5-day)						
Chemical Oxygen	Demand					
Total Organic Carl	bon					
Dissolved Oxygen						
Ammonia Nitroge	n					
Total Suspended S	Solids					
Nitrate Nitrogen						
Total Organic Nitr	ogen					
Total Phosphorus						
Oil and Grease						
Total Residual Ch	lorine					
Total Dissolved Sc	olids					
Sulfate						
Chloride						
Fluoride						
Total Alkalinity (n CaCO ₃)	ng/L as					
Temperature (°F)						
pH (Standard Uni min/max)	ts;					

Table 1 – Conventionals and Non-conventionals

Table 2 – Metals

Dollutont		MAL ²				
Ponutant	Samp.	Samp.	Samp.	Samp.	Average	(µg/L)
Aluminum, Total						2.5
Antimony, Total						5
Arsenic, Total						0.5
Barium, Total						3
Beryllium, Total						0.5
Cadmium, Total						1
Chromium, Total						3
Chromium, Hexavalent						3
Chromium, Trivalent						N/A
Copper, Total						2
Cyanide, Free						10
Lead, Total						0.5

Indicate units if different than µg/L. Minimum Analytical Level 1

²

Dollutont		MAL ²					
ronutant	Samp.	b. Samp. Samp. Samp.		Samp.	Average	(µg/L)	
Mercury, Total						0.005	
Nickel, Total						2	
Selenium, Total						5	
Silver, Total						0.5	
Thallium, Total						0.5	
Zinc, Total						5.0	

Table 3 – Toxic Pollutants with Water Quality Criteria

Outfall No.: C G	Samp. 1	Samp. 2	Samp. 3	Samp. 4	Avg.	MAL
Pollutant	(µg/L)	(µg/L)	(µg/L)	(µg/L)	(µg/L)	(µg/L)
Acrolein						0.7
Acrylonitrile						50
Anthracene						10
Benzene						10
Benzidine						50
Benzo(<i>a</i>)anthracene						5
Benzo(<i>a</i>)pyrene						5
Bis(2-chloroethyl)ether						10
Bis(2-ethylhexyl) phthalate						10
Bromodichloromethane						10
Bromoform						10
Carbon Tetrachloride						2
Chlorobenzene						10
Chlorodibromomethane						10
Chloroform						10
Chrysene						5
Cresols						10
1,2-Dibromoethane						10
<i>m</i> -Dichlorobenzene						10
o-Dichlorobenzene						10
<i>p</i> -Dichlorobenzene						10
3,3'-Dichlorobenzidine						5
1,2-Dichloroethane						10
1,1-Dichloroethylene						10
Dichloromethane						20
1,2-Dichloropropane						10
1,3-Dichloropropylene						10
2,4-Dimethylphenol						10
Di- <i>n</i> -Butyl Phthalate						10
Epichlorohydrin						1,000
Ethylbenzene						10
Ethylene Glycol						—

Outfall No.: C G	Samp. 1	Samp. 2	Samp. 3	Samp. 4	Avg.	MAL
Pollutant	(µg/L)	(µg/L)	(µg/L)	(µg/L)	(µg/L)	(µg/L)
Fluoride						500
Hexachlorobenzene						5
Hexachlorobutadiene						10
Hexachlorocyclopentadiene						10
Hexachloroethane						20
4,4'-Isopropylidenediphenol [bisphenol A]						_
Methyl Ethyl Ketone						50
Methyl <i>tert</i> -butyl ether [MTBE]						_
Nitrobenzene						10
N-Nitrosodiethylamine						20
N-Nitroso-di-n-Butylamine						20
Nonylphenol						333
Pentachlorobenzene						20
Pentachlorophenol						5
Phenanthrene						10
Polychlorinated Biphenyls (PCBs) ¹						0.2
Pyridine						20
1,2,4,5-Tetrachlorobenzene						20
1,1,2,2-Tetrachloroethane						10
Tetrachloroethylene						10
Toluene						10
1,1,1-Trichloroethane						10
1,1,2-Trichloroethane						10
Trichloroethylene						10
2,4,5-Trichlorophenol						50
TTHM (Total Trihalomethanes)						10
Vinyl Chloride						10

¹ Total of detects for PCB-1242, PCB-1254, PCB-1221, PCB-1232, PCB-1248, PCB-1260, PCB-1016. If all values are non-detects, enter the highest non-detect preceded by a "<" symbol.

STATEMENT OF BASIS/TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

DESCRIPTION OF APPLICATION

Applicant:	Victoria Port Power II LLC; Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005263000 (EPA I.D. No. TX0138801)
Regulated activity:	Industrial wastewater permit
Type of application:	Renewal
Request:	Renewal without changes
Authority:	Federal Clean Water Act (CWA) §402; Texas Water Code (TWC) §26.027; 30 Texas Administrative Code (TAC) Chapter 305, Subchapters C-F, and Chapters 307 and 319; commission policies; and Environmental Protection Agency (EPA) guidelines

EXECUTIVE DIRECTOR RECOMMENDATION

The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The draft permit will expire at midnight, five years from the date of permit issuance according to the requirements of 30 TAC §305.127(1)(C)(i).

REASON FOR PROJECT PROPOSED

The applicant applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of its existing permit.

PROJECT DESCRIPTION AND LOCATION

The applicant will operate Victoria Port II Peaking Facility, a power generation facility utilizing natural gas to fuel a combustion turbine generator (SIC 4911).

The wastewater treatment system consists of an oil water separator used to treat facility and equipment wash water and stormwater prior to discharge via Outfall 001. Water treatment wastes from a reverse osmosis treatment process are generated on-site and discharged without treatment.

The facility is located at 2050 Old Bloomington Road, in the City of Victoria, Victoria County, Texas 77905.

Discharge Route and Designated Uses

The effluent is discharged via Outfall 001 to a series of ditches, thence to Victoria Barge Canal Tidal in Segment No. 1701 of the Lavaca-Guadalupe Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for the series of ditches. The designated uses for Segment No. 1701 are non-contact recreation and high aquatic life use. The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and revisions.

Endangered Species Review

The discharge from this permit is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and the EPA only considered aquatic or aquatic-

dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS's biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Impaired Water Bodies

Segment No. 1701 is not currently listed on the state's inventory of impaired and threatened waters, the 2022 CWA §303(d) list.

Completed Total Maximum Daily Loads (TMDLs)

There are no completed TMDLs for Segment No. 1701.

Dissolved Oxygen

Due to the low levels of oxygen-demanding constituents expected from these type of waste streams authorized in the draft permit, no significant dissolved oxygen depletion is anticipated in the receiving waters as a result of this discharge.

SUMMARY OF EFFLUENT DATA

Self-reporting data is not available because the facility has not discharged.

DRAFT PERMIT CONDITIONS

The draft permit authorizes the discharge of water treatment wastes, stormwater, and facility and equipment wash water at a daily average flow not to exceed 0.144 MGD via Outfall 001.

Effluent limitations are established in the draft permit as follows:

Outfall	Pollutant	Daily Average	Daily Maximum
Outluii	rondunt	mg/L	mg/L
001	Flow	0.144 MGD	0.288 MGD
	Total Organic Carbon (TOC)	N/A	75
	Oil and Grease	N/A	15
	Total Dissolved Solids	Report	Report
	pH	6.0 SU minimum	9.0 SU

OUTFALL LOCATIONS

Outfall	Latitude	Longitude
001	28.6966 N	96.9450 W

Technology-Based Effluent Limitations

Regulations in Title 40 of the Code of Federal Regulations (40 CFR) require that technology-based limitations be placed in wastewater discharge permits based on effluent limitations guidelines, where applicable, or on best professional judgment (BPJ) in the absence of guidelines. EPA effluent limitations guidelines do not apply to the discharges authorized by this permit (There is no thermal cycle employing the steam water system as the thermodynamic medium. Effluent limitations are included at Outfall 001 for total organic carbon and oil and grease using BPJ based on EPA guidance for stormwater discharges (General Guidance – Industrial Permits, Uncontaminated Stormwater Runoff). No technology-based effluent limitations for the discharge of water treatment waste are included in the draft permit at this time because the primary pollutants of concern (total dissolved

solids, chloride, sulfate, and toxic metals) are to be screened for water quality (see the "Water Quality-Based Effluent Limitations" section below).

Water Quality-Based Effluent Limitations

Calculations of water quality-based effluent limitations for the protection of aquatic life and human health are presented in Appendix A. Aquatic life criteria established in Table 1 and human health criteria established in Table 2 of 30 TAC Chapter 307 are incorporated into the calculations, as are recommendations in the Water Quality Assessment Team's memorandum dated July 2, 2024. TCEQ practice for determining significant potential is to compare the reported analytical data from the facility against percentages of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85 percent of the calculated daily average water quality-based effluent limitation. Monitoring and reporting is required when analytical data reported in the application exceeds 70 percent of the calculated daily average water quality-based effluent limitation.

No data was reported in the application since there was not a discharge since issuance of the new permit therefore Other Requirement No. 1 from the existing permit was carried forward to the draft permit requiring reporting of effluent analytical results upon discharge commencing.

Total Dissolved Solids (TDS), Chloride, and Sulfate Screening

The facility has yet to discharge; therefore, there is not currently any data to screen for TDS, chloride, or sulfate. The draft permit contains effluent testing requirements with quarterly progress reports to obtain effluent analytical data for screening at a later date. The permit, if issued, may be reopened to include effluent limitations, monitoring and reporting requirements, or both. Monitoring and reporting requirements for TDS have been included in the draft permit based on the presence of water treatment wastes in the proposed discharge and TCEQ practice for similar facilities.

pH Screening

The existing permit includes pH limits of 6.0 - 9.0 SU at Outfall 001, which discharges into an unclassified water body. Consistent with the procedures for pH screening that were submitted to EPA with a letter dated May 28, 2014, and approved by EPA in a letter dated June 2, 2014, requiring a discharge to an unclassified water body to meet pH limits of 6.0 - 9.0 standard units reasonably ensures instream compliance with *Texas Surface Water Quality Standards* pH criteria.

Whole Effluent Toxicity Testing (Biomonitoring)

Biomonitoring requirements are not included in the draft permit. The existing permit did not establish biomonitoring requirements and discharges authorized by this permit do not meet the threshold established in the *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) to impose biomonitoring requirements.

SUMMARY OF CHANGES FROM APPLICATION

No changes were made from the application.

SUMMARY OF CHANGES FROM EXISTING PERMIT

The following changes have been made to the draft permit.

- 1. Pages 3-13 were updated (May 2021 version).
- 2. Other Requirement No. 1 was updated for all metals to be tested in Table 2 which was incorrectly put in the previous permit.

- 3. Other Requirement No. 2 from the existing permit was met and not carried forward. Other Requirement No. 3was renumbered 2.
- 4. Other Requirement No. 3 added to reflect any pollutants of concern.
- 5. Other Requirement No. 4 added to prohibit domestic wastewater discharges.

BASIS FOR DRAFT PERMIT

The following items were considered in developing the draft permit:

- 1. Application received on January 30, 2024, and additional information received on April 23, 2024 and July 2, 2024.
- 2. Existing permits: TPDES Permit No. WQ0005263000 issued on July 31, 2019.
- 3. TCEQ Rules.
- 4. *Texas Surface Water Quality Standards* 30 TAC §§307.1-307.10, effective March 1, 2018, as approved by EPA Region 6.
- 5. *Texas Surface Water Quality Standards* 30 TAC §§307.1-307.10, effective March 6, 2014, as approved by EPA Region 6, for portions of the 2018 standards not approved by EPA Region 6.
- 6. *Texas Surface Water Quality Standards* 30 TAC §§307.1-307.10, effective July 22, 2010, as approved by EPA Region 6, for portions of the 2014 standards not approved by EPA Region 6.
- 7. *Texas Surface Water Quality Standards* 30 TAC §§307.1-307.10, effective August 17, 2000, and Appendix E, effective February 27, 2002, for portions of the 2010 standards not approved by EPA Region 6.
- 8. *Procedures to Implement the Texas Surface Water Quality Standards* (IPs), Texas Commission on Environmental Quality, June 2010, as approved by EPA Region 6.
- 9. *Procedures to Implement the Texas Surface Water Quality Standards*, Texas Commission on Environmental Quality, January 2003, for portions of the 2010 IPs not approved by EPA Region 6.
- 10. Memos from the Standards Implementation Team and Water Quality Assessment Team of the Water Quality Assessment Section of the TCEQ.
- 11. Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, TCEQ Document No. 98-001.000-OWR-WQ, May 1998.
- 12. EPA Effluent Guidelines: N/A.
- 13. Consistency with the Coastal Management Plan: N/A
- 14. Letter dated May 28, 2014, from L'Oreal W. Stepney, P.E., Deputy Director, Office of Water, TCEQ, to Bill Honker, Director, Water Quality Protection Division, EPA (TCEQ proposed development strategy for pH evaluation procedures).
- 15. Letter dated June 2, 2014, from William K. Honker, P.E., Director, Water Quality Protection Division, EPA, to L'Oreal W. Stepney, P.E., Deputy Director, Office of Water, TCEQ (Approval of TCEQ proposed development strategy for pH evaluation procedures).

PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the chief clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for reviewing and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent to the Chief Clerk, along with the Executive Director's preliminary decision contained in the technical summary or fact sheet. At that time, the Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment and is not a contested case hearing.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's response to comments and final decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's response to comments and final decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ commissioners for their consideration at a scheduled commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the commission grants a contested case hearing as described above, the commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application, contact Thomas E. Starr at (512) 239-4570.

Thomas E. Starr

Thomas E. Starr, P.E.

<u>February 28, 2025</u> Date

Appendix A Calculated Water Quality-Based Effluent Limits

TEXTOX MENU #10 - INTERMITTENT FRESHWATER STREAM WITHIN 3 MILES OF A BAY OR WIDE TIDAL RIVER

The water quality-based effluent limitations developed below are calculated using:

Table 1, 2014 Texas Surface Water Quality Standards (30 TAC 307) for Freshwater and Saltwater Aquatic Life Table 2, 2018 Texas Surface Water Quality Standards for Human Health "Procedures to Implement the Texas Surface Water Quality Standards," TCEQ, June 2010

PERMIT INFORMATION

Permittee Name:	Victoria Port Power II LLC
TPDES Permit No:	WQ0005263000
Outfall No:	001
Prepared by:	Thomas Starr
Date:	February 27, 2025

DISCHARGE INFORMATION

Intermittent Receiving Waterbody:	Series of Ditches	
Segment No. for Freshwater Ambient Data:	1803	
TSS (mg/L) (Intermittent):	13	
pH (Standard Units) (Intermittent):	7.8	
Hardness (mg/L as CaCO ₃) (Intermittent):	206	
Chloride (mg/L) (Intermittent):	32	
Effluent Flow for Aquatic Life (MGD):	0.144	
% Effluent for Acute Aquatic Life (Intermittent):	100	
Saltwater Receiving Waterbody:	Victoria Barge Canal	
Segment No.:	1701	
TSS (mg/L) (Bay/Tidal River):	22	
% Effluent for Chronic Aquatic Life (Bay/Tidal River	12	
% Effluent for Acute Aquatic Life (Bay/Tidal River):	46	
Oyster Waters?	no	
Effluent Flow for Human Health (MGD):	0.144	
% Effluent for Human Health (Bay/Tidal River):	6	

CALCULATE DISSOLVED FRACTION (AND ENTER WATER EFFECT RATIO IF APPLICABLE):

	Intercept		Partition Coefficient	Dissolved Fraction		Effect Ratio	
Stream/River Metal	(b)	Slope (m)	(Кр)	(Cd/Ct)	Source	(WER)	Source
Aluminum	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Arsenic	5.68	-0.73	73590.43	0.511		1.00	Assumed
Cadmium	6.60	-1.13	219403.73	0.260		1.00	Assumed
Chromium (total)	6.52	-0.93	304812.44	0.202		1.00	Assumed
Chromium (trivalent)	6.52	-0.93	304812.44	0.202		1.00	Assumed
Chromium (hexavalent)	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Copper	6.02	-0.74	156921.31	0.329		1.00	Assumed
Lead	6.45	-0.80	362114.00	0.175		1.00	Assumed
Mercury	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Nickel	5.69	-0.57	113514.75	0.404		1.00	Assumed
Selenium	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Silver	6.38	-1.03	170859.19	0.310		1.00	Assumed
Zinc	6.10	-0.70	209044.94	0.269		1.00	Assumed

			Partition	Dissolved		Effect	
	Intercept		Coefficient	Fraction		Ratio	
Estuarine Metal	(b)	Slope (m)	(Кр)	(Cd/Ct)	Source	(WER)	Source
Aluminum	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Arsenic	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Cadmium	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Chromium (total)	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Chromium (trivalent)	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Chromium (hexavalent)	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Copper	4.85	-0.72	7646.38	0.856		1.00	Assumed
Lead	6.06	-0.85	82973.75	0.354		1.00	Assumed
Mercury	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Nickel	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Selenium	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Silver	5.86	-0.74	73554.16	0.382		1.00	Assumed
Zinc	5.36	-0.52	45913.48	0.497		1.00	Assumed

AQUATIC LIFE

CALCULATE DAILY AVERAGE AND DAILY MAXIMUM EFFLUENT LIMITATIONS:

	FW Acute	SW Acute	SW							Daily	
	Criterion	Criterion	Chronic	FW WLAa	SW WLAa	SW WLAc	FW LTAa	SW LTAa	SW LTAc	Avg.	Daily Max.
Parameter	(µg/L)	(μg/L)	Criterion	(μg/L)	(µg/L)						
Aldrin	3.0	1.3	N/A	3.00	2.83	N/A	1.72	0.904	N/A	1.32	2.81
Aluminum	991	N/A	N/A	991	N/A	N/A	568	N/A	N/A	834	1765
Arsenic	340	149	78	665	324	650	381	104	397	152	322
Cadmium	17.3	40.0	8.75	66.7	87.0	72.9	38.2	27.8	44.5	40.9	86.5
Carbaryl	2.0	613	N/A	2.00	1333	N/A	1.15	426	N/A	1.68	3.56
Chlordane	2.4	0.09	0.004	2.40	0.196	0.0333	1.38	0.0626	0.0203	0.0298	0.0632
Chlorpyrifos	0.083	0.011	0.006	0.0830	0.0239	0.0500	0.0476	0.00765	0.0305	0.0112	0.0237
Chromium (trivalent)	1030	N/A	N/A	5110	N/A	N/A	2928	N/A	N/A	4304	9106
Chromium (hexavalent)	15.7	1090	49.6	15.7	2370	413	9.00	758	252	13.2	27.9
Copper	28.1	13.5	3.6	85.3	34.3	35.0	48.9	11.0	21.4	16.1	34.1
Copper (oyster waters)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Cyanide (free)	45.8	5.6	5.6	45.8	12.2	46.7	26.2	3.90	28.5	5.72	12.1
4,4'-DDT	1.1	0.13	0.001	1.10	0.283	0.00833	0.630	0.0904	0.00508	0.00747	0.0158
Demeton	N/A	N/A	0.1	N/A	N/A	0.833	N/A	N/A	0.508	0.747	1.58
Diazinon	0.17	0.819	0.819	0.170	1.78	6.83	0.0974	0.570	4.16	0.143	0.302
Dicofol [Kelthane]	59.3	N/A	N/A	59.3	N/A	N/A	34.0	N/A	N/A	49.9	105
Dieldrin	0.24	0.71	0.002	0.240	1.54	0.0167	0.138	0.494	0.0102	0.0149	0.0316
Diuron	210	N/A	N/A	210	N/A	N/A	120	N/A	N/A	176	374
Endosulfan I (alpha)	0.22	0.034	0.009	0.220	0.0739	0.0750	0.126	0.0237	0.0458	0.0347	0.0735
Endosulfan II (beta)	0.22	0.034	0.009	0.220	0.0739	0.0750	0.126	0.0237	0.0458	0.0347	0.0735
Endosulfan sulfate	0.22	0.034	0.009	0.220	0.0739	0.0750	0.126	0.0237	0.0458	0.0347	0.0735
Endrin	0.086	0.037	0.002	0.0860	0.0804	0.0167	0.0493	0.0257	0.0102	0.0149	0.0316
Guthion [Azinphos Methyl]	N/A	N/A	0.01	N/A	N/A	0.0833	N/A	N/A	0.0508	0.0747	0.158
Heptachlor	0.52	0.053	0.004	0.520	0.115	0.0333	0.298	0.0369	0.0203	0.0298	0.0632
Hexachlorocyclohexane (gamma) [Lindane]	1.126	0.16	N/A	1.13	0.348	N/A	0.645	0.111	N/A	0.163	0.346
Lead	140	133	5.3	802	817	125	459	261	76.1	111	236
Malathion	N/A	N/A	0.01	N/A	N/A	0.0833	N/A	N/A	0.0508	0.0747	0.158
Mercury	2.4	2.1	1.1	2.40	4.57	9.17	1.38	1.46	5.59	2.02	4.27
Methoxychlor	N/A	N/A	0.03	N/A	N/A	0.250	N/A	N/A	0.153	0.224	0.474
Mirex	N/A	N/A	0.001	N/A	N/A	0.00833	N/A	N/A	0.00508	0.00747	0.0158
Nickel	863	118	13.1	2136	257	109	1224	82.1	66.6	97.8	207
Nonylphenol	28	7	1.7	28.0	15.2	14.2	16.0	4.87	8.64	7.15	15.1
Parathion (ethyl)	0.065	N/A	N/A	0.0650	N/A	N/A	0.0372	N/A	N/A	0.0547	0.115
Pentachlorophenol	19.5	15.1	9.6	19.5	32.8	80.0	11.2	10.5	48.8	15.4	32.6
Phenanthrene	30	7.7	4.6	30.0	16.7	38.3	17.2	5.36	23.4	7.87	16.6
Polychlorinated Biphenyls [PCBs]	2.0	10	0.03	2.00	21.7	0.250	1.15	6.96	0.153	0.224	0.474
Selenium	20	564	136	20.0	1226	1133	11.5	392	691	16.8	35.6
Silver	0.8	2	N/A	7.72	11.4	N/A	4.42	3.64	N/A	5.35	11.3
Toxaphene	0.78	0.21	0.0002	0.780	0.457	0.00167	0.447	0.146	0.00102	0.00149	0.00316
Tributyltin (TBT)	0.13	0.24	0.0074	0.130	0.522	0.0617	0.0745	0.167	0.0376	0.0552	0.116
2,4,5 Trichlorophenol	136	259	12	136	563	100	77.9	180	61.0	89.6	189
Zinc	216	92.7	84.2	804	405	1410	460	130	860	190	403

HUMAN HEALTH

CALCULATE DAILY	AVERAGE AND	DAILY MAXIMUM	EFFLUENT LIMITATIONS:

	Fish Only				
	Criterion	WLAh	LTAh	Daily Avg.	Daily Max.
Parameter	(µg/L)	(µg/L)	(µg/L)	(µg/L)	(µg/L)
Acrylonitrile	115	1917	1783	2620	5543
Aldrin	1.147E-05	0.000191	0.000178	0.000261	0.000552
Anthracene	1317	21950	20414	30007	63485
Antimony	1071	17850	16601	24402	51627
Arsenic	N/A	N/A	N/A	N/A	N/A
Barium	N/A	N/A	N/A	N/A	N/A
Benzene	581	9683	9006	13238	28007
Benzidine	0 107	1 78	1 66	2 4 3	5 15
Benzo(g)anthracene	0.107	0.417	0 388	0 569	1 20
Benzo(g)pyrene	0.025	0.417	0.0388	0.569	0 120
Bis(chloromethyl)ether	0.0025	0.0417	0.0588	6.0505	12.0
Bis(2-chloroothyl)ether	12 92	71/	4.25	0.25	2064
Bis(2-child bethyl) ether	42.05	126	117	973	2004
Bis(2-ethyllexyl) pittialate [Di(2-ethyllexyl) pittia	7.55	4502	4262	6265	12256
Bromodicnioromethane [Dichlorobromomethane]	275	4583	4263	0205	13256
	1060	1/66/	16430	24152	51097
	N/A	N/A	N/A	N/A	N/A
Carbon Tetrachloride	46	767	713	1048	2217
Chlordane	0.0025	0.0417	0.0388	0.0569	0.120
Chlorobenzene	2737	45617	42424	62362	131937
Chlorodibromomethane [Dibromochloromethane	183	3050	2837	4169	8821
Chloroform [Trichloromethane]	7697	128283	119304	175376	371033
Chromium (hexavalent)	502	8367	7781	11438	24198
Chrysene	2.52	42.0	39.1	57.4	121
Cresols [Methylphenols]	9301	155017	144166	211923	448354
Cyanide (free)	N/A	N/A	N/A	N/A	N/A
4,4'-DDD	0.002	0.0333	0.0310	0.0455	0.0964
4,4'-DDE	0.00013	0.00217	0.00202	0.00296	0.00626
4,4'-DDT	0.0004	0.00667	0.00620	0.00911	0.0192
2,4'-D	N/A	N/A	N/A	N/A	N/A
Danitol [Fenpropathrin]	473	7883	7332	10777	22800
1,2-Dibromoethane [Ethylene Dibromide]	4.24	70.7	65.7	96.6	204
<i>m</i> -Dichlorobenzene [1,3-Dichlorobenzene]	595	9917	9223	13557	28681
o -Dichlorobenzene [1.2-Dichlorobenzene]	3299	54983	51135	75167	159028
<i>p</i> -Dichlorobenzene [1.4-Dichlorobenzene]	N/A	N/A	N/A	N/A	N/A
3.3'-Dichlorobenzidine	2.24	37.3	34.7	51.0	107
1 2-Dichloroethane	364	6067	5642	8293	17546
1 1-Dichloroethylene [1 1-Dichloroethene]	55114	918567	854267	1255772	2656770
Dichloromethane [Methylene Chloride]	13333	222217	206662	303792	642717
1.2-Dichloropropage	250	/317	200002	5901	12/85
1.2-Dichloropropane [1.2-Dichloropropylane]	110	1092	19/5	2711	5726
Disofol [Kolthano]	0.20	E 00	1645	2711	1/1/
	2.05.05	0.000222	4.05	0.05	14.4
2.4 Dimethylphonel	2.0E-05	0.000333	120750	0.000455	0.000964
	8436	140600	130/58	192214	406657
Di-n -Butyl Phthalate	92.4	1540	1432	2105	4454
Dioxins/Furans [ICDD Equivalents]	7.97E-08	0.0000013	0.0000012	0.0000018	0.0000038
Endrin	0.02	0.333	0.310	0.455	0.964
Epichlorohydrin	2013	33550	31202	45866	97036
Ethylbenzene	1867	31117	28939	42539	89998
Ethylene Glycol	1.68E+07	28000000	260400000	382788000	809844000
Fluoride	N/A	N/A	N/A	N/A	N/A
Heptachlor	0.0001	0.00167	0.00155	0.00227	0.00482
Heptachlor Epoxide	0.00029	0.00483	0.00450	0.00660	0.0139
Hexachlorobenzene	0.00068	0.0113	0.0105	0.0154	0.0327
Hexachlorobutadiene	0.22	3.67	3.41	5.01	10.6

	Fish Only				
	Criterion	WLAh	LTAh	Daily Avg.	Daily Max.
Parameter	(μg/L)	(µg/L)	(µg/L)	(μg/L)	(µg/L)
Hexachlorocyclohexane (alpha)	0.0084	0.140	0.130	0.191	0.404
Hexachlorocyclohexane (beta)	0.26	4.33	4.03	5.92	12.5
Hexachlorocyclohexane (gamma) [Lindane]	0.341	5.68	5.29	7.76	16.4
Hexachlorocyclopentadiene	11.6	193	180	264	559
Hexachloroethane	2.33	38.8	36.1	53.0	112
Hexachlorophene	2.90	48.3	45.0	66.0	139
4,4'-Isopropylidenediphenol [Bisphenol A]	15982	266367	247721	364149	770412
Lead	3.83	180	168	246	521
Mercury	0.025	0.417	0.388	0.569	1.20
Methoxychlor	3.0	50.0	46.5	68.3	144
Methyl Ethyl Ketone	9.92E+05	16533333	15376000	22602720	47819360
Methyl tert -butyl ether [MTBE]	10482	174700	162471	238832	505284
Nickel	1140	19000	17670	25974	54953
Nitrate-Nitrogen (as Total Nitrogen)	N/A	N/A	N/A	N/A	N/A
Nitrobenzene	1873	31217	29032	42676	90287
N-Nitrosodiethylamine	2.1	35.0	32.6	47.8	101
N-Nitroso-di-n -Butylamine	4.2	70.0	65.1	95.6	202
Pentachlorobenzene	0.355	5.92	5.50	8.08	17.1
Pentachlorophenol	0.29	4.83	4.50	6.60	13.9
Polychlorinated Biphenyls [PCBs]	6.4E-04	0.0107	0.00992	0.0145	0.0308
Pyridine	947	15783	14679	21577	45650
Selenium	N/A	N/A	N/A	N/A	N/A
1,2,4,5-Tetrachlorobenzene	0.24	4.00	3.72	5.46	11.5
1,1,2,2-Tetrachloroethane	26.35	439	408	600	1270
Tetrachloroethylene [Tetrachloroethylene]	280	4667	4340	6379	13497
Thallium	0.23	3.83	3.57	5.24	11.0
Toluene	N/A	N/A	N/A	N/A	N/A
Toxaphene	0.011	0.183	0.171	0.250	0.530
2,4,5-TP [Silvex]	369	6150	5720	8407	17787
1,1,1-Trichloroethane	784354	13072567	12157487	17871505	37809784
1,1,2-Trichloroethane	166	2767	2573	3782	8002
Trichloroethylene [Trichloroethene]	71.9	1198	1114	1638	3465
2,4,5-Trichlorophenol	1867	31117	28939	42539	89998
TTHM [Sum of Total Trihalomethanes]	N/A	N/A	N/A	N/A	N/A
Vinyl Chloride	16.5	275	256	375	795

	70% of	85% of
Aquatic Life	Daily Avg.	Daily Avg.
Parameter	(μg/L)	(μg/L)
Aldrin	0.930	1.12
Aluminum	584	709
Arsenic	106	129
Cadmium	28.6	34.7
Carbaryl	1.17	1.43
Chlordane	0.0209	0.0254
Chlorpyrifos	0.00787	0.00956
Chromium (trivalent)	3013	3658
Chromium (hexavalent)	9.25	11.2
Copper	11.2	13.7
Copper (oyster waters)	N/A	N/A
Cyanide (free)	4.00	4.86
4,4'-DDT	0.00523	0.00635
Demeton	0.523	0.635
Diazinon	0.100	0.121
Dicofol [Kelthane]	34.9	42.4
Dieldrin	0.0104	0.0127
Diuron	123	150
Endosulfan I (<i>alpha</i>)	0.0243	0.0295
Endosulfan II (<i>beta</i>)	0.0243	0.0295
Endosulfan sulfate	0.0243	0.0295
Endrin	0.0104	0.0127
Guthion [Azinphos Methyl]	0.0523	0.0635
Heptachlor	0.0209	0.0254
Hexachlorocyclohexane (gamma) [Lindane]	0.114	0.139
Lead	78.3	95.1
Malathion	0.0523	0.0635
Mercury	1.41	1.71
Methoxychlor	0.156	0.190
Mirex	0.00523	0.00635
Nickel	68.5	83.2
Nonylphenol	5.01	6.08
Parathion (ethyl)	0.0383	0.0465
Pentachlorophenol	10.8	13.1
Phenanthrene	5.51	6.69
Polychlorinated Biphenyls [PCBs]	0.156	0.190
Selenium	11.7	14.3
Silver	3.74	4.55
Toxaphene	0.00104	0.00127
Tributyltin [TBT]	0.0387	0.0470
2,4,5 Trichlorophenol	62.7	76.2
Zinc	133	161

	70% of	85% of
Human Health	Daily Avg.	Daily Avg.
Parameter	(µg/L)	(µg/L)
Acrylonitrile	1834	2227
Aldrin	0.000182	0.000222
Anthracene	21005	25506
Antimony	17081	20742
Arsenic	N/A	N/A
Barium	N/A	N/A
Benzene	9266	11252
Benzidine	1.70	2.07
Benzo(a) anthracene	0.398	0.484
Benzo(a)pyrene	0.0398	0.0484
Bis(chloromethyl)ether	4.37	5.31
Bis(2-chloroethyl)ether	683	829
Bis(2-ethylhexyl) phthalate [Di(2-ethylhexyl) phtha	120	146
Bromodichloromethane [Dichlorobromomethane	4386	5325
Bromoform [Tribromomethane]	16906	20529
Cadmium	N/A	N/A
Carbon Tetrachloride	733	890
Chlordane	0.0398	0.0484
Chlorobenzene	43653	53008
Chlorodibromomethane [Dibromochloromethane	2918	3544
Chloroform [Trichloromethane]	122763	149069
Chromium (hexavalent)	8006	9722
Chrysene	40.1	48.8
Cresols [Methylphenols]	148346	180134
Cyanide (free)	N/A	N/A
4,4'-DDD	0.0318	0.0387
4,4'-DDE	0.00207	0.00251
4,4'-DDT	0.00637	0.00774
2,4'-D	N/A	N/A
Danitol [Fenpropathrin]	7544	9160
1,2-Dibromoethane [Ethylene Dibromide]	67.6	82.1
<i>m</i> -Dichlorobenzene [1,3-Dichlorobenzene]	9489	11523
o -Dichlorobenzene [1,2-Dichlorobenzene]	52617	63892
<i>p</i> -Dichlorobenzene [1,4-Dichlorobenzene]	N/A	N/A
3,3'-Dichlorobenzidine	35.7	43.3
1,2-Dichloroethane	5805	7049
1,1-Dichloroethylene [1,1-Dichloroethene]	879040	1067406
Dichloromethane [Methylene Chloride]	212654	258223
1,2-Dichloropropane	4130	5016
1,3-Dichloropropene [1,3-Dichloropropylene]	1897	2304
Dicofol [Kelthane]	4.78	5.81
Dieldrin	0.000318	0.000387
2,4-Dimethylphenol	134549	163382
Di-n -Butyl Phthalate	1473	1789
Dioxins/Furans [TCDD Equivalents]	0.0000013	0.0000015
Endrin	0.318	0.387
Epichlorohydrin	32106	38986
Ethylbenzene	29777	36158
Ethylene Glycol	267951600	325369800
Huoride	N/A	N/A
Heptachlor	0.00159	0.00193
Heptachlor Epoxide	0.00462	0.00561
Hexachlorobenzene	0.0108	0.0131
Hexachlorobutadiene	3.50	4.26
STATEMENT OF BASIS / TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION TPDES Permit No. WQ0005263000

	70% of	85% of
Human Health	Daily Avg.	Daily Avg.
Parameter	(µg/L)	(μg/L)
Hexachlorocyclohexane (alpha)	0.133	0.162
Hexachlorocyclohexane (beta)	4.14	5.03
Hexachlorocyclohexane (gamma) [Lindane]	5.43	6.60
Hexachlorocyclopentadiene	185	224
Hexachloroethane	37.1	45.1
Hexachlorophene	46.2	56.1
4,4'-Isopropylidenediphenol [Bisphenol A]	254904	309527
Lead	172	209
Mercury	0.398	0.484
Methoxychlor	47.8	58.1
Methyl Ethyl Ketone	15821904	19212312
Methyl tert -butyl ether [MTBE]	167182	203007
Nickel	18182	22078
Nitrate-Nitrogen (as Total Nitrogen)	N/A	N/A
Nitrobenzene	29873	36274
N-Nitrosodiethylamine	33.4	40.6
N-Nitroso-di-n -Butylamine	66.9	81.3
Pentachlorobenzene	5.66	6.87
Pentachlorophenol	4.62	5.61
Polychlorinated Biphenyls [PCBs]	0.0102	0.0123
Pyridine	15104	18340
Selenium	N/A	N/A
1,2,4,5-Tetrachlorobenzene	3.82	4.64
1,1,2,2-Tetrachloroethane	420	510
Tetrachloroethylene [Tetrachloroethylene]	4465	5422
Thallium	3.66	4.45
Toluene	N/A	N/A
Toxaphene	0.175	0.213
2,4,5-TP [Silvex]	5885	7146
1,1,1-Trichloroethane	12510054	15190780
1,1,2-Trichloroethane	2647	3214
Trichloroethylene [Trichloroethene]	1146	1392
2,4,5-Trichlorophenol	29777	36158
TTHM [Sum of Total Trihalomethanes]	N/A	N/A
Vinyl Chloride	263	319

STATEMENT OF BASIS / TECHNICAL SUMMARY AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION TPDES Permit No. WQ0005263000

Appendix B Comparison of Effluent Limits

The following table is a summary of technology-based effluent limitations calculated/assessed in the draft permit (Technology-Based), calculated/ assessed water quality-based effluent limitations (Water Quality-Based), and effluent limitations in the existing permit (Existing Permit). Effluent limitations appearing in bold are the most stringent of the three and are included in the draft permit.

		Technology	Water Qu	uality-Based	Existing Permit		
Outfall	Pollutant	Daily Avg	Daily Max	Daily Avg	Daily Max	Daily Avg	Daily Max
		mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
001	Flow	-	-	-	-	0.144 MGD	0.288 MGD
	Total Organic Carbon	N/A	75	-	-	N/A	75
	Oil and Grease	N/A	15	-	-	N/A	15
	Total Dissolved Solids	Report	Report	-	-	Report	Report
	рН	6.0 SU, minimum	9.0 SU	-	_	6.0 SU, minimum	9.0 SU



January 29, 2024

Victoria Port Power II LLC 2050 N. Old Bloomington Rd Victoria TX 77905

Texas Commission on Environmental Quality (TCEQ) Water Quality Division P.O. Box 13087 Austin, TX 78711 *Via TCEQ FTP & FED EX*

Subject: Victoria Port Power II LLC TPDE Renewal Application Permit No. WQ0005263000

Dear Sir or Madam,

On behalf of Victoria Port Power II LLC, Victoria Port Power II Peaking Facility is submitting the enclosed Industrial Wastewater Discharge Permit renewal application for Permit No. WQ0005263000.

The submittal is performed through the TCEQ file transfer protocol (FTP) server along with an original hardcopy and 2 copies to the address listed above.

We would like to highlight that no discharge has commenced at the facility, and subsequently no wastewater is available to be sampled. Upon discharge from the facility, required sampling will take place.

Should you have any questions or require any additional information, please do not hesitate to contact me, Kurt Lammrish at (979) 248-8026 or Kurt.Lammrish@peakerpowerholdings.com.

Respectfully,

Kurthammish

Kurt Lammrish Plant Manager

TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMIT RENEWAL APPLICATION

Victoria Port Power II, LLC 2050 Bloomington Rd. N Victoria, TX 77905 TPDES Permit No. WQ0005263000

January 29, 2024

SUBMITTED TO:

Texas Commission on Environmental Quality (TCEQ) Water Quality Division Applications Review and Processing Team, MC – 148 P.O. Box 13087 Austin, TX 78711

SUBMITTED BY: Victoria Port Power II, LLC 2050 Bloomington Rd. N Victoria, TX 77905

PREPARED BY:



13 Reads Way, Suite 100 New Castle, DE 19720

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SECTION 1

TPDES Individual Industrial Wastewater Permit to Discharge Renewal Application TCEQ Forms



TCEQ Core Data Form

For detailed instructions on completing this form, please read the Core Data Form Instructions or call 512-239-5175.

SECTION I: General Information

1. Reason for Submission (If other is checked please desc	1. Reason for Submission (If other is checked please describe in space provided.)							
New Permit, Registration or Authorization (<i>Core Data</i>)	Form should be submitted with a	the program application.)						
Renewal (Core Data Form should be submitted with the	e renewal form)	Other						
	,							
2. Customer Reference Number (if issued)	To the second statistical second state	3. Regulated Entity Reference Number (if issued)						
	Follow this link to search	······································						
	for CN or RN numbers in							
CN 605568807	RN 110451648							
1	-							

SECTION II: Customer Information

4. General Cu	istomer In	formation	Date for Cu	stome	er Information Updates (mm/dd/yyyy) 10/8/2021				10/8/2021			
New Customer Update to Customer Information Change in Regulated Entity Ownership Change in Legal Name (Verifiable with the Texas Secretary of State or Texas Comptroller of Public Accounts)												
The Customer Name submitted here may be updated automatically based on what is current and active with the Texas Secretary of State												
(SOS) or Texas Comptroller of Public Accounts (CPA).												
6. Customer Legal Name (If an individual, print last name first: eg: Doe, John) If new Customer, enter previous Customer below:								er below:				
Victoria Port II	Power LLC											
7. TX SOS/CP	A Filing Nu	umber	8. TX State T	ax ID (11 dig	gits)			9. Fe	deral Tax II	D	10. DUNS I	Number (if
0803053717			32067619240					(9 dig	gits)		applicable)	
								36-49909863				
11. Type of C	ustomer:	Corporat	ion				🗌 Individ	lual Partnership: 🗌 General 🗌 Limited			eral 🗌 Limited	
Government:	City 🗌 C	County 🗌 Federal 🗌	Local 🗌 State	Other			Sole Proprietorship Other: LLC					
12. Number o	of Employe	ees						13. I	ndependen	tly Ow	ned and Ope	rated?
⊠ 0-20 □ 2	21-100] 101-250 [] 251-	500 🗌 501 a	and higher		🛛 Yes 🗌 No						
14. Customer	Role (Prop	posed or Actual) – <i>as i</i>	t relates to the F	Regulated En	tity liste	ed on	this form. I	Please	check one of	the follo	wing	
Owner	al Licensee	Operator Responsible Par	rty 🗌 V	ner & Operat CP/BSA Appl	tor licant				Other:			
15. Mailing	24 Water	way Ave.										
Address:	Suite 400											
	City	The Woodlands		State	ТΧ		ZIP	7738	0		ZIP + 4	
16. Country N	Aailing Inf	ormation (if outside	USA)			17.	E-Mail Ac	ldress	(if applicable	e)		
18. Telephone Number 19. Extension or					n or Co	ode			20. Fax N	umber ((if applicable)	

21. General Regulated E	ntity Informa	i tion (If 'New Re	gulated Entity" is :	selected, a new	permit applic	cation is also i	required.)		
New Regulated Entity	Update to	Regulated Entity	v Name 🛛 Upd	ate to Regulate	d Entity Infor	mation			
The Regulated Entity No as Inc, LP, or LLC).	ime submitte	d may be upda	ıted, in order to	meet TCEQ C	ore Data Sto	andards (rei	moval of org	ganization	al endings suc
22. Regulated Entity Na	me (Enter nam	e of the site whe	re the regulated a	ction is taking p	olace.)				
Victoria Port II Peaking Faci	lity								
23. Street Address of	2050 Old Bl	oomington Rd N							
<u>NO PO Boxesj</u>	City	Victoria	State	тх	ZIP	77905		ZIP + 4	
24. County	Victoria								•
		lf no Stre	et Address is pr	ovided, fields	3 25-28 are r	equired.			
25. Description to									
Physical Location:									
26. Nearest City						State		Nea	rest ZIP Code
Victoria						ТХ		7790)5
atitude/Longitude are	required and				Data Stanc	lards. (Geod	oding of the	e Physical	Address may
used to supply coordina	tes where no.	ne have been µ	l/updated to me provided or to g	et TCEQ Core ain accuracy)					
used to supply coordina 27. Latitude (N) In Decir	tes where no	ne have been j 28.6958	l/updated to me provided or to g	eet TCEQ Core ain accuracy) 28.	Longitude ((W) In Decin	nal:	-96.9454	
used to supply coordina 27. Latitude (N) In Decir Degrees	tes where no nal: Minutes	may be added ne have been (28.6958	l/updated to me provided or to g Seconds	eet TCEQ Core ain accuracy) 28. Deg	Longitude ((W) In Decin	nal: inutes	-96.9454	Seconds
used to supply coordina 27. Latitude (N) In Decir Degrees 28	tes where no	may be added ne have been (28.6958 41	d/updated to me provided or to g Seconds 48.18	eet TCEQ Core ain accuracy) 28. Deg	Longitude (grees	(W) In Decin	nal: inutes 56	-96.9454	Seconds 41.60
used to supply coordina 27. Latitude (N) In Decir Degrees 28 29. Primary SIC Code	tes where no nal: Minutes 30.	41 Secondary SIC	Vupdated to me provided or to g Seconds 48.18 Code	eet TCEQ Core ain accuracy) 28. Deg 31. Prim	I Longitude (grees 96 ary NAICS C	(W) In Decin	nal: inutes 56 32. Secor	-96.9454	Seconds 41.60 CS Code
27. Latitude (N) In Decir Degrees 28 29. Primary SIC Code (4 digits)	tes where no nal: Minutes 30. (4 di	28.6958 41 Secondary SIC	Seconds 48.18 Code	28. 28. Deg 31. Prim (5 or 6 di	June Stand Longitude (grees 96 lary NAICS C gits)	(W) In Decin	nal: inutes 56 32. Secor (5 or 6 dig	-96.9454	Seconds 41.60 CS Code
used to supply coordina 27. Latitude (N) In Decir Degrees 28 29. Primary SIC Code (4 digits) 4911	tes where no nal: Minutes 30. (4 di	41 Secondary SIC	l/updated to me provided or to g Seconds 48.18 Code	221112	yrees 96 ary NAICS C	(W) In Decin	nal: inutes 56 32. Secor (5 or 6 dig	-96.9454 ndary NAIC	Seconds 41.60 CS Code

() -

34 Mailing	24 Waterway Ave.										
Address:	Suite 400										
	City		The Woodlands		State	тх	z	ZIP	77380	ZIP + 4	
35. E-Mail Address:											
36. Telephone Number				37. Extension or Code			38. Fax Number (if applicable)				
(281) 863-9000								()	-		

39. TCEQ Programs and ID Numbers Check all Programs and write in the permits/registration numbers that will be affected by the updates submitted on this form. See the Core Data Form instructions for additional guidance.

Dam Safety	Districts	Edwards Aquifer	Emissions Inventory Air	Industrial Hazardous Waste
			VCA010G, RN110451648	
Municipal Solid Waste	New Source Review Air	OSSF	Petroleum Storage Tank	D PWS
Sludge	Storm Water	🛛 Title V Air	Tires	Used Oil
		O4097, Standard Permit 152697		
Voluntary Cleanup	Wastewater	Wastewater Agriculture	Water Rights	Other: TIER II
	WQ0005263000			
	TX0138801			TXT2-101137

SECTION IV: Preparer Information

40. Name:	Chris Lussier			41. Title:	Environmental Specialist	
42. Telephon	e Number	43. Ext./Code	44. Fax Number	45. E-Mail	Address	
(901)651-693	0		() -	christopher.	lussier@naes.com	

SECTION V: Authorized Signature

46. By my signature below, I certify, to the best of my knowledge, that the information provided in this form is true and complete, and that I have signature authority to submit this form on behalf of the entity specified in Section II, Field 6 and/or as required for the updates to the ID numbers identified in field 39.

Company:	Victoria Port II Power LLC	Plant Manager		
Name (In Print):	Kurt Lammrish		Phone:	(979) 248- 8026
Signature:	KurtRammush		Date:	1/29/2024

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TCEQ INDUSTRIAL WASTEWATER PERMIT APPLICATION

INDUSTRIAL ADMINISTRATIVE REPORT 1.0

This report is required for all applications for TPDES permits and TLAPs. Contact the Applications Review and Processing Team at 512-239-4671 with any questions about completing this report

Item 1. Application Information and Fees (Instructions, Page 25)

a.	Complete each field with the re	quested inform	ation, if applicable.
	Applicant Name: <u>Victoria Port P</u>	<u>ower II LLC</u>	EPA ID No.: <u>TX0138801</u>
	Permit No.: <u>WQ0005263000</u>	Expiration Da	ite: <u>7/31/2024</u>

b. Check the box next to the appropriate authorization type.

☑ Industrial Wastewater (wastewater and stormwater)

□ Industrial Stormwater (stormwater only)

c. Check the box next to the appropriate facility status.

 \boxtimes Active \square Inactive

- d. Check the box next to the appropriate permit type.
 - \boxtimes TPDES Permit \square TLAP
- e. Check the box next to the appropriate application type.
 - □ New
 - \Box Renewal with changes
 - \square Major amendment with renewal
 - □ Minor amendment without renewal
- Major amendment without renewal

Renewal without changes

- □ Minor modification without renewal
- f. If applying for an amendment or modification, describe the request: Click to enter text.
- g. Application Fee

EPA Classification	New	Major Amend. (with or without renewal)	Renewal (with or without changes)	Minor Amend. / Minor Mod. (without renewal)
Minor facility not subject to EPA categorical effluent guidelines (40 CFR Parts 400-471)	\$350	□ \$350	⊠ \$315	\$150
Minor facility subject to EPA categorical effluent guidelines (40 CFR Parts 400-471)	\$1,250	\$1,250	\$1,215	\$150
Major facility	N/A 1	\$2,050	\$2,015	\$450

For TCEQ Use Only

Segment Number	_County
Expiration Date	Region
Permit Number	

¹ All facilities are designated as minors until formally classified as a major by EPA.

TCEQ-10411 (10/24/2022) Industrial Wastewater Application Administrative Report

h. Payment Information

Mailed

Check or money order No.: <u>Click to enter text.</u> Check or money order amt.: <u>Click to enter text.</u> Named printed on check or money order: <u>Click to enter text.</u>

Epay

Voucher number: <u>Click to enter text.</u> Copy of voucher attachment: <u>Click to enter text.</u>

Item 2. Applicant Information (Instructions, Pages 25)

a. Customer Number, if applicant is an existing customer: <u>CN605568807</u>

Note: Locate the customer number using the <u>TCEQ's Central Registry Customer Search</u>².

b. Legal name of the entity (applicant) applying for this permit: Victoria Port Power II LLC

Note: The owner of the facility must apply for the permit. The legal name must be spelled exactly as filed with the TX SOS, Texas Comptroller of Public Accounts, County, or in the legal documents forming the entity.

c. Name and title of the person signing the application. (**Note:** The person must be an executive official that meets signatory requirements in 30 TAC § 305.44.)

🖾 Mr. 🗖 Ms. First/Last Name: <u>Kurt Lammrish</u>

Title: Plant Manger

Credential: Click to enter text.

d. Will the applicant have overall financial responsibility for the facility?

🗆 Yes 🖾 No

Note: The entity with overall financial responsibility for the facility must apply as a co-applicant, if not the facility owner.

Item 3. Co-applicant Information (Instructions, Page 26)

Check this box if there is no co-applicant.; otherwise, complete the below questions.

a. Legal name of the entity (co-applicant) applying for this permit: <u>Victoria Port Power II LLC</u>

Note: The legal name must be spelled exactly as filed with the TX SOS, Texas Comptroller of Public Accounts, County, or in the legal documents forming the entity.

b. Customer Number (if applicant is an existing customer): <u>CN605568807</u>

Note: Locate the customer number using the TCEQ's Central Registry Customer Search.

c. Name and title of the person signing the application. (**Note:** The person must be an executive official that meets signatory requirements in 30 TAC § 305.44.)

🖾 Mr. 🗖 Ms. First/Last Name: <u>Mike Tulk</u>

Title: <u>Asset Manager</u>

Credential: Click to enter text.

d. Will the co-applicant have overall financial responsibility for the facility?

🖾 Yes 🛛 No

Note: The entity with overall financial responsibility for the facility must apply as a co-applicant, if not the facility owner.

TCEQ-10411 (10/24/2022) Industrial Wastewater Application Administrative Report

² <u>https://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch</u>

Item 4. Core Data Form (Instructions, Pages 26)

a. Complete one Core Data Form (TCEQ Form 10400) for each customer (applicant and coapplicant(s)) and include as an attachment. If the customer type selected on the Core Data Form is Individual, complete Attachment 1 of the Administrative Report. Attachment: <u>Click to enter text.</u>

Item 5. Application Contact Information (Instructions, Page 26)

Provide names of two individuals who can be contact for additional information about this application. Indicate if the individual can be contact about administrative or technical information, or both.

. \boxtimes Technical Contact a.

Administrative Contact Mr. D Ms. Full Name (First and Last): Christopher Lussier Title: Environmental Specialist Credential: Click to enter text. **Organization Name: NAES Corporation** Mailing Address: 652 Landing Party Lane City: Collierville State: TN Zip Code: 38017 Phone No: <u>901-651-6930</u> Fax No: Click to enter text. Email: Christopher.lussier@naes.com b. Administrative Contact . 🖾 Technical Contact □ Mr. ⊠ Ms. Full Name (First and Last): Laura Dale Title: Environmental Specialist Credential: Click to enter text. Organization Name: NAES Corporation Mailing Address: <u>13 Reads Way Suite 100</u> City: New Castle State: Delaware Zip Code: 19720 Phone No: 267-836-6983 Fax No: Click to enter text. Email: Laura.Dale@naes.com Attachment: Click to enter text.

Item 6. Permit Contact Information (Instructions, Pages 26)

Provide two names of individuals that can be contacted throughout the permit term.

a.	🖾 Mr. 🗖 Ms. Full Name (First	and Last): <u>Christopher Lussier</u>	
	Title: <u>Environmental Specialist</u>	Credential: Click to enter text	
	Organization Name: <u>NAES Corp</u>	<u>oration</u>	
	Mailing Address: <u>652 Landing P</u>	<u>arty Lane</u>	
	City: <u>Collierville</u> State: <u>TN</u>	Zip Code: <u>38017</u>	
	Phone No: <u>901-651-6930</u>	Fax No: <u>Click to enter text.</u>	Email: Christopher.lussier@naes.com
b.	🖾 Mr. 🗖 Ms. Full Name (First	and Last): <u>Kurt Lammrish</u>	
	Title: <u>Plant Manager</u>	Credential: Click to enter text	
	Organization Name: <u>NAES Corp</u>	oration	
	Mailing Address: 2050 Old Bloo	<u>mington Rd N</u>	
	City: <u>Victoria</u> State: <u>TX</u>	Zip Code: <u>77905</u>	
	Phone No: <u>979-248-8026</u>	Fax No: <u>Click to enter text.</u>	Email: <u>Kurt.Lammrish@naes.com</u>

Attachment: Click to enter text.

Item 7. Billing Contact Information (Instructions, Page 27)

The permittee is responsible for paying the annual fee. The annual fee will be assessed for permits **in effect on September 1 of each year**. The TCEQ will send a bill to the address provided in this section. The permittee is responsible for terminating the permit when it is no longer needed (form TCEQ-20029).

Provide the complete mailing address where the annual fee invoice should be mailed and the name and phone number of the permittee's representative responsible for payment of the invoice.

\boxtimes Mr. \square Ms. Full Na	me (First a	and Last): <u>Tammy Russell</u>	
Title: <u>EHS Manager</u>		Credential: <u>Click to enter text</u>	1
Organization Name: <u>V</u>	ictoria Por	rt Power II	
Mailing Address: 2050) Old Bloom	<u>mington Rd N</u>	
City: <u>Victoria</u>	State: <u>TX</u>	Zip Code: <u>77905</u>	
Phone No: <u>832-514-92</u>	75	Fax No: <u>Click to enter text.</u>	Email: <u>Tammy.Russell@naes.com</u>

Item 8. DMR/MER Contact Information (Instructions, Page 27)

Provide the name and mailing address of the person delegated to receive and submit DMRs or MERs. **Note:** DMR data must be submitted through the NetDMR system. An electronic reporting account can be established once the facility has obtained the permit number.

Mr. 🗆 Ms. Full Name (First and Last): <u>Kurt Lammrish</u>

Title: Plant ManagerCredential: Click to enter text

Organization Name: Victoria Port Power II

Mailing Address: 2050 Old Bloomington Rd N

City: <u>Victoria</u> State: <u>TX</u> Zip Code: <u>77905</u>

Phone No: <u>979-248-8026</u> Fax No: <u>Click to enter text</u>. Email: <u>Kurt.Lammrish@naes.com</u>

Item 9. NOTICE INFORMATION (Instructions, Pages 27

a. Individual Publishing the Notices

□ Mr. 🖾 Ms. Full Name (First and Last): <u>Tammy Russell</u>

Title: <u>EHS Manger</u> Credential: <u>Click to enter text.</u>

Organization Name: Victoria Port Power II

Mailing Address: 2050 Old Bloomington Rd N

City: <u>Victoria</u> State: <u>TX</u> Zip Code: <u>77905</u>

Phone No: <u>832-514-9275</u> Fax No: <u>Click to enter text.</u> Email: <u>Tammy.Russell@naes.com</u>

b. Method for Receiving Notice of Receipt and Intent to Obtain a Water Quality Permit Package (only for NORI, NAPD will be sent via regular mail)

E-mail: <u>Tammy.Russell@naes.com</u>, <u>Christopher.Lussier@naes.com</u>

□ Fax: <u>Click to enter text</u>.

⊠ Regular Mail (USPS)

Mailing Address: 2050 Old Bloomington Rd N

City: <u>Victoria</u> State: <u>TX</u> Zip Code: <u>77905</u>

c. Contact in the Notice

🖾 Mr. 🔲 Ms 🛛 Full Name (First and Last): <u>Kurt Lammrish</u>

Title: <u>Plant Manager</u> Credential: <u>Click to enter text.</u>

Organization Name: Victoria Port Power II

Phone No: <u>979-248-8026</u> Fax No: <u>Click to enter text.</u> Email: <u>Kurt.Lammrish@naes.com</u>

d. Public Viewing Location Information

Note: If the facility or outfall is located in more than one county, provide a public viewing place for each county.

Public building name: <u>Victoria Port Power II</u> Location within the building: <u>Front Entrance</u>

Physical Address of Building: 2050 Old Bloomington Rd N, TX 77905

City: <u>Victoria</u> County: <u>Victoria</u>

e. Bilingual Notice Requirements

This information is required for new, major amendment, minor amendment or minor modification, and renewal applications.

This section of the application is only used to determine if alternative language notices will be needed. Complete instructions on publishing the alternative language notices will be in your public notice package.

Please call the bilingual/ESL coordinator at the nearest elementary and middle schools and obtain the following information to determine whether an alternative language notices are required.

1. Is a bilingual education program required by the Texas Education Code at the elementary or middle school nearest to the facility or proposed facility?

🗆 Yes 🖾 No

If no, publication of an alternative language notice is not required; skip to Item 8 (Regulated Entity and Permitted Site Information.)

2. Are the students who attend either the elementary school or the middle school enrolled in a bilingual education program at that school?

🗆 Yes 🖾 No

3. Do the students at these schools attend a bilingual education program at another location?

🗆 Yes 🖾 No

4. Would the school be required to provide a bilingual education program, but the school has waived out of this requirement under 19 TAC §89.1205(g)?

🗆 Yes 🗆 No 🖾 N/A

- 5. If the answer is yes to question 1, 2, 3, or 4, public notices in an alternative language are required. Which language is required by the bilingual program? <u>Click to enter text.</u>
- f. Plain Language Summary Template Complete the Plain Language Summary at the end of this application.
- g. Complete one Public Involvement Plan (PIP) Form (TCEQ Form 20960) for each application for a new permit or major amendment and include as an attachment. Attachment: <u>Click to enter text.</u>

Item 10. Regulated Entity and Permitted Site Information (Instructions Pages 28-30)

a. TCEQ issued Regulated Entity Number (RN), if available: <u>RN110451648</u>

Note: If your business site is part of a larger business site, a Regulated Entity Number (RN) may already be assigned for the larger site. Use the RN assigned for the larger site. Search the TCEQ's Central Registry to determine the RN or to see if the larger site may already be registered as a Regulated Entity. If the site is found, provide the assigned RN.

- b. Name of project or site (the name known by the community where located): Victoria Port Power II
- c. Is the location address of the facility in the existing permit the same?

□ Yes 🖾 No 🗆 N/A (new permit)

Note: If the facility is located in Bexar, Comal, Hays, Kinney, Medina, Travis, Uvalde, or Williamson County, additional information concerning protection of the Edwards Aquifer may be required.

d. Owner of treatment facility:

	🗆 Mr. 🗖 Ms. Full Name (First	and Last): <u>Click to enter text.</u>	
	or Organization Name: Victoria	Port Power II, LLC	
	Mailing Address: <u>2050 Old Bloc</u>	omington RD N	
	City: <u>Victoria</u> State: <u>TX</u>	Zip Code: <u>77905</u>	
	Phone No: <u>NA</u>	Fax No: <u>Click to enter text.</u>	Email: <u>NA</u>
e.	Ownership of facility: \Box Pu	blic 🛛 Private	□ Both □ Federal
f.	Owner of land where treatment	facility is or will be: <u>Victoria P</u>	<u>ort Power II, LLC</u>
	🗖 Mr. 🗖 Ms. Full Name (First	and Last): <u>Click to enter text.</u>	
	or Organization Name: <u>Victoria</u>	<u>Port Power II, LLC</u>	
	Mailing Address: <u>2050 Old Bloc</u>	mington RD N	
	City: <u>Victoria</u> State: <u>TX</u>	Zip Code: <u>77905</u>	
	Phone No: <u>NA</u>	Fax No: <u>Click to enter text.</u>	Email: <u>NA</u>
	Note: If not the same as the factorial six years (In some cases, a lease	ility owner, attach a long-term e may not suffice - see instruct	lease agreement in effect for at least ions). Attachment: <u>Click to enter text.</u>
g.	Owner of effluent TLAP dispos	al site (if applicable): <u>NA</u>	
	🗆 Mr. 🗖 Ms. Full Name (First	and Last): <u>Click to enter text.</u>	
	or Organization Name: <u>Click to</u>	enter text.	
	Mailing Address: <u>Click to enter</u>	text.	
	City: <u>Click to enter text.</u>	State: <u>Click to enter text.</u>	Zip Code: <u>Click to enter text.</u>
	Phone No: <u>Click to enter text.</u>	Fax No: <u>Click to enter text.</u>	Email: <u>Click to enter text.</u>
	Note: If not the same as the factorial six years. Attachment: <u>Click to</u>	ility owner, attach a long-term enter text.	lease agreement in effect for at least
h.	Owner of sewage sludge dispos	al site (if applicable):	
	□ Mr. □ Ms. Full Nam	e (First and Last): <u>NA</u>	
	or Organization Name: <u>Click to</u>	enter text.	

Mailing Address: Click to enter text.

TCEQ-10411 (10/24/2022) Industrial Wastewater Application Administrative Report

City: Click to enter text.

State: Click to enter text.

Zip Code: Click to enter text.

Phone No: Click to enter text.

Fax No: Click to enter text. Email: Click to enter text.

Note: If not the same as the facility owner, attach a long-term lease agreement in effect for at least six years. Attachment: Click to enter text.

Item 11. TDPES Discharge/TLAP Disposal Information (Instructions, Pages 30-32)

a. Is the facility located on or does the treated effluent cross Native American Land?

□ Yes ⊠ No

b. Attach an original full size USGS Topographic Map (or an 8.5"×11" reproduced portion for renewal or amendment applications) with all required information. Check the box next to each item below to confirm it has been included on the map.

 \boxtimes One-mile radius

- Applicant's property boundaries
- ☑ Three-miles downstream information
- □ Treatment facility boundaries
- \boxtimes Highlighted discharge route(s)
- Effluent disposal site boundaries
- □ Sewage sludge disposal site

 \boxtimes Labeled point(s) of discharge

Attachment: Click to enter text.

- □ All wastewater ponds
- □ New and future construction
- c. Is the location of the sewage sludge disposal site in the existing permit accurate?

□ Yes □ No or New Permit

If no, or a new application, provide an accurate location description: Click to enter text.

d. Are the point(s) of discharge in the existing permit correct?

 \boxtimes Yes \square No or New Permit

If no, or a new application, provide an accurate location description: Click to enter text.

e. Are the discharge route(s) in the existing permit correct?

 \boxtimes Yes \square No or New Permit

If no, or a new permit, provide an accurate description of the discharge route: <u>Click to enter text.</u>

- f. City nearest the outfall(s): Victoria
- County in which the outfalls(s) is/are located: Victoria g.
- h. Is or will the treated wastewater discharge to a city, county, or state highway right-of-way, or a flood control district drainage ditch?

🗆 Yes 🖾 No

If yes, indicate by a check mark if:
Authorization granted □ Authorization pending

For new and amendment applications, attach copies of letters that show proof of contact and provide the approval letter upon receipt. Attachment: Click to enter text.

For all applications involving an average daily discharge of 5 MGD or more, provide the names of all counties located within 100 statute miles downstream of the point(s) of discharge: Click to enter text.

For TLAPs, is the location of the effluent disposal site in the existing permit accurate? i.

 \square Yes \square No or New Permit

If no, or a new application, provide an accurate location description: Click to enter text.

- j. City nearest the disposal site: <u>Click to enter text.</u>
- k. County in which the disposal site is located: Click to enter text.
- 1. Disposal Site Latitude: <u>Click to enter text.</u> Longitude: <u>Click to enter text.</u>
- m. For TLAPs, describe how effluent is/will be routed from the treatment facility to the disposal site: <u>Click to enter text.</u>
- n. For TLAPs, identify the nearest watercourse to the disposal site to which rainfall runoff might flow if not contained: <u>Click to enter text.</u>

Item 12. MISCELLANEOUS INFORMATION (Instructions, Page 32)

- a. Did any person formerly employed by the TCEQ represent your company and get paid for service regarding this application?
 - 🗆 Yes 🖾 No

If yes, list each person: <u>Click to enter text.</u>

b. Do you owe any fees to the TCEQ?

```
🗆 Yes 🖾 No
```

If yes, provide the account no.: <u>Click to enter text.</u> and total amount due: <u>Click to enter text.</u>

c. Do you owe any penalties to the TCEQ?

🗆 Yes 🖾 No

If yes, provide the enforcement order no.: <u>Click to enter text.</u> and amount due: <u>Click to enter text.</u>

Item 13. SIGNATURE PAGE (Instructions, Pages 32-33)

Permit No: WQ0005263000

Applicant Name: Victoria Port II LLC

Certification: I, Mike Tulk, certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under 30 Texas Administrative Code §305.44 to sign and submit this document and can provide documentation in proof of such authorization upon request.

Signatory name (typed or printed): Mike Tulk

Signatory title: Asset Manager	
Signature: Date: Date:	
Subscribed and Sworn to before me by the said Mike TUIK	
on this 20^{24} day of January , 20^{24}	
My commission expires on the $_18$ day of September , 2027 .	
Notary Public ISEAL1	
Harris Founty Torres September	18,2027

County, Texas

Note: If co-applicants are necessary, each entity must submit an original, separate signature page.

WATER QUALITY PERMIT

PAYMENT SUBMITTAL FORM

Use this form to submit the Application Fee, if mailing the payment. (Instructions, Page 36-37)

- Complete items 1 through 5 below. •
- Staple the check or money order in the space provided at the bottom of this document. •
- Do not mail this form with the application form. .
- Do not mail this form to the same address as the application.
- Do not submit a copy of the application with this form as it could cause duplicate permit entries.

Mail this form and the check or money order to:

BY REGULAR U.S. MAIL	BY OVERNIGHT/EXPRESS MAIL
Texas Commission on Environmental Quality	Texas Commission on Environmental Quality
Financial Administration Division	Financial Administration Division
Cashier's Office, MC-214	Cashier's Office, MC-214
P.O. Box 13088	12100 Park 35 Circle
Austin, Texas 78711-3088	Austin, Texas 78753

Fee Code: WQP Permit No: WQ0005263000

1. Check or Money Order Number: PAYMENT SENT VIA TCEQ EPAY

- 2. Check or Money Order Amount: Click to enter text.
- 3. Date of Check or Money Order: Click to enter text.
- 4. Name on Check or Money Order: Click to enter text.
- 5. APPLICATION INFORMATION

Name of Project or Site: Victoria Port Power II LLC

Physical Address of Project or Site: 2050 Old Bloomington RD N, Victoria TX 77905

If the check is for more than one application, attach a list which includes the name of each Project or Site (RE) and Physical Address, exactly as provided on the application. Attachment: Click to enter text.

Staple Check or Money Order in This Space

Checklist of Common Deficiencies

Below is a list of common deficiencies found during the administrative review of industrial wastewater permit applications. To ensure the timely processing of this application, please review the items below and indicate each item is complete and in accordance applicable rules at 30 TAC Chapters 21, 281, and 305 by checking the box next to the item. If an item is not required this application, indicate by checking N/A where appropriate. Please do not submit the application until all items below are addressed.

- Core Data Form (TCEQ Form No. 10400) (Required for all applications types. Must be completed in its entirety and signed. Note: Form may be signed by applicant representative.)
- Correct and Current Industrial Wastewater Permit Application Forms (*TCEQ Form Nos. 10055 and 10411. Version dated 5/10/2019 or later.*)
- ☑ Water Quality Permit Payment Submittal Form (Page 14) (Original payment sent to TCEQ Revenue Section. See instructions for mailing address.)
- 7.5 Minute USGS Quadrangle Topographic Map Attached (Full-size map if seeking "New" permit.
 8 ½ x 11 acceptable for Renewals and Amendments.)
- □ N/A ⊠ Current/Non-Expired, Executed Lease Agreement or Easement Attached
- ☑ N/A □ Landowners Map (See instructions for landowner requirements.)

Things to Know:

- All the items shown on the map must be labeled.
- The applicant's complete property boundaries must be delineated which includes boundaries of contiguous property owned by the applicant.
- The applicant cannot be its own adjacent landowner. You must identify the landowners immediately adjacent to their property, regardless of how far they are from the actual facility.
- If the applicant's property is adjacent to a road, creek, or stream, the landowners on the opposite side must be identified. Although the properties are not adjacent to applicant's property boundary, they are considered potentially affected landowners. If the adjacent road is a divided highway as identified on the USGS topographic map, the applicant does not have to identify the landowners on the opposite side of the highway.
- □ N/A □ Landowners Cross Reference List (See instructions for landowner requirements.)
- □ N/A □ Landowners Labels or CD-RW attached (See instructions for landowner requirements.)
- ☑ Original signature per 30 TAC § 305.44 Blue Ink Preferred (If signature page is not signed by an elected official or principle executive officer, a copy of signature authority/delegation letter must be attached.)

🖾 Plain Language Summary

Plain Language Summary Template and Instructions for Texas Pollutant Discharge Elimination System (TPDES) and Texas Land Application (TLAP) Permit Applications

This template is a guide to assist applicant's in developing a plain language summary as required by <u>30 Texas Administrative Code Chapter 39 Subchapter H</u>. Applicant's may modify the template as necessary to accurately describe their facility as long as the summary includes the following information: (1) the function of the proposed plant or facility; (2) the expected output of the proposed plant or facility; (3) the expected pollutants that may be emitted or discharged by the proposed plant or facility; and (4) how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment.

Fill in the highlighted areas below to describe your facility and application in plain language. Instructions and examples are provided below. Make any other edits necessary to improve readability or grammar and to comply with the rule requirements.

If you are subject to the alternative language notice requirements in <u>30 Texas Administrative</u> <u>Code §39.426</u>, you must provide a translated copy of the completed plain language <u>summary in the appropriate alternative language as part of your application package</u>. For your convenience, a Spanish template has been provided below. -NOT APPLICABLE

ENGLISH TEMPLATE FOR TPDES or TLAP NEW/RENEWAL/AMENDMENT APPLICATIONS INDUSTRIAL WASTEWATER/STORMWATER

The following summary is provided for this pending water quality permit application being reviewed by the Texas Commission on Environmental Quality as required by 30 Texas Administrative Code Chapter 39. The information provided in this summary may change during the technical review of the application and are not federal enforceable representations of the permit application.

Victoria Port II LLC (CN605568807) operates Victoria Port II LLC RN110451648. a combustion turbine generator (CTG) electric generation facility. The facility is located 2050 Old Bloomington Rd N, in Victoria, Victoria County, Texas 77905.

Discharges from the facility have not commenced, and subsequently no wastewater is available to be sampled. Upon discharge from the facility, required sampling will take place. Washdown and minimal amounts of stormwater will come into contact with oil from equipment operation or maintenance and will be discharged intermittently after treatment in an oil/water separator to Outfall 001.

TECHNICAL REPORT 1.0 INDUSTRIAL

The following information **is required** for all applications for a TLAP or an individual TPDES discharge permit.

For additional information or clarification on the requested information, refer to the <u>Instructions for</u> <u>Completing the Industrial Wastewater Permit Application</u>¹ available on the TCEQ website.

If more than one outfall is included in the application, provide applicable information for each individual outfall. **If an item does not apply to the facility, enter N/A** to indicate that the item has been considered. Include separate reports or additional sheets as **clearly cross-referenced attachments** and provide the attachment number in the space provided for the item the attachment addresses.

NOTE: This application is for an industrial wastewater permit only. Additional authorizations from the TCEQ Waste Permits Division or the TCEQ Air Permits Division may be needed.

1. FACILITY/SITE INFORMATION (Instructions, Pages 39-40)

a. Describe the general nature of the business and type(s) of industrial and commercial activities. Include all applicable SIC codes (up to 4).

SIC 4911- Combustion Turbine Generator (CTG) Electric Generation Facility

b. Describe all wastewater-generating processes at the facility.

Washdown and minimal amounts of stormwater will come into contact with oil from equipment operation or maintenance and will be discharged intermittently after treatment in an oil/water separator to Outfall 001.

TCEQ-10055 (05/20/2022) Industrial Wastewater Application Technical Report

¹ <u>https://www.tceq.texas.gov/permitting/wastewater/industrial/TPDES_industrial_wastewater_steps.html</u>

c. Provide a list of raw materials, major intermediates, and final products handled at the facility.

Materials List

Raw Materials	Intermediate Products	Final Products
Natural Gas		Electric Power

Attachment:

- d. Attach a facility map (drawn to scale) with the following information:
 - Production areas, maintenance areas, materials-handling areas, waste-disposal areas, and water intake structures.
 - The location of each unit of the WWTP including the location of wastewater collection sumps, impoundments, outfalls, and sampling points, if significantly different from outfall locations.

Attachment: <u>Site Map – Attachment 3</u>

e. Is this a new permit application for an existing facility?

🖾 Yes 🗆 No

If yes, provide background discussion: Renewal of Permit No WQ0005263000

- f. Is/will the treatment facility/disposal site be located above the 100-year frequency flood level.
 - \boxtimes Yes \square No

$\underline{\text{Hotobolice}}(b)$ used to determine 100 year nequency nood plant, $\underline{\underline{\text{Hotob}}}$ in the $\underline{\underline{\text{Hotob}}}$	List source(s) used to determine	100-year frequence	y flood plain:	FEMA Ma	p Panel #4806370200
---	----------------------------------	--------------------	----------------	---------	---------------------

If **no**, provide the elevation of the 100-year frequency flood plain and describe what protective measures are used/proposed to prevent flooding (including tail water and rainfall run-on controls) of the treatment facility and disposal area:

Attachment:

- g. For **new** or **major amendment** permit applications, will any construction operations result in a discharge of fill material into a water in the state?
 - \Box Yes \Box No \boxtimes N/A (renewal only)
- h. If yes to Item 1.g, has the applicant applied for a USACE CWA Chapter 404 Dredge and Fill permit?
 - □ Yes □ No

lf yes , p	provide the	permit number:	
	-	1	

If **no**, provide an approximate date of application submittal to the USACE:

2. TREATMENT SYSTEM (Instructions, Page 40)

a. List any physical, chemical, or biological treatment process(es) used/proposed to treat wastewater at this facility. Include a description of each treatment process, starting with initial treatment and finishing with the outfall/point of disposal.

Washdown/stormwater will come into contact with oil from equipment operation or maintenance and will be discharged intermittently after treatment in an oil/water separator to Outfall 001.

b. Attach a flow schematic **with a water balance** showing all sources of water and wastewater flow into the facility, wastewater flow into and from each treatment unit, and wastewater flow to each outfall/point of disposal.

Attachment: Attachment 4

3. IMPOUNDMENTS (Instructions, Pages 40-42)

Does the facility use or plan to use any wastewater impoundments (e.g., lagoons or ponds?)

🗆 Yes 🖾 No

If **no**, proceed to Item 4. If **yes**, complete **Item 3.a** for **existing** impoundments and **Items 3.a - 3.e** for **new or proposed** impoundments. **NOTE:** See instructions, Pages 40-42, for additional information on the attachments required by Items 3.a – 3.e.

a. Complete the table with the following information for each existing, new, or proposed impoundment:

Use Designation: Indicate the use designation for each impoundment as Treatment (**T**), Disposal (**D**), Containment (**C**), or Evaporation (**E**).

Associated Outfall Number: Provide an outfall number if a discharge occurs or will occur.

Liner Type: Indicate the liner type as Compacted clay liner (**C**), In-situ clay liner (**I**), Synthetic/plastic/rubber liner (**S**), or Alternate liner (**A**). **NOTE:** See instructions for further detail on liner specifications. If an alternate liner (**A**) is selected, include an attachment that provides a description of the alternate liner and any additional technical information necessary for an evaluation.

Leak Detection System: If any leak detection systems are in place/planned, enter **Y** for yes. Otherwise, enter **N** for no.

Groundwater Monitoring Wells and Data: If groundwater monitoring wells are in place/planned, enter **Y** for yes. Otherwise, enter **N** for no. Attach any existing groundwater monitoring data.

Dimensions: Provide the dimensions, freeboard, surface area, storage capacity of the impoundments, and the maximum depth (not including freeboard). For impoundments with irregular shapes, submit surface area instead of length and width.

Compliance with 40 CFR Part 257, Subpart D: If the impoundment is required to be in compliance with 40 CFR Part 257, Subpart D, enter **Y** for yes. Otherwise, enter **N** for no.

Date of Construction: Enter the date construction of the impoundment commenced (mm/dd/yy).

Impoundment Information

Parameter	Pond #	Pond #	Pond #	Pond #
Use Designation: (T) (D) (C) or (E)				
Associated Outfall Number				
Liner Type (C) (I) (S) or (A)				
Alt. Liner Attachment Reference				
Leak Detection System, Y/N				
Groundwater Monitoring Wells, Y/N				
Groundwater Monitoring Data Attachment				
Pond Bottom Located Above The Seasonal High-Water Table, Y/N				
Length (ft)				
Width (ft)				
Max Depth From Water Surface (ft), Not Including Freeboard				
Freeboard (ft)				
Surface Area (acres)				
Storage Capacity (gallons)				
40 CFR Part 257, Subpart D, Y/N				
Date of Construction				

Impoundment Information

Parameter	Pond #	Pond #	Pond #	Pond #
Use Designation: (T) (D) (C) or (E)				
Associated Outfall Number				
Liner Type (C) (I) (S) or (A)				
Alt. Liner Attachment Reference				
Leak Detection System, Y/N				
Groundwater Monitoring Wells, Y/N				
Groundwater Monitoring Data Attachment				
Pond Bottom Located Above The Seasonal High-Water Table, Y/N				
Length (ft)				
Width (ft)				
Max Depth From Water Surface (ft), not including freeboard				
Freeboard (ft)				
Surface Area (acres)				
Storage Capacity (gallons)				
40 CFR Part 257, Subpart D, Y/N				
Date of Construction				

Attachment:

The following information (Items 3.b – 3.e) is required only for **new or proposed** impoundments.

- b. For new or proposed impoundments, attach any available information on the following items. If attached, check **yes** in the appropriate box. Otherwise, check **no** or **not yet designed**.
 - i. Liner data
 - □ Yes □ No □ Not yet designed
 - ii. Leak detection system or groundwater monitoring data
 - □ Yes □ No □ Not yet designed
 - iii. Groundwater impacts
 - \Box Yes \Box No \Box Not yet designed

NOTE: Item b.iii is required if the bottom of the pond is not above the seasonal high-water table in the shallowest water-bearing zone.

Attachment:

For TLAP applications: Items 3.c – 3.e are not required, continue to Item 4.

c. Attach a USGS map or a color copy of original quality and scale which accurately locates and identifies all known water supply wells and monitor wells within ¹/₂-mile of the impoundments.

Attachment:

d. Attach copies of State Water Well Reports (e.g., driller's logs, completion data, etc.), and data on depths to groundwater for all known water supply wells including a description of how the depths to groundwater were obtained.

Attachment:

e. Attach information pertaining to the groundwater, soils, geology, pond liner, etc. used to assess the potential for migration of wastes from the impoundments or the potential for contamination of groundwater or surface water.

Attachment:

4. OUTFALL/DISPOSAL METHOD INFORMATION (Instructions, Pages 42-43)

Complete the following tables to describe the location and wastewater discharge or disposal operations for each outfall for discharge operations, and for each point of disposal for TLAP operations.

If there are more outfalls/points of disposal at the facility than the spaces provided, copies of pages 6 and/or numbered accordingly (i.e., page 6a, 6b, etc.) may be used to provide information on the additional outfalls.

For TLAP applications: Indicate the disposal method and each individual irrigation area **I**, evaporation pond **E**, or subsurface drainage system **S** by providing the appropriate letter designation for the disposal method followed by a numerical designation for each disposal area in the space provided for **Outfall** number (e.g. **E1** for evaporation pond 1, **I2** for irrigation area No. 2, etc.).

Outfall Latitude and Longitude

Outfall Number	Latitude-decimal degrees	Longitude-decimal degrees
001	28	96

Outfall Location Description

Outfall Number	Location Description
001	Western Corner of the property

Description of Sampling Points (if different from Outfall location)

Outfall Number	Description of Sampling Point
001	Sample Tap

Outfall Flow Information – Permitted and Proposed

Outfall Number	Permitted Daily Avg Flow (MGD)	Permitted Daily Max Flow (MGD)	Proposed Daily Avg Flow (MGD)	Proposed Daily Max Flow (MGD)	Anticipated Discharge Date (mm/dd/yy)
001	0.144 (100 gpm)	0.288 (200 gpm)			

Outfall Discharge – Method and Measurement

Outfall Number	Pumped Discharge? Y/N	Gravity Discharge? Y/N	Type of Flow Measurement Device Used
001	Y	Y	Totalizer or equivalent

Outfall Discharge – Flow Characteristics

Outfall Number	Intermittent Discharge? Y/N	Continuous Discharge? Y/N	Seasonal Discharge? Y/N	Discharge Duration (hrs/day)	Discharge Duration (days/mo)	Discharge Duration (mo/yr)
001	Ν	Ν	Y	24	0.3	12

Wastestream Contributions

Outfall No.: 001

Contributing Wastestreams	Volume (MGD)	% of Total Flow
Stormwater/washdown after treatment	0.007	5

Outfall No.:

Contributing Wastestreams	Volume (MGD)	% of Total Flow

Outfall No.:

Contributing Wastestreams	Volume (MGD)	% of Total Flow

Attachment:

5. BLOWDOWN AND ONCE-THROUGH COOLING WATER DISCHARGES (Instructions, Page 44)

a. Does the facility use/propose to use any cooling towers which discharge blowdown or other wastestreams to the outfall(s)?

🗆 Yes 🛛 No

NOTE: If the facility uses or plans to use cooling towers, Item 12 is required.

b. Does the facility use or plan to use any boilers that discharge blowdown or other wastestreams to the outfall(s)?

🗆 Yes 🖾 No

c. Does or will the facility discharge once-through cooling water to the outfall(s)?

🗆 Yes 🖾 No

NOTE: If the facility uses or plans to use once-through cooling water, Item 12 **is required**.

- d. If **yes** to Items 5.a, 5.b, **or** 5.c, attach the SDS with the following information for each chemical additive.
 - Manufacturers Product Identification Number
 - Product use (e.g., biocide, fungicide, corrosion inhibitor, etc.)
 - Chemical composition including CASRN for each ingredient
 - Classify product as non-persistent, persistent, or bioaccumulative
 - Product or active ingredient half-life
 - Frequency of product use (e.g., 2 hours/day once every two weeks)
 - Product toxicity data specific to fish and aquatic invertebrate organisms
 - Concentration of whole product or active ingredient, as appropriate, in wastestream.

Attach a summary of this information in addition to the submittal of the SDS for each specific wastestream and the associated chemical additives and specify which outfalls are affected.

Attachment:

e. Cooling Towers and Boilers

If **yes** to either Item 5.a **or** 5.b, complete the following table.

Cooling Towers and Boilers

Type of Unit	Number of Units	Dly Avg Blowdown (gallons/day)	Dly Max Blowdown (gallons/day)
Cooling Towers	0		
Boilers	0		

6. STORMWATER MANAGEMENT (Instructions, Page 44)

Are there any existing/proposed outfalls which discharge stormwater associated with industrial activities, as defined at *40 CFR § 122.26(b)(14)*, commingled with any other wastestream?

🗆 Yes 🖾 No

If **yes**, briefly describe the industrial processes and activities that occur outdoors or in some manner which may result in exposure of the activities or materials to stormwater:

7. DOMESTIC SEWAGE, SEWAGE SLUDGE, AND SEPTAGE MANAGEMENT AND DISPOSAL (Instructions, Page 45)

Domestic Sewage - Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

- a. Check the box next to the appropriate method of domestic sewage and domestic sewage sludge treatment or disposal. Complete Worksheet 5.0 or Item 7.b if directed to do so.
 - Domestic sewage is routed (i.e., connected to or transported to) to a WWTP permitted to receive domestic sewage for treatment, disposal, or both. **Complete Item 7.b**.
 - Domestic sewage disposed of by an on-site septic tank and drainfield system. **Complete Item 7.b**.
 - Domestic and industrial treatment sludge **ARE commingled** prior to use or disposal.
 - Industrial wastewater and domestic sewage are treated separately, and the respective sludge IS NOT commingled prior to sludge use or disposal. Complete Worksheet 5.0.
 - □ Facility is a POTW. **Complete Worksheet 5.0**.
 - Domestic sewage is not generated on-site.
 - Other (e.g., portable toilets), specify and Complete Item 7.b: Septic Tank
- b. Provide the name and TCEQ, NPDES, or TPDES Permit No. of the waste-disposal facility which receives the domestic sewage/septage. If hauled by motorized vehicle, provide the name and TCEQ Registration No. of the hauler.

Domestic Sewage Plant/Hauler Name

Plant/Hauler Name	Permit/Registration No.
United Site Services	Reg. No. 23400

8. IMPROVEMENTS OR COMPLIANCE/ENFORCEMENT REQUIREMENTS (Instructions, Page 45)

- a. Is the permittee currently required to meet any implementation schedule for compliance or enforcement?
 - 🗆 Yes 🖾 No
- b. Has the permittee completed or planned for any improvements or construction projects?
 - 🗆 Yes 🖾 No
- c. If **yes** to either 8.a **or** 8.b, provide a brief summary of the requirements and a status update:

9. TOXICITY TESTING (Instructions, Page 45)

Have any biological tests for acute or chronic toxicity been made on any of the discharges or on a receiving water in relation to the discharge within the last three years?

🗆 Yes 🖾 No

If **yes**, identify the tests and describe their purposes:

Additionally, attach a copy of all tests performed which **have not** been submitted to the TCEQ or EPA.

Attachment:

10. OFF-SITE/THIRD PARTY WASTES (Instructions, Page 45)

a. Does or will the facility receive wastes from off-site sources for treatment at the facility, disposal on-site via land application, or discharge via a permitted outfall?

🗆 Yes 🖾 No

If **yes**, provide responses to Items 10.b through 10.d below.

If **no**, proceed to Item 11.

- b. Attach the following information to the application:
 - List of wastes received (including volumes, characterization, and capability with on-site wastes).
 - Identify the sources of wastes received (including the legal name and addresses of the generators).
 - Description of the relationship of waste source(s) with the facility's activities.

Attachment:

c. Is or will wastewater from another TCEQ, NPDES, or TPDES permitted facility commingled with this facility's wastewater after final treatment and prior to discharge via the final outfall/point of disposal?

□ Yes		No
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If **yes**, provide the name, address, and TCEQ, NPDES, or TPDES permit number of the contributing facility and a copy of any agreements or contracts relating to this activity.

Attachment:

- d. Is this facility a POTW that accepts/will accept process wastewater from any SIU and has/is required to have an approved pretreatment program under the NPDES/TPDES program?
 - 🗆 Yes 🗆 No

If yes, Worksheet 6.0 of this application is required.

11. RADIOACTIVE MATERIALS (Instructions, Pages 46)

a. Are/will radioactive materials be mined, used, stored, or processed at this facility?

🗆 Yes 🖾 No

If **yes**, use the following table to provide the results of one analysis of the effluent for all radioactive materials that may be present. Provide results in pCi/L.

Radioactive Materials Mined, Used, Stored, or Processed

Radioactive Material	Concentration (pCi/L)

- b. Does the applicant or anyone at the facility have any knowledge or reason to believe that radioactive materials may be present in the discharge, including naturally occurring radioactive materials in the source waters or on the facility property?
 - \Box Yes \boxtimes No

If **yes**, use the following table to provide the results of one analysis of the effluent for all radioactive materials that may be present. Provide results in pCi/L. Do not include information provided in response to Item 11.a.

Radioactive Materials Present in the Discharge

Radioactive Material	Concentration (pCi/L)

12. COOLING WATER (Instructions, Pages 46-47)

- a. Does the facility use or propose to use water for cooling purposes?
 - \Box Yes \boxtimes No

If **no**, stop here. If **yes**, complete Items 12.b thru 12.f.

- b. Cooling water is/will be obtained from a groundwater source (e.g., on-site well).
 - 🗆 Yes 🗆 No

If **yes**, stop here. If **no**, continue.

- c. Cooling Water Supplier
 - i. Provide the name of the owner(s) and operator(s) for the CWIS that supplies or will supply water for cooling purposes to the facility.

Cooling Water Intake Structure(s) Owner(s) and Operator(s)

CWIS ID		
Owner		
Operator		

ii. Cooling water is/will be obtained from a Public Water Supplier (PWS)

🗆 Yes 🗆 No

If no, continue. If yes, provide the PWS Registration No. and stop here: PWS No.

- iii. Cooling water is/will be obtained from a reclaimed water source?
 - □ Yes □ No

If **no**, continue. If **yes**, provide the Reuse Authorization No. and stop here:

iv. Cooling water is/will be obtained from an Independent Supplier

□ Yes □ No

If **yes**, provide the actual intake flow of the Independent Supplier's CWIS that is/will be used to provide water for cooling purposes to the facility and proceed:

If **no**, proceed to Item 12.d.

- d. 316(b) General Criteria
 - i. The CWIS(s) used to provide water for cooling purposes to the facility has or will have a cumulative design intake flow of 2 MGD or greater.
 - □ Yes □ No
 - ii. At least 25% of the total water withdrawn by the CWIS is/will be used at the facility exclusively for cooling purposes on an annual average basis.
 - □ Yes □ No
 - iii. The CWIS(s) withdraw(s)/propose(s) to withdraw water for cooling purposes from surface waters that meet the definition of Waters of the United States in *40 CFR §* 122.2.
 - □ Yes □ No

If **no**, provide an explanation of how the waterbody does not meet the definition of Waters of the United States in *40 CFR § 122.2*:

If **yes** to all three questions in Item 12.d, the facility **meets** the minimum criteria to be subject to the full requirements of Section 316(b) of the CWA. Proceed to **Item 12.f**.

If **no** to any of the questions in Item 12.d, the facility **does not meet** the minimum criteria to be subject to the full requirements of Section 316(b) of the CWA; however, a determination is required based upon BPJ. Proceed to **Item 12.e**.

- e. The facility does not meet the minimum requirements to be subject to the fill requirements of Section 316(b) **and uses/proposes to use cooling towers**.
 - 🗆 Yes 🗆 No

If **yes**, stop here. If **no**, complete Worksheet 11.0, Items 1(a), 1(b)(i-iii) and (vi), 2(b)(i), and 3(a) to allow for a determination based upon BPJ.

- f. Oil and Gas Exploration and Production
 - i. The facility is subject to requirements at 40 CFR Part 435, Subparts A or D.
 - 🗆 Yes 🗆 No

If **yes**, continue. If **no**, skip to Item 12.g.

- ii. The facility is an existing facility as defined at 40 CFR § 125.92(k) or a new unit at an existing facility as defined at 40 CFR § 125.92(u).
 - 🗆 Yes 🗆 No

If **yes**, complete Worksheet 11.0, Items 1(a), 1(b)(i-iii) and (vi), 2(b)(i), and 3(a) to allow for a determination based upon BPJ. If **no**, skip to Item 12.g.iii.

- g. Compliance Phase and Track Selection
 - i. Phase I New facility subject to 40 CFR Part 125, Subpart I

🗆 Yes 🗆 No

If **yes**, check the box next to the facility's compliance track selection, attach the requested information, and complete Worksheet 11.0, Items 2 and 3, and Worksheet 11.2.

- Track I AIF greater than 2 MGD, but less than 10 MGD
 - Attach information required by *40 CFR §§ 125.86(b)(2)-(4)*.
- \Box Track I AIF greater than 10 MGD
 - Attach information required by 40 CFR § 125.86(b).
- □ Track II
 - Attach information required by 40 CFR § 125.86(c).

Attachment:

- ii. Phase II Existing facility subject to 40 CFR Part 125, Subpart J
 - □ Yes □ No

If yes, complete Worksheets 11.0 through 11.3, as applicable.

iii. Phase III – New facility subject to 40 CFR Part 125, Subpart N

□ Yes □ No

If **yes**, check the box next to the facility's compliance track selection and provide the requested information.

- □ Track I Fixed facility
 - Attach information required by 40 CFR § 125.136(b) and complete Worksheet 11.0, Items 2 and 3, and Worksheet 11.2.

□ Track I – Not a fixed facility

• Attach information required by 40 CFR § 125.136(b) and complete Worksheet 11.0, Item 2 (except the CWIS latitude and longitude under Item 2.a).

 \Box Track II – Fixed facility

• Attach information required by 40 CFR § 125.136(c) and complete Worksheet 11.0, Items 2 and 3.

Attachment:	
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NOTE: Item 13 is required only for existing permitted facilities.

13. PERMIT CHANGE REQUESTS (Instructions, Pages 49-50)

a. Is the facility requesting a **major amendment** of an existing permit?

🗆 Yes 🖂 No

If **yes**, list each request individually and provide the following information: 1) detailed information regarding the scope of each request and 2) a justification for each request. Attach any supplemental information or additional data to support each request.

b. Is the facility requesting any **minor amendments** to the permit?

🗆 Yes 🖾 No

If **yes**, list and discuss the requested changes.

- c. Is the facility requesting any **minor modifications** to the permit?
 - 🗆 Yes 🖾 No

If **yes**, list and discuss the requested changes.

WORKSHEET 1.0 EPA CATEGORICAL EFFLUENT GUIDELINES

This worksheet **is required** for all applications for TPDES permits for discharges of wastewaters subject to EPA categorical effluent limitation guidelines (ELGs).

1. CATEGORICAL INDUSTRIES (Instructions, Pages 50-52)

Is this facility subject to any of the 40 CFR categorical ELGs outlined on page 53 of the instructions?

🗆 Yes 🖾 No

If **no**, this worksheet is not required. If **yes**, provide the appropriate information in the table below.

40 CFR Effluent Guidelines

Industry	40 CFR Part

2. PRODUCTION/PROCESS DATA (Instructions, Page 54)

NOTE: For all TPDES permit applications requesting individual permit coverage for discharges of oil and gas exploration and production wastewater (discharges into or adjacent to water in the state, falling under the Oil and Gas Extraction Effluent Guidelines – 40 CFR Part 435), see Worksheet 12.0, Item 2 instead.

a. Production Data

Provide the appropriate data for effluent guidelines with production-based effluent limitations.

Production Data

Subcategory	Actual Quantity/Day	Design Quantity/Day	Units
b. Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing Data (40 CFR Part 414)

Provide each applicable subpart and the percent of total production. Provide data for metal-bearing and cyanide-bearing wastestreams, as required by *40 CFR Part 414, Appendices A and B*.

Percentages	of	Total	Production
-------------	----	-------	------------

Subcategory	Percent of Total Production	Appendix A and B - Metal	Appendix A – Cyanide

c. Refineries (40 CFR Part 419)

Provide the applicable subcategory and a brief justification.

3. PROCESS/NON-PROCESS WASTEWATER FLOWS (Instructions, Page 54)

Provide a breakdown of wastewater flow(s) generated by the facility, including both process and nonprocess wastewater flow(s). Specify which wastewater flows are to be authorized for discharge under this permit and the disposal practices for wastewater flows, excluding domestic, which are not to be authorized for discharge under this permit.

Contaminated wastewater may be generated from stormwater/washdown water that comes into contact with incidental quantities of oil from equipment operations or maintenance. The wastewater will be treated in a wastewater treatment plant consisting on an oil/water separator before discharge to Outfall 001.

4. NEW SOURCE DETERMINATION (Instructions, Page 54)

Provide a list of all wastewater-generating processes subject to EPA categorical ELGs, identify the appropriate guideline Part and Subpart, and provide the date the process/construction commenced.

Process	EPA Guideline: Part	EPA Guideline: Subpart	Date Process/ Construction Commenced

Wastewater-generating Processes Subject to Effluent Guidelines

WORKSHEET 2.0 POLLUTANT ANALYSES REQUIREMENTS

Worksheet 2.0 **is required** for all applications submitted for a TPDES permit. Worksheet 2.0 is not required for applications for a permit to dispose of all wastewater by land disposal or for discharges solely of stormwater associated with industrial activities.

1. LABORATORY ACCREDITATION (Instructions, Page 56)

Effective July 1, 2008, all laboratory tests performed must meet the requirements of *30 TAC Chapter 25*, *Environmental Testing Laboratory Accreditation and Certification* with the following general exemptions:

- a. The laboratory is an in-house laboratory and is:
 - i. periodically inspected by the TCEQ; or
 - ii. located in another state and is accredited or inspected by that state; or
 - iii. performing work for another company with a unit located in the same site; or
 - iv. performing pro bono work for a governmental agency or charitable organization.
- b. The laboratory is accredited under federal law.
- c. The data are needed for emergency-response activities, and a laboratory accredited under the Texas Laboratory Accreditation Program is not available.
- d. The laboratory supplies data for which the TCEQ does not offer accreditation.

Review *30 TAC Chapter 25* for specific requirements. The following certification statement shall be signed and submitted with every application. See Instructions, Page 34, for a list of approved signatories.

I, certify that all laboratory tests submitted with this application meet the requirements of *30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.*

(Signature)

2. GENERAL TESTING REQUIREMENTS (Instructions, Pages 56-58)

- a. Provide the date range of all sampling events conducted to obtain the analytical data submitted with this application (e.g., 05/01/2018-05/30/2018): Discharge has not commenced at the facility, and subsequently no wastewater is available to be sampled.
- b. Check the box to confirm all samples were collected no more than 12 months prior to the date of application submittal.
- c. Read the general testing requirements in the instructions for important information about sampling, test methods, and MALs. If a contact laboratory was used, attach a list which includes the name, contact information, and pollutants analyzed for each laboratory/firm. **Attachment:**

3. SPECIFIC TESTING REQUIREMENTS (Instructions, Pages 58-69)

Attach correspondence from TCEQ approving submittal of less than the required number of samples, if applicable. **Attachment:** <u>TCEQ Email – Attachment 5</u>

TABLE 1 and TABLE 2 (Instructions, Page 58)

Completion of Tables 1 and 2 **is required** for **all external outfalls** for all TPDES permit applications. **Table 1 for Outfall No.:**

Samples are (check one).		,	1	1
Pollutant	Sample 1 (mg/L)	Sample 2 (mg/L)	Sample 3 (mg/L)	Sample 4 (mg/L)
BOD (5-day)				
CBOD (5-day)				
Chemical oxygen demand				
Total organic carbon				
Dissolved oxygen				
Ammonia nitrogen				
Total suspended solids				
Nitrate nitrogen				
Total organic nitrogen				
Total phosphorus				
Oil and grease				
Total residual chlorine				
Total dissolved solids				
Sulfate				
Chloride				
Fluoride				
Total alkalinity (mg/L as CaCO3)				
Temperature (°F)				
pH (standard units)				

Table 2 for Outfall No.:

Samples are (check one):	Composites	Grabs	5		
Pollutant	Sample 1 (µg/L)	Sample 2 (µg/L)	Sample 3 (µg/L)	Sample 4 (µg/L)	MAL (µg/L)
Aluminum, total					2.5
Antimony, total					5
Arsenic, total					0.5
Barium, total					3
Beryllium, total					0.5
Cadmium, total					1
Chromium, total					3
Chromium, hexavalent					3
Chromium, trivalent					N/A
Copper, total					2
Cyanide, available					2/10
Lead, total					0.5
Mercury, total					0.005/0.0005
Nickel, total					2
Selenium, total					5
Silver, total					0.5

Pollutant	Sample 1 (µg/L)	Sample 2 (µg/L)	Sample 3 (µg/L)	Sample 4 (µg/L)	MAL (µg/L)
Thallium, total					0.5
Zinc, total					5.0

TABLE 3 (Instructions, Page 58)

Completion of Table 3 is required for all external outfalls which discharge process wastewater.

Partial completion of Table 3 is required for all external outfalls which discharge non-process wastewater and stormwater associated with industrial activities commingled with other wastestreams (see instructions for additional guidance).

Fable 3 for Outfall No.: Composites 🛛 Grabs									
Pollutant	Sample 1 (µg/L)*	Sample 2 (µg/L)*	Sample 3 (µg/L)*	Sample 4 (µg/L)*	MAL (μg/L)*				
Acrylonitrile					50				
Anthracene					10				
Benzene					10				
Benzidine					50				
Benzo(a)anthracene					5				
Benzo(a)pyrene					5				
Bis(2-chloroethyl)ether					10				
Bis(2-ethylhexyl)phthalate					10				
Bromodichloromethane [Dichlorobromomethane]					10				
Bromoform					10				
Carbon tetrachloride					2				
Chlorobenzene					10				
Chlorodibromomethane [Dibromochloromethane]					10				
Chloroform					10				
Chrysene					5				
m-Cresol [3-Methylphenol]					10				
o-Cresol [2-Methylphenol]					10				
p-Cresol [4-Methylphenol]					10				
1,2-Dibromoethane					10				
m-Dichlorobenzene [1,3-Dichlorobenzene]					10				
o-Dichlorobenzene [1,2-Dichlorobenzene]					10				
p-Dichlorobenzene [1,4-Dichlorobenzene]					10				
3,3'-Dichlorobenzidine					5				
1,2-Dichloroethane					10				
1,1-Dichloroethene [1,1-Dichloroethylene]					10				

Pollutant	Sample 1	Sample 2	Sample 3	Sample 4	MAL
	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)*
Dichloromethane [Methylene chloride]					20
1,2-Dichloropropane					10
1,3-Dichloropropene					10
[1,3-Dichloropropylene]					10
2,4-Dimethylphenol					10
Di-n-Butyl phthalate					10
Ethylbenzene					10
Fluoride					500
Hexachlorobenzene					5
Hexachlorobutadiene					10
Hexachlorocyclopentadiene					10
Hexachloroethane					20
Methyl ethyl ketone					50
Nitrobenzene					10
N-Nitrosodiethylamine					20
N-Nitroso-di-n-butylamine					20
Nonylphenol					333
Pentachlorobenzene					20
Pentachlorophenol					5
Phenanthrene					10
Polychlorinated biphenyls (PCBs) (**)					0.2
Pyridine					20
1,2,4,5-Tetrachlorobenzene					20
1,1,2,2-Tetrachloroethane					10
Tetrachloroethene [Tetrachloroethylene]					10
Toluene					10
1,1,1-Trichloroethane					10
1,1,2-Trichloroethane					10
Trichloroethene [Trichloroethylene]					10
2,4,5-Trichlorophenol					50
TTHM (Total trihalomethanes)					10
Vinyl chloride					10

Indicate units if different from μg/L. Total of detects for PCB-1242, PCB-1254, PCB-1221, PCB-1232, PCB-1248, PCB-1260, and PCB-1016. If all non-detects, enter the highest non-detect preceded by a "<". (*) (**)

TABLE 4 (Instructions, Pages 58-59)

Partial completion of Table 4 is required for each external outfall based on the conditions below.

a. Tributyltin

Is this facility an industrial/commercial facility which currently or proposes to directly dispose of wastewater from the types of operations listed below or a domestic facility which currently or proposes to receive wastewater from the types of industrial/commercial operations listed below?

 \boxtimes Yes No

If **yes**, check the box next to each of the following criteria which apply and provide the appropriate testing results in Table 4 below (check all that apply).

- Manufacturers and formulators of tributyltin or related compounds.
- Painting of ships, boats and marine structures.
- Ship and boat building and repairing.
- Ship and boat cleaning, salvage, wrecking and scaling.
- Operation and maintenance of marine cargo handling facilities and marinas.
- Facilities engaged in wood preserving.
- П Any other industrial/commercial facility for which tributyltin is known to be present, or for which there is any reason to believe that tributyltin may be present in the effluent.

b. Enterococci (discharge to saltwater)

- This facility discharges/proposes to discharge directly into saltwater receiving waters **and** i. Enterococci bacteria are expected to be present in the discharge based on facility processes.
 - \boxtimes Yes No
- ii. Domestic wastewater is/will be discharged.
 - \boxtimes Yes No

If yes to either question, provide the appropriate testing results in Table 4 below.

c. E. coli (discharge to freshwater)

- i. This facility discharges/proposes to discharge directly into freshwater receiving waters and E. coli bacteria are expected to be present in the discharge based on facility processes.
 - \boxtimes Yes No
- ii. Domestic wastewater is/will be discharged.

Yes \square No

Table 4 for Outfall No.:

If **yes to either** question, provide the appropriate testing results in Table 4 below.

Samples are (check one):	Composites	Grabs			
Pollutant	Sample 1	Sample 2	Sample 3	Sample 4	MAL
Tributyltin (µg/L)					0.010
Enterococci (cfu or MPN/100 mL)					N/A
<i>E. coli</i> (cfu or MPN/100 mL)					N/A

TABLE 5 (Instructions, Page 59)

Completion of Table 5 is required for all external outfalls which discharge process wastewater from a facility which manufactures or formulates pesticides or herbicides or other wastewaters which may contain pesticides or herbicides.

If this facility does not/will not manufacture or formulate pesticides or herbicides and does not/will not discharge other wastewaters which may contain pesticides or herbicides, check N/A.

 \boxtimes N/A

Table 5 for Outfall No.: Samples are (check one).

Samples are (check one):	Composite	s 🛛 Gral	bs	T	1
Pollutant	Sample 1 (µg/L)*	Sample 2 (µg/L)*	Sample 3 (µg/L)*	Sample 4 (µg/L)*	MAL (µg/L)*
Aldrin					0.01
Carbaryl					5
Chlordane					0.2
Chlorpyrifos					0.05
4,4'-DDD					0.1
4,4'-DDE					0.1
4,4'-DDT					0.02
2,4-D					0.7
Danitol [Fenpropathrin]					—
Demeton					0.20
Diazinon					0.5/0.1
Dicofol [Kelthane]					1
Dieldrin					0.02
Diuron					0.090
Endosulfan I (<i>alpha</i>)					0.01
Endosulfan II (<i>beta</i>)					0.02
Endosulfan sulfate					0.1
Endrin					0.02
Guthion [Azinphos methyl]					0.1
Heptachlor					0.01
Heptachlor epoxide					0.01
Hexachlorocyclohexane (alpha)					0.05
Hexachlorocyclohexane (beta)					0.05
Hexachlorocyclohexane (<i>gamma</i>) [Lindane]					0.05
Hexachlorophene					10
Malathion					0.1
Methoxychlor					2.0
Mirex					0.02
Parathion (ethyl)					0.1
Toxaphene					0.3
2,4,5-TP [Silvex]					0.3

* Indicate units if different from µg/L.

TABLE 6 (Instructions, Page 59)

Completion of Table 6 is required for all external outfalls.

Table 6 for Outfall No.:		• text.					
Samples are (check one):	🛛 Comj	posites	Grabs	5			
Pollutants	Believed Present	Believed Absent	Sample 1 (mg/L)	Sample 2 (mg/L)	Sample 3 (mg/L)	Sample 4 (mg/L)	MAL (µg/L)*
Bromide							400
Color (PCU)							_
Nitrate-Nitrite (as N)							_
Sulfide (as S)							_
Sulfite (as SO3)							_
Surfactants							_
Boron, total							20
Cobalt, total							0.3
Iron, total							7
Magnesium, total							20
Manganese, total							0.5
Molybdenum, total							1
Tin, total							5
Titanium, total							30

* Indicate units if different from μ g/L.

TABLE 7 (Instructions, Page 60)

Check the box next to any of the industrial categories applicable to this facility. If no categories are applicable, check N/A. If GC/MS testing is required, check the box provided to confirm the testing results for the appropriate parameters are provided with the application.

🖂 N/A

Table 7 for Applicable Industrial Categories

Inductrial Catagory		40 CFR	Volatiles	Acids	Bases/Neutrals	Pesticides
Indu			Table 8	Table 9	Table 10	Table 11
	Adhesives and Sealants		□ Yes	□ Yes	□ Yes	No
	Aluminum Forming	467	□ Yes	□ Yes	□ Yes	No
	Auto and Other Laundries		□ Yes	□ Yes	□ Yes	□ Yes
	Battery Manufacturing	461	□ Yes	No	□ Yes	No
	Coal Mining	434	No	No	No	No
	Coil Coating	465	□ Yes	□ Yes	□ Yes	No
	Copper Forming	468	□ Yes	□ Yes	□ Yes	No
	Electric and Electronic Components	469	□ Yes	□ Yes	□ Yes	□ Yes
	Electroplating	413	□ Yes	□ Yes	□ Yes	No
	Explosives Manufacturing	457	No	□ Yes	□ Yes	No
	Foundries		□ Yes	□ Yes	□ Yes	No
	Gum and Wood Chemicals - Subparts A,B,C,E	454	□ Yes	□ Yes	No	No
	Gum and Wood Chemicals - Subparts D,F	454	□ Yes	□ Yes	□ Yes	No
	Inorganic Chemicals Manufacturing	415	□ Yes	□ Yes	□ Yes	No
	Iron and Steel Manufacturing	420	□ Yes	□ Yes	□ Yes	No
	Leather Tanning and Finishing	425	□ Yes	□ Yes	□ Yes	No
	Mechanical Products Manufacturing		□ Yes	□ Yes	□ Yes	No
	Nonferrous Metals Manufacturing	421,471	□ Yes	□ Yes	□ Yes	□ Yes
	Oil and Gas Extraction - Subparts A, D, E, F, G, H	435	□ Yes	□ Yes	□ Yes	No
	Ore Mining - Subpart B	440	No	□ Yes	No	No
	Organic Chemicals Manufacturing	414	□ Yes	□ Yes	□ Yes	□ Yes
	Paint and Ink Formulation	446,447	□ Yes	□ Yes	□ Yes	No
	Pesticides	455	□ Yes	□ Yes	Yes	□ Yes
	Petroleum Refining	419	□ Yes	No	No	No
	Pharmaceutical Preparations	439	□ Yes	□ Yes	Yes	No
	Photographic Equipment and Supplies	459	□ Yes	□ Yes	□ Yes	No
	Plastic and Synthetic Materials Manufacturing	414	□ Yes	□ Yes	□ Yes	□ Yes
	Plastic Processing	463	□ Yes	No	No	No
	Porcelain Enameling	466	No	No	No	No
	Printing and Publishing		□ Yes	□ Yes	□ Yes	□ Yes
	Pulp and Paperboard Mills - Subpart C	430	□ *	□ Yes	□ *	□ Yes
	Pulp and Paperboard Mills - Subparts F, K	430	□ *	□ Yes	□ *	□ *
	Pulp and Paperboard Mills - Subparts A, B, D, G, H	430	□ Yes	□ Yes	□ *	□ *
	Pulp and Paperboard Mills - Subparts I, J, L	430	□ Yes	□ Yes	□ *	□ Yes
	Pulp and Paperboard Mills - Subpart E	430	□ Yes	□ Yes	Yes	□ *
	Rubber Processing	428	□ Yes	□ Yes	□ Yes	No
	Soap and Detergent Manufacturing	417	□ Yes	□ Yes	□ Yes	No
	Steam Electric Power Plants	423	□ Yes	□ Yes	No	No
	Textile Mills (Not Subpart C)	410	□ Yes	□ Yes	□ Yes	No
	Timber Products Processing	429	□ Yes	□ Yes	□ Yes	□ Yes

* Test if believed present.

TABLES 8, 9, 10, and 11 (Instructions, Page 60)

Table 8 for Outfall No.:

Completion of Tables 8, 9, 10, and 11 **is required** as specified in Table 7 for all **external outfalls** that contain process wastewater.

Completion of Tables 8, 9, 10, and 11 **may be required** for types of industry not specified in Table 7 for specific parameters that are believed to be present in the wastewater.

: Volatile Compounds

Samples are (check one):	🗖 Gra	abs			
Pollutant	Sample 1	Sample 2	Sample 3	Sample 4	MAL
	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)
Acrolein					50
Acrylonitrile					50
Benzene					10
Bromoform					10
Carbon tetrachloride					2
Chlorobenzene					10
Chlorodibromomethane					10
Chloroethane					50
2-Chloroethylvinyl ether					10
Chloroform					10
Dichlorobromomethane [Bromodichloromethane]					10
1,1-Dichloroethane					10
1,2-Dichloroethane					10
1,1-Dichloroethylene [1,1-Dichloroethene]					10
1,2-Dichloropropane					10
1,3-Dichloropropylene [1,3-Dichloropropene]					10
Ethylbenzene					10
Methyl bromide [Bromomethane]					50
Methyl chloride [Chloromethane]					50
Methylene chloride [Dichloromethane]					20
1,1,2,2-Tetrachloroethane					10
Tetrachloroethylene [Tetrachloroethene]					10
Toluene					10
1,2-Trans-dichloroethylene [1,2-Trans-dichloroethene]					10
1,1,1-Trichloroethane					10
1,1,2-Trichloroethane					10
Trichloroethylene [Trichloroethene]					10
Vinyl chloride					10

* Indicate units if different from μ g/L.

Table 9 for Outfall No.:	: Acid Com	pounds			
Samples are (check one): 🔲 Composites	s 🗆 G	rabs			
Dellutent	Sample 1	Sample 2	Sample 3	Sample 4	MAL
Ponutant	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)
2-Chlorophenol					10
2,4-Dichlorophenol					10
2,4-Dimethylphenol					10
4,6-Dinitro-o-cresol					50
2,4-Dinitrophenol					50
2-Nitrophenol					20
4-Nitrophenol					50
p-Chloro-m-cresol					10
Pentachlorophenol					5
Phenol					10
2,4,6-Trichlorophenol					10

* Indicate units if different from µg/L.

Table 10 for Outfall No.:	: Base/Neu	tral Compou	unds		
Samples are (check one): 🔲 Composite	es 🔲 Gra	abs Sample 2	Sample 2	Sample 4	ΜΔΙ
Pollutant	(μg/L)*	(μg/L)*	(μg/L)*	$(\mu g/L)^*$	μg/L)
Acenaphthene					10
Acenaphthylene					10
Anthracene					10
Benzidine					50
Benzo(a)anthracene					5
Benzo(a)pyrene					5
3,4-Benzofluoranthene [Benzo(b)fluoranthene]					10
Benzo(ghi)perylene					20
Benzo(k)fluoranthene					5
Bis(2-chloroethoxy)methane					10
Bis(2-chloroethyl)ether					10
Bis(2-chloroisopropyl)ether					10
Bis(2-ethylhexyl)phthalate					10
4-Bromophenyl phenyl ether					10
Butylbenzyl phthalate					10
2-Chloronaphthalene					10
4-Chlorophenyl phenyl ether					10
Chrysene					5
Dibenzo(a,h)anthracene					5
1,2-Dichlorobenzene [o-Dichlorobenzene]					10
1,3-Dichlorobenzene [m-Dichlorobenzene]					10
1,4-Dichlorobenzene [p-Dichlorobenzene]					10
3,3'-Dichlorobenzidine					5

Pollutant	Sample 1	Sample 2	Sample 3	Sample 4	MAL
	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)*	(µg/L)
Diethyl phthalate					10
Dimethyl phthalate					10
Di-n-butyl phthalate					10
2,4-Dinitrotoluene					10
2,6-Dinitrotoluene					10
Di-n-octyl phthalate					10
1,2-Diphenylhydrazine (as Azobenzene)					20
Fluoranthene					10
Fluorene					10
Hexachlorobenzene					5
Hexachlorobutadiene					10
Hexachlorocyclopentadiene					10
Hexachloroethane					20
Indeno(1,2,3-cd)pyrene					5
Isophorone					10
Naphthalene					10
Nitrobenzene					10
N-Nitrosodimethylamine					50
N-Nitrosodi-n-propylamine					20
N-Nitrosodiphenylamine					20
Phenanthrene					10
Pyrene					10
1,2,4-Trichlorobenzene					10

* Indicate units if different from μ g/L.

Table 11 for Outfall No.:	o enter text.	: Pestic	ides
Samples are (check one):	Composites		Grabs

Pollutant	Sample 1 (µg/L)*	Sample 2 (µg/L)*	Sample 3 (µg/L)*	Sample 4 (µg/L)*	MAL (µg/L)
Aldrin					0.01
alpha-BHC [alpha-Hexachlorocyclohexane]					0.05
beta-BHC [beta-Hexachlorocyclohexane]					0.05
gamma-BHC [gamma-Hexachlorocyclohexane]					0.05
delta-BHC [delta-Hexachlorocyclohexane]					0.05
Chlordane					0.2
4,4'-DDT					0.02
4,4'-DDE					0.1
4,4'-DDD					0.1
Dieldrin					0.02
Endosulfan I (alpha)					0.01
Endosulfan II (beta)					0.02
Endosulfan sulfate					0.1

Pollutant	Sample 1 (µg/L)*	Sample 2 (µg/L)*	Sample 3 (µg/L)*	Sample 4 (µg/L)*	MAL (µg/L)
Endrin					0.02
Endrin aldehyde					0.1
Heptachlor					0.01
Heptachlor epoxide					0.01
PCB 1242					0.2
PCB 1254					0.2
PCB 1221					0.2
PCB 1232					0.2
PCB 1248					0.2
PCB 1260					0.2
PCB 1016					0.2
Toxaphene					0.3

* Indicate units if different from μ g/L.

Attachment:

TABLE 12 (DIOXINS/FURAN COMPOUNDS)

Complete of Table 12 is required for external outfalls, as directed below. (Instructions, Pages 60-61)

a. Indicate which compound(s) are manufactured or used at the facility and provide a brief description of the conditions of its/their presence at the facility (check all that apply).

2,4,5-trichlorophenoxy acetic acid (2,4,5-T)	CASRN 93-76-5
2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP)	CASRN 93-72-1
2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon)	CASRN 136-25-4
0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel)	CASRN 299-84-3
2,4,5-trichlorophenol (TCP)	CASRN 95-95-4
hexachlorophene (HCP)	CASRN 70-30-4
None of the above	

Description:

b. Does the applicant or anyone at the facility know or have any reason to believe that 2,3,7,8tetrachlorodibenzo-p-dioxin (TCDD) or any congeners of TCDD may be present in the effluent proposed for discharge?

□ Yes □ No

Description:

If **yes** to either Items a **or** b, complete Table 12 as instructed.

Samples are (cheo	ck one): 🛛	Composites	□ Grabs			
Compound	Toxicity Equivalent Factors	Wastewater Concentration (ppq)	Wastewater Toxicity Equivalents (ppq)	Sludge Concentration (ppt)	Sludge Toxicity Equivalents (ppt)	MAL (ppq)
2,3,7,8-TCDD	1					10
1,2,3,7,8-PeCDD	1.0					50
2,3,7,8-HxCDDs	0.1					50
1,2,3,4,6,7,8-HpCDD	0.01					50
2,3,7,8-TCDF	0.1					10
1,2,3,7,8-PeCDF	0.03					50
2,3,4,7,8-PeCDF	0.3					50
2,3,7,8-HxCDFs	0.1					50
2,3,4,7,8-HpCDFs	0.01					50
OCDD	0.0003					100
OCDF	0.0003					100
PCB 77	0.0001					500
PCB 81	0.0003					500
PCB 126	0.1					500
PCB 169	0.03					500
Total						

TABLE 13 (HAZARDOUS SUBSTANCES)

Complete Table 13 is required for all external outfalls as directed below. (Instructions, Page 61)

- a. Are there any pollutants listed in the instructions (pages 55-62) believed present in the discharge?
 - 🗆 Yes 🗆 No

Table 12 for Outfall No.:

- b. Are there pollutants listed in Item 1.c. of Technical Report 1.0 which are believed present in the discharge and have not been analytically quantified elsewhere in this application?
 - □ Yes □ No

If **yes** to either Items a **or** b, complete Table 13 as instructed.

Table 13 for Outfall No.:						
Samples are (check one):	Composition	sites 🛛	Grabs			
Pollutant	CASRN	Sample 1 (µg/L)	Sample 2 (µg/L)	Sample 3 (µg/L)	Sample 4 (µg/L)	Analytical Method

WORKSHEET 3.1 SURFACE LAND APPLICATION AND EVAPORATION

This worksheet **is required** for all applications for a permit to dispose of wastewater by surface land application or evaporation.

1. EDWARDS AQUIFER (Instructions, Page 74)

a. Is the facility subject to 30 TAC Chapter 213, Edwards Aquifer Rules?

🗆 Yes 🖾 No

If **no**, proceed to Item 2. If **yes**, complete Items 1.b **and** 1.c.

- b. Check the box next to the subchapter applicable to the facility.
 - 30 TAC Chapter 213, Subchapter A
 - □ 30 TAC Chapter 213, Subchapter B
- c. If *30 TAC Chapter 213, Subchapter A* applies, attach **either**: 1) a Geologic Assessment (if conducted in accordance with *30 TAC § 213.5*) **or** 2) a report that contains the following information:
 - A description of the surface geological units within the proposed land application site and wastewater pond area.
 - The location and extent of any sensitive recharge features in the land application site and wastewater pond area
 - A list of any proposed BMPs to protect the recharge features.

Attachment:

2. SURFACE SPRAY/IRRIGATION (Instructions, Pages 74-75)

a. Provide the following information on the irrigation operations:

Area under irrigation (acres):Design application rate (acre-ft/acre/yr):Design application frequency (hours/day):Design application frequency (days/week):Design total nitrogen loading rate (lbs nitrogen/acre/year):

Average slope of the application area (percent):

Maximum slope of the application area (percent):

Irrigation efficiency (percent):

Effluent conductivity (mmhos/cm):

Soil conductivity (mmhos/cm):

Curve number:

Describe the application method and equipment:

b. Attach a detailed engineering report which includes a water balance, storage volume calculations, and a nitrogen balance.

Attachment:

3. EVAPORATION PONDS (Instructions, Page 75)

- a. Daily average effluent flow into ponds: gallons per day
- b. Attach a separate engineering report of evaporation calculations for average long-term and worst-case critical conditions.

Attachment:

4. EVAPOTRANSPIRATION BEDS (Instructions, Page 75)

a. Provide the following information on the evapotranspiration beds:

Number of beds:
Area of bed(s) (acres):
Depth of bed(s) (feet):
Void ratio of soil in the beds:
Storage volume within the beds (include units):
Description of any lining to protect groundwater:

b. Attach a certification by a licensed Texas professional engineer that the liner meets TCEQ requirements.

Attachment:

c. Attach a separate engineering report with water balance, storage volume calculations, and description of the liner.

Attachment:

5. OVERLAND FLOW (Instructions, Page 75)

a. Provide the following information on the overland flow:

Area used for application (acres):

Slopes for application area (percent):

Design application rate (gpm/foot of slope width):

Slope length (feet):

Design BOD₅ loading rate (lbs BOD₅/acre/day):

Design application frequency (hours/day):

Design application frequency (days/week):

b. Attach a separate engineering report with the method of application and design requirements according to *30 TAC § 217.212*.

Attachment:

WORKSHEET 3.2 SUBSURFACE IRRIGATION SYSTEMS (NON-DRIP)

This worksheet **is required** for all applications for a permit to dispose of wastewater by subsurface land application.

Check the box to confirm the Class V Injection Well Inventory/Authorization Form (Worksheet 9.0) has been submitted to the TCEQ UIC Permits Team as directed.

1. EDWARDS AQUIFER (Instructions, Page 76)

- a. The subsurface system is/will be located on the Edwards Aquifer Recharge Zone, as mapped by the TCEQ?
 - 🗆 Yes 🗆 No
- b. The subsurface system is/will be located on the Edwards Aquifer Transition Zone, as mapped by the TCEQ?
 - 🗆 Yes 🗆 No

If **yes** to Item 1.a **or** 1.b, the subsurface system may be prohibited by *30 TAC § 213.8*. Contact the Water Quality Assessment Section at (512) 239-4671 to determine if the proposed activity is affected by this rule.

2. SUBSURFACE APPLICATION (Instructions, Page 76)

- a. Check the box next to the type of subsurface land disposal system requested by this application:
 - □ Conventional drainfield, beds, or trenches
 - \Box Low pressure dosing
 - □ Other:
- b. Provide the following information on the irrigation operations:

Application area (acres):

Area of drainfield (square feet):

Application rate (gal/square ft/day):

Depth to groundwater (feet):

Area of trench (square feet):

Dosing duration per area (hours):

Number of beds:

Dosing amount per area (inches/day):

Soil infiltration rate (inches/hour):

Storage volume (gallons):

Area of bed(s) (square feet):

Soil classification:

c. Attach a separate engineering report using *30 TAC § 309.20*, *Subchapter C, Land Disposal of Sewage Effluent* as guidance, excluding items b(3)(A) and b(3)(B). Include a description of the schedule of dosing basin rotation.

Attachment:

WORKSHEET 4.0 RECEIVING WATERS

This worksheet **is required** for all TPDES permit applications.

1. DOMESTIC DRINKING WATER SUPPLY (Instructions, Page 81)

- a. There is a surface water intake for domestic drinking water supply located within 5 (five) miles downstream from the point/proposed point of discharge.
 - 🗆 Yes 🖾 No

If **no**, stop here and proceed to Item 2. If **yes**, provide the following information:

- i. The legal name of the owner of the drinking water supply intake:
- v. The distance and direction from the outfall to the drinking water supply intake:
- b. Locate and identify the intake on the USGS 7.5-minute topographic map provided for Administrative Report 1.0.
 - Check this box to confirm the above requested information is provided.

2. DISCHARGE INTO TIDALLY INFLUENCED WATERS (Instructions, Page 81)

If the discharge is to tidally influenced waters, complete this section. Otherwise, proceed to Item 3.

- a. Width of the receiving water at the outfall: N/A feet
- b. Are there oyster reefs in the vicinity of the discharge?
 - 🗆 Yes 🖾 No

If **yes**, provide the distance and direction from the outfall(s) to the oyster reefs:

c. Are there sea grasses within the vicinity of the point of discharge?

🗆 Yes 🖾 No

If **yes**, provide the distance and direction from the outfall(s) to the grasses:

3. CLASSIFIED SEGMENT (Instructions, Page 81)

The discharge is/will be directly into (or within 300 feet of) a classified segment.

🗆 Yes 🖾 No

If **yes**, stop here. It is not necessary to complete Items 4 and 5 of this worksheet or Worksheet 4.1. If **no**, complete Items 4 and 5 and Worksheet 4.1 may be required.

4. DESCRIPTION OF IMMEDIATE RECEIVING WATERS (Instructions, Page 82)

- a. Name of the immediate receiving waters: Unnamed Ditch
- b. Check the appropriate description of the immediate receiving waters:
 - □ Lake or Pond
 - Surface area (acres):
 - Average depth of the entire water body (feet):
 - Average depth of water body within a 500foot radius of the discharge point (feet):
- Man-Made Channel or Ditch
- □ Stream or Creek
- □ Freshwater Swamp or Marsh
- □ Tidal Stream, Bayou, or Marsh
- Open Bay
- \Box Other, specify:

If **Man-Made Channel or Ditch** or **Stream or Creek** were selected above, provide responses to Items 4.c – 4.g below:

c. For **existing discharges**, check the description below that best characterizes the area **upstream** of the discharge.

For **new discharges**, check the description below that best characterizes the area **downstream** of the discharge.

- Intermittent (dry for at least one week during most years)
- Intermittent with Perennial Pools (enduring pools containing habitat to maintain aquatic life uses)
- Perennial (normally flowing)

Check the source(s) of the information used to characterize the area upstream (existing discharge) or downstream (new discharge):

- $\Box \qquad USGS flow records$
- \boxtimes personal observation
- historical observation by adjacent landowner(s)
- \Box other, specify:
- d. List the names of all perennial streams that join the receiving water within three miles downstream of the discharge point: N/A
- e. The receiving water characteristics change within three miles downstream of the discharge (e.g., natural or man-made dams, ponds, reservoirs, etc.).

🖾 Yes 🗆 No

If yes, describe how: The final discharge is at the Victoria Barge Canal

- f. General observations of the water body during normal dry weather conditions: <u>Dry drainage swale</u>. Date and time of observation:
- g. The water body was influenced by stormwater runoff during observations.
 - 🗆 Yes 🖾 No

If **yes**, describe how:

5. GENERAL CHARACTERISTICS OF WATER BODY (Instructions, Page 82)

a.	Is the receiving water upstream of the existing discharge or proposed discharge site influenced by any
	of the following (check all that apply):

- \Box oil field activities \Box urban runoff
- □ agricultural runoff □ septic tanks
- \Box upstream discharges \boxtimes other, specify: <u>Undeveloped</u>

b. Uses of water body observed or evidence of such uses (check all that apply):

- $\square \quad livestock watering \quad \square \quad fishing$
- \Box non-contact recreation \Box industrial water supply
- □ domestic water supply □ irrigation withdrawal
- \Box contact recreation \Box navigation
- c. Description which best describes the aesthetics of the receiving water and the surrounding area (check only one):
 - □ Wilderness: outstanding natural beauty; usually wooded or un-pastured area: water clarity exceptional
 - Natural Area: trees or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored
 - **Common Setting:** not offensive, developed but uncluttered; water may be colored or turbid
 - □ **Offensive:** stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

picnic/park activities

other, specify:

WORKSHEET 4.1 WATERBODY PHYSICAL CHARACTERISTICS

The following information **is required** for new applications, EPA-designated Major facilities, and major amendment applications requesting to add an outfall if the receiving waters are perennial or intermittent with perennial pools (including impoundments) for a TDPES permit.

Complete the transects downstream of the existing or proposed discharges.

1. DATA COLLECTION (Instructions, Pages 83-84)

a.	Date of study: Time of study: Waterbody name: General location:
b.	Type of stream upstream of an existing discharge or downstream of a proposed discharge (check only one):
	\square perennial \square intermittent with perennial pools \square impoundment
c.	No. of defined stream bends: Well: Moderately: Poorly:
d.	No. of riffles:
e.	Evidence of flow fluctuations (check one): Minor Moderate Severe
f.	Provide the observed stream uses and where there is evidence of channel obstructions/modifications:

g. Complete the following table with information regarding the transect measurements.

Stream Transect Data

Transect Location	Habitat Type*	Water Surface Width (ft)	Stream Depths (ft)**					1	

* riffle, run, glide, or pool

** channel bed to water surface

2. SUMMARIZE MEASUREMENTS (Instructions, Page 84)

Provide the following information regarding the transect measurements:

Streambed slope of entire reach (from USGS map in ft. /ft.):

Approximate drainage area above	the most downstream transect	from USGS map or	county highway
map (square miles):	lext.	_	

Length of stream evaluated (ft):

Number of lateral transects made:

Average stream width (ft):

Average stream depth (ft):

Average stream velocity (ft/sec):

Instantaneous stream flow (ft³/sec):

Indicate flow measurement method (VERY IMPORTANT – type of meter, floating chip timed over a fixed distance, etc.):

Flow fluctuations (i.e., minor, moderate, or severe):

Size of pools (i.e., large, small, moderate, or none):

Maximum pool depth (ft):

Total number of stream bends:

Number well defined:

Number moderately defined:

Number poorly defined:

Total number of riffles:

WORKSHEET 5.0 SEWAGE SLUDGE MANAGEMENT AND DISPOSAL

The following information **is required** for all TPDES permit applications that meet the conditions as outlined in Technical Report 1.0, Item 7.

1. SEWAGE SLUDGE SOLIDS MANAGEMENT PLAN (Instructions, Page 85)

a. Is this a new permit application or an amendment permit application?

🗆 Yes 🖾 No

b. Does or will the facility discharge in the Lake Houston watershed?

🗆 Yes 🖾 No

If **yes** to either Item 1.a **or** 1.b, attach a solids management plan.

Attachment:

2. SEWAGE SLUDGE MANAGEMENT AND DISPOSAL (Instructions, Pages 85-86)

- a. Check the box next to the sludge disposal method(s) authorized under the facility's existing permit (check all that apply).
 - Permitted landfill
 - □ Marketing and distribution by the permittee, attach Form TCEQ-00551
 - □ Registered land application site, attach Form TCEQ-00565
 - □ Processed by the permittee, attach Form TCEQ-00744
 - □ Surface disposal site (sludge monofill), attach Form TCEQ-00744
 - □ Transported to another WWTP
 - Beneficial land application, attach Form TCEQ-10451
 - □ Incineration, attach Form TCEQ-00744

Based on the selection(s) made above, complete and attach the required TCEQ forms as directed. Failure to submit the required TCEQ form will result in delays in processing the application

Attachment:

b. Provide the following information for each disposal site:

Disposal site name:

	TCEQ Permit/Registration Number:
c.	Method of sewage sludge transportation: \Box truck \Box train \Box pipe \Box other:
	TCEQ Hauler Registration Number:
	Sludge is transported as a: 🗆 liquid 🗆 semi-liquid 🗆 semi-solid 🗆 solid

- d. Purpose of land application: \Box reclamation \Box soil conditioning \Box N/A
- e. If sewage sludge is transported to another WWTP for treatment, attach a written statement or copy of contractual agreements confirming that the WWTP identified above will accept and be responsible for the sludge from this facility for the life of the permit (at least 5 years).

Attachment:

3. AUTHORIZATION FOR SEWAGE SLUDGE DISPOSAL (Instructions, Page 86)

- a. If this is a new or major amendment application which requests authorization of a new sewage sludge disposal method, check the new sewage disposal method(s) requested for authorization (check all that apply):
 - □ Marketing and distribution by the permittee, attach Form TCEQ-00551
 - □ Processed by the permittee, attach Form TCEQ-00744
 - □ Surface disposal site (sludge monofill), attach Form TCEQ-00744
 - Beneficial land application, attach Form TCEQ-10451
 - □ Incineration, attach Form TCEQ-00744

Based on the selection(s) made above, complete and attach any required TCEQ forms, as directed. Failure to submit the required TCEQ form will result in delays in processing the application

Attachment:

NOTE: New authorization for beneficial land application, incineration, processing, or disposal in the TPDES permit or TLAP **requires a major amendment to the permit**. New authorization for composting may require a major amendment to the permit. See the instructions to determine if a major amendment is required or if authorization for composting can be added through the renewal process.

WORKSHEET 7.0 STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES

This worksheet **is required** for all TPDES permit applications requesting individual permit coverage for discharges consisting of **either**: 1) solely of stormwater discharges associated with industrial activities, as defined in *40 CFR §* 122.26(*b*)(14)(*i*-*xi*), **or** 2) stormwater discharges associated with industrial activities and any of the listed allowable non-stormwater discharges, as defined in the MSGP (TXR05000), Part II, Section A, Item 6.

Discharges of stormwater as defined in 40 *CFR* § 122.26 (*b*)(13) are not required to obtain authorization under a TPDES permit (see exceptions at 40 *CFR* §§ 122.26(*a*)(1) and (9)). Authorization for discharge may be required from a local municipal separate storm sewer system.

1. APPLICABILITY (Instructions, Page 90)

Do discharges from any of the existing/proposed outfalls consist either 1) solely of stormwater discharges associated with industrial activities **or** 2) stormwater discharges associated with industrial activities and any of the allowable non-stormwater discharges?

🖾 Yes 🗆 No

If **no**, stop here. If **yes**, proceed as directed.

2. STORMWATER OUTFALL COVERAGE (Instructions, Page 91)

List each existing/proposed stormwater outfall at the facility and indicate which type of authorization covers or is proposed to cover discharges.

Outfall	Authorized Under MSGP	Authorized Under Individual Permit
001		TX0138801
	B	

Authorization coverage

If **all** existing/proposed outfalls which discharge stormwater associated with industrial activities (and any of the allowable non-stormwater discharges) are **authorized under the MSGP**, **stop** here.

If **seeking authorization** for any outfalls which discharge stormwater associated with industrial activities (and any of the allowable non-stormwater discharges) **under an individual permit**, **proceed**.

NOTE: The following information is required for each existing/proposed stormwater outfall for which the facility is seeking individual permit authorization under this application.

3. SITE MAP (Instructions, Page 91)

Attach a site map or maps (drawn to scale) of the entire facility with the following information.

- the location of each stormwater outfall to be covered by the permit
- an outline of the drainage area that is within the facility's boundary and that contributes stormwater to each outfall to be covered by the permit
- connections or discharge points to municipal separate storm sewer systems
- locations of all structures (e.g. buildings, garages, storage tanks)
- structural control devices that are designed to reduce pollution in discharges of stormwater associated with industrial activities
- process wastewater treatment units (including ponds)
- bag house and other air treatment units exposed to stormwater (stormwater runoff, snow melt runoff, and surface runoff and drainage)
- landfills; scrapyards; surface water bodies (including wetlands)
- vehicle and equipment maintenance areas
- physical features of the site that may influence discharges of stormwater associated with industrial activities or contribute a dry weather flow
- locations where spills or leaks of reportable quality (as defined in *30 TAC § 327.4*) have occurred during the three years before this application was submitted to obtain coverage under an individual permit
- processing areas, storage areas, material loading/unloading areas, and other locations where significant materials are exposed to stormwater (stormwater runoff, snow melt runoff, and surface runoff and drainage)
- Check the box to confirm all the above information was provided on the facility site map(s).

Attachment: 6

4. FACILITY/SITE INFORMATION (Instructions, Pages 91-92)

a. Provide the area of impervious surface and the total area drained by each stormwater outfall requested for authorization by this permit application.

Impervious Surfaces

Outfall	Area of Impervious Surface (include units)	Total Area Drained (include units)

b. Provide the following local area rainfall information and the source of the information. Wettest month: <u>October</u> Average rainfall for wettest month (total inches): <u>4.64</u> 25-year, 24-hour rainfall (inches): <u>9.84</u> Source: USGS – ESRI Maps

- c. Attach an inventory, or list, of materials currently handled at the facility that may be exposed to precipitation. **Attachment:** *Z*
- d. Attach narrative descriptions of the industrial processes and activities involving the materials in the above-listed inventory that occur outdoors or in some manner that may result in exposure of the materials to precipitation or runoff (see instructions for guidance). **Attachment:**4
- e. Describe any BMPs and controls the facility uses/proposes to prevent or effectively reduce pollution in stormwater discharges from the facility: Stop the leak or capture leaking materials in a suitable container when possible to do so in a manner which does not threaten the life or health of the responding personnel or otherwise create unsafe conditions. If there is a threat of fire or explosion, personnel must evacuate the area and notify trained emergency response agencies. Place absorbents or earthen dikes as necessary to control migration of the oil away from the spill area. Plug or otherwise seal off drainage pathways (such as storm water drains) which would allow discharge of product from the area affected by the release. Once the spill is under control, the Facility Operator will direct personnel or contractors to: Remove liquid oils and spill contaminated water for treatment or disposal. Remove oil contaminated vegetation, soils, and other solid debris. Place recovered spill material in a containment area with proper labeling until it can be disposed of off-Site. Prepare proper shipping papers or waste manifests. Transport the recovered materials to an authorized treatment/storage/disposal facility. Replenish spill control supplies and the spill control kit. Conduct an investigation to determine the cause and contributing factors which resulted in the spill occurring. Evaluate the spill response activities to determine where improvements are needed and update the Response Plan, if required File required follow up reports with government agencies and keep records related to the spill and subsequent remedial activities.

5. LABORATORY ACCREDITATION CERTIFICATION (Instructions, Page 92)

Effective July 1, 2008, all laboratory tests performed must meet the requirements of *30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification* with the following general exemptions:

- a. The laboratory is an in-house laboratory and is:
 - i. periodically inspected by the TCEQ; or
 - ii. located in another state and is accredited or inspected by that state; or
 - iii. performing work for another company with a unit located in the same site; or
 - vi. performing pro bono work for a governmental agency or charitable organization.
- b. The laboratory is accredited under federal law.
- c. The data are needed for emergency-response activities, and a laboratory accredited under the Texas Laboratory Accreditation Program is not available.
- d. The laboratory supplies data for which the TCEQ does not offer accreditation.

Review *30 TAC Chapter 25* for specific requirements. The following certification statement shall be signed and submitted with every application. See Instructions, Page 32, for a list of approved signatories.

I, certify that all laboratory tests submitted with this application meet the requirements of *30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification*.

(Signature)

6. POLLUTANT ANALYSIS (Instructions, Pages 92-93)

- a. Provide the date range of all sampling events conducted to obtain the analytical data submitted with this application (e.g., 05/01/2018-05/30/2018): <u>Outfall has not commenced discharging at this point.</u> <u>Upon discharge, sampling will take place.</u>
- b. Check the box to confirm all samples were collected no more than 12 months prior to the date of application submittal.
- c. Complete Table 17 as directed on page 92 of the Instructions.

Pollutant	Grab Sample* Maximum (mg/L)	Composite Sample** Maximum (mg/L)	Grab Sample* Average (mg/L)	Composite Sample** Average (mg/L)	Number of Storm Events Sampled	MAL (mg/L)
pH (standard units)	(max)	_	(min)	_		
Total suspended solids						
Chemical oxygen demand						1
Total organic carbon						
Oil and grease						
Arsenic, total						0.0005
Barium, total						0.003
Cadmium, total						0.001
Chromium, total						0.003
Chromium, trivalent						
Chromium, hexavalent						0.003
Copper, total						0.002
Lead, total						0.0005
Mercury, total						0.000005
Nickel, total						0.002
Selenium, total						0.005
Silver, total						0.0005
Zinc, total						0.005

Table 17 Pollutant Analysis for Outfall No.:

* Taken during first 30 minutes of storm event

** Flow-weighted composite sample

d. Complete Table 18 as directed on pages 92-94 of the Instructions.

Table 18 Pollutant Analysis for Outfall No.:

Pollutant	Grab Sample* Maximum (mg/L)	Composite Sample** Maximum (mg/L)	Grab Sample* Average (mg/L)	Composite Sample** Average (mg/L)	Number of Storm Events Sampled

Pollutant	Grab Sample* Maximum (mg/L)	Composite Sample** Maximum (mg/L)	Grab Sample* Average (mg/L)	Composite Sample** Average (mg/L)	Number of Storm Events Sampled

* Taken during first 30 minutes of storm event

** Flow-weighted composite sample

Attachment: <u>NA</u>

7. STORM EVENT DATA (Instructions, Page 94)

Provide the following data for the storm event(s) which resulted in the maximum values for the analytical data submitted:

Date of storm event: <u>NA</u>

Duration of storm event (minutes):

Total rainfall during storm event (inches):

Number of hours the between beginning of the storm measured and the end of the previous measurable storm event (hours):

Maximum flow rate during rain event (gallons/minute):

Total stormwater flow from rain event (gallons):

Provide a description of the method of flow measurement or estimate:

SECTION 2

ATTACHMENTS

Attachment 1: LeaseAttachment 2: USGS MapAttachment 3: General Site MapAttachment 4: Process Description & Water Balance DiagramAttachment 5: TCEQ Approval for No Sampling EmailAttachment 6: Site Arrangement MapAttachment 7: Site Inventory TableAttachment 8: E-Pay Voucher

GROUND LEASE

between

VICTORIA COUNTY NAVIGATION DISTRICT

and

VICTORIA BLOOMINGTON, LLC

November 21, 2017

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GROUND LEASE

THIS GROUND LEASE (this "Lease") is made and entered into effective as of November <u>21</u>, 2017 (the "<u>Effective Date</u>") by and between the VICTORIA COUNTY NAVIGATION DISTRICT, a navigation district formed under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas ("Landlord"), and Victoria Bloomington, LLC, a Texas limited liability company ("<u>Tenant</u>").

RECITALS

A. Landlord owns property in Victoria County, Texas, commonly known as the Port of Victoria Industrial Park (also the "Land"), which encompasses the tract of land described in <u>Exhibit A</u> hereto (the "<u>Demised Premises</u>"). A site plan depicting the Land (the "<u>Site Plan</u>") is attached hereto as <u>Exhibit B</u>.

B. Tenant wishes to lease the Demised Premises for the Term and to construct on the Demised Premises an electric power generation and distribution facility (such facility, together with other improvements from time to time located on the Demised Premises, being herein called the "Demised Premises Improvements").

AGREEMENTS

NOW, THEREFORE, for and in consideration of the agreements set forth herein, Landlord and Tenant (collectively, the "<u>Parties</u>" and individually, a "<u>Party</u>") hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.01 Definitions. Each capitalized term used in this Lease shall have the meaning set forth or referred to in <u>Schedule 1.01</u> hereto. In addition, <u>Schedule 1.01</u> sets forth certain rules for the interpretation of this Lease.

ARTICLE 2 DEMISED PREMISES

2.01 <u>Demised Premises</u>. Landlord hereby does lease, let and demise unto Tenant, and Tenant hereby does lease and rent from Landlord, upon and subject to the provisions of this Lease, the Demised Premises.

ARTICLE 3 <u>TERM</u>

3.01 <u>Term</u>. The term of this Lease (the "<u>Term</u>") shall commence on the Effective Date, and shall end on the last day of the calendar month which is seven (7) years after the last day of the Commencement Month. The term "<u>Lease Year</u>" shall mean each period of twelve (12) calendar months commencing on the first day of the calendar month following the

Commencement Month, except that the first Lease Year shall include the period of time between the Effective Date and the end of the Commencement Month. Tenant shall have the option to extend the Term for three (3) additional seven (7) year periods, each a "<u>Renewal Term</u>". Tenant may exercise this option only by delivering to Landlord written notification of its intent to extend the lease for the additional term. Said notice must be received by Landlord no later than one (1) year prior to the expiration of the then-current seven (7) year term. Any reference to Term shall include, if applicable, any Renewal Term.

ARTICLE 4 BASE RENT

4.01 Base Rent. (a) Commencing on the Effective Date, Tenant shall pay to Landlord annual base rent ("<u>Base Rent</u>") of \$325,248.00, being \$2,200.00 per acre per each month of the Lease Year. Base Rent shall be adjusted pursuant to Section 4.01(b) for any Renewal Term. Base Rent shall be paid in equal monthly installments in advance on the first day of each calendar month; provided, however, that Base Rent, prorated for the balance of the Commencement Month, shall be paid along with the Base Rent for the first calendar month following the Commencement Month.

(b) Provided Tenant has exercised its option to extend the Term as provided in ARTICLE 3 above, commencing on the first day of the Renewal Term Adjustment Date (the "<u>Adjustment Date</u>") (*i.e.*, December 1, 2024), and on each Adjustment Date thereafter, Base Rent will increase, on a cumulative basis, at the rate the greater of (i) 20% over the Base Rent during the previous seven-Lease Year period or (ii) increases in the Index from the first day of the previous seven-Lease Year period.

(c) For the purpose of calculating adjustments of Base Rent, the following definitions shall apply:

(i) The term "Index" means the "Consumer Price Index – All Urban Consumers" published by the Bureau of Labor Statistics of the United States Department of Labor ("BLS"), or any successor agency, all items, (1982-1984 = 100) or any renamed local index covering the Victoria County area, or any other measure thereafter employed by said BLS or successor agency in lieu of such Index that measures the cost of living for all urban consumers for all items in the Victoria County area.

(d) In the event that the Index for the most recent Comparison Month is not available as of any Adjustment Date, the Base Rent shall be increased by twenty percent (20%) over the Base Rent in effect for the previous seven-Lease Year period. When the Index for such Comparison Month is available, any further adjustment, if applicable, shall be made retroactive to the applicable Adjustment Date, with Tenant making any additional payments of Base Rent, if applicable, no later than thirty (30) days after such Index is available.

4.02 <u>No Abatement</u>. Except to the extent provided in Article 10, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder to pay Base Rent, or entitle Tenant to any abatement, diminution, reduction, offset or suspension of Base Rent whatsoever;

and Tenant waives any rights now or hereafter conferred upon it by statute or other Applicable Law, to any abatement, diminution, reduction, offset or suspension of Base Rent because of any event, happening, occurrence or situation whatsoever.

ARTICLE 5 IMPOSITIONS; UTILITIES; NET LEASE

5.01 **Impositions Defined**. The term "Impositions" shall mean all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees, and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed by any public authority upon or accrued or become a lien on (i) the Premises or any part thereof; (ii) the rent and income received by or for the account of Tenant from any sublessees or for any use or occupancy of the Premises; (iii) such franchises, licenses, and permits as may be pertinent to the use of the Premises; or (iv) any documents to which the Tenant is a party creating or transferring an interest or estate in the Premises or any parking rights or appurtenances to the Premises. Impositions shall not include any income tax, capital levy, estate, succession, inheritance or transfer taxes, or similar tax of Landlord; any franchise tax imposed upon any owner of the fee of the Demised Premises; or any income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Landlord under this Lease by any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority (each a "Governmental Authority" and collectively, "Governmental Authorities"). However, if at any time during the Term the present method of taxation shall be so changed that the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and improvements thereon shall be discontinued and in whole or partial substitution therefor, taxes of the type described in the immediately preceding sentence or taxes, assessments, levies, impositions, or charges shall be levied, assessed, and/or imposed wholly or partially as a capital levy or otherwise on the rents received from said real estate or the rents reserved herein or any part thereof, then such substitute taxes, assessments, levies, impositions, or charges, to the extent so levied, assessed, or imposed, shall be deemed to be included within the term Impositions.

5.02 Tenant's Obligation. During the Term, Tenant will pay as and when the same shall become due all Impositions directly to the Governmental Authority or other person entitled to receive payment thereof and provide Landlord with reasonable evidence that such Impositions have been paid in a timely manner. Impositions that are payable by Tenant for the tax year in which the Term commences as well as during the tax year in which the Term ends shall be apportioned so that Tenant shall pay its proportionate share of the Impositions for such periods Where any Imposition that Tenant is obligated to pay may be paid pursuant to of time. Applicable Law in installments, Tenant may pay such Imposition in installments as and when such installments become due. Tenant shall, if so requested, deliver to Landlord evidence of due payment of all Impositions Tenant is obligated to pay hereunder, concurrently with the making of such payment. If the Premises is not separately assessed, Tenant shall pay a share of the Impositions properly allocable to the Premises, as reasonably determined by Landlord; provided, however, that (i) Tenant may have the Demised Premises separately assessed for purposes of ad valorem property taxes and Landlord will reasonably cooperate with Tenant to achieve the same, and (ii) Landlord agrees to pay, prior to delinquency, any outstanding ad valorem property taxes for the Demised Premises and will provide Tenant with evidence of same. Upon receipt of any ad valorem tax statements for the property that includes the Demised Premises, Landlord shall deliver to Tenant copies of such statements and an invoice setting forth Landlord's calculation of the portion of the 2017 ad valorem taxes properly allocable to the Demised Premises. Tenant shall pay the portion of the 2017 ad valorem taxes properly allocable to the Demised Premises within thirty (30) days after Tenant's receipt of such statement.

5.03 Tax Contest. Tenant may, at its sole cost and expense, contest the validity or amount of any Imposition for which it is responsible, in which event the payment thereof may be deferred to the extent permitted by Applicable Law, during the pendency of such contest, if diligently prosecuted. Fifteen (15) days prior to the date any contested Imposition shall become delinquent, Tenant shall deposit with Landlord or, at the election of Tenant, such bank or trust company having its principal place of business in Victoria, Texas, selected by Tenant and reasonably satisfactory to Landlord (the "Imposition Trustee"), an amount sufficient to pay such contested item, together with any interest and penalties thereon and the estimated fees and expenses of any Imposition Trustee, which amount shall be applied to the payment of such items when the amount thereof shall be finally determined. In lieu of such cash deposit, Tenant may deliver to Landlord a surety company bond in form and substance, and issued by a company. satisfactory to Landlord, or other security reasonably satisfactory to Landlord. Nothing herein contained, however, shall be construed to allow any Imposition to remain unpaid for such length of time as would permit the Premises, or any part thereof, to be sold or seized by any Governmental Authority for the nonpayment of the same. If at any time, in the judgment of Landlord reasonably exercised, it shall become necessary to do so, Landlord may, after written notice to Tenant, under protest if so requested by Tenant, direct the application of the amounts so deposited or so much thereof as may be required to prevent a sale or seizure of the Premises or foreclosure of any lien created thereon by such item. If the amount deposited exceeds the amount of such payment, the excess shall be paid to Tenant, or, in case there should be any deficiency, the amount of such deficiency shall be promptly paid on demand by Tenant to Landlord (provided Landlord has advanced such amount), and, if not so paid, such amount shall be a debt of Tenant to Landlord, together with interest thereon at the Interest Rate from the date advanced until paid. Tenant shall promptly furnish Landlord with copies of all proceedings and documents with regard to the contest of any Imposition, and Landlord shall have the right, at its expense, to participate therein.

5.04 <u>Evidence Concerning Impositions</u>. The certificate, advice, bill, or statement issued or given by the appropriate officials authorized by Applicable Law to issue the same or to receive payment of any Imposition of the existence, nonpayment, or amount of such Imposition shall be prima facie evidence for all purposes of the existence, nonpayment, or amount of such Imposition.

5.05 <u>Rendition</u>. For each tax year commencing after the Effective Date, Tenant shall render the Premises for each Governmental Authority imposing Impositions thereon and may, if Tenant shall so desire, endeavor at any time or times to obtain a lowering of the valuation of the Premises for any year for the purpose of reducing ad valorem taxes thereon, and in such event, Landlord will, at the request of Tenant, cooperate in effecting such a reduction, provided that

Landlord shall not be required to incur any expense in connection therewith without its prior consent.

5.06 <u>Utilities</u>. Tenant shall be responsible for any and all costs associated with the installation or extension of utilities to the Premises which are necessary for Tenant's operations on the Premises, subject to prior approval by Landlord not to be unreasonably withheld, conditioned or deluged. Tenant shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone, cable, internet service and other communication services, and all other utilities and similar services rendered or supplied to the Premises, and all water fees, water rents, sewer/septic service charges, or other similar charges levied or charged against, or in connection with, the Premises. Tenant shall not, for any purpose, drill or have drilled a water well on the Premises.

5.07 <u>Net Lease</u>. Except as expressly provided in this Lease, Landlord shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the financing, ownership, construction, maintenance, operation, or repair of the Premises. It is expressly understood and agreed that this is a completely net lease intended to assure Landlord the rentals herein reserved on an absolute net basis.

5.08 <u>Right to Perform Tenant's Obligation as to Impositions</u>. If Tenant fails to timely pay any Imposition for which it is responsible hereunder, or fails to timely notify Landlord of its intention to contest the same, or fails to pay contested Impositions as provided in Section 5.03, Landlord may, at its election (but without obligation), pay such Imposition with any interest and penalties due thereon, and the amount so paid shall be reimbursed by Tenant on demand together with interest thereon at the Interest Rate from the date of such payment until repaid.

ARTICLE 6 CONDITION OF DEMISED PREMISES; IMPROVEMENTS

6.01 <u>Condition of Demised Premises</u>. Tenant acknowledges that it is leasing the Demised Premises and any improvements located thereon "AS IS, WHERE IS, WITH ALL FAULTS" and that Landlord makes no representations or warranties of any nature, express or implied, concerning the Demised Premises or any improvements thereon, including any representation or warranty concerning (i) the physical condition of the Demised Premises or any such improvements, (ii) the suitability of the Demised Premises or any improvements thereon for Tenant's intended use, (iii) the environmental condition of the Demised Premises and any such improvements or (iv) compliance of the Demised Premises or any such improvements with any Applicable Laws. Tenant has had adequate opportunity to inspect, conduct tests and other due diligence and otherwise evaluate the Demised Premises.

6.02 <u>Construction of Improvements</u>. Tenant shall, subject to the subsequent provisions of this Article 6, construct all Demised Premises Improvements in accordance with the terms of this Lease.

6.03 <u>Alterations; Demolition</u>. (a) At any time and from time to time during the Term, Tenant may perform such construction, alteration, renovation, repair, refurbishment, and other work with regard to the Demised Premises Improvements as Tenant may elect, provided that the same is done in accordance with the Construction Standards herein. Landlord acknowledges and agrees that Tenant may construct a fence around the boundary of the Demised Premises and/or Demised Premises Improvements.

(b) Any civil infrastructure improvements made to the Demised Premises by Tenant as part of the Demised Premises Improvements, including, without limitation, roadways, driveways, fencing, concrete or other improved surfacing, foundations, and concrete slabs (the "<u>Civil Infrastructure Improvements</u>"), shall not be demolished or removed without the prior written consent of Landlord. Upon the expiration or termination of this Lease, Tenant shall have the right and obligation to remove all Demised Premises Improvements other than the Civil Infrastructure Improvements, which at Landlord's option will either remain on the Demised Premises after the expiration or termination of the Lease, or will be demolished and removed from the Demised Premises, and the Demised Premises shall be put in a good, clean and safe order and condition at Tenant's sole cost and expense. Notwithstanding the foregoing, Tenant shall have no obligation to remove foundation piers below a depth of four (4) feet from the surface of the Demised Premises.

6.04 <u>Construction Standards and Liens</u>. (a) The Demised Premises Improvements shall be constructed, and any and all alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto shall be performed, in accordance with the following "<u>Construction Standards</u>" (herein so referenced):

(i) With respect to any material construction, installation, alteration, renovation, repair, refurbishment and other work with regard to the Civil Infrastructure Improvements, prior to the commencement of such work Tenant shall provide Landlord with site plans, drainage plans, construction plans, or other such depictions of the work to be performed, as applicable, suitable to allow Landlord's civil engineering representative, to conduct a civil design/utilities compliance review of the proposed work;

(ii) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question;

(iii) All such construction or work shall be done in material compliance with all Applicable Laws;

(iv) No such construction or work shall be commenced until Tenant shall have obtained all licenses, permits, and authorizations required of all Governmental Authorities having jurisdiction, including Landlord;

(v) No such construction or work shall be commenced until Tenant shall have obtained, and Tenant shall maintain in force and effect, the insurance coverage required in Article 8 with respect to the type of construction or work in question;

(vi) No such construction or work shall be commenced until Tenant shall have provided Landlord with an irrevocable Standby Letter of Credit of no less than One Million Dollars (\$1,000,000.00), reasonably protecting Landlord against the failure of Tenant and/or its contractor(s) to prevent the filing of liens against the Demised Premises whether arising from Chapter 53 of the Texas Property Code, the Texas Constitution, common law, or other applicable statute; the failure of Tenant and/or its contractor(s) to provide a bond against any said liens; Tenant's failure to timely complete a then ongoing Civil Infrastructure Improvement project; and/or, Tenant's failure to provide a substitute Standby Letter of Credit prior to the expiration of a previous Standby Letter of Credit provided to Landlord (said Standby Letter of Credit to be released by Landlord no later than ten (10) days following Landlord's receipt of written instruments containing unconditional waivers and releases of lien rights, and duly executed by all contractors, sub-contractors and materialmen, of any tier, who provided materials and or services in connection with the construction or work);

(vii) After commencement, such construction or work shall be prosecuted with due diligence to its completion, subject to extension due to delays caused by Force Majeure; and,

(viii) After completion of construction or substantial alteration of the Demised Premises Improvements, Tenant shall provide Landlord with a complete set of as-built drawings, and update same to reflect material alterations or modifications through the Term of the Lease.

(b) Tenant shall have no right, authority, or power to bind Landlord or any interest of Landlord in the Demised Premises, the Land or any improvements located on the Land for any claim for labor or for material or for any other charge or expense incurred in construction of the Demised Premises Improvements or performing any alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto, nor to render Landlord's interest in the Demised Premises, the Land or any improvements located on the Land liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Tenant shall in no way be considered to be the agent of Landlord with respect to, or general contractor for, the construction, erection, or operation of any such Demised Premises Improvements, alterations, renovations, repairs, restorations, refurbishments or other work. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Demised Premises or the Land shall be filed, Tenant shall promptly pay and release or bond such liens to Landlord's reasonable satisfaction or otherwise obtain the release or discharge thereof. If Tenant fails to promptly pay and release or bond such lien to Landlord's reasonable satisfaction, Landlord shall have the right, but not the obligation, to pay, release or obtain a bond to protect against such liens and claims following written notice to Tenant, and Tenant shall reimburse Landlord on demand for any such amounts paid together with interest thereon from the date of such payment until paid.

(c) Landlord, as well as its agents, employees, Commissioners, architects, engineers and Affiliates, if any, shall not be liable to Tenant or any other Person for any loss, claim or demand asserted on account of Landlord's exercise of its rights and duties hereunder, or any failure or defect in such exercise. No approval of designs, plans, specifications or other matters shall ever be construed as representing or implying that such designs, plans, specifications or other matters will, if followed, result in a properly designed building or other improvements. Such approvals shall in no event be construed as representing or guaranteeing

that any improvements will be built in a workmanlike manner, nor shall such approvals relieve Tenant of its obligation to construct the improvements in a workmanlike manner as provided in this Article 6.

6.05 Ownership of Improvements. During the Term of the Lease, all Demised Premises Improvements are the sole property of Tenant. Tenant may upon written notice to Landlord remove all or any part of such Demised Premises Improvements which are not considered Civil Infrastructure Improvements and constitute personal property utilized in connection with the Demised Premises upon the expiration or earlier termination of this Lease; and Tenant shall repair all damage to the Demised Premises caused by such removal at Tenant's cost, expense, and liability. In the event that Tenant fails to remove the Demised Premises Improvements (except as aforesaid) within one hundred and eighty (180) days of the expiration or earlier termination of the Lease, then, at Landlord's election, either (i) Tenant's rights, title, and interest in and to such Demised Premises Improvements, or (ii) Landlord shall be entitled to remove and dispose of such Demised Premises Improvements, in a commercially reasonable manner, at Tenant's cost, expense, and liability. This provision shall survive the termination of this Lease.

6.06 <u>Mutual Cooperation</u>. (a) Landlord, as owner of the Demised Premises and the Land, shall reasonably cooperate with and assist Tenant in Tenant's efforts to file for and obtain all building permits, certificates of occupancy, easements, licenses, variances, permissions and consents necessary to construct, operate and maintain the Premises so long as Landlord is not required to incur any obligations or liabilities other than minor incidental expenses or impose any restrictions conditions or other encumbrances on the Land.

(b) Landlord shall not unreasonably delay or prohibit Tenant from commencing and thereafter continuously pursuing construction of the Demised Premises Improvements in accordance with this Lease but this sentence does not require Landlord to refrain from exercising any of Landlord's rights under this Lease.

(c) Landlord shall have the right to require periodic meetings with representatives of Tenant present (in person or by phone) to discuss issues relating to the progress of construction of the Demised Premises Improvements, including the coordination of construction of such improvements.

ARTICLE 7

USE, CONTINUOUS OPERATIONS, MAINTENANCE, AND REPAIRS

7.01 <u>Use</u>. (a) Subject to the terms and provisions hereof, Tenant shall have the right to use and enjoy the Premises for the construction and operation of an electric generation and distribution facility, and for no other uses.

(b) Tenant shall not use or occupy the Premises, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by Tenant hereunder, (iii) constitute a public or private nuisance, (iv) be unreasonably disruptive to the Land or the improvements located thereon, or (v) violate any Applicable Law. Landlord represents to Tenant that the use described Section 7.01(a) above does not constitute a public or private nuisance nor is unreasonably disruptive to the Land or the improvements located therein.

7.02 <u>Maintenance and Repairs</u>. (a) Tenant shall take good care of the Premises, make all repairs thereto, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises in first-class order, repair, and condition at all times and in compliance with all Applicable Laws. Tenant will not do, permit, or suffer any waste, damages, disfigurement, or injury to or upon the Premises or any part thereof. However, the foregoing provisions of this Section 7.02 shall not prohibit Tenant from undertaking the initial construction of the Demised Premises Improvements or any subsequent repairs, remodeling, renovation, or reconstruction (whether resulting from casualty, condemnation, or otherwise) in accordance with the terms of this Lease.

(b) Landlord shall have no obligation to maintain or repair the Premises.

ARTICLE 8 INSURANCE AND INDEMNITY

8.01 <u>Insurance</u>. Tenant will, at its cost and expense, keep and maintain in force the following policies of insurance:

(a) Builders "All-Risk" or equivalent all-risk installation insurance, as such term is used in the insurance industry, in an amount that is not less than the full replacement cost value of the planned Demised Premises Improvements and covering all construction, erection or installation work including without limitation coverage for mechanical and electrical breakdown and all forms of testing and commissioning required to complete the planned Demised Premises Improvements, including, but not limited to, coverage for resulting or ensuing damage arising out of design error, faulty materials or faulty workmanship, the perils of flood, earthquake, named windstorm, hail, lightning, riot and civil commotion, theft, vandalism and malicious mischief, subject to terms that are consistent with current industry practice insuring real and personal property of Tenant on the Demised Premises; and,

(b) Worker's compensation and employer's liability coverage insurance as to Tenant's employees involved in the construction, operation, or maintenance of the Premises in compliance with Applicable Law.

8.02 <u>Liability Insurance</u>. Tenant will, at its cost and expense, keep and maintain in force commercial general liability insurance for bodily injury, death and property loss and damage (including coverages for product liability, contractual liability and personal injury liability) covering Tenant for claims, lawsuits or damages arising out of its performance under this Agreement, and any negligent or otherwise wrongful acts or omissions by Tenant or any employee or agent of Tenant, with no exclusions for explosion, collapse and underground perils, or fire and coverage for pollution and punitive damages (to the extent normally available), with a combined single limit of not less than \$2,000,000.00 with such limit to be increased if requested by Landlord (but no more frequently than once every three (3) years) by an amount which may

be commercially reasonable at the time, taking into account the size and type of the Demised Premises Improvements, their construction, location, use and occupancy. Tenant shall require that: (i) any other general contractor for initial construction, tenant improvement work, casualty restoration work or any significant alterations provide completed operations coverage in its commercial general liability policy, and (ii) such insurance name Tenant and Landlord as additional insureds and be written on an occurrence, rather than a claims made, basis. In addition, throughout the Term Tenant shall maintain pollution liability insurance with a limit commensurate with industry practice for similar operations but not less than \$5,000,000 per occurrence. Coverage will provide for property damage and bodily injury to third parties including, without limitation, Landlord, arising out of "sudden and accidental" pollution conditions as a result of Tenant's operations on the Demised Premsies.

8.03 Policies. All insurance maintained in accordance with the provisions of this Article 8 shall be issued by companies reasonably satisfactory to Landlord and the Permitted Mortgagee, if any (hereinafter defined). All property policies shall be carried in the name of both Landlord and Tenant, as their respective interests may appear, and shall contain a mortgagee clause acceptable to the Permitted Mortgagee. All property policies shall expressly provide that any loss thereunder may be adjusted with Tenant and Landlord, but shall be payable to Landlord, who shall agree to receive and disburse all proceeds as set forth in Section 9.02. All liability insurance policies shall name Landlord and the Permitted Mortgagee as an additional insured and shall include contractual liability endorsements. All such policies of insurance may be provided on either an occurrence or claims-made basis. If such coverage is provided on a claims made basis, such insurance shall continue throughout the term of the Agreement, and upon the termination of this Agreement, or the expiration or cancellation of the insurance, Tenant shall purchase or arrange for the purchase of either an unlimited reporting endorsement ("Tail" coverage), or "Prior Acts" coverage from the subsequent insurer, with a retroactive date on or prior to the effective date of this Agreement and for a period of not less than five (5) years following the termination or expiration of this Agreement. No cancellation, non-renewal or material modification will occur without thirty (30) days' prior written notice by the insurer to Landlord, Tenant and the Permitted Mortgagee. Tenant shall furnish Landlord and the Permitted Mortgagee with such evidence of insurance, including duplicate originals or copies certified as being true and correct of all insurance policies, or certificates of insurance reasonably satisfactory to Landlord and the Permitted Mortgagee, with new certificates of insurance or other evidence of insurance to be delivered no later than thirty (30) days prior to the expiration of the current policies. If Tenant fails to maintain any insurance required to be maintained by Tenant pursuant to this Lease, Landlord may, at its election (without obligation), procure such insurance as may be necessary to comply with these requirements, and Tenant shall reimburse Landlord, on demand, with interest thereon at the Interest Rate from the date of expenditure until fully reimbursed. Any and all property insurance policies required to be maintained pursuant to this Agreement shall, if they do not automatically permit the waivers of subrogation contained herein, be endorsed to reflect the waivers of subrogation provided for herein.

8.04 <u>Tenant's Indemnity</u>. Tenant shall defend, indemnify and hold harmless Landlord and its affiliates, officers, directors, employees, commissioners, managers and agents (the "Indemnified Parties") from and against, and Tenant shall be responsible for, any and all liabilities (including strict liability), actions, demands, penalties, fines, losses, costs and expenses (including reasonable attorneys' and experts' fees and expenses), suits, costs of any settlement or

judgment, and claim of any and every kind whatsoever, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (all of which are hereinafter collectively called "Claims"), which may now or in the future be brought or instituted or asserted on account of or growing out of or arising from (i) any failure on the part of Tenant and its affiliates, partners, members, shareholders or other equity owners, officers, directors, employees, managers or agents, or licensees (the "Tenant Parties") to comply with the provisions of this Lease, or to comply with the provisions of Applicable Law applicable to the Tenant Parties or the Premises, (ii) any and all injuries or damages, including death, to persons or properties relating to the condition, use or occupancy of the Premises, including the construction, alteration, repair or maintenance of any improvements, or the presence on or release or discharge from the Premises of any Hazardous Substances (except to the extent that Landlord has been proven to have caused such presence, release or discharge), or (iii) Landlord's approval of any designs, site plans, plans, specifications or other matters. NOTWITHSTANDING THE NEGLIGENCE OR STRICT LIABILITY (WITHOUT **REGARD TO FAULT) OF ANY OF THE INDEMNIFIED PARTIES except, in the case of** each Indemnified Party, to the extent that the Claims are proven to have resulted from the gross negligence or willful misconduct of such Indemnified Party. Maintenance of the insurance referred to in this Article 8 shall not affect Tenant's obligations under this Section 8.04. Without relieving Tenant of its obligations under this Section 8.04, the Indemnified Parties, at their election, may defend or participate in the defense of any Claims with attorneys and representatives of their own choosing. Tenant shall be relieved of its obligation of indemnity to the extent, and only to the extent, of the amount actually recovered from one or more insurance carriers and either paid to Landlord or paid for Landlord's benefit in reduction of any Claims, but nothing contained herein shall entitle Tenant to delay performing its indemnification obligations, or require any Indemnified Party to delay enforcing its indemnification rights, until one or more insurance carriers make such payments to or for the benefit of the Indemnified Parties.

8.05 Subrogation. Landlord hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Tenant, its agents, partners or other equity owners, directors, officers and employees (each a "Tenant Release Party") for any loss or damage that may occur to the Demised Premises Improvements and to Landlord's interest in any other property located on the Demised Premises or the Land, whether real, personal or mixed, and the Land, regardless of cause or origin, INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY TENANT RELEASE PARTY, to the extent such loss is covered in whole or in part by insurance. Tenant hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Landlord, its agents, directors, commissioners, officers and employees (each a "Landlord Release Party") for any loss or damage that may occur to the Demised Premises Improvements and to all property of Tenant located on the Demised Premises or the Land, whether real, personal or mixed, and the Demised Premises, regardless of cause or origin, INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY LANDLORD RELEASE PARTY, to the extent such loss is covered (or is required under this Lease to be covered) in whole or in part by insurance. Nothing contained in this Section 8.05 is intended or shall be construed to create any liability that would not otherwise exist in the absence of this Section 8.05.

ARTICLE 9 CASUALTY LOSS

9.01 <u>Tenant's Obligation to Restore</u>. Should the Demised Premises Improvements be wholly or partially damaged or destroyed by fire or other casualty, Tenant shall promptly, but in no event later than two (2) Business Days after the occurrence of such destruction, commence and thereafter diligently pursue all steps necessary to secure the Demised Premises Improvements and otherwise make the Demised Premises Improvements safe so as not to result in risk of injury to Persons or damage to other property on the Land, including constructing a fence around the Demised Premises Improvements (if necessary for security or safety). The work described in this Section 9.01 is herein called the "Immediate Work".</u>

9.02 [Intentionally Deleted].

9.03 <u>Notice of Damage</u>. Tenant shall immediately notify Landlord and any Permitted Mortgagee of any destruction or material damage to the Premises.

ARTICLE 10 CONDEMNATION

10.01 <u>Total Taking</u>. Should the entire Premises be taken (which term, as used in this Article 10, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, then (a) this Lease shall terminate as of the date of taking possession by the condemning authority, (b) Base Rent shall be apportioned and paid to such date of termination, and (c) the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (ii) second, the balance of the award shall be equitably apportioned between Landlord and Tenant based on the then respective fair market values of Landlord's Interest (appraised by reference to all relevant factors including the income stream derivable by Landlord under this Lease and the then present value of Landlord's reversionary interest in the entire Premises after expiration of the originally stated Term), and Tenant's Leasehold Estate (appraised by reference to all relevant factors, including the income stream derivable by Tenant from the Premises for the remainder of the originally stated Term), with any award to Tenant payable to Tenant's Permitted Mortgagees as their interests may appear. However, if Tenant's portion of the condemnation award is insufficient to repay the Permitted Mortgage, then Landlord's portion of such award shall be reduced by the amount which, when taken together with Tenant's portion, is sufficient to repay the Permitted Mortgage; but in no event shall Landlord be denied the portion of the condemnation award attributable to the fair market value of the Demised Premises (expressly excluding the Demised Premises Improvements) determined as if this lease were not in effect. If Landlord and Tenant are unable to agree on the respective fair market values of their interests in the Premises, then the matter shall be submitted to arbitration as provided in Section 15.03. After the determination and distribution of the condemnation award as herein provided, this Lease shall terminate.

10.02 <u>Partial Taking</u>. If a portion of the Premises is taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this

Lease shall continue in effect as to the remainder of the Premises unless, in Tenant's reasonable judgment, so much of the Premises is so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 10.01. In the event of a partial taking where this Lease is not terminated, the Base Rent payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis having due regard to the relative value and acreage of the portion of the Premises thus taken as compared to the remainder thereof and taking into consideration the extent, if any, to which Tenant's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking. If Landlord and Tenant are unable to agree as to a just reduction in Base Rent, the matter shall be submitted to arbitration as provided in Section 15.03. In the event of a partial taking where this Lease is not terminated, Tenant shall proceed promptly to restore the remaining portion of the Premises to an integral unit resembling, so far as practicable, the Premises prior to such taking, in the same manner provided in Article 9 for restoration following a casualty, with the provisions relating to Tenant's right to use insurance proceeds for Immediate Work and Restoration Work to apply likewise to Tenant's right to use condemnation awards for such purposes.

10.03 <u>Award on Partial Taking</u>. In the event of a partial taking where this Lease is not terminated, and as a result thereof Tenant will need to restore, repair, or refurbish the remainder of the Premises in order to put them in a useable condition, then (a) the award shall first be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Premises taken, (b) the portion allocable to Landlord shall be paid to Landlord, and (c) the portion of the award payable to Tenant shall be paid to Tenant. If a portion of the Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Premises taken.

10.04 <u>Voluntary Dedication</u>. Tenant shall have no right to voluntarily devote or dedicate any portion of the Premises to public use without Landlord's prior written consent.

10.05 <u>Notice of Taking, Cooperation</u>. Landlord and Tenant shall immediately notify the other and any Permitted Mortgagee of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

ARTICLE 11 ASSIGNMENT AND SUBLETTING

11.01 <u>Tenant's Right to Assign</u>. Except as permitted in Sections 11.03 and 12.01, Tenant shall not sell, assign, sublease, or otherwise transfer (each being herein referred to as a "<u>Transfer</u>"), or mortgage, pledge or otherwise encumber (each being herein referred to as an "<u>Encumbrance</u>" or to "<u>Encumber</u>"), whether voluntarily, involuntarily or by operation of law, its Leasehold Estate, or any portion thereof, without Landlord's prior written consent, which

consent shall not be unreasonably withheld based on the financial condition, business reputation, and experience of the Transferee (or its operator) in operating similar facilities.

(a) The provisions of this Section 11.01 shall not apply to a foreclosure by the Permitted Mortgagee or a conveyance to the Permitted Mortgagee (or its Affiliate) in lieu of foreclosure, but the provisions of this Section 11.01 shall apply to a subsequent Transfer by the Permitted Mortgagee or its Affiliate to the purchaser at such foreclosure sale.

(b) No Transfer or Encumbrance, regardless of whether Landlord has consented to such Transfer or Encumbrance, shall release Tenant (or any previous Transferee) from liability for the performance of all of Tenant's obligations under this Lease; however, so long as no Event of Default then remains uncured, upon a Transfer permitted under this Lease the Transferor shall be released from liability for performance of all of Tenant's obligations under this Lease accruing after the date of such Transfer, and the Transferee shall be deemed to have assumed all of Tenant's obligations under this Lease.

(c) Prior to making any Transfer for which Landlord's consent is required, Tenant shall provide to Landlord the following: (i) the name of the proposed Transferee and all direct or indirect owners of equity ownership interest in the Transferee; (ii) financial information regarding the proposed Transferee and the Persons Controlling the Transferee, including balance sheets, income statements and the like; and (iii) such other information as Landlord shall reasonably request to determine the financial viability and business reputation and operational experience of the proposed Transferee.

(d) For any Permitted Assignment or Permitted Sublease which does not require Landlord's consent as described in Section 11.03 below, Tenant shall give notice to Landlord identifying the Transferor, the Transferee and the interest transferred no later than ten (10) Business Days after such transfer has occurred.

11.02 <u>Assignment by Landlord</u>. Landlord may, without Tenant's consent, Transfer or Encumber all or any part of its Landlord's Interest, including its interest in this Lease, and Tenant shall attorn to any transferee of Landlord's Interest provided such Transferee shall be bound by this Lease and shall enter into a non-disturbance and attornment agreement with Tenant. As used in this Lease, "Landlord" shall mean only the fee owner of the Premises at the time in question, and in the event of any Transfer of title to the Premises, the Transferor shall automatically be released from all of the obligations of the Landlord under this Lease accruing from and after the date of such Transfer, and all of such obligations accrued prior to the date that such Transferor became the Landlord, provided that the Transferee shall assume and be responsible for all obligations of "Landlord", including those accruing prior to the Transfer of Landlord's Interest, during the time that such Transferee is the Landlord hereunder. The covenants and obligations of Landlord contained in this Lease shall be binding on Landlord, its successors and assigns, only during and in respect to their respective successive periods of ownership, except to the extent provided in this Section 11.02.

11.03 <u>Permitted Assignment/Sublease by Tenant</u>. Notwithstanding anything to the contrary contained in Section 11.01 of this Lease, and further, provided that (a) such assignment or sublease will not relieve or release Tenant from any obligations under this Lease which

accrued prior to such assignment, and (b) an Event of Default (as hereinafter defined) has not occurred or is occurring beyond any applicable notice and opportunity to cure provisions provided herein, (i) Tenant may assign this Lease, by assignment or at law, without Landlord's consent, to any persons or entities that are an Affiliate of Tenant ("Permitted Assignment"), and (ii) Tenant may sublease all or a portion of the Demised Premises to any persons or entities that are an Affiliate of Tenant, including, but not limited to, Victoria Port Power LLC ("Permitted Sublease").

ARTICLE 12 TENANT'S FINANCING

12.01 <u>Tenant's Right to Encumber</u>. (a) Provided that no Event of Default has occurred and is then continuing, Tenant shall have the right, from time to time, to mortgage the Leasehold Estate with a deed of trust, mortgage or other lien instruments to secure borrowings of Tenant, subject to the provisions of this Article 12. Any such mortgage, deed of trust and/or other lien instruments and the indebtedness secured thereby are herein collectively referred to as a "<u>Permitted Mortgage</u>" and the holder or other beneficiary thereof is herein referred to as the "<u>Permitted Mortgage</u>". In the event there is more than one Permitted Mortgage at one time, then all of the provisions of Section 12.03) shall be solely for the benefit of and enforceable by the Permitted Mortgagee with respect to the Permitted Mortgage having first lien priority (as determined by Landlord in good faith by review of such title information as Landlord, in its sole discretion, deems appropriate). The Permitted Mortgage shall not encumber or affect in any way the Landlord's Interest.

(b) Tenant's right to grant a Permitted Mortgage is subject to the following additional conditions:

(i) No later than thirty (30) days after the execution and delivery of a Permitted Mortgage, Tenant shall have delivered to Landlord a written notice stating the existence of the Permitted Mortgage and the name and address of the Permitted Mortgagee for purposes of notice.

(ii) The Permitted Mortgagee shall be a bank, savings association, insurance company, pension fund or other institutional lender which, typically provides investment funding for similar type projects ("<u>Institutional Lender</u>"). Tenant will provide landlord with information specifying the funding sources for landlord to approve such sources, such approval not to be unreasonably withheld. If the Permitted Mortgage has been originated by an Institutional Lender, the Permitted Mortgage may be securitized in a bona fide securitization transaction regardless of whether the holders of indirect beneficial interests in the Permitted Mortgage would constitute Institutional Lenders, so long as the servicing agent for the Permitted Mortgage is a bona fide servicing agent.

(iii) [Intentionally deleted]

(iv) The Permitted Mortgage must contain the Landlord protective provisions described in Section 12.02.

12.02 <u>Landlord Protective Provisions</u>. The Permitted Mortgage shall expressly provide for the following rights, which rights are solely for the benefit of and enforceable by Landlord and are not for the benefit of, and may not be enforced by, Tenant:

(a) The Permitted Mortgagee shall not accelerate maturity of the Permitted Mortgage or foreclose any lien securing payment thereof until a notice specifying the default under the Permitted Mortgage giving rise to such right of acceleration or foreclosure (a "Mortgage Default") has been received by Landlord and Landlord has failed to cure the Mortgage Default within twenty (20) days after Landlord's receipt of such notice of default; provided, however, that if notice of default has been given at least two (2) times during any calendar year for failure to pay a regular installment of interest, or principal and interest, on the Permitted Mortgage, then no such notice of default shall be required for any subsequent defaults of the same type during the balance of the applicable calendar year. Any payments made and other things done by Landlord to cure the Mortgage Default shall be fully effective to prevent acceleration of maturity or foreclosure as if done by Tenant. Any amount expended by Landlord in curing or attempting to cure such Mortgage Default shall be paid by Tenant to Landlord upon demand, together with interest thereon at the Interest Rate from the date of each such expenditure until the date paid in full. Landlord has the option, but not the obligation, to cure any such Mortgage Default, and after commencing the cure of any such Mortgage Default may cease further actions to so cure.

(b) The Permitted Mortgagee shall not foreclose the Permitted Mortgage or accept a deed in lieu of foreclosure unless notice of such foreclosure or deed in lieu of foreclosure has been given to Landlord no less than thirty (30) days in advance of such event.

12.03 <u>Mortgagee Protective Provisions</u>. If Tenant encumbers the Leasehold Estate with a Permitted Mortgage in compliance with this Article 12, for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) There shall be no cancellation, termination (other than termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) or material modification of this Lease without the prior written consent of the Permitted Mortgagee. Landlord shall not accept any surrender of this Lease (other than in connection with a termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) without the prior written consent of the Permitted Mortgagee. The Permitted Mortgagee will not be bound by any such cancellation, surrender or material modifications made without its consent, other than a termination of this Lease or of Tenant's right to possession following the occurrence of an Event of Default so long as Landlord has complied with the provisions of this Section 12.03.

(b) If an Event of Default should occur hereunder:

(i) Landlord will deliver to the Permitted Mortgagee a copy of each notice of Tenant's default under this Lease if Landlord intends that such default is to serve as the basis for an Event of Default. Landlord shall not terminate this Lease or Tenant's right to possession hereunder until a notice specifying the Event of Default has been received by the Permitted Mortgagee and the Permitted Mortgagee has failed to cure the Event of Default within the time periods herein provided. Any payments made and other things done by the Permitted Mortgagee to cure the Event of Default shall be fully effective to prevent termination of this Lease or termination of Tenant's right to possession as if done by Tenant. The time period for cure is sixty (60) days after the Permitted Mortgagee's receipt of notice of the Event of Default; provided, however, that if a non-monetary Event of Default can be cured but by its nature cannot be cured within such sixty (60) day time period, and if the Permitted Mortgagee has commenced curing such Event of Default within such time period and thereafter diligently pursues such cure to completion, such sixty (60) day cure period shall be extended for the period of time necessary for the Permitted Mortgagee to cure such Event of Default; provided further, that the time period for curing the failure to commence and thereafter diligently pursue the Immediate Work (by commencing and thereafter diligently pursuing such work) shall be ten (10) days after Permitted Mortgagee's receipt of notice of such failure. The Permitted Mortgagee has the option, but not the obligation, to cure any such Event of Default, and after commencing the cure of any such Event of Default may cease further actions to so cure.

(ii) If the Event of Default is a non-monetary default that the Permitted Mortgagee cannot reasonably cure without being in possession of the Premises, then for so long as the Permitted Mortgagee is diligently and with continuity attempting to secure possession of the Premises (whether by foreclosure or otherwise, but subject to the provisions of this Article 12), provided the Permitted Mortgagee cures any monetary default as well as any other defaults that are reasonably susceptible of then being cured by the Permitted Mortgagee, Landlord shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Premises in order to cure such Event of Default, and during such time Landlord shall not terminate this Lease or Tenant's right to possession of the Premises.

(c) If the Lease is terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to Landlord not later than sixty (60) days after receipt from Landlord of written notice of such termination (which notice Landlord agrees to give) to elect to receive, in its own name or in the name of its Affiliate (which shall have an amount of equity capital no less than that of Tenant on the Effective Date), a new lease of the Premises for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and Landlord agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any then uncured Event of Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder. Upon the execution of such new lease, Landlord and the new tenant named therein shall prorate income and expenses relating to the Demised Premises Improvements effective as of the date of termination of this Lease as if the tenant named in the new Lease had succeeded to the interest of Tenant under this Lease as of the effective date of such termination; provided, however, that Landlord shall not be obligated to account to the tenant named in the new lease for any income or revenue from the Demised Premises Improvements not actually delivered to Landlord in connection with such termination. In addition to the new lease, Landlord shall execute and deliver to the tenant named therein such deeds, bills of sale, assignments and other instruments as may be necessary to convey, assign and otherwise transfer to the tenant under the new lease, AS IS, without warranty of title or any other warranty or representation of any type, but with confirmation of no prior conveyance or assignment by Landlord, all of Landlord's right, title and interest in and to the

Demised Premises Improvements that may have reverted to Landlord on account of the termination of this Lease, including without limitation any subleases.

(d) No Permitted Mortgagee shall be or become liable to Landlord as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Tenant under this Lease or shall actually take possession of the Premises, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability.

(e) Nothing contained in this Section 12.03 shall prevent Landlord's pursuing monetary damages or injunctive relief relating to Tenant's default.

The provisions of this Section 12.03 are solely for the benefit of and enforceable by the Permitted Mortgagee and are not for the benefit of, and may not be enforced by, Tenant.

ARTICLE 13 WARRANTY OF PEACEFUL POSSESSION

13.01 <u>Warranty of Peaceful Possession</u>. Landlord covenants that Tenant, prior to the occurrence of an Event of Default, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease, any matter of record in Victoria County, Texas and Applicable Law. Landlord agrees to warrant and forever defend Tenant's right to such occupancy, use, and enjoyment and the title to the Premises against the claims of any and all Persons whomsoever lawfully claim the same, or any part thereof, by, through or under Landlord or any matter of record in Victoria County, Texas and any matters that a proper survey would reveal, but not otherwise, subject only to provisions of this Lease and Applicable Law.

ARTICLE 14 EVENT OF DEFAULT AND REMEDIES

14.01 <u>Event of Default</u>. Each of the following shall be deemed an "<u>Event of Default</u>" by Tenant hereunder and a material breach of this Lease:

(a) Whenever Tenant shall fail to pay any installment of Base Rent or any other sum payable by Tenant to Landlord, or any assignee, subcontractor or agent of Landlord, under this Lease or other agreement directly related to Tenant's operations at the Port of Victoria, on the date upon which the same is due to be paid, and such default shall continue for ten (10) days after Tenant shall have been given a written notice specifying such default; provided, that after two (2) notices of default have been given in any calendar year with respect to Tenant's failure to pay any installment of Base Rent, any subsequent failure to pay any installment of Base Rent during the balance of such calendar year shall constitute an Event of Default without any requirement of notice of such failure being given to Tenant;

(b) Whenever Tenant shall fail to promptly commence and thereafter diligently pursue performance of the Immediate Work and Tenant shall fail to remedy the same

(by commencing and thereafter diligently pursuing such work) within fifteen (15) days after Tenant shall have been given a written notice specifying such default;

(c) Whenever Tenant shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept, performed or observed by Tenant (including the covenants, agreements, terms or provisions contained herein that are to be kept or performed by the owner or lessee of the Premises) other than with respect to payment of Base Rent or other liquidated sums of money and as provided in Section 14.01(b) above, and Tenant shall fail to remedy the same within thirty (30) days after Tenant shall have been given a written notice specifying such default; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Tenant has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Tenant to cure such default;

(d) Whenever an involuntary petition shall be filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or whenever a receiver of Tenant, or of all or substantially all of the property of Tenant, shall be appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event; or

(e) Whenever Tenant shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or seek relief under any other law for the benefit of debtors.

14.02 <u>Remedies</u>. If an Event of Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Section 12.03, Landlord may at any time thereafter prior to the curing thereof and without waiving any other remedies hereunder or available to Landlord at law or in equity (Landlord's remedies being cumulative), do any one or more of the following:

(a) Landlord may terminate this Lease by giving Tenant written notice thereof, in which event this Lease and the Leasehold Estate and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date of such notice; and Landlord, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Base Rent or existing breaches hereof. In the event of such termination, Tenant shall be liable to Landlord for all Base Rent accrued to the date of termination and damages in an amount equal to (i) the discounted present value of the amount by which the Base Rent reserved hereunder for the remainder of the stated Term exceeds the then net fair market rental value of the Premises for such period of time, plus (ii) all expenses incurred by Landlord in enforcing its rights hereunder, including but not limited to attorneys' fees, court costs, and other such expenses.

(b) Landlord may terminate Tenant's right to possession of the Premises and enjoyment of the rents, issues, and profits therefrom without terminating this Lease or the Leasehold Estate, and reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Base Rent or existing breaches hereof, and lease, manage, and operate the Premises and collect the rents, issues, and profits therefrom all for the account of Tenant, and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing, and operating the Premises). If the net rental so received by Landlord is less than the amount necessary to satisfy all of Tenant's obligations under this Lease, Tenant shall pay to Landlord on demand the amount of such deficiency together with interest at the Interest Rate, and Landlord may bring suit from time to time to collect such deficiency. If the net rental so received by Landlord exceeds the amounts necessary to satisfy all of Tenant's obligations under this Lease, nevertheless Landlord shall retain such excess. In no event shall Landlord be liable for failure to so lease, manage, or operate the Premises or collect the rentals due under any subleases and any such failure shall not reduce Tenant's liability hereunder. If Landlord elects to proceed under this Section 14.02(b), Landlord may at any time thereafter elect to terminate this Lease as provided in Section 14.02(a).

14.03 Landlord's Default. If (a) Landlord fails to make any payment of money required to be paid by Landlord to Tenant or any third party under this Lease on the date upon which the same is due to be paid, and such default shall continue for ten (10) days after Landlord shall have been given a written notice specifying such default; or (b) Landlord fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept, performed or observed by Landlord (other than payment of money) and Landlord shall fail to remedy the same within thirty (30) days after Landlord shall have been given a written notice specifying the same; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Landlord has commenced curing such default within such time period and thereafter diligently pursues such eure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Landlord to cure such default; then in such event Tenant may enforce the performance of this Lease and collect damages by any method provided by law or equity except as otherwise expressly provided herein; provided, however, that Tenant shall not take any action to enforce the performance of this Lease and collect damages until thirty (30) days thereafter has passed with such default remaining uncured (plus such additional time period as provided in clause (b) above with respect to cure by Landlord). Notwithstanding the foregoing provisions of this Section 14.03, Tenant shall have no right to terminate this Lease, except as otherwise provided herein.

14.04 <u>Time is of the Essence</u>. Whenever in this Lease a date, time period or other similar requirement or limitation is provided, time is of the essence.

ARTICLE 15 MISCELLANEOUS

15.01 <u>Notices</u>. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 15.01; or (b) delivering the same to the party to be notified in person or through a reliable courier service. Notice given in accordance herewith shall be effective upon receipt at the address of the

addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

Landlord:	Victoria County Navigation District 1934 FM 1492 Victoria, Texas 77905 Attn: Executive Director Phone: (361) 570-8855 Fax: (361) 570-8854
With copies to:	The Law Office of Duane G. Crocker, P.C. 121 S. Main St., Ste. 300 P.O. Box 2661 Victoria, Texas 77902 Phone: 361.574.8898 Fax: 361.574.8881
Tenant:	Victoria Bloomington, LLC 5850 San Felipe, Suite 601 Houston, TX 77057 Attn: GP Manalac Phone: (713) 503-8645
With a required copy to:	Debra M. Gilbreath Dow Golub Remels & Gilbreath, PLLC 2700 Post Oak Blvd., Suite 1750 Houston, Texas 77056 Phone: (713) 403-4216

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving ten (10) days advance notice to such effect in accordance with the provisions of this Section 15.01.

15.02 Performance of Other Party's Obligations. If either Party fails to perform or observe any of its covenants, agreements, or obligations hereunder for a period of thirty (30) days after notice of such failure is given by the other Party, then the other Party shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements, or obligations which are asserted to have not been performed or observed at the expense of the failing Party and to recover from the failing Party all reasonable costs and expenses incurred in connection with attempting to do so, together with interest thereon at the Interest Rate from the date expended until repaid. Notwithstanding the foregoing, if either Party determines, in its reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of \$50,000.00, exists due to the other Party's failure to observe or perform or observe the covenants, agreements, and obligations which give rise to such emergency at the expense of the failing Party and recover from the failing Party all costs and expenses of the failing Party all costs and expenses incurred in connection with emergency at the expense of the failing Party and recover from the failing Party and expenses incurred in connection which give rise to such emergency at the expense of the failing Party and recover from the failing Party all costs and expenses incurred in connection

with attempting to do so, together with interest thereon at the Interest Rate from the date expended until repaid. Any performance or observance by a Party pursuant to this Section 15.02 shall not constitute a waiver of the other Party's failure to perform or observe. In performing its self-help rights, the applicable Party shall perform in a commercially reasonable manner.

15.03 <u>Arbitration</u>. (a) This section shall only apply where express provision is made in this Lease for settlement of a dispute or determination of a matter by arbitration.

(b) If either Party wishes to settle a dispute or determine a matter by arbitration, such matter shall be resolved by binding arbitration in accordance with the provisions of this Section 15.03, and shall be self-administered in accordance with the American Arbitration Association pursuant to its rules of commercial arbitration. Any claimed default based upon such dispute shall be deemed suspended until the dispute is resolved, provided that the Party claimed to be in default is proceeding diligently with the arbitration; provided, however, nothing contained in this Section 15.03 shall suspend the obligation of Tenant to pay Base Rent hereunder.

(c) Landlord and Tenant may agree on an arbitrator, and in such event, such arbitrator's decision shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction. If Landlord and Tenant are unable to agree on an arbitrator, Landlord and Tenant shall each appoint an arbitrator, and such two arbitrators shall select, within fifteen (15) days after the appointment of such second arbitrator, a third arbitrator. The decision of a majority of the three arbitrators shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction.

(d) If (i) either Landlord or Tenant fails to appoint an arbitrator within ten (10) days after receiving notice from the other Party that such other Party has appointed an arbitrator, or (ii) the first two arbitrators fail to appoint a third arbitrator within the aforesaid fifteen (15) day period, or (iii) any Person appointed as an arbitrator by or on behalf of either Landlord or Tenant shall die, fail to act, resign or become disqualified and the Party by or on behalf of whom such arbitrator was appointed shall fail to appoint a substitute arbitrator within ten (10) days after being requested to do so by the other Party, the arbitrator in question will be appointed by the District Courts of Victoria County Texas subject to the rules of such courts regarding recusal of judges. Each Party shall bear and pay the cost of the arbitrator appointed by (or for) it, and the cost of the third arbitrator shall be borne and paid equally by Landlord and Tenant. If the presiding judge of the applicable court does not appoint the third arbitrator within forty-five (45) days, then such arbitrator shall be appointed within fifteen (15) days thereafter in accordance with the rules of the American Arbitration Association, but subject to the requirements herein for the appointment of arbitrators.

(e) All arbitration proceedings shall be held in Victoria, Victoria County Texas. If a hearing is scheduled, Landlord and Tenant shall be given reasonable advance notice of the time and place of any arbitration hearing and both shall have the right to be present, heard and represented by counsel. The arbitrators shall not have the right to add to or subtract from or otherwise change the terms and provisions of this Lease, and their determination shall be consistent and in accordance with the terms and provisions of this Lease. **15.04** <u>Modification and Non-Waiver</u>. No variations, modifications, or changes herein or hereof shall be binding upon any Party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either Party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Landlord of any Base Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any Party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving Party.

15.05 <u>Governing Law</u>. This Lease shall be construed and enforced in accordance with the laws of the State of Texas.

15.06 <u>Number and Gender</u>. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate.

15.07 <u>Estoppel Certificate</u>. Landlord and Tenant shall execute and deliver to each other, promptly upon any request therefor by the other Party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting Party and stating:

(a) whether or not this Lease is in full force and effect;

(b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;

(c) whether or not there are any existing defaults hereunder known to the Party executing the certificate, and specifying the nature thereof;

(d) whether or not any particular Article, Section, or provision of this Lease has been complied with to the knowledge of the Party executing the certificate; and

(e) such other matters as may be reasonably requested.

15.08 <u>Severability</u>. If any provision of this Lease or the application thereof to any Person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15.09 <u>Attorney Fees</u>. If litigation is ever instituted by either Party to enforce, or to seek damages for the breach of, any provision hereof, the prevailing Party therein shall be promptly reimbursed by the other Party for all attorneys' fees reasonably incurred by the prevailing Party in connection with such litigation.

15.10 <u>Surrender of Premises: Holding Over</u>. Upon termination or expiration of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Premises, except as otherwise specifically provided in Section 9.01, in good order, repair, and condition. Upon such

termination or expiration Landlord may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by force, summary proceedings, ejectment, or otherwise, and may dispossess and remove Tenant from the Premises and may have, hold, and enjoy the Premises and all rental and other income therefrom, free of any claim by Tenant with respect thereto. If Tenant does not surrender possession of the Premises at the end of the Term, such action shall not extend the Term, Tenant shall be a tenant at sufferance, and during such time of occupancy Tenant shall pay to Landlord, as damages, an amount equal to twice the amount of Base Rent that was being paid immediately prior to the end of the Term. Landlord shall not be deemed to have accepted a surrender of the Premises by Tenant, or to have extended the Term, other than by execution of a written agreement specifically so stating.

15.11 <u>Relation of Parties</u>. It is the intention of Landlord and Tenant to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make Landlord and Tenant partners or joint venturers or to render either Party hereto liable for any obligation of the other.

15.12 Force Majeure. (a) As used herein, "Force Majeure" shall mean, with respect to the applicable Force Majeure Party, the occurrence of any of the following: (i) strikes, lockouts or picketing (legal or illegal); (ii) a temporary taking; (iii) riot, civil commotion, insurrection and war; (iv) fire or other casualty, accidents, acts of God or public enemy; (iii) natural disaster directly impacting the Land and/or Demised Premises; (vi) application of any Applicable Law to the extent that such application was not reasonably foreseeable by the Party claiming the right to an extension of time as a result of an event of Force Majeure (the "Force Majeure Party"); or (vii) any other event which prevents or delays the performance by the Force Majeure Party of any of its obligations imposed upon it hereunder and the prevention or cessation of which event is beyond the reasonable control of the Force Majeure Party. However, in no event shall any of the following be deemed to constitute Force Majeure: (A) failure to obtain financing for, failure to refinance, or cessation of disbursements under financing for, the purchase, construction, demolition, repair or ownership of the Demised Premises Improvements; (B) law suits among parties comprising Tenant; (C) inability to pay when due monetary sums; or (D) the acts or omissions of the contractor, subcontractors or suppliers of the Force Majeure Party or any other Person acting by, through or under the Force Majeure Party.

(b) If a Force Majeure Party shall be delayed, hindered or prevented from performance of any of its obligations hereunder (other than to pay Base Rent or other monetary sum) by reason of Force Majeure, the time for performance of such obligation shall be extended on a day-for-day basis for each day of actual delay, provided that the following requirements are complied with by the Force Majeure Party: (y) the Force Majeure Party shall give prompt written notice of such occurrence to the other Party, and (z) the Force Majeure Party shall diligently attempt to remove, resolve or otherwise eliminate such event, and minimize the cost and time delay associated with such event, keep the other Party advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, neither Party shall be relieved by any event of Force Majeure from its obligation to pay Base Rent or other monetary sum hereunder. 15.13 <u>Non-Merger</u>. Notwithstanding the fact that fee title to the Demised Premises and to the Leasehold Estate may, at any time, be held by the same Person, there shall be no merger of the Leasehold Estate and fee estate unless the respective owners thereof execute and file for record in the Office of the County Clerk of Victoria County, Texas a document expressly providing for the merger of such estates.

15.14 <u>Entireties</u>. This Lease constitutes the entire agreement of the Parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. However, any other agreements entered into between Landlord and Tenant of even date herewith are not merged herein and shall remain in effect.

15.15 Limitation on Landlord's Liability. Notwithstanding anything to the contrary contained herein, (i) Landlord's liability for failure to perform any of its obligations hereunder or otherwise relating to the Premises is hereby expressly limited to Landlord's interest in and to the Premises, and (ii) should Landlord fail to pay any sum required to be paid by Landlord hereunder, or fail to perform any obligation required to be performed by Landlord hereunder, any judicial proceedings brought by Tenant against Landlord shall be limited to proceeding against Landlord's rights and interest in and to the Premises, and no attachment, execution, or other writ or process shall be sought, issued, or levied upon any assets, properties (including the Land and any improvements thereon), or funds of Landlord, other than against Landlord's interest in and to the Premises. No provision contained in this Agreement shall be interpreted in any manner as a waiver of any rights or protections against suit and/or liability, including, without limitation, any sovereign immunity protection which Landlord may possess or enjoy by virtue of its status and existence as a governmental entity in the State of Texas.

15.16 <u>Recordation</u>. Simultaneously with the execution of this Lease, Landlord and Tenant will promptly execute an instrument in recordable form constituting a memorandum of this Lease in form attached hereto as <u>Exhibit C</u>, which shall be filed for record in the Office of the County Clerk of Victoria County, Texas, solely to give record notice of the existence of this Lease. No such memorandum shall in any way vary, modify or supersede this Lease. Except in connection with actual litigation between the Parties, this Lease shall not be filed for record.

15.17 <u>Successors and Assigns</u>. This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to Tenant's rights to Transfer, sublet, or Encumber, this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Whenever a reference is made herein to either Party, such reference shall include the party's permitted successors and assigns.

15.18 Inspection. Landlord shall have the right but not the obligations to enter upon the Demised Premises during reasonable business hours and upon reasonable notice with or without a representative of Tenant (a) at any time that bona fide emergency circumstances require, and (b) to conduct repairs related to the Land, provided that in all such cases, Landlord shall use commercially reasonable efforts to coordinate such entry with Tenant and that Landlord shall comply with all rules and requirements of Tenant to enter the Demised Premises. At all other times, Landlord shall have the right but not the obligation to enter the Demised Premises ONLY during reasonable business hours and upon prior reasonable notice to inspect the Demised Premises ONLY when accompanied by a representative of Tenant and provided that Landlord complies with all rules and requirements of Tenant to enter the Demised Premises. When

accessing the Demised Premises Landlord shall comply with all (a) rules and regulations of Tenant, and (b) applicable laws, rules and regulations applicable to the Premises, including those relating to health, safety, and the environment, as well as those of any Texas state agencies with jurisdiction over Tenant's use of the Premises. In addition, Tenant shall have the right at any time to deny access to the Demised Premises to Landlord if Tenant determines, in its reasonable discretion, that Landlord has violated the rules and regulations or applicable legal requirements (or that their entry of Landlord onto the Demised Premises would cause a violation of the rules and regulations or applicable legal requirements), or which constitutes a risk to health, safety, or the environment. In such event, Tenant shall notify Landlord in writing of the specific violation and the action required, in the reasonable judgment of Tenant, to correct the violation. Upon correction of the violation, Tenant shall permit Landlord to access the Demised Premises. Nothing herein shall prevent regulatory or governmental authorities from entering the Demised Premises as authorized by applicable law. Notwithstanding anything to the contrary herein, if Landlord reasonably believes that a violation of Article 16 or of any applicable Environmental Law has occurred, or if Landlord has received a notice from a Governmental Authority alleging any violation of any Environmental Law, Landlord shall have the right to access the Demised Premises in compliance with the provisions make such inspections as Landlord shall reasonably Any such inspection and the repair of any damage to the Demised Premises require. Improvements caused by any such inspection, shall be at Landlord's cost and expense unless a violation of Article 16 or of any Environmental Law has occurred, in which event Tenant shall be responsible for such cost and expense.

15.19 <u>No Third Parties Benefited</u>. Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, opportunities to extend the Term, and any right to execute a new lease (if applicable), and certain other enumerated rights granted to the Permitted Mortgagee, the terms and provisions of this Lease are for the sole benefit of, and may be enforced only by, Landlord and Tenant, and no other Persons whatsoever (including any Direct or Indirect Equity Owner in Tenant) is intended to benefit herefrom or shall have any right to enforce this Lease.

15.20 <u>Survival</u>. Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease, including indemnification obligations relating to events or conditions that occur or exist prior to such expiration or termination, shall survive the expiration or termination of this Lease.

15.21 <u>Use of Landlord's Name</u>. Tenant shall not use Landlord's name in any advertising or promotional material relating to the Premises without Landlord's prior written consent, but Tenant may make reference to this Lease and to Landlord in legally operative documents, as Tenant shall deem reasonably necessary.

15.22 <u>Interest</u>. If any Base Rent or other amount required to be paid by one Party to the other Party pursuant to this Lease is not paid when due, such amount shall bear interest at the Interest Rate from the date due until the date paid in full.

15.23 <u>Limit on Damages</u>. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 15.23, NOTWITHSTANDING ANYTHING IN THIS LEASE OR UNDER LAW OR EQUITY TO THE CONTRARY, EXCEPT FOR INTEREST

CHARGEABLE HEREUNDER NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST REVENUES OR PROFITS ARISING OUT OF THIS LEASE OR RELATING TO THE PREMISES, INCLUDING THE NEGLIGENCE OF THE PARTY AGAINST WHOM THE CLAIM WOULD BE MADE.

15.24 <u>Broker</u>. Landlord and Tenant represent and warrant each to the other that such Party has not dealt with any broker in connection with this Lease and that, insofar as such Party knows, no broker negotiated this Lease or is entitled to any commission in connection herewith. Landlord and Tenant each agree to indemnify the other Party for any losses, costs or damages (including reasonable attorneys' fees) incurred by the other Party as a consequence of the breach or falsity of the representations and warranties of such Party under this Section 15.24.

HAZARDOUS SUBSTANCES

16.01 Use of Hazardous Substances. Except as expressly authorized under the definition of "Hazardous Substances," Tenant shall not cause or permit any Hazardous Substance to exist or otherwise be brought, kept or used in or about the Premises or the Land or any improvements thereon by Tenant, its agents, employees, contractors or invitees (collectively, the "Tenant Representatives"), and neither Tenant nor any of the Tenant Representatives shall use, generate, produce, store, Release or otherwise cause or permit the occurrence or continued existence of any Hazardous Substances in, on, under or about the Premises or to be transported to or from the Premises, except in strict compliance with applicable Environmental Laws. Tenant and Tenant Representatives shall, at their own expense, procure, maintain in effect, and comply with all conditions of all permits, licenses, registrations, exemptions, and other governmental and regulatory approvals required under Environmental Laws for any Hazardous Substances in, on, under, to or from or about the Premises, including the discharge of appropriately treated and approved wastes into or through any sanitary sewer serving the Premises.

16.02 <u>Remediation of Hazardous Substances</u>. (a) As between Landlord and Tenant and specifically excluding any Hazardous Substances exposure or contamination to the extent proven to have been caused by Landlord, if any actual or suspected exposure to, or contamination arising from, Hazardous Substances occurs at any time, or if Tenant or any Tenant Representative causes, whether by action or failure to act, any exposure or contamination of the Land or any improvements thereon from Hazardous Substances ("Tenant Responsible Contamination"), Tenant and/or Tenant Representatives, at their sole cost and expense, shall promptly and diligently remove and, as applicable, remediate such Hazardous Substances from, at, or under the Premises or the Land or improvements thereon, or the groundwater underlying the Premises or the Land, in strict compliance with applicable Environmental Laws and in accordance with then prevailing industry standards. Tenant shall, at its sole cost and expense, develop, implement, and document in writing regular monitoring of the Premises for the possible presence or Release of, or exposure to, any Tenant Responsible Contamination. In the event any actual or suspected Tenant Responsible Contamination is identified Tenant shall: (i) promptly (but no later than three (3) Business Days of such identification) notify Landlord of such actual or suspected contamination and the location thereof; and (ii) arrange no later than five (5) Business Days of such identification for a third party, independent inspection of the Premises by a well-qualified (and, as necessary, licensed) environmental consultant to confirm whether the

Tenant Responsible Contamination exists, which inspection will be performed at Tenant's sole cost and expense no sooner than five (5) days but no later than ten (10) days after Tenant notifies Landlord in writing of such planned inspection. Neither Tenant nor any Tenant Representative shall take any required remedial action in response to any Tenant Responsible Contamination in or about the Premises or the Land or improvements thereon, or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant Responsible Contamination, without first notifying Landlord at least five (5) days in advance of Tenant's intention to do so and affording Landlord the opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

(b) If Tenant does not promptly and diligently take all steps to prepare any remediation plan required for any Tenant Responsible Contamination, obtain all necessary approvals for such remediation plan, and thereafter commence and perform the required remediation within thirty (30) days after Landlord has approved Tenant's remediation plan and all other required approvals and consents have been obtained (subject to extension due to delays caused by Force Majeure), and thereafter continue to diligently prosecute such remediation to completion in accordance with the approved remediation plan, Landlord, at its option (but without any obligation to do so), may cause such remediation to be accomplished, and Tenant shall reimburse Landlord immediately upon demand for all amounts paid by Landlord, together with interest on such amounts at the Interest Rate from the date incurred until the date paid in full.

(c) Tenant shall promptly deliver to Landlord copies of all hazardous waste manifests, and otherwise deliver such information and supporting documentation to Landlord as Landlord may reasonably require, to evidence the proper management, transport and disposal of all Hazardous Substances removed from the Premises, the Land or any improvements thereon as part of Tenant's remediation of any Tenant Responsible Contamination.

(d) Any cleanup, removal or other remediation of Tenant Responsible Contamination must be completed in its entirety at or before the expiration or termination of this Lease.

16.03 <u>Disposal of Hazardous Substances</u>. Tenant shall cause all Hazardous Substances removed from the Premises or the Land as part of the required remediation of any Tenant Responsible Contamination to be removed, contained, and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such Hazardous Substances.

16.04 Notice of Hazardous Substance Matters. Each Party (herein the "Notifying Party") shall immediately notify the other Party ("Recipient") in writing of (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Premises pursuant to any Environmental Law; (b) any claim made or threatened by any Person against the Notifying Party or the Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances resulting from operations or activities on or about the Premises; and (c) any report made to any Governmental Authority arising out of or in connection with any Hazardous Substances in, on, under, Released, or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith, all on receipt by the

Notifying Party of actual knowledge of any of the foregoing matters. The Notifying Party shall deliver to the Recipient as promptly as possible, and in any event within ten (10) days after the Notifying Party first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof.

[Signature Page Follows]

EXECUTED as of the date and year first above written.

LANDLORD:

VICTORIA COUNTY NAVIGATION DISTRICT

Bv:		
Name:	ROBBY BURDGE	
Title:	CHAITZMAN	

TENANT:

VICTORIA BLOOMINGTON, LLC By: Pamela N. Castleman, Manager

SCHEDULE 1.01

DEFINITIONS; TERMINOLOGY

1.01 <u>Definitions</u>. As used in the Lease, each of the following terms shall have the following meaning:

"<u>Adjustment Date</u>" has the meaning set forth in Section 4.01(c).

"<u>Affiliate</u>" means, when used with reference to a specified Person, any Person who directly or indirectly Controls, is Controlled by or is under common Control with the specified Person. "<u>Affiliate</u>" shall also include (i) any Person which owns, directly or indirectly (including through one or more intermediaries), fifty percent (50%) or more of any class of voting security or equity interests of such specified Person, (ii) any Subsidiary of such specified Person and (iii) any Subsidiary of a Person defined in clause (i). Notwithstanding the foregoing however, the officers, directors, trustees and individuals in similar capacities with respect to any Person shall not be considered "Affiliates" of such Person merely on account of such Person's status as an officer, director, trustee or other similar position or capacity; and further, a stockholder shall not be considered an "Affiliate" merely on account of its status as a stockholder.

"<u>Applicable Law</u>" means, collectively, all applicable federal, state and local statutes, ordinances, codes, rules, regulations and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority having jurisdiction over any of the Parties or the Premises. Applicable Law includes Environmental Laws.

"<u>BLS</u>" has the meaning set forth in Section 4.01(c).

"Base Rent" has the meaning set forth in Section 4.01.

"<u>Business Days</u>" shall mean any day other than Saturday, Sunday and other days on which banks in Victoria, Texas are customarily closed for business.

"Civil Infrastructure Improvements" has the meaning set forth in Section 6.03.

"Claims" has the meaning set forth in Section 8.04.

"Commencement Month" means the calendar month in which the Effective Date occurs.

"Construction Standards" has the meaning set forth in Section 6.04(a).

"<u>Control</u>" (including the correlates of "<u>Controlled</u>" and "<u>Controlling</u>") means the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of the specified Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

"Demised Premises" has the meaning set forth in the Recitals.

"<u>Demised Premises Improvements</u>" has the meaning set forth in the Recitals.

"<u>Direct or Indirect Equity Owner</u>" means each Person that owns a direct or indirect equity ownership interest in Tenant.

"Effective Date" has the meaning set forth in the Preamble.

"Encumbrance" or "Encumber" has the meaning set forth in Section 11.01.

"Environmental Laws" means all laws, statutes, codes, ordinances, orders, interpretations, rules and regulations of any Governmental Authority applicable to Landlord, Tenant or the Premises relating to human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.* ("<u>RCRA</u>"); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC Section 9601 *et seq.* ("<u>CERCLA</u>"), the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*, the Federal Hazardous Materials Transportation Law, 49 U.S.C. Section 5101 *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*, the Texas Solid Waste Disposal Act, Chapter 361 of the Texas Health & Safety Code, all as now or hereafter amended, as well as all regulations promulgated thereunder and any common law or any other rule of law of any Governmental Authority applicable to Landlord, Tenant or the Premises and relating to human health or the environment.

"Event of Default" has the meaning set forth in Section 14.01.

"Force Majeure" has the meaning set forth in Section 15.12(a).

"Force Majeure Party" has the meaning set forth in Section 15.12(a).

"Governmental Authorities" has the meaning set forth in Section 5.01.

"Governmental Authority" has the meaning set forth in Section 5.01.

"Hazardous Substances" means any of the following: (i) any "hazardous waste," "solid waste," "hazardous material," "hazardous substance," "toxic substance," "pollutant," or "contaminant" as those or similar terms are defined or regulated under any Environmental Laws; (ii) any mold, mildew, fungus, or other potentially dangerous organisms; (iii) asbestos (whether or not friable) and asbestos-containing materials; (iv) any volatile organic compounds, including oil and petroleum products; (v) any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to health, safety or welfare of any person or to the environment, including any polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (vi) radon gas; (vii) any other substance the presence of which on the Premises is prohibited by any Environmental Laws; and (viii) any other substance which by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal. However, for the purposes of the covenants, but not the indemnification obligations, set forth in this Lease, the term "<u>Hazardous Substances</u>" shall not include small quantities of materials, chemicals or substances normally used in connection with the use, management, operation, or ownership of a facility similar to Tenant's provided that such materials, chemicals or substances are generated, produced, stored, handled, used transported and disposed in a safe and prudent manner in strict compliance with all Environmental Laws.

"Immediate Work" has the meaning set forth in Section 9.01.

"Imposition Trustee" has the meaning set forth in Section 5.03.

"Impositions" has the meaning set forth in Section 5.01.

"Indemnified Parties" has the meaning set forth in Section 8.04.

"Index" has the meaning set forth in Section 4.01(c).

"Interest Rate" means an annual rate of interest equal to the lesser of (i) five percent (5%) above the "Prime Rate" as announced from time to time by *The Wall Street Journal*, or if such publication ceases to exist or report a "Prime Rate", five percent (5%) per annum above the prime rate or reference rate announced from time to time by JPMorgan Chase Bank, N.A. (or any successor thereto) or such other major national banking institution selected by Landlord, or (ii) the maximum contract rate of interest then permitted by Applicable Law.

"Land" has the meaning set forth in the Recitals.

"Landlord" has the meaning set forth in the Preamble and Section 11.02.

"Landlord Release Party" has the meaning set forth in Section 8.05.

"<u>Landlord's Interest</u>" means Landlord's fee title to the Demised Premises, Landlord's reversionary interest in the Demised Premises and Demised Premises Improvements if any, Landlord's right to receive payment of Base Rent and Landlord's other rights under this Lease.

"Lease" has the meaning set forth in the Preamble.

"Lease Year" has the meaning set forth in Section 3.01.

"Leasehold Estate" means the leasehold estate and Tenant's other rights created by this Lease, including Tenant's ownership interest in the Demised Premises Improvements during the Term.

"Notifying Party" has the meaning set forth in Section 16.04.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Permitted Assignment" has the meaning set forth in Section 11.03.

"Permitted Sublease" has the meaning set forth in Section 11.03.

"<u>Permitted Mortgagee</u>" has the meaning set forth in Section 12.01(a).

"Permitted Mortgage" has the meaning set forth in Section 12.01(a).

"Person" means any individual, corporation, partnership, limited liability company or other entity of any kind.

"<u>Premises</u>" means the Demised Premises, Demised Premises Improvements, and any Easement Area Improvements.

"Recipient" has the meaning set forth in Section 16.04.

"<u>Release</u>" means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

"Schedules" has the meaning set forth in Section 1.02 of Schedule 1.01.

"Site Plan" has the meaning set forth in the Recitals.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which more than fifty percent (50%) of (i) the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) or (ii) other equity interest comparable to that described in the preceding clause (i) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries, or by one of more other Subsidiaries.

"<u>Tenant</u>" has the meaning set forth in the Preamble. Upon an assignment of this Lease permitted in accordance with the terms of this Lease, the assignee ("<u>Transferee</u>") will thereupon succeed to the rights and obligations of, and become, the "Tenant" for purposes of this Lease.

"Tenant Parties" has the meaning set forth in Section 8.04.

"Tenant Release Party" has the meaning set forth in Section 8.05.

"Tenant Representatives" has the meaning set forth in Section 16.01.

"Tenant Responsible Contamination" has the meaning set forth in Section 16.02.

"Term" has the meaning set forth in Section 3.01.

"Transfer" has the meaning set forth in Sections 11.01.

"Transferee" has the meaning set forth in the definition of "Tenant".

"Transferor" means the Person making the Transfer.

1.02 <u>Terminology</u>. The terms defined in this <u>Schedule 1.01</u> shall apply throughout the Lease. All references in the Lease to "Section" or "Article" shall refer to the section or article of the Lease in which such reference appears, unless otherwise expressly stated. All references to "<u>Schedules</u>" shall mean the schedules attached to the Lease. All references to "Exhibits" shall mean the exhibits attached to the Lease. All such Schedules and Exhibits are incorporated in the Lease by this reference. All references to herein, hereof, hereto, hereunder or similar terms shall be deemed to refer to the entire Lease. As used in this Lease, the term "including" shall mean "including but not limited to." The headings of Articles and Sections in and Exhibits to the Lease shall be for convenience only and shall not affect the interpretation hereof. If Landlord or Tenant ceases to be a partnership, all references herein to Landlord's or Tenant's partners shall thereafter be deemed to be references to Landlord's or Tenant's other equity owners.

1.03 <u>Interpretation</u>. Words used in the singular number shall include the plural, and viceversa, and any gender shall be deemed to include each other gender. Reference to any agreement means such agreement as amended or modified and in effect from time to time in accordance with the terms thereof. This Lease was negotiated between Landlord and Tenant with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Lease to be construed or interpreted against either Party shall not apply to any construction or interpretation hereof.

EXHIBIT A

METES & BOUNDS DESCRIPTION OF DEMISED PREMISES

[attached]
THE STATE OF TEXAS} COUNTY OF VICTORIA

Being a 12.32 acree tract of land situated in the Diego Garcia League, Abstract No. 39, Victoria County, Texas, said 12.32 acres being a portion of an 18.808 acree tract of land, described as Tract II, conveyed from Erol C. Tucker and Frank Buhler, III, et al to Victoria County Navigation District by deed dated May 10, 2001 as recorded in Official Records Instrument No. 200105883 of Victoria County, Texas, said 4.00 acree tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch diameter iron rod found for the East corner of the herein described tract, said iron rod being the East corner of the 18.808 acre Victoria County Navigation District tract, the North corner of a 682.8788 acre tract of land conveyed from Nancy Marion Stoner, et al to E.I. Du Pont De Nemours and Company as recorded in Volume 812, Page 670 of the Deed Records of said county, and in the southwest right-of-way line of Old Bloomington Road (60' R.O.W.);

THENCE, South 53°17'32" West (deed call, South 54°41'22" West), with the common line of the 18.808 acre Victoria County Navigation District tract and the 682.8788 acre E.I. Du Pont De Nemours and Company tract, passing at a distance of 296.34 feet a 5/8 inch diameter iron rod found for reference marking the East corner of a 5.35 acre Railroad Easement recorded in Volume 71, Page 249 of the Deed Records of said county, and continuing for an overall distance of 399.04 feet (deed call, 399.04 feet) to a 5/8 inch diameter iron rod found for the South corner of the herein described tract, said iron rod also being the South corner of the 18.808 acre Victoria County Navigation District tract, and the beginning of a non-tangent curve to the right;

THENCE, with the curving southwest line of the 18.808 acre Victoria County Navigation District tract, and 50 feet parallel and northeast of the centerline of the Union Pacific Railroad tracks, along said curve to the right, with a radius of 3,769.83 feet, a central angle of 04°46'55", an arc length of 314.63 feet, and a chord which bears North 21°19'00" West, a distance of 314.54 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;

THENCE, North 18°55'33" West (deed call, North 17°31'43" West), with the southwest line of the 18.808 acre Victoria County Navigation District tract and 50 feet parallel from the centerline of the Union Pacific Railroad tracks, a distance of 1,115.93 feet to a 1/2 inch diameter iron rod with plastic cap stamped "RWP INC 1855" found for the West corner of the herein described tract, said iron rod also being South 18°55'33" East (deed call, South 17°31'43" East), a distance of 866.17 feet from a 5/8 inch diameter iron rod found for the West corner of the 18.808 acre Victoria County Navigation District tract and in the southeast right-of-way line of Farm-to-Market Road 1432 (120' R.O.W.); THENCE, North 70°58'47" Bast, crossing the 18.808 acre Victoria County Navigation District tract, passing at a distance of 195.38 feet a 5/8 inch diameter iron rod found for the South corner of a 1.80 acre tract of land conveyed from J.M. Pickering, et al to Tennessee Gas Transmission Company as recorded in Volume 448, Page 120 of the Deed Records of said county, and continuing for an overall distance of 390.94 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the North corner of the herein described tract, said iron rod being an exterior corner of the 18.808 Victoria County Navigation District tract, the East corner of the 1.80 acre Tennessee Gas Transmission Company tract and in the southwest right-of-way line of Old Bloomington Road (60" R.O.W.), said iron rod being South 67°05'49" West, a distance of 2.72 feet from a 1/2 iron rod with plastic cap stamped "RWP INC 1855" found for reference and being South 19°01'13" East (deed call, South 17°38'00" East), a distance of 397.50 feet from a 1/2 inch diameter iron rod with plastic cap stamped "RWP INC 1855" found for the North corner of the North corner of the 1.80 acre Tennessee Gas Transmission Company tract;

THENCE, South 19°01'13" East (deed call, South 17°38'00" East), with the northeast line of the 18.808 acre Victoria County Navigation District tract and the southwest right-of-way line of Old Bloomington Road, a distance of 1,308.97 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 12.32 acres of land, more or less.

Bearings are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances shown are surface and may be converted to grid by dividing by the combined adjustment factor of 1,000130.

A survey drawing of even date herewith accompanies this legal description.

The foregoing Fieldnote Description is based on an actual survey made under my supervision in November 2016 and is true and correct to the best of my knowledge and belief.

Wm. Patrick Hohlt *HIJ3/177* Registered Professional Land Surveyor Texas No. 5523 TBPLS Registration No. 100576-00



1710080

EXHIBIT B

SITE PLAN

[attached]

Exhibit B

EXHIBIT C

FORM OF MEMORANDUM OF GROUND LEASE

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF GROUND LEASE

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF VICTORIA §

§.

THAT, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Victoria County Navigation District, whose address is 1934 FM 1432, Victoria County, Victoria, Texas 77905, (hereinafter referred to as "Lessor"), has entered into, executed and delivered an unrecorded Ground Lease ("Lease"), in favor of Victoria Bloomington, LLC ("Lessee"), whose address is 5850 San Felipe, Suite 650, Houston, Texas 77057, effective as of _______, 2017, covering and affecting certain real property owned by Lessor and to which Lessor leased and let to Lessee the real property located in Victoria County, State of Texas and described on Exhibit "A" attached hereto and incorporated herein by reference ("Property"):

Lessor by the Lease, has leased and let unto Lessee the exclusive right to possession (as defined therein) to the Property, during the term of the Lease, and among other rights set forth therein, the right to construct and maintain for Lessee's use and operations such facilities as are provided for in the Lease and the right of ingress and egress in, on, and over the Property.

This Memorandum of Ground Lease is executed by Lessor and Lessee and placed of record in the County in which the Property is located for the purpose of placing all persons on notice of the existence of the Lease, which Lease is not being placed of record. The Lease is for a primary term of seven (7) years commencing on ______, 20___ and terminating on ______, 20___, unless extended for up to an additional twenty-one (21) years as provided in the Lease, subject to all terms and provisions set forth in said Lease, reference to the original Lease is here made for all purposes. The Lease, with all of its terms, covenants and other provisions is incorporated into this Memorandum for all purposes.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 20____.

LESSOR:

VICTORIA COUNTY NAVIGATION DISTRICT

By:		
Name:		
Title:		

STATE OF TEXAS §

COUNTY OF VICTORIA §

This instrument was acknowledged before me on this _____ day of ______, 20_____, by ______, _____ of the Victoria County Navigation District.

NOTARY PUBLIC, STATE OF TEXAS

LESSEE:

VICTORIA BLOOMINGTON, LLC,

a Texas limited liability company

By:

Pamela N. Castleman, Manager

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 20____, by Pamela N. Castleman, Manager, of Victoria Bloomington, LLC.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[attached]

SUBLEASE AGREEMENT

This Sublease Agreement (this "<u>Sublease</u>") is entered into effective as of February 23, 2018 (the "<u>Effective Date</u>") by and between VICTORIA BLOOMINGTON, LLC, a Texas limited liability company ("<u>Sublandlord</u>") and VICTORIA PORT POWER LLC, a Texas limited liability company ("<u>Subleanet</u>").

RECITALS:

A. Sublandlord is currently leasing from the Victoria County Navigation District ("Landlord"), certain premises consisting of +/- 12.32 acres (the "Leased Premises") pursuant to that certain Ground Lease dated November 21, 2017, between Sublandlord and Landlord as amended by that certain First Amendment to Ground Lease dated effective February 23, 2018 between Sublandlord and Landlord, and as amended and affected by that certain Consent, Sublease Recognition and Agreement (Victoria Port) by and among Landlord, Sublandlord, Subtenant and Wilmington Trust, National Association, as Collateral Agent dated as of the Effective Date (the "Consent") (as may be further amended from time to time with the prior written consent of Subtenant and its Permitted Mortgagee, the "Master Lease").

B. Pursuant to the Master Lease, Landlord granted a non-exclusive easement and right-of-way for the laying, construction, installation, maintenance, repair, relocation, replacement, removal, modification and operation of underground wastewater discharge lines and all related connections and appurtenances in favor of Sublandlord and Subtenant for the benefit of the Leased Premises and the Subleased Premises ("Wastewater Discharge Easement"), a memorandum of which was recorded as Instrument No. 201802045 of the Official Public Records of Victoria County, Texas;

C. Pursuant to that certain Water Line Easement (Blanket) dated February 23, 2018, by and between Landlord, Sublandlord and Subtenant, recorded as Instrument No. 201802048 of the Official Public Records of Victoria County, Texas, Landlord has granted a non-exclusive blanket easement and right-of-way for the laying, construction, installation, maintenance, repair, relocation, replacement, removal, modification and operation of underground water lines and all related connections and appurtenances in favor of Subtenant, for the benefit of the Subleased Premises (the "<u>Water Line Easement</u>", together with the Wastewater Discharge Easement, the "<u>Easements</u>");

D. Subtenant desires to sublease from Sublandlord and Sublandlord desires to sublease to Subtenant the Subleased Premises (defined below) subject to the terms and conditions hereof.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration paid by each party hereto to the other, Sublandlord and Subtenant agree as follows:

1. <u>Terms.</u> Capitalized terms used but not defined in this Sublease shall have the meanings specified in the Master Lease.

2. <u>Sublease Grant; Use</u>.

(a) <u>Subleased Premises</u>. Sublandlord subleases to Subtenant, and Subtenant subleases from Sublandlord, a 4.00 acre portion of the Leased Premises described by metes and bounds attached hereto as <u>Exhibit A</u> (the "<u>Subleased Premises</u>"), in accordance with and subject to the terms, conditions and provisions of this Sublease and, as and to the extent incorporated herein, the Master Lease.

(b) <u>Non-Exclusive Easements</u>. Sublandlord agrees that its use of the Easements on a non-exclusive basis shall not unreasonably interfere with or disturb Subtenant's use of the Easements.

(c) <u>Use of Subleased Premises</u>. Subtenant shall use and occupy the Subleased Premises for the uses as described in Section 7.01 of the Master Lease and for no other purpose. In no event shall Subtenant use or permit the Subleased Premises to be used for any use prohibited by the Master Lease.

3. <u>Term</u>. The term of this Sublease (the "<u>Sublease Term</u>") shall commence on the Effective Date, and shall expire on November 30, 2034, unless earlier terminated pursuant to the terms of this Sublease. If the Master Lease is renewed or extended then the Sublease Term shall automatically renew for the same term as the Master Lease, unless earlier terminated pursuant to the terms of this Sublease.

4. <u>Rent.</u>

(a) Subtenant agrees to pay to Sublandlord, or as directed by Sublandlord, without offset, abatement, deduction or demand (except as may be expressly set forth herein), as base rent (the "<u>Base Rental</u>") for the Subleased Premises, in the amount of \$13,200.00 per month.

(b) Base Rental (together with any applicable state and local sales or use taxes) shall be payable monthly, in advance, on or before the first day of each and every calendar month during the Sublease Term, beginning on the Effective Date at 5850 San Felipe, Suite 601, Houston, Texas 77057, Attn: GP Manalac, or at such other place as Sublandlord shall from time to time designate by written notice, in lawful money of the United States. All amounts due from Subtenant under or in respect of this Sublease (collectively, "**Rent**"), whether labeled Base Rental, Additional Rent, or otherwise, shall be considered as rental reserved under this Sublease for all purposes, including without limitation, regulations promulgated pursuant to the Bankruptcy Code, including further without limitation, Section 502(b) thereof. Base Rental for any partial month shall be prorated on a daily basis.

(c) In addition to Base Rental, (i) during any period of time during the Sublease Term that the Subleased Premises are not assessed as a separate real estate tax parcel, Subtenant shall pay to Sublandlord its proportionate share (32.47%) ("<u>Subtenant's Share</u>") of Impositions payable by Sublandlord under Section 5.01 of the Master Lease and (ii) during any

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period of time during the Sublease Term that the Subleased Premises are assessed as a separate real estate tax parcel, Subtenant shall pay as and when the same become due 100% of the Impositions properly allocable to the Subleased Premises directly to the applicable Governmental Authority or other person entitled to receive payment thereof ((i) and (ii) "Additional Rent"). Sublandlord shall promptly forward to Subtenant any collectively. invoices received from Landlord or any Governmental Authority or other person with respect to any Impositions that are payable in whole or in part by Subtenant under this Sublease. During any period of time during the Sublease Term that the Subleased Premises are not assessed as a separate real estate tax parcel, Subtenant shall pay Subtenant's Share of such Impositions to Sublandlord (or, at Subtenant's election, directly to the applicable Governmental Authority or other person entitled to receive payment thereof) following receipt of an invoice with reasonable supporting documentation from Sublandlord, such payments to be made as and when such Impositions shall become due (so long as Subtenant has timely received such invoice and supporting documentation). To the extent that Subtenant has made Additional Rent payments directly to Sublandlord, Sublandlord shall provide Subtenant with reasonable evidence that the Impositions have been paid to the applicable Governmental Authority or other person entitled to receive payment thereof in a timely manner. During any period of time during the Subleased Term that the Subleased Premises are not assessed as a separate real estate tax parcel, Sublandlord shall indemnify, defend and hold Subtenant harmless from and against any and all claims, actions, demands, suits, losses, costs, expenses and liability whatsoever incurred or suffered by Subtenant on account of any failure of Sublandlord to pay timely all of such Impositions. Sublandlord shall promptly apply for and diligently pursue until completion the creation of two separate, legally subdivided tax parcels, one for solely the Subleased Premises and the other for solely the portion of the Leased Premises that excludes the Subleased Premises. The Additional Rent, if any, shall be in addition to Subtenant's obligation to pay Base Rental. Subtenant's obligations under this Section 4(c) to pay Additional Rent that has accrued during the Sublease Term shall survive the expiration or earlier termination of the Sublease Term. During any period of time during the Subleased Term that the Subleased Premises are assessed as a separate real estate tax parcel, Subtenant shall indemnify, defend and hold Sublandlord harmless from and against any and all claims, actions, demands, suits, losses, costs, expenses and liability whatsoever incurred or suffered by Subtenant on account of any failure of Subtenant to pay timely the Impositions due solely on the Subleased Premises.

5. <u>Intentionally Deleted</u>.

6. <u>Improvements to the Subleased Premises</u>. Subtenant shall not make any improvements, alterations or additions to the Subleased Premises without complying with the Master Lease. Sublandlord agrees and certifies to Subtenant and its Permitted Mortgagee that Sublandlord has approved Subtenant's installation and extension of utilities to the Subleased Premises as are necessary for the construction, use, operation and maintenance of the electric distribution and generation facility to be constructed by Subtenant on the Subleased Premises, as required by Section 5.06 of the Master Lease. Notwithstanding anything to the contrary in the Master Lease, no further review by, or consent of, Sublandlord shall be required in connection with the construction of the electric distribution and generation facility to be constructed by Subtenant on the Subleased Premises, subjects on the Subleased Premises.

7. Performance Obligations. With the exception of the obligation to pay to Landlord Base Rental and Additional Rent relating to Impositions as provided in this Sublease (which as between Sublandlord and Subtenant, are in lieu of and supersede any obligations under the Master Lease with respect to Subtenant's payment of base or additional rent) and excluding any provisions of the Master Lease which are expressly not incorporated into and excluded from this Sublease pursuant to Section 12(c) below, Subtenant agrees, for the benefit of Sublandlord and Landlord, to perform, comply with and be bound by all of the terms, provisions, covenants and conditions of the Master Lease solely as they relate to the Subleased Premises or Subtenant's use of and activities within the Subleased Premises that first accrue after the Effective Date that are to be performed, complied with or observed during the Sublease Term by Sublandlord as "Tenant" under the Master Lease. Subtenant agrees not to do or permit anything to be done with respect to the Subleased Premises which would, with the passage of time or giving of notice (or both), result in a default under the Master Lease or cause the Master Lease to be terminated or forfeited. Subtenant covenants and agrees to timely perform its obligations under this Sublease and to indemnify, defend and hold Sublandlord harmless from any and all costs, expenses, liabilities or damages which Sublandlord may incur as a consequence of Subtenant's failure to perform any such obligations. Sublandlord agrees not to do or permit anything to be done which would, with the passage of time or giving of notice (or both), result in a default under the Master Lease or cause the Master Lease to be terminated or forfeited. Sublandlord covenants and agrees to timely perform its obligations under the Master Lease and this Sublease and to indemnify, defend and hold Subtenant and its officers, directors, employees, members, managers, partners and agents ("Subtenant Indemnitees"), harmless from any and all costs, expenses, liabilities or damages which Subtenant may incur as a consequence of Sublandlord's failure to perform any such obligations or due to Sublandlord's development, construction, use, operation and occupancy of the Leased Premises and Demised Premises Improvements or the conduct of business conducted by Sublandlord in the Leased Premises or caused by any negligence or willful misconduct of Sublandlord, or its agents, servants, employees, customers, invitees or licensees, including loss of this Sublease and any reasonable attorneys' fees incurred in connection with the foregoing; provided that such indemnity shall not extend to any breach by Subtenant of its obligations under this Sublease. Sublandlord shall not modify, amend, supplement, surrender, accept a surrender, or terminate the Master Lease (including, without limitation, any right to treat the Master Lease as terminated pursuant to any bankruptcy or insolvency proceeding affecting Landlord) or grant its consent or waive any right under the Master Lease, without Subtenant's and any Permitted Mortgagee's prior written consent. Sublandlord shall promptly deliver to Subtenant all notices from Landlord or any fee mortgagee regarding default, possible default, disputes or expenses, or that otherwise may affect Subtenant's rights or obligations under this Sublease or in or to the Subleased Premises. Without limiting the generality of the foregoing, Sublandlord shall pay all rent, charges, Impositions and expenses payable under the Master Lease as and when due thereunder, provided that Subtenant is not in monetary default under this Sublease beyond all notice and cure periods. In no event shall Sublandlord join in any fee mortgage or subordinate its interest in the Master Lease to any fee mortgage or other Encumbrance without the prior written consent of Subtenant and any Permitted Mortgagee. THE INDEMNITIES FOR THE BENEFIT OF SUBLANDLORD, SUBTENANT AND SUBTENANT INDEMNITEES IN THIS SECTION 7 SHALL BE **ENFORCEABLE** EVEN IF SUBLANDLORD, **SUBTENANT** OR SUBTENANT INDEMNITEES, OR ANY ONE OR MORE OF THEM HAVE OR HAS CAUSED OR PARTICIPATED IN CAUSING SUCH LIABILITY AND CLAIMS BY THEIR JOINT OR CONCURRENT ACTS, NEGLIGENT OR INTENTIONAL, OR OTHERWISE, BUT IN SUCH EVENT THE INDEMNIFYING PARTY SHALL NOT BE RESPONSIBLE FOR THAT PORTION OF ANY LOSS WHICH IS HELD TO BE CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF ONE OR MORE OF THE INDEMNIFIED PARTIES. Notwithstanding the terms of this Sublease to the contrary, the terms of this <u>Section 7</u> shall survive the expiration or earlier termination of this Sublease.

8. Assignment and Subletting; Mortgages. Subtenant shall comply with any restrictions on Transfers and Encumbrances set forth in the Master Lease insofar as they relate to this Sublease or the Subleased Premises or any part thereof, provided that to the extent, if at all, that Sublandlord's consent is required for any Transfer or Encumbrance by Subtenant, Sublandlord shall not unreasonably withhold, condition or delay its consent. Sublandlord acknowledges that, as of the Effective Date, Subtenant has granted a Permitted Mortgage to a Permitted Mortgagee with respect to Subtenant's interest in the Subleased Premises and Easements, as more particularly described in the Consent. Any Permitted Mortgagee shall be a third party beneficiary of this Sublease. Sublandlord shall comply with any restrictions on Transfers and Encumbrances imposed on it set forth in the Master Lease, provided that notwithstanding anything to the contrary in the Master Lease, (i) Sublandlord shall not have any right to Encumber (including, without limitation, by granting a Permitted Mortgage on) all or any portion of the Subleased Premises, the Easements or the Easement Area or Sublandlord's interest in the Sublease and (ii) Sublandlord shall not be released from any of its obligations under this Sublease that accrue prior to any permitted Transfer by Sublandlord.

9. <u>Subtenant Default; Remedies.</u>

(a) Any one or more of the following events will constitute an event of default by Subtenant (a "<u>Subtenant Default</u>") under this Sublease:

(1) Whenever Subtenant shall fail to pay any installment of Base Rental, Additional Rent or any other amount required to be paid by Subtenant on the date upon which the same is due to be paid, and such failure shall continue for ten (10) days after Subtenant shall have been given written notice from Sublandlord specifying such failure; or

(2) Whenever Subtenant shall fail to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Sublease that are to be kept, performed or observed by Tenant, and Subtenant shall fail to remedy the same within thirty (30) days after Tenant shall have been given a written notice from Sublandlord or Landlord specifying such default; provided, however, that if a nonmonetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Subtenant commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Subtenant to cure such default; or (3) Whenever an involuntary petition shall be filed against Subtenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or whenever a receiver of Subtenant, or of all or substantially all of the property of Tenant, shall be appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event; or

(4) Whenever Subtenant shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or seek relied under any other law for the benefit of debtors.

(b) At any time after a Subtenant Default has occurred, Sublandlord may exercise all rights and remedies provided under the Master Lease for a default of Tenant thereunder as such rights and remedies relate to the Subleased Premises, subject to the rights of any Permitted Mortgagee.

10. **Relationship of Parties, Services.**

(a) <u>Services</u>. Sublandlord shall have no obligation to deliver or provide any services to Subtenant or the Subleased Premises or to perform any repairs or maintenance with respect to the Subleased Premises.

(b) <u>Default by Landlord</u>. If Landlord shall default in the performance of any of its obligations under the Master Lease, with respect to or otherwise impacting the Subleased Premises, Sublandlord shall, upon the written request of Subtenant or upon receipt of written notice of such default, use reasonable efforts to enforce the Master Lease and obtain Landlord's compliance with its obligations thereunder, and shall cooperate with Subtenant in connection therewith. For purposes of this Section 10, the term "reasonable efforts" shall, if requested by Subtenant, (1) include legal action against Landlord for its failure to perform, and (2) include Sublandlord's exercise of any self-help remedies that may be available to Sublandlord under the Master Lease, provided that if Landlord's default affects the Subleased Premises then Subtenant shall reimburse Sublandlord for Subtenant's Share of any actual costs and expenses incurred in connection therewith, unless Landlord's default affects only the Subleased Premises in which event Subtenant shall reimburse Sublandlord 100% of the costs and expenses incurred in connection therewith. If following the making of a demand on Landlord by Sublandlord and the expiration of the grace and cure periods expressly granted to Landlord under the Master Lease, if any, Landlord shall fail to perform its obligations under the Master Lease, then Subtenant shall have the right to take action against Landlord in Subtenant's own name, provided that Subtenant will pay all costs and expenses incurred in connection with any such action, subject to reimbursement from Sublandlord to Subtenant for 67.53% of such expenses if the Landlord's default affects portions of the Leased Premises other than the Subleased Premises. All rights of Sublandlord under the Master Lease necessary for that purpose shall be, and hereby are, conferred upon and transferred to Subtenant. Subtenant shall be subrogated to such rights to the extent that they apply to the Subleased Premises. If Subtenant cannot proceed against Landlord in Subtenant's name for any reason, Subtenant shall have the right to proceed against Landlord in Sublandlords' name, after providing not less than ten (10) business days written notice to Sublandlord. If after said ten (10) business day period, Sublandlord has not initiated a

proceeding against Landlord for said default, Sublandlord shall execute all documents and take all actions that Subtenant reasonably requests in connection therewith. To the extent that, as a result of Landlord's default under the Master Lease affecting only the Subleased Premises, Sublandlord recovers any sum from Landlord or is entitled to any abatement, credit, set-off or offset, such recovery, abatement, credit, set-off or offset, or the benefit, thereof, shall belong exclusively to Subtenant, and if such Landlord's default affects both the entire Leased Premises, then Subtenant's Share of such recovery, abatement, credit, set-off, offset or benefit shall belong to Subtenant.

(c) <u>Cooperation</u>. Sublandlord shall give such notices to and make such requests of Landlord (including requests for consent or approval), as requested by Subtenant, and otherwise reasonably cooperate with Subtenant to ensure the performance by Landlord of its obligations under the Master Lease and Easements and to confer upon Subtenant the benefits of all rights of Sublandlord under the Master Lease and Easements.

(d) <u>Self-Help</u>. In addition to any self-help rights of Subtenant as incorporated from the Master Lease in this Sublease, if any failure of performance or default of Sublandlord under the Master Lease or Sublease adversely affects the Subtenant or the Subleased Premises, then Subtenant shall have the right to cure such failure of performance or default on behalf of Sublandlord after not less than ten (10) business days written notice (except no notice shall be necessary in the case of an emergency) to Sublandlord. In such event, Sublandlord shall reimburse Subtenant upon demand for any sums paid or costs incurred by Subtenant in curing such failure of performance or default, including without limitation, interest thereon at the Interest Rate from the date Subtenant pays or incurs such costs.

11. <u>Care of the Subleased Premises by Subtenant</u>. Subtenant shall maintain and repair the Subleased Premises in the manner required of Sublandlord as Tenant under the Master Lease.

12. <u>Incorporation of Master Lease Terms</u>. This Sublease is expressly subordinate and subject to the terms and benefits of the Master Lease as and to the extent incorporated herein, and subject to the Sublease recognition and other terms and benefits set forth in the Consent. To the extent not otherwise inconsistent with this Sublease, the terms, provisions, covenants and conditions of the Master Lease are hereby incorporated into this Sublease by reference as fully as if completely reproduced herein, and for purposes of the Master Lease provisions so incorporated into this Sublease:

(a) The term "Landlord" as used in the Master Lease shall refer to Sublandlord hereunder and its successors and permitted assigns; the term "Tenant" as used in the Master Lease shall refer to Subtenant and its successors and permitted assigns; the term "Base Rent" as used in the Master Lease shall refer to the Base Rental under this Sublease; the term "Impositions" as used in the Master Lease (other than as used and defined in Section 5.01 of the Master Lease) shall refer to the Additional Rent under this Sublease; the term "Demised Premises" as used in the Master Lease shall refer to the Subleased Premises; the term "Demised Premises Improvements" as used in the Master Lease shall refer solely to the Demised Premises Improvements located on the Subleased Premises; the term "Lease" as used in the Master Lease shall refer to this Sublease; the term "Term" as used in the Master Lease shall refer to the Sublease Term; and the term "Event of Default" as used in the Master Lease shall refer to a Subtenant Default;

(b) Notwithstanding the foregoing, the following provisions of the Master Lease are hereby included from and incorporated into this Sublease: Article 1 (Definitions); Section 4.02 (No Abatement); all of Article 5 (Impositions, Utilities, Net Lease); Section 6.01 (Condition of Demised Premises); Section 6.05 (Ownership of Improvements); Section 6.06 (Mutual Cooperation); Section 7.02(b); all of Article 8 (Insurance and Indemnity) except for Section 8.04; Section 9.03 (Notice of Damage); Article 10 (Condemnation); Section 11.02 (Assignment by Landlord); all of Article 12 (Tenant's Financing) except those portions of Article 12 not incorporated into this Sublease pursuant to Section 12(c) below; Section 14.03 (Landlord's Default); Section 15.02 (Performance of Other Party's Obligations); Section 15.04 (Modification and Non-Waiver); Section 15.06 (Number and Gender); Section 15.07 (Estoppel Certificate); Section 15.11 (Relation of Parties); Section 15.12 (Force Majeure); Section 15.13 (Non-Merger); Section 15.17 (Successors and Assigns); Section 15.19 (No Third Parties Benefited); Section 15.21 (Use of Landlord's Name); Section 15.23 (Limit on Damages); and all of Article 16 (Hazardous Substances).

(c) Notwithstanding the foregoing, the following provisions of the Master Lease are hereby excluded from and not incorporated into this Sublease: Section 3.01 (Term); Section 4.01 (Base Rent); Section 12.01(b)(ii) (second sentence only); Section 12.01(b)(iv); Section 12.02 (Landlord Protective Provisions); Section 14.01 (Event of Default); Section 15.01 (Notices); Section 15.15 (Limitation of Landlord's Liability); and Section 15.18(b) (i.e., the words: "to conduct repairs related to the Land").

(d) The irrevocable Standby Letter of Credit of no less than \$1,000,000 required to be provided with respect to the Civil Infrastructure Improvements and other improvements to be constructed on the Subleased Premises pursuant to Section 6.04(vi) of the Master Lease shall be provided by Subtenant directly to Landlord and not Sublandlord.

(e) Sublandlord acknowledges and agrees that the insurance coverages maintained by Tenant as of the Effective Date satisfy the Subtenant's insurance obligations under the Sublease as of the Effective Date. Notwithstanding anything to the contrary in the Master Lease or this Sublease, Subtenant shall have no obligation to repair, reconstruct or restore any of the Demised Premises Improvements upon the occurrence of any casualty (other than the obligation to perform Immediate Work).

(f) With respect to any approval required to be obtained from Sublandlord under the Master Lease as incorporated herein, such consent shall not be unreasonably withheld, delayed or conditioned;

(g) In any case where Landlord reserves the right to enter or access the Subleased Premises, such right shall inure to the benefit of both Sublandlord and Landlord;

(h) In the event of any conflict between the terms and provisions of this Sublease and the Master Lease, the terms and conditions of this Sublease shall supersede and control;

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(i) From and after the Effective Date and throughout the Sublease Term, Subtenant shall maintain insurance coverage with respect to the Subleased Premises that meets the requirements under the Master Lease. All insurance policies required to name Landlord as an additional insured under the Master Lease shall also name Sublandlord (in the case of insurance maintained by Subtenant) and Subtenant and its Permitted Mortgagee (in the case of insurance maintained by Sublandlord) as an additional insured;

(j) All indemnity obligations of Subtenant under the Master Lease, as incorporated herein, and all waivers (including any waivers of Claims as defined in the Master Lease), releases, and exculpatory provisions under the Master Lease, as incorporated herein, for the benefit of Landlord shall be for the benefit of Sublandlord, Landlord, their respective affiliates, and their respective officers, directors, shareholders, employees, partners, members, representatives and agents;

(k) To the extent that any notice to, or consent of, Landlord is required under this Sublease, Subtenant shall promptly provide copies of all such notices, or requests for consent, to Landlord contemporaneously with any notices sent to Sublandlord;

(1) Sublandlord and Subtenant shall promptly provide the other party with any notices received from Landlord which affect the Subleased Premises;

(m) No representations or warranties made by Landlord under the Master Lease, if any, are incorporated herein (and in no event shall Sublandlord be deemed to have made any such representations or warranties to Subtenant except as expressly provided in this Sublease);

(n) Sublandlord shall have no obligation to repair or restore any portion of the Leased Premises (including the Subleased Premises) following a casualty or condemnation, however, the abatement and termination rights and entitlement to insurance proceeds and condemnation awards as stated in the Master Lease for the benefit of Sublandlord in the event of a casualty or condemnation shall inure exclusively to, and may be exercised exclusively by, the Subtenant (subject to the rights of any Permitted Mortgagee of Subtenant) for a casualty or condemnation involving the Subleased Premises, and Sublandlord shall have no right to terminate the Master Lease on account of any casualty or condemnation (whether or not affecting the Subleased Premises) without the prior written consent of Subtenant and any Permitted Mortgagee of Subtenant; and

(o) In no event shall Sublandlord or Subtenant be liable for any acts or omissions of Landlord or any officer, director, shareholder, employee, partner, member, representative, or agent ("Landlord Parties") or any failure of Landlord or any other Landlord Parties to comply with the terms of the Master Lease; however, Sublandlord agrees to comply with its obligations under this Sublease in the case of any such failure, including, without limitation, Sublandlord's obligations under Section 10(b) above.

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13. **<u>Representations and Warranties.</u>**

(a) Sublandlord warrants and represents to Subtenant as follows:

(1) Sublandlord is a limited liability company duly organized under the laws of the State of Texas and has full right, power and authority to enter into this Sublease and to carry out its obligations hereunder; all required actions necessary to authorize Sublandlord to enter into this Sublease and to carry out its obligations hereunder have been taken; and the person signing this Sublease on behalf of Sublandlord is authorized to do so.

(2) Sublandlord has received no written notice from Landlord of any breach or default by Sublandlord under the Master Lease (including, without limitation. any failure to pay Base Rent) which remains uncured, and Sublandlord knows of no uncured default by Tenant or Landlord under the Master Lease. The Master Lease is in full force and effect.

(3) A true, correct and complete copy of the Master Lease (including any all amendments, modifications or supplements thereto, is attached hereto as <u>Exhibit</u> <u>B</u>. Sublandlord has not entered into any other documents affecting or related to the Subleased Premises other than the Master Lease, this Sublease, the Consent and the Easements.

(4) Sublandlord has made no mortgage, pledge, grant, transfer, sublease, or assignment of any interests or rights held by Sublandlord under the Sublease or with respect to the Subleased Premises, or any part thereof, to any person or entity except Subtenant.

(5) Upon execution by the person executing this Sublease on behalf of Sublandlord, this Sublease will be fully binding upon and enforceable against Sublandlord.

(6) There has not been filed by or against Sublandlord nor is there threatened against or contemplated by Sublandlord, a petition of bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under bankruptcy laws of the United States or any state thereof, or any action brought under such bankruptcy laws.

(b) Subtenant warrants, represents and covenants to Sublandlord as follows:

(1) Subtenant is a limited liability company duly organized under the laws of the State of Texas and has full right, power and authority to enter into this Sublease and to carry out its obligations hereunder; all required actions necessary to authorize Subtenant to enter into this Sublease and to carry out its obligations hereunder have been taken; and the person signing this Sublease on behalf of Subtenant is authorized to do so. (2) Subtenant has received a copy of and has reviewed the terms of the Master Lease.

(3) Upon execution by the person executing this Sublease on behalf of Subtenant, this Sublease will be fully binding upon and enforceable against Subtenant.

(4) There has not been filed by or against Subtenant nor is there threatened against or contemplated by Subtenant, a petition of bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under bankruptcy laws of the United States or any state thereof, or any action brought under such bankruptcy laws.

14. <u>Notices.</u> All notices or requests provided for hereunder shall be in writing and shall be either (a) delivered by hand, (b) sent by United States registered or certified mail, return receipt requested, postage prepaid, or (c) sent by prepaid nationally recognized overnight carrier (e.g., Fed Ex) for next business day delivery, to the following addresses:

if to Sublandlord:	Victoria Bloomington, LLC
	5850 San Felipe, Suite 601
	Houston, TX 77057
	Attn: GP Manalac
	Phone: (713) 503-8645
if to Subtenant:	Victoria Port Power LLC
	5850 San Felipe, Suite 601
	Houston, TX 77057
	Attn: GP Manalac
	Phone: (713) 503-8645

All such notices shall be deemed received (a) when hand delivered if sent in the manner provided in (1) above, (2) three business days after being placed in the United States mail if sent in the manner set forth in (b) above, or (3) upon delivery or attempted delivery if sent in the manner provided in (c) above. Each party may from time to time change its notice address by at least five days prior written notice to the other party.

15. <u>Governing Law</u>. This Sublease shall be governed by and construed in accordance with the laws of the State of Texas.

16. <u>Interest on Obligations</u>. All amounts owed by one party to the other under this Sublease which are not paid when due shall bear interest at the Interest Rate specified in Section 15.22 of the Master Lease from the date due until the date paid in full. In no event, however, shall the charges permitted under this Section or elsewhere in this Sublease, to the extent they are considered to be interest under applicable law, exceed the maximum lawful rate of interest.

17. <u>Severability</u>. In the event that anyone or more of the provisions contained in this Sublease shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity,

illegality, or unenforceability shall not affect any other provision hereof, and this Sublease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. <u>Attorneys' Fees</u>. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Sublease, the prevailing party shall be entitled to recover reasonable attorneys' fees from the other party.

19. <u>Amendments</u>. This Sublease may not be altered, changed or amended, except by an instrument in writing executed by all parties hereto.

20. <u>Survival of Obligations</u>. Except as may be expressly set forth herein to the contrary, all obligations of a party hereunder that are not fully performed at the expiration or earlier termination of the Sublease Term shall survive such expiration or earlier termination, including, without limitation, payment obligations with respect to Base Rental and Additional Rent.

21. Intentionally Deleted.

22. **Quiet Enjoyment**. Provided no Subtenant Default exists under this Sublease beyond the expiration of any applicable cure periods, Subtenant shall peaceably and quietly hold and enjoy the Subleased Premises against Sublandlord and all persons claiming by, through or under Sublandlord, for the Sublease Term, subject to the provisions and conditions of this Sublease and the Master Lease, as incorporated herein. Sublandlord shall not exercise and any termination rights expressly granted to Sublandlord under the Master Lease without the prior written consent of Subtenant and any Permitted Mortgagee.

23. Intentionally Deleted.

24. <u>Entire Agreement</u>. This Sublease, together with the Consent, constitutes the entire agreement between Subtenant and Sublandlord and supersedes all prior agreements (whether written or otherwise) that may exist between the parties with regard to the sublease and use of the Subleased Premises by Subtenant.

25. <u>Time is of the Essence</u>. Whenever in this Sublease a date, time period or other similar requirement or limitation is provided, time is of the essence.

26. **Brokers**. Subtenant warrants and represents that it has not dealt with any real estate broker and/or salesman in connection with the negotiation or execution of this Sublease and no broker or salesman has been involved in connection with this Sublease to Subtenant's knowledge. Sublandlord warrants and represents that it has not dealt with any real estate broker and/or salesman in connection with the, negotiation or execution of this Sublease and no broker or salesman has been involved in connection or execution of this Sublease and no broker or salesman has been involved in connection with this Sublease to Sublandlord's knowledge. Subtenant agrees to defend, indemnify and hold harmless Sublandlord from and against any and all costs, expenses, attorneys' fees or liability for any compensation, commission and charges representatives. Sublandlord agrees to defend, indemnify and hold harmless Subtenant or Subtenant's representatives. Sublandlord agrees to defend, indemnify and hold harmless Subtenant or Subtenant's representatives. Sublandlord agrees to defend, indemnify and hold harmless Subtenant or Subtenant's representatives. Sublandlord agrees to defend, indemnify and hold harmless Subtenant from and against any and all costs, expenses, attorney's fees or liability for any compensation, commission

and charges claimed by any real estate broker and/or salesman due to acts of Sublandlord or Sublandlord's representatives.

27. Intentionally Deleted.

28. <u>**Recording**</u>. This Sublease may not be filed for record. However, simultaneously with the execution of this Sublease, Sublandlord and Subtenant shall execute a memorandum of this Sublease (the "<u>Memorandum</u>") in the form attached hereto as <u>Exhibit "C"</u>, which shall be filed for record in the Office of the County Clerk of Victoria County, Texas. The Memorandum shall not, in any way, vary, modify or supersede the terms of this Sublease.

29. <u>Counterparts</u>. This Sublease may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. An executed counterpart transmitted by facsimile or electronic mail shall be deemed an original counterpart and shall be effective as delivery of a manually executed counterpart of this Sublease.

[SIGNATURE PAGE FOLLOWS]

EXECUTED effective as of the Effective Date.

SUBLANDLORD:

VICTORIA BLOOMINGTON, LLC, a Texas limited fiability company

By:

Pamela N. Castleman, Manager

SUBTENANT:

VICTORIA PORT POWER LLC, a Texas limited liability company

By:	In sa
Name:	GERARD & MANALAC
Title:	PRESIDENT

EXHIBIT A

Legal Description of the Subleased Premises

[attached]

THE STATE OF TEXAS} COUNTY OF VICTORIA}

Being a 4,00 acre tract of land situated in the Diego Garcia League, Abstract No. 39, Victoria County, Texas, said 4.00 acres being a portion of an 18.808 acre tract of land, described as Tract II, conveyed from Erol C. Tucker and Frank Buhler, III, et al to Victoria County Navigation District by deed dated May 10, 2001 as recorded in Official Records Instrument No. 200105883 of Victoria County, Texas, said 4.00 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch diameter iron rod found for the East corner of the herein described tract, said iron rod being the East corner of the 18.808 acre Victoria County Navigation District tract, the North corner of a 682.8788 acre tract of land conveyed from Nancy Marion Stoner, et al to E.I. Du Pont De Nemours and Company as recorded in Volume 812, Page 670 of the Deed Records of said county, and in the southwest right-of-way line of Old Bloomington Road (60' R.O.W.);

THENCE, South 53°17'32" West (deed call, South 54°41'22" West), with the common line of the 18.808 acre Victoria County Navigation District tract and the 682.8788 acre E.I. Du Pont De Nemours and Company tract, passing at a distance of 296.34 feet a 5/8 inch diameter iron rod found for reference marking the East corner of a 5.35 acre Railroad Easement recorded in Volume 71, Page 249 of the Deed Records of said county, and continuing for an overall distance of 399.04 feet (deed call, 399.04 feet) to a 5/8 inch diameter iron rod found for the South corner of the herein described tract, said iron rod also being the South corner of the 18.808 acre Victoria County Navigation District tract, and the beginning of a non-tangent curve to the right;

THENCE, with the curving southwest line of the 18.808 acre Victoria County Navigation District tract, and 50 feet parallel and northeast of the centerline of the Union Pacific Railroad tracks, along said curve to the right, with a radius of 3,769.83 feet, a central angle of 04°46'55", an arc length of 314.63 feet, and a chord which bears North 21°19'00" West, a distance of 314.54 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;

THENCE, North 18°55'33" West (deed call, North 17°31'43" West), with the southwest line of the 18.808 acre Victoria County Navigation District tract and 50 feet parallel from the centerline of the Union Pacific Railroad tracks, a distance of 191.37 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the West corner of the herein described tract, said iron rod also being South 18°55'33" West (deed call, South 17°31'43" West), a distance of 1,790.73 feet from a 5/8 inch diameter iron rod found for the West corner of the 18.808 acre Victoria County Navigation District tract and in the southeast right-of-way line of Farm-to-Market Road 1432 (120' R.O.W.);

THENCE, North 70°58'47" East, crossing the 18.808 acre Victoria County Navigation District tract, a distance of 392.47 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped

"CIVILCORP" set for the North corner of the herein described tract, said iron rod being in the northeast line of the 18.808 Victoria County Navigation District tract and in the southwest right-of-way line of Old Bloomington Road, said iron rod also being South19°01'13" East, a distance of 924.56 feet from a 5/8 inch diameter iron rod found for an exterior corner of the 18.808 acre Victoria County Navigation District tract;

THENCE, South 19°01'13" East (deed call, South 17°38'00" East), with the northeast line of the 18.808 acre Victoria County Navigation District tract and the southwest right-of-way line of Old Bloomington Road, a distance of 384.42 feet to the **POINT OF BEGINNING**, **CONTAINING** within these metes and bounds 4.00 acres of land, more or less.

Bearings are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances shown are surface and may be converted to grid by dividing by the combined adjustment factor of 1.000130.

A survey drawing of even date herewith accompanies this legal description.

The foregoing Fieldnote Description is based on an actual survey made under my supervision in November 2016 and is true and correct to the best of my knowledge and belief.

WM. PATRICK HC Wm. Patrick Hohlt 11 Registered Professional Land Surveyor Texas No. 5523

1610305

EXHIBIT B

<u>Master Lease</u>

· · · · ·

[attached]

GROUND LEASE

between

VICTORIA COUNTY NAVIGATION DISTRICT

and

VICTORIA BLOOMINGTON, LLC

November 21, 2017

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GROUND LEASE

THIS GROUND LEASE (this "Lease") is made and entered into effective as of November <u>21</u>, 2017 (the "<u>Effective Date</u>") by and between the VICTORIA COUNTY NAVIGATION DISTRICT, a navigation district formed under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas ("Landlord"), and Victoria Bloomington, LLC, a Texas limited liability company ("<u>Tenant</u>").

RECITALS

A. Landlord owns property in Victoria County, Texas, commonly known as the Port of Victoria Industrial Park (also the "Land"), which encompasses the tract of land described in <u>Exhibit A</u> hereto (the "<u>Demised Premises</u>"). A site plan depicting the Land (the "<u>Site Plan</u>") is attached hereto as <u>Exhibit B</u>.

B. Tenant wishes to lease the Demised Premises for the Term and to construct on the Demised Premises an electric power generation and distribution facility (such facility, together with other improvements from time to time located on the Demised Premises, being herein called the "Demised Premises Improvements").

AGREEMENTS

NOW, THEREFORE, for and in consideration of the agreements set forth herein, Landlord and Tenant (collectively, the "<u>Parties</u>" and individually, a "<u>Party</u>") hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.01 <u>Definitions</u>. Each capitalized term used in this Lease shall have the meaning set forth or referred to in <u>Schedule 1.01</u> hereto. In addition, <u>Schedule 1.01</u> sets forth certain rules for the interpretation of this Lease.

ARTICLE 2 DEMISED PREMISES

2.01 <u>Demised Premises</u>. Landlord hereby does lease, let and demise unto Tenant, and Tenant hereby does lease and rent from Landlord, upon and subject to the provisions of this Lease, the Demised Premises.

ARTICLE 3 TERM

3.01 <u>Term</u>. The term of this Lease (the "<u>Term</u>") shall commence on the Effective Date, and shall end on the last day of the calendar month which is seven (7) years after the last day of the Commencement Month. The term "<u>Lease Year</u>" shall mean each period of twelve (12) calendar months commencing on the first day of the calendar month following the

Commencement Month, except that the first Lease Year shall include the period of time between the Effective Date and the end of the Commencement Month. Tenant shall have the option to extend the Term for three (3) additional seven (7) year periods, each a "<u>Renewal Term</u>". Tenant may exercise this option only by delivering to Landlord written notification of its intent to extend the lease for the additional term. Said notice must be received by Landlord no later than one (1) year prior to the expiration of the then-current seven (7) year term. Any reference to Term shall include, if applicable, any Renewal Term.

ARTICLE 4 BASE RENT

4.01 <u>Base Rent</u>. (a) Commencing on the Effective Date, Tenant shall pay to Landlord annual base rent ("<u>Base Rent</u>") of \$325,248.00, being \$2,200.00 per acre per each month of the Lease Year. Base Rent shall be adjusted pursuant to Section 4.01(b) for any Renewal Term. Base Rent shall be paid in equal monthly installments in advance on the first day of each calendar month; provided, however, that Base Rent, prorated for the balance of the Commencement Month, shall be paid along with the Base Rent for the first calendar month following the Commencement Month.

(b) Provided Tenant has exercised its option to extend the Term as provided in ARTICLE 3 above, commencing on the first day of the Renewal Term Adjustment Date (the "<u>Adjustment Date</u>") (*i.e.*, December 1, 2024), and on each Adjustment Date thereafter, Base Rent will increase, on a cumulative basis, at the rate the greater of (i) 20% over the Base Rent during the previous seven-Lease Year period or (ii) increases in the Index from the first day of the previous seven-Lease Year period.

(c) For the purpose of calculating adjustments of Base Rent, the following definitions shall apply:

(i) The term "Index" means the "Consumer Price Index – All Urban Consumers" published by the Bureau of Labor Statistics of the United States Department of Labor ("<u>BLS</u>"), or any successor agency, all items, (1982-1984 = 100) or any renamed local index covering the Victoria County area, or any other measure thereafter employed by said BLS or successor agency in lieu of such Index that measures the cost of living for all urban consumers for all items in the Victoria County area.

(d) In the event that the Index for the most recent Comparison Month is not available as of any Adjustment Date, the Base Rent shall be increased by twenty percent (20%) over the Base Rent in effect for the previous seven-Lease Year period. When the Index for such Comparison Month is available, any further adjustment, if applicable, shall be made retroactive to the applicable Adjustment Date, with Tenant making any additional payments of Base Rent, if applicable, no later than thirty (30) days after such Index is available.

4.02 <u>No Abatement</u>. Except to the extent provided in Article 10, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder to pay Base Rent, or entitle Tenant to any abatement, diminution, reduction, offset or suspension of Base Rent whatsoever;

and Tenant waives any rights now or hereafter conferred upon it by statute or other Applicable Law, to any abatement, diminution, reduction, offset or suspension of Base Rent because of any event, happening, occurrence or situation whatsoever.

ARTICLE 5 <u>IMPOSITIONS; UTILITIES; NET LEASE</u>

5.01 **Impositions Defined**. The term "Impositions" shall mean all taxes, assessments. use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities. excises, levies, license and permit fees, and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever. which shall or may during the Term be assessed, levied, charged, confirmed or imposed by any public authority upon or accrued or become a lien on (i) the Premises or any part thereof; (ii) the rent and income received by or for the account of Tenant from any sublessees or for any use or occupancy of the Premises; (iii) such franchises, licenses, and permits as may be pertinent to the use of the Premises; or (iv) any documents to which the Tenant is a party creating or transferring an interest or estate in the Premises or any parking rights or appurtenances to the Premises. Impositions shall not include any income tax, capital levy, estate, succession, inheritance or transfer taxes, or similar tax of Landlord; any franchise tax imposed upon any owner of the fee of the Demised Premises; or any income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Landlord under this Lease by any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority (each a "Governmental Authority" and collectively, "Governmental Authorities"). However, if at any time during the Term the present method of taxation shall be so changed that the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and improvements thereon shall be discontinued and in whole or partial substitution therefor, taxes of the type described in the immediately preceding sentence or taxes, assessments, levies, impositions, or charges shall be levied, assessed, and/or imposed wholly or partially as a capital levy or otherwise on the rents received from said real estate or the rents reserved herein or any part thereof, then such substitute taxes. assessments, levies, impositions, or charges, to the extent so levied, assessed, or imposed, shall be deemed to be included within the term Impositions.

5.02 Tenant's Obligation. During the Term, Tenant will pay as and when the same shall become due all Impositions directly to the Governmental Authority or other person entitled to receive payment thereof and provide Landlord with reasonable evidence that such Impositions have been paid in a timely manner. Impositions that are payable by Tenant for the tax year in which the Term commences as well as during the tax year in which the Term ends shall be apportioned so that Tenant shall pay its proportionate share of the Impositions for such periods of time. Where any Imposition that Tenant is obligated to pay may be paid pursuant to Applicable Law in installments, Tenant may pay such Imposition in installments as and when such installments become due. Tenant shall, if so requested, deliver to Landlord evidence of due payment of all Impositions Tenant is obligated to pay hereunder, concurrently with the making of such payment. If the Premises is not separately assessed, Tenant shall pay a share of the Impositions properly allocable to the Premises, as reasonably determined by Landlord; provided, however, that (i) Tenant may have the Demised Premises separately assessed for purposes of ad valorem property taxes and Landlord will reasonably cooperate with Tenant to achieve the same, and (ii) Landlord agrees to pay, prior to delinquency, any outstanding ad valorem property taxes for the Demised Premises and will provide Tenant with evidence of same. Upon receipt of any ad valorem tax statements for the property that includes the Demised Premises, Landlord shall deliver to Tenant copies of such statements and an invoice setting forth Landlord's calculation of the portion of the 2017 ad valorem taxes properly allocable to the Demised Premises. Tenant shall pay the portion of the 2017 ad valorem taxes properly allocable to the Demised Premises within thirty (30) days after Tenant's receipt of such statement.

5.03 Tax Contest. Tenant may, at its sole cost and expense, contest the validity or amount of any Imposition for which it is responsible, in which event the payment thereof may be deferred to the extent permitted by Applicable Law, during the pendency of such contest, if diligently prosecuted. Fifteen (15) days prior to the date any contested Imposition shall become delinquent, Tenant shall deposit with Landlord or, at the election of Tenant, such bank or trust company having its principal place of business in Victoria, Texas, selected by Tenant and reasonably satisfactory to Landlord (the "Imposition Trustee"), an amount sufficient to pay such contested item, together with any interest and penalties thereon and the estimated fees and expenses of any Imposition Trustee, which amount shall be applied to the payment of such items when the amount thereof shall be finally determined. In lieu of such cash deposit, Tenant may deliver to Landlord a surety company bond in form and substance, and issued by a company. satisfactory to Landlord, or other security reasonably satisfactory to Landlord. Nothing herein contained, however, shall be construed to allow any Imposition to remain unpaid for such length of time as would permit the Premises, or any part thereof, to be sold or seized by any Governmental Authority for the nonpayment of the same. If at any time, in the judgment of Landlord reasonably exercised, it shall become necessary to do so, Landlord may, after written notice to Tenant, under protest if so requested by Tenant, direct the application of the amounts so deposited or so much thereof as may be required to prevent a sale or seizure of the Premises or foreclosure of any lien created thereon by such item. If the amount deposited exceeds the amount of such payment, the excess shall be paid to Tenant, or, in case there should be any deficiency, the amount of such deficiency shall be promptly paid on demand by Tenant to Landlord (provided Landlord has advanced such amount), and, if not so paid, such amount shall be a debt of Tenant to Landlord, together with interest thereon at the Interest Rate from the date advanced until paid. Tenant shall promptly furnish Landlord with copies of all proceedings and documents with regard to the contest of any Imposition, and Landlord shall have the right, at its expense, to participate therein.

5.04 <u>Evidence Concerning Impositions</u>. The certificate, advice, bill, or statement issued or given by the appropriate officials authorized by Applicable Law to issue the same or to receive payment of any Imposition of the existence, nonpayment, or amount of such Imposition shall be prima facie evidence for all purposes of the existence, nonpayment, or amount of such Imposition.

5.05 <u>Rendition</u>. For each tax year commencing after the Effective Date, Tenant shall render the Premises for each Governmental Authority imposing Impositions thereon and may, if Tenant shall so desire, endeavor at any time or times to obtain a lowering of the valuation of the Premises for any year for the purpose of reducing ad valorem taxes thereon, and in such event, Landlord will, at the request of Tenant, cooperate in effecting such a reduction, provided that

Landlord shall not be required to incur any expense in connection therewith without its prior consent.

5.06 <u>Utilities</u>. Tenant shall be responsible for any and all costs associated with the installation or extension of utilities to the Premises which are necessary for Tenant's operations on the Premises, subject to prior approval by Landlord not to be unreasonably withheld, conditioned or deluged. Tenant shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone, cable, internet service and other communication services, and all other utilities and similar services rendered or supplied to the Premises, and all water fees, water rents, sewer/septic service charges, or other similar charges levied or charged against, or in connection with, the Premises. Tenant shall not, for any purpose, drill or have drilled a water well on the Premises.

5.07 <u>Net Lease</u>. Except as expressly provided in this Lease, Landlord shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the financing, ownership, construction, maintenance, operation, or repair of the Premises. It is expressly understood and agreed that this is a completely net lease intended to assure Landlord the rentals herein reserved on an absolute net basis.

5.08 <u>Right to Perform Tenant's Obligation as to Impositions</u>. If Tenant fails to timely pay any Imposition for which it is responsible hereunder, or fails to timely notify Landlord of its intention to contest the same, or fails to pay contested Impositions as provided in Section 5.03, Landlord may, at its election (but without obligation), pay such Imposition with any interest and penalties due thereon, and the amount so paid shall be reimbursed by Tenant on demand together with interest thereon at the Interest Rate from the date of such payment until repaid.

ARTICLE 6 CONDITION OF DEMISED PREMISES; IMPROVEMENTS

6.01 <u>Condition of Demised Premises</u>. Tenant acknowledges that it is leasing the Demised Premises and any improvements located thereon "AS IS, WHERE IS, WITH ALL FAULTS" and that Landlord makes no representations or warranties of any nature, express or implied, concerning the Demised Premises or any improvements thereon, including any representation or warranty concerning (i) the physical condition of the Demised Premises or any such improvements, (ii) the suitability of the Demised Premises or any improvements thereon for Tenant's intended use, (iii) the environmental condition of the Demised Premises and any such improvements or (iv) compliance of the Demised Premises or any such improvements with any Applicable Laws. Tenant has had adequate opportunity to inspect, conduct tests and other due diligence and otherwise evaluate the Demised Premises.

6.02 <u>Construction of Improvements</u>. Tenant shall, subject to the subsequent provisions of this Article 6, construct all Demised Premises Improvements in accordance with the terms of this Lease.

6.03 <u>Alterations; Demolition</u>. (a) At any time and from time to time during the Term, Tenant may perform such construction, alteration, renovation, repair, refurbishment, and other work with regard to the Demised Premises Improvements as Tenant may elect, provided that the same is done in accordance with the Construction Standards herein. Landlord acknowledges and agrees that Tenant may construct a fence around the boundary of the Demised Premises and/or Demised Premises Improvements.

(b) Any civil infrastructure improvements made to the Demised Premises by Tenant as part of the Demised Premises Improvements, including, without limitation, roadways, driveways, fencing, concrete or other improved surfacing, foundations, and concrete slabs (the "<u>Civil Infrastructure Improvements</u>"), shall not be demolished or removed without the prior written consent of Landlord. Upon the expiration or termination of this Lease, Tenant shall have the right and obligation to remove all Demised Premises Improvements other than the Civil Infrastructure Improvements, which at Landlord's option will either remain on the Demised Premises after the expiration or termination of the Lease, or will be demolished and removed from the Demised Premises, and the Demised Premises shall be put in a good, clean and safe order and condition at Tenant's sole cost and expense. Notwithstanding the foregoing, Tenant shall have no obligation to remove foundation piers below a depth of four (4) feet from the surface of the Demised Premises.

6.04 <u>Construction Standards and Liens</u>. (a) The Demised Premises Improvements shall be constructed, and any and all alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto shall be performed, in accordance with the following "<u>Construction Standards</u>" (herein so referenced):

(i) With respect to any material construction, installation, alteration, renovation, repair, refurbishment and other work with regard to the Civil Infrastructure Improvements, prior to the commencement of such work Tenant shall provide Landlord with site plans, drainage plans, construction plans, or other such depictions of the work to be performed, as applicable, suitable to allow Landlord's civil engineering representative, to conduct a civil design/utilities compliance review of the proposed work;

(ii) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question;

(iii) All such construction or work shall be done in material compliance with all Applicable Laws;

(iv) No such construction or work shall be commenced until Tenant shall have obtained all licenses, permits, and authorizations required of all Governmental Authorities having jurisdiction, including Landlord;

(v) No such construction or work shall be commenced until Tenant shall have obtained, and Tenant shall maintain in force and effect, the insurance coverage required in Article 8 with respect to the type of construction or work in question;

(vi) No such construction or work shall be commenced until Tenant shall have provided Landlord with an irrevocable Standby Letter of Credit of no less than One

-6-
Million Dollars (\$1,000,000.00), reasonably protecting Landlord against the failure of Tenant and/or its contractor(s) to prevent the filing of liens against the Demised Premises whether arising from Chapter 53 of the Texas Property Code, the Texas Constitution, common law, or other applicable statute; the failure of Tenant and/or its contractor(s) to provide a bond against any said liens; Tenant's failure to timely complete a then ongoing Civil Infrastructure Improvement project; and/or, Tenant's failure to provide a substitute Standby Letter of Credit prior to the expiration of a previous Standby Letter of Credit provided to Landlord (said Standby Letter of Credit to be released by Landlord no later than ten (10) days following Landlord's receipt of written instruments containing unconditional waivers and releases of lien rights, and duly executed by all contractors, sub-contractors and materialmen, of any tier, who provided materials and or services in connection with the construction or work);

(vii) After commencement, such construction or work shall be prosecuted with due diligence to its completion, subject to extension due to delays caused by Force Majeure; and,

(viii) After completion of construction or substantial alteration of the Demised Premises Improvements, Tenant shall provide Landlord with a complete set of as-built drawings, and update same to reflect material alterations or modifications through the Term of the Lease.

(b) Tenant shall have no right, authority, or power to bind Landlord or any interest of Landlord in the Demised Premises, the Land or any improvements located on the Land for any claim for labor or for material or for any other charge or expense incurred in construction of the Demised Premises Improvements or performing any alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto, nor to render Landlord's interest in the Demised Premises, the Land or any improvements located on the Land liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Tenant shall in no way be considered to be the agent of Landlord with respect to, or general contractor for, the construction, erection, or operation of any such Demised Premises Improvements, alterations, renovations, repairs, restorations, refurbishments or other work. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Demised Premises or the Land shall be filed, Tenant shall promptly pay and release or bond such liens to Landlord's reasonable satisfaction or otherwise obtain the release or discharge thereof. If Tenant fails to promptly pay and release or bond such lien to Landlord's reasonable satisfaction, Landlord shall have the right, but not the obligation, to pay, release or obtain a bond to protect against such liens and claims following written notice to Tenant, and Tenant shall reimburse Landlord on demand for any such amounts paid together with interest thereon from the date of such payment until paid.

(c) Landlord, as well as its agents, employees, Commissioners, architects, engineers and Affiliates, if any, shall not be liable to Tenant or any other Person for any loss, claim or demand asserted on account of Landlord's exercise of its rights and duties hereunder, or any failure or defect in such exercise. No approval of designs, plans, specifications or other matters shall ever be construed as representing or implying that such designs, plans, specifications or other matters will, if followed, result in a properly designed building or other improvements. Such approvals shall in no event be construed as representing or guaranteeing that any improvements will be built in a workmanlike manner, nor shall such approvals relieve Tenant of its obligation to construct the improvements in a workmanlike manner as provided in this Article 6.

6.05 Ownership of Improvements. During the Term of the Lease, all Demised Premises Improvements are the sole property of Tenant. Tenant may upon written notice to Landlord remove all or any part of such Demised Premises Improvements which are not considered Civil Infrastructure Improvements and constitute personal property utilized in connection with the Demised Premises upon the expiration or earlier termination of this Lease; and Tenant shall repair all damage to the Demised Premises caused by such removal at Tenant's cost, expense, and liability. In the event that Tenant fails to remove the Demised Premises Improvements (except as aforesaid) within one hundred and eighty (180) days of the expiration or earlier termination of the Lease, then, at Landlord's election, either (i) Tenant's rights, title, and interest in and to such Demised Premises Improvements shall be vested in Landlord without the necessity of executing any conveyance instruments, or (ii) Landlord shall be entitled to remove and dispose of such Demised Premises Improvements, in a commercially reasonable manner, at Tenant's cost, expense, and liability. This provision shall survive the termination of this Lease.

6.06 <u>Mutual Cooperation</u>. (a) Landlord, as owner of the Demised Premises and the Land, shall reasonably cooperate with and assist Tenant in Tenant's efforts to file for and obtain all building permits, certificates of occupancy, easements, licenses, variances, permissions and consents necessary to construct, operate and maintain the Premises so long as Landlord is not required to incur any obligations or liabilities other than minor incidental expenses or impose any restrictions conditions or other encumbrances on the Land.

(b) Landlord shall not unreasonably delay or prohibit Tenant from commencing and thereafter continuously pursuing construction of the Demised Premises Improvements in accordance with this Lease but this sentence does not require Landlord to refrain from exercising any of Landlord's rights under this Lease.

(c) Landlord shall have the right to require periodic meetings with representatives of Tenant present (in person or by phone) to discuss issues relating to the progress of construction of the Demised Premises Improvements, including the coordination of construction of such improvements.

ARTICLE 7

USE, CONTINUOUS OPERATIONS, MAINTENANCE, AND REPAIRS

7.01 <u>Use</u>. (a) Subject to the terms and provisions hereof, Tenant shall have the right to use and enjoy the Premises for the construction and operation of an electric generation and distribution facility, and for no other uses.

(b) Tenant shall not use or occupy the Premises, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by Tenant hereunder,

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(iii) constitute a public or private nuisance, (iv) be unreasonably disruptive to the Land or the improvements located thereon, or (v) violate any Applicable Law. Landlord represents to Tenant that the use described Section 7.01(a) above does not constitute a public or private nuisance nor is unreasonably disruptive to the Land or the improvements located therein.

7.02 <u>Maintenance and Repairs</u>. (a) Tenant shall take good care of the Premises, make all repairs thereto, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises in first-class order, repair, and condition at all times and in compliance with all Applicable Laws. Tenant will not do, permit, or suffer any waste, damages, disfigurement, or injury to or upon the Premises or any part thereof. However, the foregoing provisions of this Section 7.02 shall not prohibit Tenant from undertaking the initial construction of the Demised Premises Improvements or any subsequent repairs, remodeling, renovation, or reconstruction (whether resulting from casualty, condemnation, or otherwise) in accordance with the terms of this Lease.

(b) Landlord shall have no obligation to maintain or repair the Premises.

ARTICLE 8 INSURANCE AND INDEMNITY

8.01 <u>Insurance</u>. Tenant will, at its cost and expense, keep and maintain in force the following policies of insurance:

(a) Builders "All-Risk" or equivalent all-risk installation insurance, as such term is used in the insurance industry, in an amount that is not less than the full replacement cost value of the planned Demised Premises Improvements and covering all construction, erection or installation work including without limitation coverage for mechanical and electrical breakdown and all forms of testing and commissioning required to complete the planned Demised Premises Improvements, including, but not limited to, coverage for resulting or ensuing damage arising out of design error, faulty materials or faulty workmanship, the perils of flood, earthquake, named windstorm, hail, lightning, riot and civil commotion, theft, vandalism and malicious mischief, subject to terms that are consistent with current industry practice insuring real and personal property of Tenant on the Demised Premises; and,

(b) Worker's compensation and employer's liability coverage insurance as to Tenant's employees involved in the construction, operation, or maintenance of the Premises in compliance with Applicable Law.

8.02 <u>Liability Insurance</u>. Tenant will, at its cost and expense, keep and maintain in force commercial general liability insurance for bodily injury, death and property loss and damage (including coverages for product liability, contractual liability and personal injury liability) covering Tenant for claims, lawsuits or damages arising out of its performance under this Agreement, and any negligent or otherwise wrongful acts or omissions by Tenant or any employee or agent of Tenant, with no exclusions for explosion, collapse and underground perils, or fire and coverage for pollution and punitive damages (to the extent normally available), with a combined single limit of not less than \$2,000,000.00 with such limit to be increased if requested by Landlord (but no more frequently than once every three (3) years) by an amount which may

be commercially reasonable at the time, taking into account the size and type of the Demised Premises Improvements, their construction, location, use and occupancy. Tenant shall require that: (i) any other general contractor for initial construction, tenant improvement work, casualty restoration work or any significant alterations provide completed operations coverage in its commercial general liability policy, and (ii) such insurance name Tenant and Landlord as additional insureds and be written on an occurrence, rather than a claims made, basis. In addition, throughout the Term Tenant shall maintain pollution liability insurance with a limit commensurate with industry practice for similar operations but not less than \$5,000,000 per occurrence. Coverage will provide for property damage and bodily injury to third parties including, without limitation, Landlord, arising out of "sudden and accidental" pollution conditions as a result of Tenant's operations on the Demised Premsies.

8.03 All insurance maintained in accordance with the provisions of this Policies. Article 8 shall be issued by companies reasonably satisfactory to Landlord and the Permitted Mortgagee, if any (hereinafter defined). All property policies shall be carried in the name of both Landlord and Tenant, as their respective interests may appear, and shall contain a mortgagee clause acceptable to the Permitted Mortgagee. All property policies shall expressly provide that any loss thereunder may be adjusted with Tenant and Landlord, but shall be payable to Landlord, who shall agree to receive and disburse all proceeds as set forth in Section 9.02. All liability insurance policies shall name Landlord and the Permitted Mortgagee as an additional insured and shall include contractual liability endorsements. All such policies of insurance may be provided on either an occurrence or claims-made basis. If such coverage is provided on a claims made basis, such insurance shall continue throughout the term of the Agreement, and upon the termination of this Agreement, or the expiration or cancellation of the insurance, Tenant shall purchase or arrange for the purchase of either an unlimited reporting endorsement ("Tail" coverage), or "Prior Acts" coverage from the subsequent insurer, with a retroactive date on or prior to the effective date of this Agreement and for a period of not less than five (5) years following the termination or expiration of this Agreement. No cancellation, non-renewal or material modification will occur without thirty (30) days' prior written notice by the insurer to Landlord, Tenant and the Permitted Mortgagee. Tenant shall furnish Landlord and the Permitted Mortgagee with such evidence of insurance, including duplicate originals or copies certified as being true and correct of all insurance policies, or certificates of insurance reasonably satisfactory to Landlord and the Permitted Mortgagee, with new certificates of insurance or other evidence of insurance to be delivered no later than thirty (30) days prior to the expiration of the current policies. If Tenant fails to maintain any insurance required to be maintained by Tenant pursuant to this Lease, Landlord may, at its election (without obligation), procure such insurance as may be necessary to comply with these requirements, and Tenant shall reimburse Landlord, on demand, with interest thereon at the Interest Rate from the date of expenditure until fully reimbursed. Any and all property insurance policies required to be maintained pursuant to this Agreement shall, if they do not automatically permit the waivers of subrogation contained herein, be endorsed to reflect the waivers of subrogation provided for herein.

8.04 <u>Tenant's Indemnity</u>. Tenant shall defend, indemnify and hold harmless Landlord and its affiliates, officers, directors, employees, commissioners, managers and agents (the "Indemnified Parties") from and against, and Tenant shall be responsible for, any and all liabilities (including strict liability), actions, demands, penalties, fines, losses, costs and expenses (including reasonable attorneys' and experts' fees and expenses), suits, costs of any settlement or

judgment, and claim of any and every kind whatsoever, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (all of which are hereinafter collectively called "Claims"), which may now or in the future be brought or instituted or asserted on account of or growing out of or arising from (i) any failure on the part of Tenant and its affiliates, partners, members, shareholders or other equity owners, officers, directors, employees, managers or agents, or licensees (the "Tenant Parties") to comply with the provisions of this Lease, or to comply with the provisions of Applicable Law applicable to the Tenant Parties or the Premises, (ii) any and all injuries or damages, including death, to persons or properties relating to the condition, use or occupancy of the Premises, including the construction, alteration, repair or maintenance of any improvements, or the presence on or release or discharge from the Premises of any Hazardous Substances (except to the extent that Landlord has been proven to have caused such presence, release or discharge), or (iii) Landlord's approval of any designs, site plans. plans, specifications **1**0 other matters. NOTWITHSTANDING THE NEGLIGENCE OR STRICT LIABILITY (WITHOUT **REGARD TO FAULT) OF ANY OF THE INDEMNIFIED PARTIES except, in the case of** each Indemnified Party, to the extent that the Claims are proven to have resulted from the gross negligence or willful misconduct of such Indemnified Party. Maintenance of the insurance referred to in this Article 8 shall not affect Tenant's obligations under this Section 8.04. Without relieving Tenant of its obligations under this Section 8.04, the Indemnified Parties, at their election, may defend or participate in the defense of any Claims with attorneys and representatives of their own choosing. Tenant shall be relieved of its obligation of indemnity to the extent, and only to the extent, of the amount actually recovered from one or more insurance carriers and either paid to Landlord or paid for Landlord's benefit in reduction of any Claims, but nothing contained herein shall entitle Tenant to delay performing its indemnification obligations, or require any Indemnified Party to delay enforcing its indemnification rights, until one or more insurance carriers make such payments to or for the benefit of the Indemnified Parties.

8.05 Subrogation. Landlord hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Tenant, its agents, partners or other equity owners, directors, officers and employees (each a "Tenant Release Party") for any loss or damage that may occur to the Demised Premises Improvements and to Landlord's interest in any other property located on the Demised Premises or the Land, whether real, personal or mixed, and the Land, regardless of cause or origin, INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY TENANT RELEASE PARTY, to the extent such loss is covered in whole or in part by insurance. Tenant hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Landlord, its agents, directors, commissioners, officers and employees (each a "Landlord Release Party") for any loss or damage that may occur to the Demised Premises Improvements and to all property of Tenant located on the Demised Premises or the Land, whether real, personal or mixed, and the Demised Premises, regardless of cause or origin, INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY LANDLORD RELEASE PARTY, to the extent such loss is covered (or is required under this Lease to be covered) in whole or in part by insurance. Nothing contained in this Section 8.05 is intended or shall be construed to create any liability that would not otherwise exist in the absence of this Section 8.05.

ARTICLE 9 CASUALTY LOSS

9.01 <u>Tenant's Obligation to Restore</u>. Should the Demised Premises Improvements be wholly or partially damaged or destroyed by fire or other casualty, Tenant shall promptly, but in no event later than two (2) Business Days after the occurrence of such destruction, commence and thereafter diligently pursue all steps necessary to secure the Demised Premises Improvements and otherwise make the Demised Premises Improvements safe so as not to result in risk of injury to Persons or damage to other property on the Land, including constructing a fence around the Demised Premises Improvements (if necessary for security or safety). The work described in this Section 9.01 is herein called the "Immediate Work".

9.02 [Intentionally Deleted].

9.03 <u>Notice of Damage</u>. Tenant shall immediately notify Landlord and any Permitted Mortgagee of any destruction or material damage to the Premises.

ARTICLE 10 CONDEMNATION

10.01 Total Taking. Should the entire Premises be taken (which term, as used in this Article 10, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, then (a) this Lease shall terminate as of the date of taking possession by the condemning authority, (b) Base Rent shall be apportioned and paid to such date of termination, and (c) the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (ii) second, the balance of the award shall be equitably apportioned between Landlord and Tenant based on the then respective fair market values of Landlord's Interest (appraised by reference to all relevant factors including the income stream derivable by Landlord under this Lease and the then present value of Landlord's reversionary interest in the entire Premises after expiration of the originally stated Term), and Tenant's Leasehold Estate (appraised by reference to all relevant factors, including the income stream derivable by Tenant from the Premises for the remainder of the originally stated Term), with any award to Tenant payable to Tenant's Permitted Mortgagees as their interests may appear. However, if Tenant's portion of the condemnation award is insufficient to repay the Permitted Mortgage, then Landlord's portion of such award shall be reduced by the amount which, when taken together with Tenant's portion, is sufficient to repay the Permitted Mortgage; but in no event shall Landlord be denied the portion of the condemnation award attributable to the fair market value of the Demised Premises (expressly excluding the Demised Premises Improvements) determined as if this lease were not in effect. If Landlord and Tenant are unable to agree on the respective fair market values of their interests in the Premises, then the matter shall be submitted to arbitration as provided in Section 15.03. After the determination and distribution of the condemnation award as herein provided, this Lease shall terminate.

10.02 <u>Partial Taking</u>. If a portion of the Premises is taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall continue in effect as to the remainder of the Premises unless, in Tenant's reasonable judgment, so much of the Premises is so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 10.01. In the event of a partial taking where this Lease is not terminated, the Base Rent payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis having due regard to the relative value and acreage of the portion of the Premises thus taken as compared to the remainder thereof and taking into consideration the extent, if any, to which Tenant's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking. If Landlord and Tenant are unable to agree as to a just reduction in Base Rent, the matter shall be submitted to arbitration as provided in Section 15.03. In the event of a partial taking where this Lease is not terminated, Tenant shall proceed promptly to restore the remaining portion of the Premises to an integral unit resembling, so far as practicable, the Premises prior to such taking, in the same manner provided in Article 9 for restoration following a casualty, with the provisions relating to Tenant's right to use insurance proceeds for Immediate Work and Restoration Work to apply likewise to Tenant's right to use condemnation awards for such purposes.

10.03 <u>Award on Partial Taking</u>. In the event of a partial taking where this Lease is not terminated, and as a result thereof Tenant will need to restore, repair, or refurbish the remainder of the Premises in order to put them in a useable condition, then (a) the award shall first be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Premises taken, (b) the portion allocable to Landlord shall be paid to Landlord, and (c) the portion of the award payable to Tenant shall be paid to Tenant. If a portion of the Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Premises taken.

10.04 <u>Voluntary Dedication</u>. Tenant shall have no right to voluntarily devote or dedicate any portion of the Premises to public use without Landlord's prior written consent.

10.05 <u>Notice of Taking, Cooperation</u>. Landlord and Tenant shall immediately notify the other and any Permitted Mortgagee of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

ARTICLE 11 ASSIGNMENT AND SUBLETTING

11.01 <u>Tenant's Right to Assign</u>. Except as permitted in Sections 11.03 and 12.01, Tenant shall not sell, assign, sublease, or otherwise transfer (each being herein referred to as a "<u>Transfer</u>"), or mortgage, pledge or otherwise encumber (each being herein referred to as an "<u>Encumbrance</u>" or to "<u>Encumber</u>"), whether voluntarily, involuntarily or by operation of law, its Leasehold Estate, or any portion thereof, without Landlord's prior written consent, which consent shall not be unreasonably withheld based on the financial condition, business reputation, and experience of the Transferee (or its operator) in operating similar facilities.

(a) The provisions of this Section 11.01 shall not apply to a foreclosure by the Permitted Mortgagee or a conveyance to the Permitted Mortgagee (or its Affiliate) in lieu of foreclosure, but the provisions of this Section 11.01 shall apply to a subsequent Transfer by the Permitted Mortgagee or its Affiliate to the purchaser at such foreclosure sale.

(b) No Transfer or Encumbrance, regardless of whether Landlord has consented to such Transfer or Encumbrance, shall release Tenant (or any previous Transferee) from liability for the performance of all of Tenant's obligations under this Lease; however, so long as no Event of Default then remains uncured, upon a Transfer permitted under this Lease the Transferor shall be released from liability for performance of all of Tenant's obligations under this Lease accruing after the date of such Transfer, and the Transferee shall be deemed to have assumed all of Tenant's obligations under this Lease.

(c) Prior to making any Transfer for which Landlord's consent is required, Tenant shall provide to Landlord the following: (i) the name of the proposed Transferee and all direct or indirect owners of equity ownership interest in the Transferee; (ii) financial information regarding the proposed Transferee and the Persons Controlling the Transferee, including balance sheets, income statements and the like; and (iii) such other information as Landlord shall reasonably request to determine the financial viability and business reputation and operational experience of the proposed Transferee.

(d) For any Permitted Assignment or Permitted Sublease which does not require Landlord's consent as described in Section 11.03 below, Tenant shall give notice to Landlord identifying the Transferor, the Transferee and the interest transferred no later than ten (10) Business Days after such transfer has occurred.

11.02 <u>Assignment by Landlord</u>. Landlord may, without Tenant's consent, Transfer or Encumber all or any part of its Landlord's Interest, including its interest in this Lease, and Tenant shall attorn to any transferee of Landlord's Interest provided such Transferee shall be bound by this Lease and shall enter into a non-disturbance and attornment agreement with Tenant. As used in this Lease, "Landlord" shall mean only the fee owner of the Premises at the time in question, and in the event of any Transfer of title to the Premises, the Transferor shall automatically be released from all of the obligations of the Landlord under this Lease accruing from and after the date of such Transfer, and all of such obligations accrued prior to the date that such Transferor became the Landlord, provided that the Transferee shall assume and be responsible for all obligations of "Landlord", including those accruing prior to the Transfer of Landlord's Interest, during the time that such Transferee is the Landlord hereunder. The covenants and obligations of Landlord contained in this Lease shall be binding on Landlord, its successors and assigns, only during and in respect to their respective successive periods of ownership, except to the extent provided in this Section 11.02.

11.03 <u>Permitted Assignment/Sublease by Tenant</u>. Notwithstanding anything to the contrary contained in Section 11.01 of this Lease, and further, provided that (a) such assignment or sublease will not relieve or release Tenant from any obligations under this Lease which

accrued prior to such assignment, and (b) an Event of Default (as hereinafter defined) has not occurred or is occurring beyond any applicable notice and opportunity to cure provisions provided herein, (i) Tenant may assign this Lease, by assignment or at law, without Landlord's consent, to any persons or entities that are an Affiliate of Tenant ("<u>Permitted Assignment</u>"), and (ii) Tenant may sublease all or a portion of the Demised Premises to any persons or entities that are an Affiliate of Tenant, including, but not limited to, Victoria Port Power LLC ("<u>Permitted Sublease</u>").

ARTICLE 12 <u>TENANT'S FINANCING</u>

12.01 <u>Tenant's Right to Encumber</u>. (a) Provided that no Event of Default has occurred and is then continuing, Tenant shall have the right, from time to time, to mortgage the Leasehold Estate with a deed of trust, mortgage or other lien instruments to secure borrowings of Tenant, subject to the provisions of this Article 12. Any such mortgage, deed of trust and/or other lien instruments and the indebtedness secured thereby are herein collectively referred to as a "<u>Permitted Mortgage</u>" and the holder or other beneficiary thereof is herein referred to as the "<u>Permitted Mortgage</u>". In the event there is more than one Permitted Mortgage at one time, then all of the provisions of Section 12.03) shall be solely for the benefit of and enforceable by the Permitted Mortgagee with respect to the Permitted Mortgage having first lien priority (as determined by Landlord in good faith by review of such title information as Landlord, in its sole discretion, deems appropriate). The Permitted Mortgage shall not encumber or affect in any way the Landlord's Interest.

(b) Tenant's right to grant a Permitted Mortgage is subject to the following additional conditions:

(i) No later than thirty (30) days after the execution and delivery of a Permitted Mortgage, Tenant shall have delivered to Landlord a written notice stating the existence of the Permitted Mortgage and the name and address of the Permitted Mortgagee for purposes of notice.

(ii) The Permitted Mortgagee shall be a bank, savings association, insurance company, pension fund or other institutional lender which, typically provides investment funding for similar type projects ("<u>Institutional Lender</u>"). Tenant will provide landlord with information specifying the funding sources for landlord to approve such sources, such approval not to be unreasonably withheld. If the Permitted Mortgage has been originated by an Institutional Lender, the Permitted Mortgage may be securitized in a bona fide securitization transaction regardless of whether the holders of indirect beneficial interests in the Permitted Mortgage would constitute Institutional Lenders, so long as the servicing agent for the Permitted Mortgage is a bona fide servicing agent.

(iii) [Intentionally deleted]

(iv) The Permitted Mortgage must contain the Landlord protective provisions described in Section 12.02.

12.02 <u>Landlord Protective Provisions</u>. The Permitted Mortgage shall expressly provide for the following rights, which rights are solely for the benefit of and enforceable by Landlord and are not for the benefit of, and may not be enforced by, Tenant:

(a) The Permitted Mortgagee shall not accelerate maturity of the Permitted Mortgage or foreclose any lien securing payment thereof until a notice specifying the default under the Permitted Mortgage giving rise to such right of acceleration or foreclosure (a "Mortgage Default") has been received by Landlord and Landlord has failed to cure the Mortgage Default within twenty (20) days after Landlord's receipt of such notice of default; provided, however, that if notice of default has been given at least two (2) times during any calendar year for failure to pay a regular installment of interest, or principal and interest, on the Permitted Mortgage, then no such notice of default shall be required for any subsequent defaults of the same type during the balance of the applicable calendar year. Any payments made and other things done by Landlord to cure the Mortgage Default shall be fully effective to prevent acceleration of maturity or foreclosure as if done by Tenant. Any amount expended by Landlord in curing or attempting to cure such Mortgage Default shall be paid by Tenant to Landlord upon demand, together with interest thereon at the Interest Rate from the date of each such expenditure until the date paid in full. Landlord has the option, but not the obligation, to cure any such Mortgage Default, and after commencing the cure of any such Mortgage Default may cease further actions to so cure.

(b) The Permitted Mortgagee shall not foreclose the Permitted Mortgage or accept a deed in lieu of foreclosure unless notice of such foreclosure or deed in lieu of foreclosure has been given to Landlord no less than thirty (30) days in advance of such event.

12.03 <u>Mortgagee Protective Provisions</u>. If Tenant encumbers the Leasehold Estate with a Permitted Mortgage in compliance with this Article 12, for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) There shall be no cancellation, termination (other than termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) or material modification of this Lease without the prior written consent of the Permitted Mortgagee. Landlord shall not accept any surrender of this Lease (other than in connection with a termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) without the prior written consent of the Permitted Mortgagee. The Permitted Mortgagee will not be bound by any such cancellation, surrender or material modifications made without its consent, other than a termination of this Lease or of Tenant's right to possession following the occurrence of an Event of Default so long as Landlord has complied with the provisions of this Section 12.03.

(b) If an Event of Default should occur hereunder:

(i) Landlord will deliver to the Permitted Mortgagee a copy of each notice of Tenant's default under this Lease if Landlord intends that such default is to serve as the basis for an Event of Default. Landlord shall not terminate this Lease or Tenant's right to possession hereunder until a notice specifying the Event of Default has been received by the Permitted Mortgagee and the Permitted Mortgagee has failed to cure the Event of Default within the time periods herein provided. Any payments made and other things done by the Permitted Mortgagee to cure the Event of Default shall be fully effective to prevent termination of this Lease or termination of Tenant's right to possession as if done by Tenant. The time period for cure is sixty (60) days after the Permitted Mortgagee's receipt of notice of the Event of Default; provided, however, that if a non-monetary Event of Default can be cured but by its nature cannot be cured within such sixty (60) day time period, and if the Permitted Mortgagee has commenced curing such Event of Default within such time period and thereafter diligently pursues such cure to completion, such sixty (60) day cure period shall be extended for the period of time necessary for the Permitted Mortgagee to cure such Event of Default; provided further, that the time period for curing the failure to commence and thereafter diligently pursue the Immediate Work (by commencing and thereafter diligently pursuing such work) shall be ten (10) days after Permitted Mortgagee's receipt of notice of such failure. The Permitted Mortgagee has the option, but not the obligation, to cure any such Event of Default, and after commencing the cure of any such Event of Default and after commencing the cure of any such Event of Default, and after commencing the cure of any such Event of Default, and after commencing the cure of any such Event of Default and there after commencing the cure of any such Event of Default and after commencing the cure of any such Event of Default may cease further actions to so cure.

(ii) If the Event of Default is a non-monetary default that the Permitted Mortgagee cannot reasonably cure without being in possession of the Premises, then for so long as the Permitted Mortgagee is diligently and with continuity attempting to secure possession of the Premises (whether by foreclosure or otherwise, but subject to the provisions of this Article 12), provided the Permitted Mortgagee cures any monetary default as well as any other defaults that are reasonably susceptible of then being cured by the Permitted Mortgagee, Landlord shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Premises in order to cure such Event of Default, and during such time Landlord shall not terminate this Lease or Tenant's right to possession of the Premises.

(c)If the Lease is terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to Landlord not later than sixty (60) days after receipt from Landlord of written notice of such termination (which notice Landlord agrees to give) to elect to receive, in its own name or in the name of its Affiliate (which shall have an amount of equity capital no less than that of Tenant on the Effective Date), a new lease of the Premises for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and Landlord agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any then uncured Event of Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder. Upon the execution of such new lease, Landlord and the new tenant named therein shall prorate income and expenses relating to the Demised Premises Improvements effective as of the date of termination of this Lease as if the tenant named in the new Lease had succeeded to the interest of Tenant under this Lease as of the effective date of such termination; provided, however, that Landlord shall not be obligated to account to the tenant named in the new lease for any income or revenue from the Demised Premises Improvements not actually delivered to Landlord in connection with such termination. In addition to the new lease, Landlord shall execute and deliver to the tenant named therein such deeds, bills of sale, assignments and other instruments as may be necessary to convey, assign and otherwise transfer to the tenant under the new lease, AS IS, without warranty of title or any other warranty or representation of any type, but with confirmation of no prior conveyance or assignment by Landlord, all of Landlord's right, title and interest in and to the

Demised Premises Improvements that may have reverted to Landlord on account of the termination of this Lease, including without limitation any subleases.

(d) No Permitted Mortgagee shall be or become liable to Landlord as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Tenant under this Lease or shall actually take possession of the Premises, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability.

(e) Nothing contained in this Section 12.03 shall prevent Landlord's pursuing monetary damages or injunctive relief relating to Tenant's default.

The provisions of this Section 12.03 are solely for the benefit of and enforceable by the Permitted Mortgagee and are not for the benefit of, and may not be enforced by, Tenant.

ARTICLE 13 WARRANTY OF PEACEFUL POSSESSION

13.01 <u>Warranty of Peaceful Possession</u>. Landlord covenants that Tenant, prior to the occurrence of an Event of Default, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease, any matter of record in Victoria County, Texas and Applicable Law. Landlord agrees to warrant and forever defend Tenant's right to such occupancy, use, and enjoyment and the title to the Premises against the claims of any and all Persons whomsoever lawfully claim the same, or any part thereof, by, through or under Landlord or any matter of record in Victoria County, Texas and any matters that a proper survey would reveal, but not otherwise, subject only to provisions of this Lease and Applicable Law.

ARTICLE 14 EVENT OF DEFAULT AND REMEDIES

14.01 <u>Event of Default</u>. Each of the following shall be deemed an "<u>Event of Default</u>" by Tenant hereunder and a material breach of this Lease:

(a) Whenever Tenant shall fail to pay any installment of Base Rent or any other sum payable by Tenant to Landlord, or any assignee, subcontractor or agent of Landlord, under this Lease or other agreement directly related to Tenant's operations at the Port of Victoria, on the date upon which the same is due to be paid, and such default shall continue for ten (10) days after Tenant shall have been given a written notice specifying such default; provided, that after two (2) notices of default have been given in any calendar year with respect to Tenant's failure to pay any installment of Base Rent, any subsequent failure to pay any installment of Base Rent during the balance of such calendar year shall constitute an Event of Default without any requirement of notice of such failure being given to Tenant;

(b) Whenever Tenant shall fail to promptly commence and thereafter diligently pursue performance of the Immediate Work and Tenant shall fail to remedy the same

(by commencing and thereafter diligently pursuing such work) within fifteen (15) days after Tenant shall have been given a written notice specifying such default;

(c) Whenever Tenant shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept, performed or observed by Tenant (including the covenants, agreements, terms or provisions contained herein that are to be kept or performed by the owner or lessee of the Premises) other than with respect to payment of Base Rent or other liquidated sums of money and as provided in Section 14.01(b) above, and Tenant shall fail to remedy the same within thirty (30) days after Tenant shall have been given a written notice specifying such default; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Tenant has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Tenant to cure such default;

(d) Whenever an involuntary petition shall be filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or whenever a receiver of Tenant, or of all or substantially all of the property of Tenant, shall be appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event; or

(e) Whenever Tenant shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or seek relief under any other law for the benefit of debtors.

14.02 <u>Remedies</u>. If an Event of Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Section 12.03, Landlord may at any time thereafter prior to the curing thereof and without waiving any other remedies hereunder or available to Landlord at law or in equity (Landlord's remedies being cumulative), do any one or more of the following:

(a) Landlord may terminate this Lease by giving Tenant written notice thereof, in which event this Lease and the Leasehold Estate and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date of such notice; and Landlord, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Base Rent or existing breaches hereof. In the event of such termination, Tenant shall be liable to Landlord for all Base Rent accrued to the date of termination and damages in an amount equal to (i) the discounted present value of the amount by which the Base Rent reserved hereunder for the remainder of the stated Term exceeds the then net fair market rental value of the Premises for such period of time, plus (ii) all expenses incurred by Landlord in enforcing its rights hereunder, including but not limited to attorneys' fees, court costs, and other such expenses.

(b) Landlord may terminate Tenant's right to possession of the Premises and enjoyment of the rents, issues, and profits therefrom without terminating this Lease or the Leasehold Estate, and reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Base Rent or existing breaches hereof, and lease, manage, and operate the Premises and collect the rents, issues, and profits therefrom all for the account of Tenant, and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing, and operating the Premises). If the net rental so received by Landlord is less than the amount necessary to satisfy all of Tenant's obligations under this Lease, Tenant shall pay to Landlord on demand the amount of such deficiency together with interest at the Interest Rate, and Landlord may bring suit from time to time to collect such deficiency. If the net rental so received by Landlord exceeds the amounts necessary to satisfy all of Tenant's obligations under this Lease, nevertheless Landlord shall retain such excess. In no event shall Landlord be liable for failure to so lease, manage, or operate the Premises or collect the rentals due under any subleases and any such failure shall not reduce Tenant's liability hereunder. If Landlord elects to proceed under this Section 14.02(b), Landlord may at any time thereafter elect to terminate this Lease as provided in Section 14.02(a).

14.03 Landlord's Default. If (a) Landlord fails to make any payment of money required to be paid by Landlord to Tenant or any third party under this Lease on the date upon which the same is due to be paid, and such default shall continue for ten (10) days after Landlord shall have been given a written notice specifying such default; or (b) Landlord fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept, performed or observed by Landlord (other than payment of money) and Landlord shall fail to remedy the same within thirty (30) days after Landlord shall have been given a written notice specifying the same; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Landlord has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Landlord to cure such default; then in such event Tenant may enforce the performance of this Lease and collect damages by any method provided by law or equity except as otherwise expressly provided herein; provided, however, that Tenant shall not take any action to enforce the performance of this Lease and collect damages until thirty (30) days thereafter has passed with such default remaining uncured (plus such additional time period as provided in clause (b) above with respect to cure by Landlord). Notwithstanding the foregoing provisions of this Section 14.03, Tenant shall have no right to terminate this Lease, except as otherwise provided herein.

14.04 <u>Time is of the Essence</u>. Whenever in this Lease a date, time period or other similar requirement or limitation is provided, time is of the essence.

ARTICLE 15 MISCELLANEOUS

15.01 <u>Notices</u>. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 15.01; or (b) delivering the same to the party to be notified in person or through a reliable courier service. Notice given in accordance herewith shall be effective upon receipt at the address of the

addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

Landlord:

Victoria County Navigation District 1934 FM 1492 Victoria, Texas 77905 Attn: Executive Director Phone: (361) 570-8855 Fax: (361) 570-8854

With copies to:

The Law Office of Duane G. Crocker, P.C. 121 S. Main St., Ste. 300 P.O. Box 2661 Victoria, Texas 77902 Phone: 361.574.8898 Fax: 361.574.8881

Tenant:

With a required copy to:

Debra M. Gilbreath Dow Golub Remels & Gilbreath, PLLC 2700 Post Oak Blvd., Suite 1750 Houston, Texas 77056 Phone: (713) 403-4216

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving ten (10) days advance notice to such effect in accordance with the provisions of this Section 15.01.

Victoria Bloomington, LLC 5850 San Felipe, Suite 601

Houston, TX 77057 Attn: GP Manalac Phone: (713) 503-8645

15.02 Performance of Other Party's Obligations. If either Party fails to perform or observe any of its covenants, agreements, or obligations hereunder for a period of thirty (30) days after notice of such failure is given by the other Party, then the other Party shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements, or obligations which are asserted to have not been performed or observed at the expense of the failing Party and to recover from the failing Party all reasonable costs and expenses incurred in connection with attempting to do so, together with interest thereon at the Interest Rate from the date expended until repaid. Notwithstanding the foregoing, if either Party determines, in its reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of \$50,000.00, exists due to the other Party's failure to observe or perform or observe the covenants, agreements, and obligations which give rise to such emergency at the expense of the failing Party and immediately perform or observe the failing Party and recover from the failing Party all costs and expenses incurred in connection

with attempting to do so, together with interest thereon at the Interest Rate from the date expended until repaid. Any performance or observance by a Party pursuant to this Section 15.02 shall not constitute a waiver of the other Party's failure to perform or observe. In performing its self-help rights, the applicable Party shall perform in a commercially reasonable manner,

15.03 <u>Arbitration</u>. (a) This section shall only apply where express provision is made in this Lease for settlement of a dispute or determination of a matter by arbitration.

(b) If either Party wishes to settle a dispute or determine a matter by arbitration, such matter shall be resolved by binding arbitration in accordance with the provisions of this Section 15.03, and shall be self-administered in accordance with the American Arbitration Association pursuant to its rules of commercial arbitration. Any claimed default based upon such dispute shall be deemed suspended until the dispute is resolved, provided that the Party claimed to be in default is proceeding diligently with the arbitration; provided, however, nothing contained in this Section 15.03 shall suspend the obligation of Tenant to pay Base Rent hereunder.

(c) Landlord and Tenant may agree on an arbitrator, and in such event, such arbitrator's decision shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction. If Landlord and Tenant are unable to agree on an arbitrator, Landlord and Tenant shall each appoint an arbitrator, and such two arbitrators shall select, within fifteen (15) days after the appointment of such second arbitrator, a third arbitrator. The decision of a majority of the three arbitrators shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction.

(d) If (i) either Landlord or Tenant fails to appoint an arbitrator within ten (10) days after receiving notice from the other Party that such other Party has appointed an arbitrator, or (ii) the first two arbitrators fail to appoint a third arbitrator within the aforesaid fifteen (15) day period, or (iii) any Person appointed as an arbitrator by or on behalf of either Landlord or Tenant shall die, fail to act, resign or become disqualified and the Party by or on behalf of whom such arbitrator was appointed shall fail to appoint a substitute arbitrator within ten (10) days after being requested to do so by the other Party, the arbitrator in question will be appointed by the District Courts of Victoria County Texas subject to the rules of such courts regarding recusal of judges. Each Party shall bear and pay the cost of the arbitrator appointed by (or for) it, and the cost of the third arbitrator shall be borne and paid equally by Landlord and Tenant. If the presiding judge of the applicable court does not appoint the third arbitrator within forty-five (45) days, then such arbitrator shall be appointed within fifteen (15) days thereafter in accordance with the rules of the American Arbitration Association, but subject to the requirements herein for the appointment of arbitrators.

(e) All arbitration proceedings shall be held in Victoria, Victoria County Texas. If a hearing is scheduled, Landlord and Tenant shall be given reasonable advance notice of the time and place of any arbitration hearing and both shall have the right to be present, heard and represented by counsel. The arbitrators shall not have the right to add to or subtract from or otherwise change the terms and provisions of this Lease, and their determination shall be consistent and in accordance with the terms and provisions of this Lease. 15.04 <u>Modification and Non-Waiver</u>. No variations, modifications, or changes herein or hereof shall be binding upon any Party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either Party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Landlord of any Base Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any Party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving Party.

15.05 <u>Governing Law</u>. This Lease shall be construed and enforced in accordance with the laws of the State of Texas.

15.06 <u>Number and Gender</u>. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate.

15.07 <u>Estoppel Certificate</u>. Landlord and Tenant shall execute and deliver to each other, promptly upon any request therefor by the other Party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting Party and stating:

(a) whether or not this Lease is in full force and effect;

(b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;

(c) whether or not there are any existing defaults hereunder known to the Party executing the certificate, and specifying the nature thereof;

(d) whether or not any particular Article, Section, or provision of this Lease has been complied with to the knowledge of the Party executing the certificate; and

(e) such other matters as may be reasonably requested.

15.08 <u>Severability</u>. If any provision of this Lease or the application thereof to any Person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15.09 <u>Attorney Fees</u>. If litigation is ever instituted by either Party to enforce, or to seek damages for the breach of, any provision hereof, the prevailing Party therein shall be promptly reimbursed by the other Party for all attorneys' fees reasonably incurred by the prevailing Party in connection with such litigation.

15.10 <u>Surrender of Premises: Holding Over</u>. Upon termination or expiration of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Premises, except as otherwise specifically provided in Section 9.01, in good order, repair, and condition. Upon such

termination or expiration Landlord may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by force, summary proceedings, ejectment, or otherwise, and may dispossess and remove Tenant from the Premises and may have, hold, and enjoy the Premises and all rental and other income therefrom, free of any claim by Tenant with respect thereto. If Tenant does not surrender possession of the Premises at the end of the Term, such action shall not extend the Term, Tenant shall be a tenant at sufferance, and during such time of occupancy Tenant shall pay to Landlord, as damages, an amount equal to twice the amount of Base Rent that was being paid immediately prior to the end of the Term. Landlord shall not be deemed to have accepted a surrender of the Premises by Tenant, or to have extended the Term, other than by execution of a written agreement specifically so stating.

15.11 <u>Relation of Parties</u>. It is the intention of Landlord and Tenant to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make Landlord and Tenant partners or joint venturers or to render either Party hereto liable for any obligation of the other.

15.12 Force Majeure. (a) As used herein, "Force Majeure" shall mean, with respect to the applicable Force Majeure Party, the occurrence of any of the following: (i) strikes, lockouts or picketing (legal or illegal); (ii) a temporary taking; (iii) riot, civil commotion, insurrection and war; (iv) fire or other casualty, accidents, acts of God or public enemy; (iii) natural disaster directly impacting the Land and/or Demised Premises; (vi) application of any Applicable Law to the extent that such application was not reasonably foreseeable by the Party claiming the right to an extension of time as a result of an event of Force Majeure (the "Force Majeure Party"); or (vii) any other event which prevents or delays the performance by the Force Majeure Party of any of its obligations imposed upon it hereunder and the prevention or cessation of which event is beyond the reasonable control of the Force Majeure Party. However, in no event shall any of the following be deemed to constitute Force Majeure: (A) failure to obtain financing for, failure to refinance, or cessation of disbursements under financing for, the purchase, construction, demolition, repair or ownership of the Demised Premises Improvements; (B) law suits among parties comprising Tenant; (C) inability to pay when due monetary sums; or (D) the acts or omissions of the contractor, subcontractors or suppliers of the Force Majeure Party or any other Person acting by, through or under the Force Majeure Party.

(b) If a Force Majeure Party shall be delayed, hindered or prevented from performance of any of its obligations hereunder (other than to pay Base Rent or other monetary sum) by reason of Force Majeure, the time for performance of such obligation shall be extended on a day-for-day basis for each day of actual delay, provided that the following requirements are complied with by the Force Majeure Party: (y) the Force Majeure Party shall give prompt written notice of such occurrence to the other Party, and (z) the Force Majeure Party shall diligently attempt to remove, resolve or otherwise eliminate such event, and minimize the cost and time delay associated with such event, keep the other Party advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, neither Party shall be relieved by any event of Force Majeure from its obligation to pay Base Rent or other monetary sum hereunder. 15.13 <u>Non-Merger</u>. Notwithstanding the fact that fee title to the Demised Premises and to the Leasehold Estate may, at any time, be held by the same Person, there shall be no merger of the Leasehold Estate and fee estate unless the respective owners thereof execute and file for record in the Office of the County Clerk of Victoria County, Texas a document expressly providing for the merger of such estates.

15.14 <u>Entireties</u>. This Lease constitutes the entire agreement of the Parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. However, any other agreements entered into between Landlord and Tenant of even date herewith are not merged herein and shall remain in effect.

15.15 Limitation on Landlord's Liability. Notwithstanding anything to the contrary contained herein, (i) Landlord's liability for failure to perform any of its obligations hereunder or otherwise relating to the Premises is hereby expressly limited to Landlord's interest in and to the Premises, and (ii) should Landlord fail to pay any sum required to be paid by Landlord hereunder, or fail to perform any obligation required to be performed by Landlord hereunder, any judicial proceedings brought by Tenant against Landlord shall be limited to proceeding against Landlord's rights and interest in and to the Premises, and no attachment, execution, or other writ or process shall be sought, issued, or levied upon any assets, properties (including the Land and any improvements thereon), or funds of Landlord, other than against Landlord's interest in and to the Premises. No provision contained in this Agreement shall be interpreted in any manner as a waiver of any rights or protections against suit and/or liability, including, without limitation, any sovereign immunity protection which Landlord may possess or enjoy by virtue of its status and existence as a governmental entity in the State of Texas.

15.16 <u>Recordation</u>. Simultaneously with the execution of this Lease, Landlord and Tenant will promptly execute an instrument in recordable form constituting a memorandum of this Lease in form attached hereto as <u>Exhibit C</u>, which shall be filed for record in the Office of the County Clerk of Victoria County, Texas, solely to give record notice of the existence of this Lease. No such memorandum shall in any way vary, modify or supersede this Lease. Except in connection with actual litigation between the Parties, this Lease shall not be filed for record.

15.17 <u>Successors and Assigns</u>. This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to Tenant's rights to Transfer, sublet, or Encumber, this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Whenever a reference is made herein to either Party, such reference shall include the party's permitted successors and assigns.

15.18 Inspection. Landlord shall have the right but not the obligations to enter upon the Demised Premises during reasonable business hours and upon reasonable notice with or without a representative of Tenant (a) at any time that bona fide emergency circumstances require, and (b) to conduct repairs related to the Land, provided that in all such cases, Landlord shall use commercially reasonable efforts to coordinate such entry with Tenant and that Landlord shall comply with all rules and requirements of Tenant to enter the Demised Premises. At all other times, Landlord shall have the right but not the obligation to enter the Demised Premises ONLY during reasonable business hours and upon prior reasonable notice to inspect the Demised Premised Premises of Tenant and provided that Landlord complies with all rules and requirements of Tenant to enter the Demised Premises.

accessing the Demised Premises Landlord shall comply with all (a) rules and regulations of Tenant, and (b) applicable laws, rules and regulations applicable to the Premises, including those relating to health, safety, and the environment, as well as those of any Texas state agencies with jurisdiction over Tenant's use of the Premises. In addition, Tenant shall have the right at any time to deny access to the Demised Premises to Landlord if Tenant determines, in its reasonable discretion, that Landlord has violated the rules and regulations or applicable legal requirements (or that their entry of Landlord onto the Demised Premises would cause a violation of the rules and regulations or applicable legal requirements), or which constitutes a risk to health, safety, or the environment. In such event, Tenant shall notify Landlord in writing of the specific violation and the action required, in the reasonable judgment of Tenant, to correct the violation. Upon correction of the violation, Tenant shall permit Landlord to access the Demised Premises. Nothing herein shall prevent regulatory or governmental authorities from entering the Demised Premises as authorized by applicable law. Notwithstanding anything to the contrary herein, if Landlord reasonably believes that a violation of Article 16 or of any applicable Environmental Law has occurred, or if Landlord has received a notice from a Governmental Authority alleging any violation of any Environmental Law, Landlord shall have the right to access the Demised Premises in compliance with the provisions make such inspections as Landlord shall reasonably require. Any such inspection and the repair of any damage to the Demised Premises Improvements caused by any such inspection, shall be at Landlord's cost and expense unless a violation of Article 16 or of any Environmental Law has occurred, in which event Tenant shall be responsible for such cost and expense.

15.19 <u>No Third Parties Benefited</u>. Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, opportunities to extend the Term, and any right to execute a new lease (if applicable), and certain other enumerated rights granted to the Permitted Mortgagee, the terms and provisions of this Lease are for the sole benefit of, and may be enforced only by, Landlord and Tenant, and no other Persons whatsoever (including any Direct or Indirect Equity Owner in Tenant) is intended to benefit herefrom or shall have any right to enforce this Lease.

15.20 <u>Survival</u>. Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease, including indemnification obligations relating to events or conditions that occur or exist prior to such expiration or termination, shall survive the expiration or termination of this Lease.

15.21 <u>Use of Landlord's Name</u>. Tenant shall not use Landlord's name in any advertising or promotional material relating to the Premises without Landlord's prior written consent, but Tenant may make reference to this Lease and to Landlord in legally operative documents, as Tenant shall deem reasonably necessary.

15.22 <u>Interest</u>. If any Base Rent or other amount required to be paid by one Party to the other Party pursuant to this Lease is not paid when due, such amount shall bear interest at the Interest Rate from the date due until the date paid in full.

15.23 <u>Limit on Damages</u>. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 15.23, NOTWITHSTANDING ANYTHING IN THIS LEASE OR UNDER LAW OR EQUITY TO THE CONTRARY, EXCEPT FOR INTEREST

CHARGEABLE HEREUNDER NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST REVENUES OR PROFITS ARISING OUT OF THIS LEASE OR RELATING TO THE PREMISES, INCLUDING THE NEGLIGENCE OF THE PARTY AGAINST WHOM THE CLAIM WOULD BE MADE.

15.24 <u>Broker</u>. Landlord and Tenant represent and warrant each to the other that such Party has not dealt with any broker in connection with this Lease and that, insofar as such Party knows, no broker negotiated this Lease or is entitled to any commission in connection herewith. Landlord and Tenant each agree to indemnify the other Party for any losses, costs or damages (including reasonable attorneys' fees) incurred by the other Party as a consequence of the breach or falsity of the representations and warranties of such Party under this Section 15.24.

HAZARDOUS SUBSTANCES

16.01 Use of Hazardous Substances. Except as expressly authorized under the definition of "Hazardous Substances," Tenant shall not cause or permit any Hazardous Substance to exist or otherwise be brought, kept or used in or about the Premises or the Land or any improvements thereon by Tenant, its agents, employees, contractors or invitees (collectively, the "Tenant Representatives"), and neither Tenant nor any of the Tenant Representatives shall use, generate, produce, store, Release or otherwise cause or permit the occurrence or continued existence of any Hazardous Substances in, on, under or about the Premises or to be transported to or from the Premises, except in strict compliance with applicable Environmental Laws. Tenant and Tenant Representatives shall, at their own expense, procure, maintain in effect, and comply with all conditions of all permits, licenses, registrations, exemptions, and other governmental and regulatory approvals required under Environmental Laws for any Hazardous Substances in, on, under, to or from or about the Premises, including the discharge of appropriately treated and approved wastes into or through any sanitary sewer serving the Premises.

16.02 <u>Remediation of Hazardous Substances</u>. (a) As between Landlord and Tenant and specifically excluding any Hazardous Substances exposure or contamination to the extent proven to have been caused by Landlord, if any actual or suspected exposure to, or contamination arising from, Hazardous Substances occurs at any time, or if Tenant or any Tenant Representative causes, whether by action or failure to act, any exposure or contamination of the Land or any improvements thereon from Hazardous Substances ("Tenant Responsible Contamination"), Tenant and/or Tenant Representatives, at their sole cost and expense, shall promptly and diligently remove and, as applicable, remediate such Hazardous Substances from, at, or under the Premises or the Land or improvements thereon, or the groundwater underlying the Premises or the Land, in strict compliance with applicable Environmental Laws and in accordance with then prevailing industry standards. Tenant shall, at its sole cost and expense, develop, implement, and document in writing regular monitoring of the Premises for the possible presence or Release of, or exposure to, any Tenant Responsible Contamination. In the event any actual or suspected Tenant Responsible Contamination is identified Tenant shall: (i) promptly (but no later than three (3) Business Days of such identification) notify Landlord of such actual or suspected contamination and the location thereof; and (ii) arrange no later than five (5) Business Days of such identification for a third party, independent inspection of the Premises by a well-qualified (and, as necessary, licensed) environmental consultant to confirm whether the Tenant Responsible Contamination exists, which inspection will be performed at Tenant's sole cost and expense no sooner than five (5) days but no later than ten (10) days after Tenant notifies Landlord in writing of such planned inspection. Neither Tenant nor any Tenant Representative shall take any required remedial action in response to any Tenant Responsible Contamination in or about the Premises or the Land or improvements thereon, or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant Responsible Contamination, without first notifying Landlord at least five (5) days in advance of Tenant's intention to do so and affording Landlord the opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

(b) If Tenant does not promptly and diligently take all steps to prepare any remediation plan required for any Tenant Responsible Contamination, obtain all necessary approvals for such remediation plan, and thereafter commence and perform the required remediation within thirty (30) days after Landlord has approved Tenant's remediation plan and all other required approvals and consents have been obtained (subject to extension due to delays caused by Force Majeure), and thereafter continue to diligently prosecute such remediation to completion in accordance with the approved remediation plan, Landlord, at its option (but without any obligation to do so), may cause such remediation to be accomplished, and Tenant shall reimburse Landlord immediately upon demand for all amounts paid by Landlord, together with interest on such amounts at the Interest Rate from the date incurred until the date paid in full.

(c) Tenant shall promptly deliver to Landlord copies of all hazardous waste manifests, and otherwise deliver such information and supporting documentation to Landlord as Landlord may reasonably require, to evidence the proper management, transport and disposal of all Hazardous Substances removed from the Premises, the Land or any improvements thereon as part of Tenant's remediation of any Tenant Responsible Contamination.

(d) Any cleanup, removal or other remediation of Tenant Responsible Contamination must be completed in its entirety at or before the expiration or termination of this Lease.

16.03 <u>Disposal of Hazardous Substances</u>. Tenant shall cause all Hazardous Substances removed from the Premises or the Land as part of the required remediation of any Tenant Responsible Contamination to be removed, contained, and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such Hazardous Substances.

16.04 Notice of Hazardous Substance Matters. Each Party (herein the "Notifying Party") shall immediately notify the other Party ("Recipient") in writing of (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Premises pursuant to any Environmental Law; (b) any claim made or threatened by any Person against the Notifying Party or the Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances resulting from operations or activities on or about the Premises; and (c) any report made to any Governmental Authority arising out of or in connection with any Hazardous Substances in, on, under, Released, or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith, all on receipt by the

Notifying Party of actual knowledge of any of the foregoing matters. The Notifying Party shall deliver to the Recipient as promptly as possible, and in any event within ten (10) days after the Notifying Party first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof.

[Signature Page Follows]

EXECUTED as of the date and year first above written.

LANDLORD:

VICTORIA COUNTY NAVIGATION DISTRICT

By:		
Name:	ROBBY BURDAE	
Title:	CHAITZMAN	

TENANT:

VICTORIA BLOOMINGTON, LLC By: Pamela N. Castleman, Manager

Signature Page to Ground Lease

SCHEDULE 1,01

DEFINITIONS; TERMINOLOGY

1.01 <u>Definitions</u>. As used in the Lease, each of the following terms shall have the following meaning:

"Adjustment Date" has the meaning set forth in Section 4.01(c).

"<u>Affiliate</u>" means, when used with reference to a specified Person, any Person who directly or indirectly Controls, is Controlled by or is under common Control with the specified Person. "<u>Affiliate</u>" shall also include (i) any Person which owns, directly or indirectly (including through one or more intermediaries), fifty percent (50%) or more of any class of voting security or equity interests of such specified Person, (ii) any Subsidiary of such specified Person and (iii) any Subsidiary of a Person defined in clause (i). Notwithstanding the foregoing however, the officers, directors, trustees and individuals in similar capacities with respect to any Person shall not be considered "Affiliates" of such Person merely on account of such Person's status as an officer, director, trustee or other similar position or capacity; and further, a stockholder shall not be considered an "Affiliate" merely on account of its status as a stockholder.

"<u>Applicable Law</u>" means, collectively, all applicable federal, state and local statutes, ordinances, codes, rules, regulations and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority having jurisdiction over any of the Parties or the Premises. Applicable Law includes Environmental Laws.

"BLS" has the meaning set forth in Section 4.01(c).

"Base Rent" has the meaning set forth in Section 4.01.

"Business Days" shall mean any day other than Saturday, Sunday and other days on which banks in Victoria, Texas are customarily closed for business.

"Civil Infrastructure Improvements" has the meaning set forth in Section 6.03.

"Claims" has the meaning set forth in Section 8.04.

"Commencement Month" means the calendar month in which the Effective Date occurs,

"Construction Standards" has the meaning set forth in Section 6.04(a).

"<u>Control</u>" (including the correlates of "<u>Controlled</u>" and "<u>Controlling</u>") means the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of the specified Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

"Demised Premises" has the meaning set forth in the Recitals,

"Demised Premises Improvements" has the meaning set forth in the Recitals.

"<u>Direct or Indirect Equity Owner</u>" means each Person that owns a direct or indirect equity ownership interest in Tenant.

"Effective Date" has the meaning set forth in the Preamble.

"Encumbrance" or "Encumber" has the meaning set forth in Section 11.01.

"Environmental Laws" means all laws, statutes, codes, ordinances, orders, interpretations, rules and regulations of any Governmental Authority applicable to Landlord, Tenant or the Premises relating to human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.* ("RCRA"); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC Section 9601 *et seq.* ("CERCLA"), the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*, the Federal Hazardous Materials Transportation Law, 49 U.S.C. Section 5101 *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*, the Texas Solid Waste Disposal Act, Chapter 361 of the Texas Health & Safety Code, all as now or hereafter amended, as well as all regulations promulgated thereunder and any common law or any other rule of law of any Governmental Authority applicable to Landlord, Tenant or the Premises and relating to human health or the environment.

"Event of Default" has the meaning set forth in Section 14.01.

"Force Majeure" has the meaning set forth in Section 15,12(a).

"Force Majeure Party" has the meaning set forth in Section 15.12(a).

"Governmental Authorities" has the meaning set forth in Section 5.01.

"Governmental Authority" has the meaning set forth in Section 5.01.

"Hazardous Substances" means any of the following: (i) any "hazardous waste," "solid waste," "hazardous material," "hazardous substance," "toxic substance," "pollutant," or "contaminant" as those or similar terms are defined or regulated under any Environmental Laws; (ii) any mold, mildew, fungus, or other potentially dangerous organisms; (iii) asbestos (whether or not friable) and asbestos-containing materials; (iv) any volatile organic compounds, including oil and petroleum products; (v) any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to health, safety or welfare of any person or to the environment, including any polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (vi) radon gas; (vii) any other substance the presence of which on the Premises is prohibited by any Environmental Laws; and (viii) any other substance which by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal. However, for the purposes of the covenants, but not the indemnification obligations, set forth in this Lease, the term "<u>Hazardous Substances</u>" shall not include small quantities of materials, chemicals or substances normally used in connection with the use, management, operation, or ownership of a facility similar to Tenant's provided that such materials, chemicals or substances are generated, produced, stored, handled, used transported and disposed in a safe and prudent manner in strict compliance with all Environmental Laws.

"Immediate Work" has the meaning set forth in Section 9.01.

"Imposition Trustee" has the meaning set forth in Section 5.03.

"Impositions" has the meaning set forth in Section 5.01.

"Indemnified Parties" has the meaning set forth in Section 8.04.

"Index" has the meaning set forth in Section 4.01(c).

"Interest Rate" means an annual rate of interest equal to the lesser of (i) five percent (5%) above the "Prime Rate" as announced from time to time by *The Wall Street Journal*, or if such publication ceases to exist or report a "Prime Rate", five percent (5%) per annum above the prime rate or reference rate announced from time to time by JPMorgan Chase Bank, N.A. (or any successor thereto) or such other major national banking institution selected by Landlord, or (ii) the maximum contract rate of interest then permitted by Applicable Law.

"Land" has the meaning set forth in the Recitals.

"Landlord" has the meaning set forth in the Preamble and Section 11.02.

"Landlord Release Party" has the meaning set forth in Section 8.05.

"<u>Landlord's Interest</u>" means Landlord's fee title to the Demised Premises, Landlord's reversionary interest in the Demised Premises and Demised Premises Improvements if any, Landlord's right to receive payment of Base Rent and Landlord's other rights under this Lease.

"Lease" has the meaning set forth in the Preamble.

"Lease Year" has the meaning set forth in Section 3.01.

"<u>Leasehold Estate</u>" means the leasehold estate and Tenant's other rights created by this Lease, including Tenant's ownership interest in the Demised Premises Improvements during the Term.

"Notifying Party" has the meaning set forth in Section 16.04.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Permitted Assignment" has the meaning set forth in Section 11.03.

"Permitted Sublease" has the meaning set forth in Section 11.03.

"Permitted Mortgagee" has the meaning set forth in Section 12.01(a).

"Permitted Mortgage" has the meaning set forth in Section 12.01(a).

"<u>Person</u>" means any individual, corporation, partnership, limited liability company or other entity of any kind.

"<u>Premises</u>" means the Demised Premises, Demised Premises Improvements, and any Easement Area Improvements.

"Recipient" has the meaning set forth in Section 16.04.

"<u>Release</u>" means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

"Schedules" has the meaning set forth in Section 1.02 of Schedule 1.01.

"Site Plan" has the meaning set forth in the Recitals.

"<u>Subsidiary</u>" means, with respect to any Person, any corporation or other entity of which more than fifty percent (50%) of (i) the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) or (ii) other equity interest comparable to that described in the preceding clause (i) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries, or by one of more other Subsidiaries.

"<u>Tenant</u>" has the meaning set forth in the Preamble. Upon an assignment of this Lease permitted in accordance with the terms of this Lease, the assignee ("<u>Transferee</u>") will thereupon succeed to the rights and obligations of, and become, the "Tenant" for purposes of this Lease.

"Tenant Parties" has the meaning set forth in Section 8.04.

"Tenant Release Party" has the meaning set forth in Section 8.05.

"Tenant Representatives" has the meaning set forth in Section 16.01.

"Tenant Responsible Contamination" has the meaning set forth in Section 16,02.

"Term" has the meaning set forth in Section 3.01.

"Transfer" has the meaning set forth in Sections 11.01.

"Transferee" has the meaning set forth in the definition of "Tenant".

"Transferor" means the Person making the Transfer.

1.02 <u>Terminology</u>. The terms defined in this <u>Schedule 1.01</u> shall apply throughout the Lease. All references in the Lease to "Section" or "Article" shall refer to the section or article of the Lease in which such reference appears, unless otherwise expressly stated. All references to "<u>Schedules</u>" shall mean the schedules attached to the Lease. All references to "Exhibits" shall mean the exhibits attached to the Lease. All such Schedules and Exhibits are incorporated in the Lease by this reference. All references to herein, hereof, hereto, hereunder or similar terms shall be deemed to refer to the entire Lease. As used in this Lease, the term "including" shall mean "including but not limited to." The headings of Articles and Sections in and Exhibits to the Lease shall be for convenience only and shall not affect the interpretation hereof. If Landlord or Tenant ceases to be a partnership, all references herein to Landlord's or Tenant's partners shall thereafter be deemed to be references to Landlord's or Tenant's other equity owners.

1.03 Interpretation. Words used in the singular number shall include the plural, and viceversa, and any gender shall be deemed to include each other gender. Reference to any agreement means such agreement as amended or modified and in effect from time to time in accordance with the terms thereof. This Lease was negotiated between Landlord and Tenant with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Lease to be construed or interpreted against either Party shall not apply to any construction or interpretation hereof.

-5-

EXHIBIT A

METES & BOUNDS DESCRIPTION OF DEMISED PREMISES

[attached]

Exhibit A

THE STATE OF TEXAS) COUNTY OF VICTORIA

Being a 12.32 acre tract of land situated in the Diego Garcia League, Abstract No. 39, Victoria County, Texas, said 12.32 acres being a portion of an 18.808 acre tract of land, described as Tract II, conveyed from Erol C. Tucker and Frank Buhler, III, et al to Victoria County Navigation District by deed dated May 10, 2001 as recorded in Official Records Instrument No. 200105883 of Victoria County, Texas, said 4.00 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch diameter iron rod found for the East corner of the herein described tract, said iron rod being the East corner of the 18,808 acre Victoria County Navigation District tract, the North corner of a 682.8788 acre tract of land conveyed from Nancy Marion Stoner, et al to EL Du Pont De Nemours and Company as recorded in Volume 812, Page 670 of the Deed Records of said county, and in the southwest right-of-way line of Old Bloomington Road (60' R.O.W.);

THENCE, South 53°17°32" West (deed call, South 54°41'22" West), with the common line of the 18.808 acre Victoria County Navigation District tract and the 682.8788 acre E.I. Du Pont De Nemours and Company tract, passing at a distance of 296.34 feet a 5/8 inch diameter iron rod found for reference marking the East corner of a 5.35 acre Railroad Easement reporded in Volume 71, Page 249 of the Deed Records of said county, and continuing for an overall distance of 399.04 feet (deed call, 399.04 feet) to a 5/8 inch diameter iron rod found for the South corner of the herein described tract, said iron rod also being the South corner of the 18.808 acre Victoria County Navigation District tract, and the beginning of a non-tangent curve to the right;

THENCE, with the curving southwest line of the 18.808 acre Victoria County Navigation District tract, and 50 feet parallel and northeast of the centerline of the Union Pacific Railroad tracks, along said curve to the right, with a radius of 3,769.83 feet, a central angle of 04°46'55", an arc length of 314.63 feet, and a chord which bears North 21°19'00" West, a distance of 314.54 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;

THENCE, North 18°55'33" West (deed call, North 17°31'43" West), with the southwest line of the 18.808 acre Viotoria County Navigation District tract and 50 feet parallel from the centerline of the Union Pacific Railroad tracks, a distance of 1,115,93 feet to a 1/2 inch diameter iron rod with plastic cap stamped "RWP INC 1855" found for the West corner of the herein described tract, said iron rod also being South 18°55'33" East (deed call, South 17°31'43" East), a distance of 866.17 feet from a 5/8 inch diameter iron rod found for the West corner of the 18.808 acre Victoria County Navigation District tract and in the southeast right-of-way line of Farm-to-Market Road 1432 (120' R.O.W.); THENCE, North 70°58'47" Bast, crossing the 18.808 acre Victoria County Navigation District tract, passing at a distance of 195.38 feet a 5/8 inch diameter iron rod found for the South corner of a 1.80 acre tract of land conveyed from J.M. Pickering, et al to Tennessee Gas Transmission Company as recorded in Volume 448, Page 120 of the Deed Records of said county, and continuing for an overall distance of 390.94 feet to a 5/8 lnch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the North corner of the herein described tract, said iron rod being an exterior corner of the 18.808 Victoria County Navigation District tract, the Bast corner of the 1.80 acre Tennessee Gas Transmission Company tract and in the southwest right-of-way line of Old Bloomington Road (60' R.O.W.), said iron rod being South 67°05'49" West, a distance of 2.72 feet from a 1/2 iron rod with plastic cap stamped "RWP INC 1855" found for reference and being South 19°01'13" East (deed call, South 17°38'00" East), a distance of 397.50 feet from a 1/2 inch diameter iron rod with plastic cap stamped "RWP INC 1855" found for the North corner of the 1.80 acre Tennessee Gas Transmission Company tract;

THENCE, South 19°01'13" East (deed call, South 17°38'00" East), with the northeast line of the 18.808 acre Victoria County Navigation District tract and the southwest right-of-way line of Old Bloomington Road, a distance of 1,308.97 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 12.32 acres of land, more or less.

Bearings are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances shown are surface and may be converted to grid by dividing by the combined adjustment factor of 1.000130.

A survey drawing of even date herewith accompanies this legal description,

The foregoing Fieldnote Description is based on an actual survey made under my supervision in November 2016 and is true and correct to the best of my knowledge and belief.

Wm. Patrick Hohlt 1/3/17 Registered Professional Land Surveyor Texas No. 5523 TBPLS Registration No. 100576-00



1710080

EXHIBIT B

SITE PLAN

[attached]

Exhibit B

EXHIBIT C

FORM OF MEMORANDUM OF GROUND LEASE

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER,

MEMORANDUM OF GROUND LEASE

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF VICTORIA §

§

THAT, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Victoria County Navigation District, whose address is 1934 FM 1432, Victoria County, Victoria, Texas 77905, (hereinafter referred to as "Lessor"), has entered into, executed and delivered an unrecorded Ground Lease ("Lease"), in favor of Victoria Bloomington, LLC ("Lessee"), whose address is 5850 San Felipe, Suite 650, Houston, Texas 77057, effective as of _______, 2017, covering and affecting certain real property owned by Lessor and to which Lessor leased and let to Lessee the real property located in Victoria County, State of Texas and described on Exhibit "A" attached hereto and incorporated herein by reference ("Property"):

Lessor by the Lease, has leased and let unto Lessee the exclusive right to possession (as defined therein) to the Property, during the term of the Lease, and among other rights set forth therein, the right to construct and maintain for Lessee's use and operations such facilities as are provided for in the Lease and the right of ingress and egress in, on, and over the Property.

This Memorandum of Ground Lease is executed by Lessor and Lessee and placed of record in the County in which the Property is located for the purpose of placing all persons on notice of the existence of the Lease, which Lease is not being placed of record. The Lease is for a primary term of seven (7) years commencing on ______, 20___ and terminating on ______, 20___, unless extended for up to an additional twenty-one (21) years as provided in the Lease, subject to all terms and provisions set forth in said Lease, reference to the original Lease is here made for all purposes. The Lease, with all of its terms, covenants and other provisions is incorporated into this Memorandum for all purposes.

IN WITNESS WHEREOF, this instrument is executed this _____ day of , 20

LESSOR:

VICTORIA COUNTY NAVIGATION DISTRICT

§

By:	
Name:	
Title:	· · · · · · · · · · · · · · · · · · ·

STATE OF TEXAS

COUNTY OF VICTORIA §

This instrument was acknowledged before me on this _____ day of _____, 20____, by ______, _____ of the Victoria County Navigation District.

NOTARY PUBLIC, STATE OF TEXAS

LESSEE:

VICTORIA BLOOMINGTON, LLC,

a Texas limited liability company

By:

Pamela N. Castleman, Manager

.

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 20____, by Pamela N. Castleman, Manager, of Victoria Bloomington, LLC.

NOTARY PUBLIC, STATE OF TEXAS
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this "First Amendment") is made as of February 23, 2018 (the "Effective Date") by and among VICTORIA COUNTY NAVIGATION DISTRICT, a navigation district formed under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas ("Landlord"), and VICTORIA BLOOMINGTON, LLC, a Texas limited liability company ("Tenant").

RECITALS:

A. Landlord and Tenant entered into that certain Ground Lease dated November 21, 2017 (the "Lease") for approximately 12.32 acres of real property located in Victoria County, Texas, as described therein (the "<u>Premises</u>"), a memorandum of which is recorded as Instrument No. 201712650 of the Official Public Records of Victoria County, Texas (the "<u>Memorandum</u>").

B. Landlord and Tenant desire to amend the Lease pursuant to the terms and conditions below.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the foregoing recitals, Ten and No/100 Dollars (\$10.00) in hand paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby acknowledge and agree to the following:

1. The above recitals are hereby incorporated by reference. All capitalized terms not initially defined in this First Amendment shall have the meanings given to them in the Lease, as applicable and as amended hereby, unless otherwise defined herein.

2. <u>Wastewater Discharge</u>. The Lease is hereby amended to include a Section 15.25 which shall include the following:

"15.25 Wastewater Discharge Easement.

(a) Landlord hereby grants to Tenant and any subtenant under a Permitted Sublease, as defined in Section 11.03 of this Lease, or under a sublease permitted by Section 11.01 of this Lease (collectively, "<u>Subtenant</u>") a non-exclusive easement and right-of-way (the "<u>Easement</u>") for the laying, construction, installation, maintenance, repair, relocation, replacement, removal, modification and operation of underground wastewater discharge lines and all related connections and appurtenances (collectively, the "<u>Facilities</u>") across, along, under, over, upon and through certain property of Landlord described by in <u>Exhibit D</u> and depicted in <u>Exhibit E</u>, attached hereto and incorporated herein for all purposes (the "<u>Easement Tract</u>"). All facilities shall be buried below the surface of the ground with the exception of manhole covers that of necessity must be at or above grade.

(b) Tenant and Subtenant may lay, construct, install, maintain, repair, relocate, replace, remove, modify and operate the Facilities across, along, under, over, upon and through the Easement Tract, and may enter upon the Easement Tract to engage in all activities as may be necessary, requisite, convenient, or appropriate in connection therewith. Tenant's and Subtenant's rights shall include, without limitation, the right to clear and remove trees, undergrowth, shrubbery, and other improvements from within the Easement Tract (except as may be expressly provided herein) and the right to bring and

operate such equipment on the Easement Tract as may be necessary, requisite, convenient, or appropriate to effectuate the purposes for which the Easement is granted. Subject to the rights granted to Tenant and Subtenant herein, Tenant and Subtenant will, at all times after doing any work in connection with the Easement, restore the surface of the Easement Tract and any affected adjacent property thereto as nearly as reasonably practicable to substantially the condition prior to the undertaking of such work; provided, however, Tenant and Subtenant shall not be obligated to replace or restore any trees, growth, shrubbery, or other improvements or obstructions removed from within the Easement Tract in connection with the construction, installation, repair, maintenance, relocation, replacement, removal, upgrade, change in the size of, operation, placement, inspection, protection, or alteration of the Facilities. Tenant and Subtenant shall remove, at Tenant's and Subtenant's expense, any dirt, earth, or other material excavated from the Easement Tract in connection with Tenant's or Subtenant's construction, operation, or maintenance of the Facilities that is not used in connection with Tenant's or Subtenant's activities hereunder. Except as otherwise specifically set forth in this paragraph, Tenant and Subtenant shall have no right to go or travel upon, over or across any lands of Landlord except for the Easement Tract and, to the extent necessary for ingress or egress to the Easement Tract or to lay, construct, install, maintain, repair, relocate, replace, remove, modify and operate the Facilities within the Easement Tract as provided herein. the property adjacent to the Easement Tract owned by Landlord. Nothing contained herein shall grant or be construed as granting to Tenant or Subtenant the right to use the Easement Tract for any purpose other than for the purposes herein specified or to change the dimensions or location of the Easement Tract.

(c) The Easement hereby granted is non-exclusive, and Landlord, its successors and assigns, shall have the right from time to time to grant further easements over, across, through and under the Easement Tract for any lawful purpose, provided that the holder of such easement does not unduly or unreasonably interfere with the rights herein granted.

(d) Landlord expressly reserves unto itself its successors and assigns, the right to the use and enjoyment of the surface of the Easement Tract for any and all lawful purposes, provided, however, that such use and enjoyment of the surface of the Easement Tract shall not unreasonably interfere with or restrict the full and complete use and enjoyment of the Easement for the purposes set forth herein. Although the Easement herein conveyed is an underground easement, it is expressly agreed and provided that Tenant and Subtenant shall have the right to make reasonable use of the surface of the Easement Tract for placement of surface mounted facilities appurtenant to Tenant's and Subtenant's underground Facilities, and while constructing, reconstructing, inspecting, maintaining, repairing, altering, and/or operating the underground Facilities to be installed within this Easement.

(e) This conveyance is further made subject to any and all restrictions, covenants, easements, rights-of-way, encumbrances, and mineral or royalty reservations or interests affecting the Easement Tract and appearing of record in the Official Public Records of Real Property of Victoria County, Texas (the "<u>Official Records</u>") prior to the date hereof or filed in the Official Records as of the Effective Date, to the extent the same are in effect and validly enforceable against the Easement Tract (the "<u>Permitted Encumbrances</u>"). TO HAVE AND TO HOLD the Easement, subject to the matters set forth herein, together with, all and singular, the rights and appurtenances thereto in anywise belonging, including all necessary rights of ingress, egress, and regress, unto Tenant, Subtenant, and their respective successors and assigns, forever. Landlord does

hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Easement unto Tenant, Subtenant, their respective successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Landlord, but not otherwise, subject to the Permitted Encumbrances and to all of the terms, conditions, provisions and limitations hereinabove set forth and provided.

(f) Landlord and Tenant hereby agree that the Easement granted by this Section 15.25 shall terminate automatically upon the expiration or earlier termination of this Lease (unless any Permitted Mortgagee elects to enter into a new lease with Landlord upon the termination or expiration of the Lease as provided in Section 12.03(c) of the Ground Lease, in which case the Easement shall continue for the duration of such new lease, as fully as though such new lease were the Lease hereunder.)

(g) Tenant's rights and obligations under this Section 15.25 may be assigned, in whole or in part, to the assignee under any Permitted Assignment (as such term is defined in Section 11.03 of this Lease), any future Subtenant, any Permitted Mortgagee or any other transferee to whom the Lease is transferred or assigned, in whole or in part, pursuant to a Transfer or Encumbrance permitted by Section 11.01 of the Lease.

(h) Landlord and Tenant shall execute and record a memorandum of the Easement granted by this Section 15.25 in the Office of the County Clerk of Victoria County, Texas.

(i) Landlord, Tenant and Subtenant shall cooperate reasonably to obtain any crossing rights or consents from any holders of existing rights with respect to the Easement Tract required in connection with the Easement.

3. <u>Exhibit "A"</u>. <u>Exhibit "A"</u> to the Lease, which contains a scrivener's error in the metes and bounds description of the Premises, is hereby deleted in its entirety and replaced with <u>Exhibit "A"</u> to this First Amendment. Landlord and Tenant shall execute and record a correction of the Memorandum in the form attached hereto as <u>Exhibit "F"</u> in the Office of the County Clerk of Victoria County, Texas, in order to correct the same scrivener's error in the legal description of the Memorandum.

4. Additional Provisions.

(a) Except as modified by this First Amendment, the Lease and all the terms, covenants, conditions and agreements thereof are hereby in all respects ratified, confirmed and approved.

(b) This First Amendment contains the entire understanding between the parties with respect to the matters contained herein. Except as modified by this First Amendment, the Lease shall remain unchanged and shall continue in full force and effect. No representations, warranties, covenants or agreements have been made concerning or affecting the subject matter of this First Amendment, except as are contained herein and in the Lease. This First Amendment may not be changed orally, but only by an agreement in writing, which is signed by all parties to this First Amendment.

(c) This First Amendment may be executed in any number of counterparts, any one of which shall constitute an original and all counterparts being but one instrument. Facsimile or electronic mail signatures of this First Amendment shall be treated as originals for all purposes.

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this First Amendment effective as of the Effective Date.

LANDLORD:

VICTORIA COUNTY NAVIGATION DISTRICT

By: ______ Name: ______ Title:

TENANT:

VICTORIA BLOOMINGTON, LLC

By:

Pamela N. Castleman, Manager

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF DEMISED PREMISES

THE STATE OF TEXAS} COUNTY OF VICTORIA}

Being a 12.32 acre tract of land situated in the Diego Garcia League, Abstract No. 39, Victoria County, Texas, said 12.32 acres being a portion of an 18.808 acre tract of land, described as Tract II, conveyed from Erol C. Tucker and Frank Buhler, III, et al to Victoria County Navigation District by deed dated May 10, 2001 as recorded in Official Records Instrument No. 200105883 of Victoria County, Texas, said 12.32 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch diameter iron rod found for the East corner of the herein described tract, said iron rod being the East corner of the 18.808 acre Victoria County Navigation District tract, the North corner of a 682.8788 acre tract of land conveyed from Nancy Marion Stoner, et al to E.I. Du Pont De Nemours and Company as recorded in Volume 812, Page 670 of the Deed Records of said county, and in the southwest right-of-way line of Old Bloomington Road (60' R.O.W.);

THENCE, South 53°17'32" West (deed call, South 54°41'22" West), with the common line of the 18.808 acre Victoria County Navigation District tract and the 682.8788 acre E.I. Du Pont De Nemours and Company tract, passing at a distance of 296.34 feet a 5/8 inch diameter iron rod found for reference marking the East corner of a 5.35 acre Railroad Easement recorded in Volume 71, Page 249 of the Deed Records of said county, and continuing for an overall distance of 399.04 feet (deed call, 399.04 feet) to a 5/8 inch diameter iron rod found for the South corner of the herein described tract, said iron rod also being the South corner of the 18.808 acre Victoria County Navigation District tract, and the beginning of a non-tangent curve to the right;

THENCE, with the curving southwest line of the 18.808 acre Victoria County Navigation District tract, and 50 feet parallel and northeast of the centerline of the Union Pacific Railroad tracks, along said curve to the right, with a radius of 3,769.83 feet, a central angle of 04°46'55", an arc length of 314.63 feet, and a chord which bears North 21°19'00" West, a distance of 314.54 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for an exterior corner of the herein described tract;

THENCE, North 18°55'33" West (deed call, North 17°31'43" West), with the southwest line of the 18.808 acre Victoria County Navigation District tract and 50 feet parallel from the centerline of the Union Pacific Railroad tracks, a distance of 1,115.93 feet to a 1/2 inch diameter iron rod with plastic cap stamped "RWP INC 1855" found for the West corner of the herein described tract, said iron rod also being South 18°55'33" East (deed call, South 17°31'43" East), a distance of 866.05 feet from a 5/8 inch diameter iron rod found for the West corner of the 18.808 acre Victoria County Navigation District tract and in the southeast right-of-way line of Farm-to-Market Road 1432 (120' R.O.W.);

THENCE, North 70°58'47" East, crossing the 18.808 acre Victoria County Navigation District tract, passing at a distance of 195.38 feet a 5/8 inch diameter iron rod found for the South corner of a 1.80 acre tract of land conveyed from J.M. Pickering, et al to Tennessee Gas Transmission Company as recorded in Volume 448, Page 120 of the Deed Records of said county, and continuing for an overall distance of 390.94 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the North corner of the herein described tract, said iron rod being an exterior corner of the 18.808 Victoria County Navigation District tract, the East corner of the 1.80 acre Tennessee Gas Transmission Company tract and in the southwest right-of-way line of Old Bloomington Road (60' R.O.W.), said iron rod being South 67°05'49" West, a distance of 2.72 feet from a I/2 iron rod with plastic cap stamped "RWP INC 1855" found for reference and being South 19°01'13" East (deed call, South 17°38'00" East), a distance of 397.50 feet from a 1/2 inch diameter iron rod with plastic cap stamped "RWP INC 1855" found for the North corner of the 1.80 acre Tennessee Gas Transmission Company tract;

THENCE, South 19°01'13" East (deed call, South 17°38'00" East), with the northeast line of the 18.808 acre Victoria County Navigation District tract and the southwest right-of-way line of Old Bloomington Road, a distance of 1,308.97 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 12.32 acres of land, more or less.

Bearings are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances shown are surface and may be converted to grid by dividing by the combined adjustment factor of 1.000130.

A survey drawing of even date herewith accompanies this legal description.

The foregoing Fieldnote Description is based on an actual survey made under my supervision in November 2016 and is true and correct to the best of my knowledge and belief.

Wm. Patrick Hohlt 2/5/15 Registered Professional Land Surveyor Texas No. 5523 TBPLS Registration No. 100576-00



1710080

EXHIBIT D

LEGAL DESCRIPTION OF THE EASEMENT TRACT

DISCHARGE EASEMENT NO. 1

THE STATE OF TEXAS} COUNTY OF VICTORIA}

Being a 0.700 acre (30,511 square foot) Discharge Easement situated in the Diego Garcia League, Abstract No. 39, Victoria County, Texas, said 0.700 acres being over and across a portion of an 55.714 acre tract of land, described as Tract I, conveyed from Erol C. Tucker and Frank Buhler, III, et al to Victoria County Navigation District (VCND) by deed dated May 10, 2001 as recorded in Official Records Instrument No. 200105883 of Victoria County, Texas, said 0.700 acre easement being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" found for the East corner of the herein described easement, said iron rod being the South corner of an 18.808 acre tract of land, described as Tract II, conveyed from Erol C. Tucker and Frank Buhler, III, et al to Victoria County Navigation District (VCND) as recorded in Official Records Instrument No. 200105883 of said county, in the northeast right-of-way line of the Union Pacific Railroad (100' R.O.W.), and in the northwest line of a 682.8788 acre tract of land conveyed from Nancy Marion Stoner, et al to E.I. Du Pont De Nemours and Company as recorded in Volume 812, Page 670 of the Deed Records of said county;

THENCE, South 53°17'27" West, crossing the Union Pacific Railroad with the northwest line of the 682.8788 acre E.I. Du Pont De Nemours and Company tract, passing at a distance of 104.82 feet a 5/8 inch diameter iron rod found for the East corner of the 55.714 acre VCND tract, passing at a distance of 258.61 a 5/8 inch diameter iron rod found for the South corner of a 5.35 acre Railroad Easement as recorded in Volume 71, Page 249 of the Deed Records of said county, and continuing for an overall distance of 864.48 feet to a point for the South corner of the herein described easement, said point also being North 53°17'32" East, a distance of 15.00 from a fence corner post found for the South corner of the 55.714 acre VCND tract, and the East corner of a 155.97 acre tract of land conveyed from Dalton B. Spies, et al to E.I. DuPont de Nemours and Company (Inc.) as recorded in Volume 1483, Page 908 of the Deed Records of said county;

THENCE, North 36°23'50" West, crossing the 55.714 acre VCND tract, a distance of 2,195.74 to a point for the West corner of the herein described easement, said iron rod also being North 53°28'46" East, a distance of 15.00 feet from fence corner post found for the West corner of the 55.714 acre VCND tract, the North corner of the 155.97 acre DuPont de Nemours and Company (Inc.) tract, and in the southeast right-of-way line of Farm-to-Market Road 1432 (120' R.O.W.);

THENCE, North 53°28'46" East, with the northwest line of the 55.714 acre VCND tract and the southeast right-of-way line of Farm-to-Market Road 1432, a distance of 10.00 feet to a point for the North corner of the herein described easement;

THENCE, South 36°23'50" East, crossing the 55.714 acre VCND tract, a distance of 2,185.71 feet to a point for an interior corner the herein described easement;

THENCE, North 53°17'27" East, crossing the 55.714 acre VCND tract, passing at an approximate distance of 702 feet the southwest line of the 5.35 acre Railroad Easement, and continuing for an overall distance of 856.74 feet to a point for an exterior corner the herein described easement, said point also being in the southwest line of the 18.808 acre VCND tract and the beginning of an non-tangent curve to the left;

THENCE, continuing with the southwest line of the 18.808 acre VCND tract, along said curve to the left with a radius of 3,769.83 feet, a central angle of 00°09'22", an arc length of 10.27 feet, and a chord which bears South 23°37'47" East, a distance of 10.27 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 0.700 acres (30,511 square feet) of land, more or less.

Bearings are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances shown are surface and may be converted to grid by dividing by the combined adjustment factor of 1.000130.

A survey drawing of even date herewith accompanies this legal description.

The foregoing Fieldnote Description is based on an actual survey made under my supervision in April 2017 and is true and correct to the best of my knowledge and belief.

Wm. Patrick Hohlt 12/19/17 Registered Professional Land Surveyor Texas No. 5523 TBPLS Registration No. 100576-00

1710080-Discharge Easement No. 1

WM. PATRICK

DISCHARGE EASEMENT NO. 2

THE STATE OF TEXAS} COUNTY OF VICTORIA}

Being a 1.49 acre (64,750 square foot) Discharge Easement situated in the Diego Garcia League, Abstract No. 39, Victoria County, Texas, said 1.49 acres being across a portion of that certain 170.01 acre tract of land conveyed from Ruth S. Emmons to Victoria County Navigation District (VCND) by deed dated November 12, 1970 as recorded in Volume 759, Page 219 of the Deed Records of Victoria County, Texas, that certain 40.27 acre tract of land, described as Tract III, conveyed from W.L. Lipscomb, et al to Victoria County Navigation District by deed dated January 22, 1965 as recorded in Volume 634, Page 538 of the Deed Records of Victoria County, Texas, and that certain 178.88 acre tract of land conveyed from W.L. Lipscomb, et al to Victoria County Navigation District by deed dated February 9, 1965 as recorded in Volume 639, Page 434 of the Deed Records of Victoria County, Texas, said 1.49 acre easement being more particularly described by metes and bounds as follows:

COMMENCING from a point for the East corner of the 40.27 acre VCND tract, an exterior corner of a 288.8342 acre tract of land conveyed from Ethel Weaver Evans, et al to E.I. Du Pont de Nemours and Company as recorded in Volume 830, Page 152 of the Deed Records of said county and being in the southwest right-of-way line of Farm-to-Market Road 1432 (120° R.O.W.);

THENCE, North 36°31'19' West, with the northeast line of the 40.27 acre VCND tract and the southwest right-of-way line of Farm-to-Market Road 1432, a distance of 62.37 feet to a point in the northeast line of the 40.27 acre VCND tract, the South corner of the 170.01 acre VCND tract and the northwest right-of-way line of Farm-to-Market 1432;

THENCE, North 53°28'46" East, with the southeast line of the 170.01 acre VCND tract and the northwest right-of-way line of Farm-to Market Road 1432, a distance of 65.03 feet to a point for the South corner of the herein described easement and the fieldnote POINT OF BEGINNING;

THENCE, across the 170.01 acre, 40.27 acre and the 178.88 acre VCND tracts as follows:

North 42°12'39" West, a distance of 240.05 feet to an angle point in the herein described easement;

North 49°18'09" West, a distance of 162.06 feet to an angle point in the herein described easement;

North 43°54'12" West, a distance of 280.01 feet to an angle point in the herein described easement;

South 89°30'41" West, a distance of 70.96 feet to an angle point in the herein described easement;

North 36°38'39" West, a distance of 265.16 feet to an angle point in the herein described easement;

North 46°57'35" West, a distance of 326.36 feet to an angle point in the herein described easement;

North 84°36'35" West, a distance of 41.70 feet to an angle point in the herein described easement;

South 52°43'40" West, a distance of 522.41 feet to an angle point in the herein described easement;

South 01°15'20" East, a distance of 57.09 feet to an angle point in the herein described easement;

THENCE, South 88°56'01" West, a distance of 181.62 feet to a point for southwest corner of the herein described easement, said point being in the East high bank of Pickering Basin;

THENCE, North 05°56'12" West, along the East high bank of Pickering Basin, a distance of 30.11 feet to a point for the West corner of the herein described easement;

THENCE, across the 170.01 acre, 40.27 acre and the 178.88 acre VCND tracts as follows:

North 88°56'01" East, a distance of 154.08 feet to an angle point in the herein described easement;

North 01°15'20" West, a distance of 42.27 feet to an angle point in the herein described easement;

North 52°43'40" East, a distance of 549.41 feet to an angle point in the herein described easement;

South 84°36'35" East, a distance of 63.64 feet to an angle point in the herein described easement;

South 46°57'35" East, a distance of 339.30 feet to an angle point in the herein described easement;

South 36°38'39" East, a distance of 252.63 feet to an angle point in the herein described easement;

North 89°30'41" East, a distance of 68.64 feet to an angle point in the herein described easement;

South 43°54'12" East, a distance of 291.51 feet to an angle point in the herein described easement;

South 49°18'09" East, a distance of 162.50 feet to an angle point in the herein described easement;

THENCE, South 42°12'39" East, a distance of 244.90 feet to a point for the East corner of the herein described easement, said point being in the southeast line of the 170.01 acre VCND tract and the northwest right-of-way line of Farm-to-Market Road 1432;

THENCE, South 53°28'46" West, with the southeast line of the 170.01 acre VCND tract and the northwest right-of-way line of Farm-to-Market Road 1432, a distance of 30.15 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 1.49 acres (64, 750 square feet) of land, more or less.

Bearings are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances shown are surface and may be converted to gtid by dividing by the combined adjustment factor of 1.000130.

A survey drawing of even date herewith accompanies this legal description.

The foregoing Fieldnote Description is based on an actual survey made under my supervision in December 2017 and is true and correct to the best of my knowledge and belief.

Wm. Patrick Hohlt 12/22/17 Registered Professional Land Surveyor Texas No. 5523 TBPLS Registration No. 100576-00

1710080-Discharge Easement No. 2



EXHIBIT E

DEPICTION OF THE EASEMENT TRACT





EXHIBIT F

FORM OF CORRECTION MEMORANDUM OF GROUND LEASE

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

CORRECTION MEMORANDUM OF GROUND LEASE

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF VICTORIA §

This CORRECTION MEMORANDUM OF GROUND LEASE (this "<u>Correction</u> <u>Memorandum</u>") is dated effective November 21, 2017, by and between the VICTORIA COUNTY NAVIGATION DISTRICT, whose address is 1934 FM 1432, Victoria County, Victoria, Texas 77905 ("<u>Lessor</u>"), and VICTORIA BLOOMINGTON, LLC, a Texas limited liability company, whose address is 5850 San Felipe, Suite 601, Houston, Texas 77057 ("<u>Lessee</u>").

RECITALS

WHEREAS, Lessor and Lessee executed that certain Memorandum of Ground Lease dated November 21, 2017, filed for record as Instrument No. 201712650 of the Official Public Records of Victoria County, Texas (the "<u>Memorandum</u>"), which gave notice of an unrecorded Ground Lease between Lessor and Lessee (the "<u>Ground Lease</u>") affecting certain real property owned by Lessor to which Lessor leased to Lessee, as described in said Memorandum (the "<u>Property</u>").

WHEREAS, the metes and bounds description of the Property attached to the Memorandum contained a scrivener's error.

WHEREAS, Lessor and Lessee desire to correct the Memorandum pursuant to the terms and conditions below.

AGREEMENT

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by Lessor and Lessee, Lessor and Lessee do hereby agree as follows:

1. <u>**Recitals**</u>. The recitals above are incorporated herein by reference.

2. <u>Exhibit "A"</u>. <u>Exhibit "A"</u> to the Memorandum is hereby deleted in its entirety and replaced with <u>Exhibit "A"</u> to this Correction Memorandum.

3. <u>Effect</u>. In the event of a conflict between the terms and provisions of the Memorandum and the terms and provisions of this Correction Memorandum, the terms and provisions of this Correction Memorandum shall control. Any and all terms and provisions of the Memorandum shall, except as expressly corrected and modified hereby, remain in full force and effect.

[signature pages follow]

LESSOR:

VICTORIA COUNTY NAVIGATION DISTRICT

By:	 _
Name:	
Title:	 _

STATE OF TEXAS §

COUNTY OF VICTORIA §

This instrument was acknowledged before me on this _____ day of ______, 2018, by ______, _____ of the Victoria County Navigation District.

NOTARY PUBLIC, STATE OF TEXAS

LESSEE:

VICTORIA BLOOMINGTON, LLC,

a Texas limited liability company

By:

Pamela N. Castleman, Manager

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 2018, by Pamela N. Castleman, Manager, of Victoria Bloomington, LLC, a Texas limited liability company, on behalf of said limited liability company.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT C

Form of the Memorandum

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF SUBLEASE AGREEMENT

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF VICTORIA §

THAT, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VICTORIA BLOOMINGTON, LLC, a Texas limited liability company, whose address is 5850 San Felipe, Suite 601, Houston, Texas 77057, (hereinafter referred to as "<u>Sublandlord</u>"), has entered into, executed and delivered an unrecorded Sublease Agreement ("<u>Sublease</u>"), in favor of VICTORIA PORT POWER LLC, a Texas limited liability company, ("<u>Subtenant</u>"), whose address is 5850 San Felipe, Suite 601, Houston, Texas 77057, effective as of ______, 201__, covering and affecting certain real property (i) leased by Sublandlord from the Victoria County Navigation District ("<u>Landlord</u>") which Sublandlord has subleased to Subtenant, located in Victoria County, State of Texas and described on <u>Exhibit A</u> attached hereto and incorporated herein by reference (the "<u>Sublease</u>").

This Memorandum of Sublease Agreement is executed by Sublandlord and Subtenant and placed of record in the County in which the Subleased Premises is located for the purpose of placing all persons on notice of the existence of the Sublease, which Sublease is not being placed of record. The Sublease is for a primary term of ______ commencing on _______, 201___ and terminating on _______, subject to all terms and provisions set forth in said Sublease. The Sublease, with all of its terms, covenants and other provisions is incorporated into this Memorandum of Sublease Agreement for all purposes.

[signature pages follow]

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 201__.

SUBLANDLORD:

VICTORIA BLOOMINGTON, LLC,

a Texas limited liability company

By:

Pamela N. Castleman, Manager

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 201__, by Pamela N. Castleman, Manager, of Victoria Bloomington, LLC, a Texas limited liability company, on behalf of said limited liability company.

NOTARY PUBLIC, STATE OF TEXAS

SUBTENANT:

VICTORIA PORT POWER LLC,

a Texas limited liability company

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 201___, by _____, of Victoria Port Power LLC, a Texas limited liability company, on behalf of said limited liability company.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A

LEGAL DESCRIPTION OF SUBLEASED PREMISES



Lease Application for Saltwater Pipeline Facility to be Located on State Right of Way

Form ROW-SW-APP (Rev. 6/17) Page 1 of 2

Application Number:

Part 1 - Instructions							
A Saltwater Pipeline Facility is defined in Chapter 91, Natural Resources Code, Subchapter T, Sec. 91.901 as; "A pipeline facility that conducts water that contains salt and other substances and is intended to be used in drilling or operating a well used in the exploration for or production of oil or gas, including an injection well used for enhanced recovery operations or is produced during drilling or operating an oil, gas, or other type of well. The term includes a pipeline facility that conducts flowback and produced water from oil or gas well on which a hydraulic fracturing treatment has been performed to an oil and gas waste disposal well for disposal."							
To ensure you are using current version download the form at: w	<u>vw.txdot.gov</u>						
Complete this application in its entirety. An incomplete, incorrect, of any applicable location priority.	r unsigned application may be denied and lose						
Part 2 - Identification of the Applicant							
First & Last Name: Gerardo Manalac	Title: President						
Company Name: Victoria Port Power LLC							
Work Phone: <u>713-4007662</u> Cell	Phone: <u>713-503-8645</u>						
Email: gmanalac@castlemanpower.com							
Address: 5850 San Felipe Ste 601 Houston, TX 77057							
Part 3 - Identification of the Lessee							
Complete Name of Company: Victoria Port Power LLC							
Company Mailing Address (stract number, route, DO, box, etc.):							
Company Mailing Address (street number, route, PO box, etc.):							
5850 San Felipe Dr Houston TX 77057							
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 Website: website:	vw.castlemanpower.com						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 City: Houston State: TX	vw.castlemanpower.com Zip: 77057						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 City: Houston State: TX Primary Contact	vw.castlemanpower.comZip: 77057						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 City: Houston State: TX Primary Contact First and Last Name: Raymond Lajuez	vw.castlemanpower.com Zip: <u>77057</u>						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 City: Houston State: TX Primary Contact First and Last Name: Raymond Lajuez Email: raymond@castlemanpower.com	vw.castlemanpower.com Zip: 77057						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 Website: website:	vw.castlemanpower.com Zip: <u>77057</u>						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 Website: wn City: Houston State: TX Primary Contact State: TX First and Last Name: Raymond Lajuez Email: raymond@castlemanpower.com Work Phone (with Area Code): 713-334-0700 Cell Phone Part 4 - Location of the Proposed Saltwater Pipeline Facility Cell Phone	vw.castlemanpower.com Zip: 77057 						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 Website: website:	vw.castlemanpower.com Zip: 77057 ne (with Area Code): 713-201-1246 eginning point, any crossing, road name, side of nwest corner of the intersections of FM 1432 and s; thence to Victoria Barge Canal, Segment 1701.						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 Website: website: City: Houston State: TX Primary Contact State: TX First and Last Name: Raymond Lajuez Email: raymond@castlemanpower.com Work Phone (with Area Code): 713-334-0700 Cell Phone Part 4 - Location of the Proposed Saltwater Pipeline Facility General description of requested pipeline route: (i.e., origin point, broad, ending terminus) The discharge point is at the end of a pipeline into a culvert at the south an unnamed road; effluent will flow through a series of drainage ditches Length of Proposed 321.21 (in feet): 5300	vw.castlemanpower.com Zip: 77057 ne (with Area Code): 713-201-1246 eginning point, any crossing, road name, side of newest corner of the intersections of FM 1432 and s; thence to Victoria Barge Canal, Segment 1701. County(s):						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 Website: wm City: Houston State: TX Primary Contact State: TX First and Last Name: Raymond Lajuez Email: raymond@castlemanpower.com Work Phone (with Area Code): 713-334-0700 Cell Phone Part 4 - Location of the Proposed Saltwater Pipeline Facility General description of requested pipeline route: (i.e., origin point, broad, ending terminus) The discharge point is at the end of a pipeline into a culvert at the south an unnamed road; effluent will flow through a series of drainage ditches Length of Proposed Saltwater Pipeline Facility (in rods): 321.21 (in feet): 5300 • Origin Source Latitude: 28°41'42.99"N	vw.castlemanpower.com Zip: 77057 and (with Area Code): 713-201-1246 eginning point, any crossing, road name, side of newest corner of the intersections of FM 1432 and s; thence to Victoria Barge Canal, Segment 1701. County(s): Longitude: 96°56'44.26"W						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 Website: wm City: Houston State: TX Primary Contact State: TX First and Last Name: Raymond Lajuez Email: raymond@castlemanpower.com Work Phone (with Area Code): 713-334-0700 Cell Phone Part 4 - Location of the Proposed Saltwater Pipeline Facility General description of requested pipeline route: (i.e., origin point, broad, ending terminus) The discharge point is at the end of a pipeline into a culvert at the south an unnamed road; effluent will flow through a series of drainage ditches Length of Proposed Saltwater Pipeline Facility (in rods): 321.21 (in feet): 5300 • Origin Source Latitude: 28°41'42.99"N Email: 28°41'54.97"N	vw.castlemanpower.com Zip: 77057 The (with Area Code): 713-201-1246 eginning point, any crossing, road name, side of twest corner of the intersections of FM 1432 and s; thence to Victoria Barge Canal, Segment 1701. County(s): Longitude: 96°56'44.26"W Longitude: 96°57'06.82"W						
5850 San Felipe Dr Houston TX 77057 Main Phone: 713-334-0700 City: Houston State: TX Primary Contact State: TX First and Last Name: Raymond Lajuez Email: raymond@castlemanpower.com Work Phone (with Area Code): 713-334-0700 Cell Phone Part 4 - Location of the Proposed Saltwater Pipeline Facility General description of requested pipeline route: (i.e., origin point, broad, ending terminus) The discharge point is at the end of a pipeline into a culvert at the south an unnamed road; effluent will flow through a series of drainage ditchest Length of Proposed Saltwater Pipeline Facility (in rods): 321.21 (in feet): 5300 • Origin Source Latitude: 28°41'42.99"N • Beginning of ROW Latitude: 28°41'54.97"N • End of ROW Latitude: 28°41'24.49"N	vw.castlemanpower.com Zip: 77057 Te (with Area Code): 713-201-1246 eginning point, any crossing, road name, side of twest corner of the intersections of FM 1432 and s; thence to Victoria Barge Canal, Segment 1701. County(s): Longitude: 96°56'44.26"W Longitude: 96°57'06.82"W Longitude: 96°57'55.20"W						

Part 5 - Type of Proposed Occupancy on State Picht of Ma	N/						
This lease application is for the installation and operation of a Saltwater Pipeline Eacility for (check one of the following):							
Surface Lease for a period of 90 days or less Subsurface Lease for a period of 5 years plus options							
Part 6 - Commence Date	· · · · · · · · · · · · · · · · · · ·						
Requested commence date for lease: November 1, 2018							
Part 7 - Type of Pipeline							
Pipeline Diameter - all Pipe Sizes are Nominal (check one):	Note that surface pipe may not exceed 12" diameter						
\Box Less than 4" \Box 4" to Less than 6" \Box 6"	to Less than 12" 12" to Less than 24"						
Part 8 - Acknowledgement by Applicant							
To knowingly make a false statement or conceal a mater revocation of your Certificate of Approval. I, the undersign application; that I am familiar with all of its content and the contained therein are true in substance and in fact.	rial fact in this application will result in the denial and/or gned, swear (affirm) that I have read the entire foregoing nat all answers, statements, explanations, and all other materials						
Gerardo Manalac							
Printed name of signatory	Signature of Applicant or Authorized Representative (must be original signature)						
President							
Authorized Representative's Title if the Applicant is a Corporation	Name of Corporation if the Applicant is a Corporation						
Part 9 - Submitting the Lease Application							
1. Be advised that this Application, or its subsequent a	oproval, may not be assigned or transferred for any reason.						
2. Send the completed lease application to:							
Texas Department of Transportation Attention: Saltwater Lease Program Local District Office of the Lease Location							
 If this application for a lease is <i>approved</i>, the next s document which will be sent to the applicant in an el 	step will be the qualification and preparation of a formal lease ectronic format along with instructions and return information.						
4. The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Section 552.01 and 552.023 of the Government code, you are entitled to receive and review this information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.							
Part 10a - Completed by TxDOT Staft Only							
Reviewed and verified the application and accompanying	g documents.						
Associated Fee \$: b	pased on current fee schedule.						
Term Rent \$: B	y:						
Action by:	Date:						
(Name, Title)						
Part 10b - Completed by TxEOT Statt Only							
Upon review of this application and the accompanying d	ocuments, this permit application is:						
APPROVED - move to qualification and preparation of the lease agreement.							
Special Requirements:							
Action by	Data						
(Name Title Department F	Cepresentative)						





Victoria Port Power II LLC Process Description

The Applicant has installed and operates a natural gas combustion turbine generator (CTG) for electricity.

Washdown and minimal amounts of stormwater will come into contact with oil from equipment operation or maintenance and will be discharged intermittently after treatment in an oil/water separator to Outfall 001.

Victoria Port Port II



From:	Russell, Tammy
To:	Dale, Laura
Cc:	Lussier, Christopher
Subject:	FW: Renewal TPDES PERMIT NO. WQ0005263000
Date:	Monday, January 8, 2024 6:09:48 PM
Attachments:	image002.png

Thank you, *Tammy Russell* EHS Manager Texas Peaker Plants; SJRR, Port Comfort, Chamon, Victoria Port II Direct/Cell: <u>832-514-9275</u> <u>tammy.russell@naes.com</u>



NAES Corporation 1180 NW Maple St. Suite 200 Issaquah, WA 98027

From: Alyssa Loveday <Alyssa.Loveday@tceq.texas.gov>
Sent: Monday, January 8, 2024 3:43 PM
To: Tammy Russell <tammy.russell@peakerpowerholdings.com>; WQAP <WQAP@tceq.texas.gov>
Cc: Lussier, Christopher <Christopher.Lussier@naes.com>
Subject: RE: Renewal TPDES PERMIT NO. WQ0005263000

Good afternoon Ms. Russel,

Thank you for the email. If <mark>discharge has not commenced at the facility, and subsequently no</mark> wastewater is available to be sampled, you all can note in the application that no discharge has occurred and that upon discharge from the facility, required sampling will take place.

If we can be of any further assistance, please let me know.

Thank you,



Alyssa Loveday, M.S. Team Leader, Industrial Wastewater Permitting Water Quality Division, Office of Water Email: <u>Alyssa.Loveday@tceq.texas.gov</u> Phone: (512) 239-4524

How is our customer service? Fill out our online customer satisfaction survey at <u>www.tceq.texas.gov/customersurvey</u>

From: Tammy Russell <<u>tammy.russell@peakerpowerholdings.com</u>>

Sent: Monday, January 8, 2024 3:05 PM
To: WQAP <<u>WQAP@tceq.texas.gov</u>>
Cc: Lussier, Christopher <<u>Christopher.Lussier@naes.com</u>>
Subject: Renewal TPDES PERMIT NO. WQ0005263000

To Whom it may concern,

Good morning, Victoria Port Power II, LLC is working on the TPDES Renewal. The wastewater system was under construction, it is now completed, but not commissioned. No discharge or sampling from the outfall 001 has occurred. With the absence of sampling, is there a specific form or letter that needs to be a part of the TPDES Permit Renewal Package? Is there a letter of approval Victoria Port Power II needs to acquire from TCEQ to send with the renewal permit? Any help or direction would be greatly appreciated.

TPDES - RENEWAL Company Name- Victoria Port Power II, LLC TCEQ Regulated Entity Number- RN110451648 Site Name- Victoria Port II Peaking Facility Water Permits Division Permit Number- TX0138801 TPDES PERMIT NO. WQ0005263000

Thank you, Tammy Russell EHS Manager Texas Peaker Plants; SJRR, Port Comfort, Chamon, Victoria Port II Direct/Cell: <u>832-514-9275</u> tammy.russell@naes.com



NAES Corporation 1180 NW Maple St. Suite 200 Issaquah, WA 98027



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	RECI 6-18- By DC	- BURIED 22 - BURIED 4/0 TIN BURIED - EQUIPME GROUND - BURIED	GROUND GRID W Start Model Start Mexican Model GROUND GRID W NNED COPPER CO 24" BELOW FIN ENT OR FACILITI ING WIRE GRID WIRE	PINS No Energy Solutions, Comments Good For Comments Comments Date: data by S&W Energy S he contractor or suppli day the purchase orde by the purchase orde IRE NDUCTOR ISHED GRAJ ES	Inc nformation 6-22-21 olutions. Inc er from the or contract	c
		GROUND) INSPEC > FENCE	ROD 3/4" X 10' TION TEST WELL	-0" COPPE	R	В
NQ. DATE B 5/27/21 A 5/11/21 R PROJECT 14	UPDATED GROUNDII ISSUED FOR CONS NUMBER 41 2	NG GRID FOR GRO TRUCTION TI ELECTRIC, VPII, P 2 X LMG	UNLESS OTHERV THIRD ANGLE PROJECTION DO NOT SCALE DRAVING REVISION UNDING STUDY HIS DRAWING CONTA INFIDENTIAL INFORM S DRAWING SHOULD WAY THAT WOUL RELEVANT P AL GROUNDING GRID UNER PROJECT 000 60HZ UNITS DRAVING NUMBER 141-E-300	ISE SPECIFIED DIMENSIONS ARE TOLERANI ANGULAR FRACTIONAL TVO PLACE DE THREE PLACE DE AINS PROPRIE NOT BE USI D BE DETRIN OWER SOLUT REV.NO. B 1	IN INCHES DESI ± 1' 1/16' DIMAL ± .03 CIMAL ± .010 BY CHK RGS AHL DMC JS TARY AND THERMORE, DIN ANY MENTAL TO IDNS, LLC, SHEET 1 of 3	A


















Oil-Filled Equipment

Name/Location	Contents	Capacity - each piece of equipment (gal)	Total Oil Storage Capacity (gal)	Oil-Filled Equipment Footprint Area	Secondary Containment Area	Secondary Containment: Available Capacity	Required Capacity	Method of Removal of Accumulated Precipitation	High Level Indicator
GSU Transformers (2)	Transformer Oil	8,937	17,874	11.5' X 15' X 1.9' Pedestal 172.5 sq. ft. 327.75 cu. ft.	37.8' X 29' X 2' Concrete berm 1,096.2 sq. ft. 2,192.4 cu. ft.	2192.4 cu. ft 327.75 cu. ft. = 1,864.65 cu. ft. Available Capacity: 1,864.65 cu. ft. = 13,947.58 gal	110% of Capacity: 9,830.7 gal Available Secondary containment capacity: 13,947.58 gal Containment sufficient? Yes	Evaporation or drained to ground depending on volume of water accumulated	Visual level
Enclosed Auxiliary Skid (2) between combustion turbine generators	Lube Oil & Hydraulic Oil	175 gal each lube oil & 25 gal each hydraulic oil (total 200 gal each skid)	400	N/A	13.9' X 10.5' X 4' 145.95 sq. ft. 583.8 cu. ft.	Available Capacity: 583.8 cu. ft. = 4,366.82 gal	110% of Capacity: 220 gal Available Secondary containment capacity: 4,366.82 gal Containment sufficient? Yes	N/A - the skid is enclosed	Sight glass and level alarm
Generator Lube Oil (2) at each combustion turbine generator	Lube Oil	2,500	5,000	N/A	16.2' X 21' X 1.5' 340.2 sq. ft. 510.3 cu. ft.	Available Capacity: 510.3 cu. ft. = 3,817.04 gal	110% of Capacity: 2,750 gal Available Secondary containment capacity: 3,817.04 gal Containment sufficient? Yes	Evaporation or drained to ground depending on volume of water accumulated	Sight glass and level alarm
Fin Fan Lube Oil Cooler (2) between combustion turbine generators	Turbine Lube Oil (Synthetic) & Generator Lube Oil (Mineral)	150 gal Turbine lube oil & 300 gal Generator Lube Oil (total 450 gal each cooler)	900	N/A	36.5' X 18.10' X 1.3' 660.65 sq. ft. 858.85 cu. ft.	Available Capacity: 858.85 cu. ft. = 6,424.20 gal	110% of Capacity: 495 gal Available Secondary containment capacity: 6,424.20 gal Containment sufficient? Yes	Evaporation or drained to ground depending on volume of water accumulated	Sight glass and level alarm
Total Site Oil Storage			24,174						

conversion factor: 1 cu. ft. = 7.48 gal

Lussier, Christopher

From:	steers@tceq.texas.gov
Sent:	Monday, January 29, 2024 11:55 AM
То:	Lussier, Christopher
Subject:	TCEQ ePay Receipt for 582EA000590098

WARNING: This email originated from outside your organization. Do not click links or open attachments unless you recognize the sender and know the contents are safe.

If you have ANY reason to doubt the authenticity of this message, contact IT before you open or click on anything.

[You don't often get email from steers@tceq.texas.gov. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

This is an automated message from the TCEQ ePay system. Please do not reply. Trace Number: 582EA000590098 Date: 01/29/2024 10:55 AM Payment Method: CC - Authorization 0000019955 TCEQ Amount: \$315.00 Texas.gov Price: \$322.34*

* This service is provided by Texas.gov, the official website of Texas. The price of this service includes funds that support the ongoing operations and enhancements of Texas.gov, which is provided by a third party in partnership with the State.

Actor: CHRISTOPHER LUSSIER Email: christopher.lussier@naes.com

Payment Contact: CHRISTOPHER E LUSSIER Phone: 901-651-6930 Company: NAES CORPORATION Address: 652 LANDING PARTY LANE, COLLIERVILLE, TN 38107

Fees Paid: Fee Description AR Number Amount WW PERMIT - MINOR FACILITY NOT SUBJECT TO 40 CFR 400-471 - RENEWAL \$300.00 30 TAC 305.53B WQ RENEWAL NOTIFICATION FEE \$15.00

TCEQ Amount: \$315.00

Trace Number: 582EA000590098 Date: 01/29/2024 10:55 AM Payment Method: CC - Authorization 0000019955 Voucher Amount: \$300.00 Fee Paid: WW PERMIT - MINOR FACILITY NOT SUBJECT TO 40 CFR 400-471 - RENEWAL RN Number: RN110451648 Site Name: VICTORIA PORT II POWER PEAKING FACILITY Site Address: 2050 OLD BLOOMINGTON RD, VICTORIA, TX 77905 Site Location: 2050 OLD BLOOMINGTON RD VICTORIA TX 77905 CN Number: CN605568807 Customer Name: VICTORIA PORT POWER II LLC Customer Address: 2050 OLD BLOOMINGTON RD, VICTORIA, TX 77905 Program Area ID: WQ0005263000 Comments: TX0138801, TPDES Permit Renewal

Voucher: 684038 Trace Number: 582EA000590098 Date: 01/29/2024 10:55 AM Payment Method: CC - Authorization 0000019955 Voucher Amount: \$15.00 Fee Paid: 30 TAC 305.53B WQ RENEWAL NOTIFICATION FEE

To print out a copy of the receipt and vouchers for this transaction either click on or copy and paste the following url into your browser:

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TCEQ ePay Receipt

- Transaction Information -

Trace Number:	582EA000590098		
Date:	01/29/2024 10:55 AM		
Payment Method:	CC - Authorization 0000019955		
ePay Actor:	CHRISTOPHER LUSSIER		
TCEQ Amount:	\$315.00		
Texas.gov Price::	\$322.34*		

* This service is provided by Texas.gov, the official website of Texas. The price of this service includes funds that support the ongoing operations and enhancements of Texas.gov, which is provided by a third party in partnership with the State.

- Payment Contact Information -

Name:	CHRISTOPHER E LUSSIER
Company:	NAES CORPORATION
Address:	652 LANDING PARTY LANE, COLLIERVILLE, TN 38107
Phone:	901-651-6930

– Cart Items –

Vouche 684037	• Fee Description WW PERMIT - MINOR FACULITY NOT SUBJECT TO 40 CFR 400-471 -	AR Number	Amount \$300.00
004037	RENEWAL		\$500.00
684038	30 TAC 305.53B WQ RENEWAL NOTIFICATION FEE		\$15.00
		TCEQ Amount:	\$315.00