



Margit Larrieu

01/15/2004 12:08 PM

To: Michael M Stephens,

cc:

Fax to:

Subject: Re: Lease # 3475

Hi Mike

Just some 'housekeeping' - this lease is with the Idaho Dept of Lands (their # M8016) for lands we've rented since 1991 for DOE seismic activities. The file indicates that we do not have a signed copy of the lease. Dennis' last memo to you (4-11-02) mentions that BBWI is not really the party that signed it, but that DOE did. Would you do me a favor and fax or mail over a copy of the executed lease? Much appreciated.

Regards,

Margit Larrieu

Subcontract Administrator

208-526-7829



MISCELLANEOUS LEASE
No. M-8016
United States Department of Energy

This lease agreement is made and entered into by and between the State of Idaho, acting by and through the State Board of Land Commissioners (LESSOR) and United States Department of Energy, (LESSEE), 850 Energy Drive, Idaho Falls, ID 83402, collectively referred to herein as the "Parties." In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

This lease shall commence JANUARY 1, 2001, and terminate DECEMBER 31, 2010.

The LESSOR does hereby lease and demise unto the LESSEE, at the rate and for the use specified herein, the lands described as follows or as may be described in the attached: Part, NESW Sec. 36, T12N, R29E, B.M. [Clark, LM41-01]

In consideration of the foregoing, the covenants, restrictions and conditions in the attached, herein incorporated by reference as Attachment A, are hereby agreed to by LESSEE and LESSOR.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

IDAHO STATE BOARD OF LAND COMMISSIONERS

Secretary of State

President of the State Board of Land Commissioners
Governor of the State of Idaho

Director, Department of Lands

STATE OF IDAHO, COUNTY OF ADA

On this ___ day of _____ in the year _____, before me, a Notary Public in and for said State, personally appeared Dirk Kempthorne, known to me to be the President of the Idaho State Board of Land Commissioners and the Governor of the State of Idaho; and Pete T. Cenarrusa, known to me to be the Secretary of the State of Idaho and Stanley F. Hamilton, known to me to be the Director, Department of Lands, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Notary Public

Residence

Commission Expires

LESSEE
(LESSEE) (LESSEE)
STATE OF _____ COUNTY OF _____
On this ___ day of _____ in the year _____, before me, a Notary Public in and for said State, personally appeared _____, known to me to be the LESSEE that executed the within instrument, and acknowledged to me that they executed same.
IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.
Notary Public Residence Commission Expires

ATTACHMENT A

1. Rent.

Lessee shall pay the Lessor, as rent for the leased site, the following amounts, determined and payable in the manner and at the time set forth herein.

- A. Annual Rent. Lessee shall pay to Lessor as annual rent, without abatement, offset, or deduction of any kind, unless expressly allowed by this lease, the amount of **TWO HUNDRED FIFTY DOLLARS AND NO/100THS (\$250.00)** Each of said annual base rent payments will be made payable in advance beginning on the first day of January and on every anniversary thereafter. All rent shall be paid in lawful money of the United States of America forwarded to the Lessor or as otherwise directed by the Lessor in writing.
- B. Annual Rent Subject to Modification. Lessor reserves the right to increase or decrease the annual base rent to be paid by the Lessee effective on January 1 of any calendar year by first providing Lessee with one hundred and eighty (180) calendar days prior written notification of the change in the annual base rent.
- C. Late Payment Fee. Any late payment of annual base rent shall be cause for the Lessor to declare a default herein. If any base rent payment is not made to Lessor on or before January 1 as provided herein, the Lessee shall pay to the Lessor as a late payment fee an amount equal to \$25.00 or one percent (1%) of the amount due, whichever is greater, plus one percent (1%) per month of said amount due including interest thereafter until paid in full.

2. Use of Premises.

- A. Use of the leased site shall be restricted to undeveloped vehicle access and for installation of a seismographic complex.
- B. Occupancy will be limited to a twenty foot square area for development of the seismographic complex.
- C. Any new or additional use of the lease site requires Lessor's prior written consent. Any new or additional use by Lessee without the authorization of Lessor shall be prohibited and will be considered a breach.

3. Bond.

NONE.

4. Sublease and Assignment.

- A. Sublease. This lease may not be subleased without Lessee first obtaining the prior written consent of Lessor, or Lessor's designee.
- B. Assignment. This lease may not be assigned without Lessee first obtaining the prior written consent of the Lessor or Lessor's designee.

5. Lessee's Compliance with Applicable Laws and Rules.

- A. Full Compliance. Lessee's use of the leased site shall fully comply with all statutes, ordinances, rules, regulations and laws of applicable federal, state and local governmental authorities. Lessee shall comply with all applicable rules and regulations and standards promulgated by the state Land Board or the Department of Lands.
- B. No Waste or Nuisance. Lessee shall not use the leased site in any manner that would constitute waste, nor shall the Lessee allow the same to be committed thereon. The Lessee shall not do anything which will create a nuisance or a danger to persons or property.

6. Environmental, Safety, and Sanitary Requirements.

- A. Sanitary Requirements. Lessee shall at all times keep the leased site in a clean and sanitary condition, free of trash, noxious weeds, garbage and litter, so that the leased site is maintained in as nearly natural state as possible. Lessee shall not dispose of sewage except in conformity with applicable federal, state, and local

law, rules and regulations pertinent to Lessee's use. The Lessee shall store and dispose of all trash and garbage in conformity with all legal requirements. Lessee is responsible for all costs associated with sewage, garbage and litter disposal.

- B. Fire and Safety Regulations. Lessee shall comply with all applicable state laws and rules of the Department of Lands for fire protection and prevention. Lessee agrees to keep the leased site free from fire hazards. Lessee is prohibited from burning of garbage or household trash. The burning of wood or other debris requires the prior written permission of Lessor and must comply with applicable federal, state, or local law, regulation, rule, or ordinance.
- C. No Hazardous Materials. Lessee shall neither commit nor permit the use, placement, transport or disposal of any hazardous waste such as oil or gasoline or any other substance that is or is suspected to be a hazardous substance or material except as provided by federal, state or local law, regulation or ordinance of manufacture. Lessee shall be responsible, at its own expense, for removing or taking other appropriate remedial action regarding such wastes, substances, or materials which Lessee may cause to be introduced, in accordance with applicable federal, state, or local law, regulation, or ordinance.

7. **No Warranty of Suitability.**

- A. No Warranty. Lessee acknowledges that the Lessor, nor any agent or designee of the Lessor, has made any representation or warranty with respect to the leased site or concerning the suitability of the leased site for the uses intended by the Lessee. Lessee acknowledges that it has accepted the leased site in an "AS IS CONDITION," accepting liability for any and all known or unknown faults therein.
- B. Quiet Enjoyment. Lessor agrees that the Lessee, upon payment of the rent and performing the terms of this lease, may quietly have, hold, and enjoy the leased site during the term hereof.

8. **Payment of Taxes and Assessments.**

The Lessee agrees to pay, when due, before delinquency, any real or personal property taxes, assessment or fees that may be assessed or levied by a governmental authority asserting such authority over the leased site or its improvements. Lessee shall make such payment directly to the taxing authority and hold Lessor harmless from any claim or assessment.

9. **Construction and Improvements.**

- A. Water Development. Lessee shall not drill or use a new water well, nor develop any use of any water source, without first obtaining the prior written consent of the Lessor and the applicable governmental authorities responsible for adjudicating and developing water rights.
- B. Construction of Improvements. Lessee may construct improvements upon the leased site under limited circumstances in accordance with the following conditions: Lessee must first obtain the prior written consent of Lessor or Lessor's designee. Lessee must furnish a complete set of construction plans and an accurate plot plan of all proposed improvements contemplated by Lessee and submit those plans and drawings to Lessor or Lessor's designee. Once the construction plans and plot plan have been approved, then the construction of the improvements must comply with all applicable building codes and the rules and regulations of the Idaho Department of Lands. Lessee may not place a lien or encumber the leased site.
- C. Treatment of Approved Improvements Upon Lease Expiration. In the event this lease expires without Lessee having made application to renew, Lessor shall have the right to require Lessee to remove all approved improvements placed or caused to be placed upon the leased premises by the Lessee, and to require Lessee to restore the leased premises, as nearly as is reasonably practical, to its natural condition, all at Lessee's sole cost and expense, or, at Lessor's option, to purchase such approved improvements from Lessee at the fair market value of the same as of the date of expiration.
- D. Non-Approved Improvements. Any improvements to the leased site which are not approved by Lessor shall be removed by the Lessee at the Lessee's sole cost and expense. Upon the expiration of the lease term if unapproved improvements remain on the leased site, then Lessor may remove such unapproved improvements and charge the cost of removal and restoration to the Lessee. Lessee shall also be responsible for all collection costs including legal fees and interest.

10. Relations of the Parties.

Lessee is not an officer, employee, or agent of the Lessor. Lessee covenants that it will satisfy and hold Lessor harmless against any lien, judgment, or encumbrance filed or made against the leased site at the Lessee's sole and separate cost or expense.

11. Insurance.

NONE.

12. Indemnification.

Lessee shall indemnify, defend, and save harmless the Lessor, the State of Idaho, its officers, agents and employees from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorneys' fees, caused by or arising out of the performance, act or omission of Lessee, or Lessee's agents, or employees or otherwise arising out of the use or occupation of the leased site; or arising from the Lessee or Lessee's agents or employees' failure to comply with any applicable state, federal, or local law, statute, rule, regulation or act. This indemnification shall survive the termination or expiration of this lease.

13. Inspection and Audit Rights.

A. Inspection by Lessor. Lessee shall permit Lessor or Lessor's authorized agent or designee to inspect and enter the leased site and any improvements at any reasonable time.

B. Audit Rights. The Lessor shall have the right to audit, in such a manner at all reasonable times as it deems appropriate, all activities of the Lessee arising in the course of its undertakings under this lease. Lessee must maintain its books, records, documents, and other evidence of accounting in accordance with generally accepted accounting principles so as to properly reflect its business.

14. Reclassification.

The Lessor reserves the right to reclassify the lands covered by this lease and to terminate this lease with one hundred eighty (180) days written notice of termination to Lessee.

15. Reservations by Lessor.

The Lessor expressly reserves and excepts the following rights from the lease:

A. All timber rights, rights for oil and gas, geothermal rights, mineral rights, easements and rights-of-way, fee title to the leased site, and title to all appurtenances and improvements placed thereon by the Lessor.

B. The right to grant easements over the leased site, providing said easements do not conflict with the approved improvements installed and maintained or operated by the Lessee upon the leased site.

C. The right to require that changes are made to the sanitation or other facilities for the protection of public health, safety or preservation of the leased site.

D. The right to issue leases for exploration and development of oil, gas, geothermal and mineral resources or any other lease, so long as such other use does not materially interfere with the authorized use under this lease.

E. To reserve, as its sole property, any and all water from any source arising on state land and to hold the water rights for any beneficial use that may develop as a result of this lease.

F. Right of ingress and egress over and across the herein described premises for itself and its assigns on existing roads or suitable alternative roads provided by the Lessee.

16. Lessor's Right of Sale or Exchange.

Lessor reserves the right to sell or exchange all or any portion of the leased premises and in the event of sale or

exchange during the continuance hereof, Lessee hereby covenants to deliver immediate possession of the lands so sold or exchanged unto the Lessor, or to the person or party as may be specified in writing by the Lessor or its authorized agent. In the event of such sale or exchange, the Lessee shall have the rights provided by Section 58-313, Idaho Code, with respect to approved improvements placed upon the leased premises by the Lessee; provided that Lessee shall not be entitled to compensation with respect to any non-approved improvements made or erected upon the leased premises.

17. **Lessee's Default.**

Lessee's breach of any of the terms of this lease is a basis for termination of the lease. Lessee's violation of any Land Board or Department of Lands rule or regulation currently or hereafter adopted is a further basis for termination of this lease. Lessor shall provide Lessee written notice of the breach for violation and, if applicable, the corrective action required of Lessee. The notice shall specify the reasonable time to make a correction or cure the violation or breach. If the corrective action or cure is not taken within the specified time or does not occur, then the Lessor or Lessor's designee shall cancel the lease effective on the date specified in the written cancellation notice, provided, however, that the notice shall be provided to Lessee no later than thirty (30) calendar days prior to the effective date of such cancellation.

18. **Notices.**

Any notice given in connection with the lease shall be given in writing and shall be delivered either by hand to the other party or by certified mail, return receipt requested, to the other party at the other party's address stated herein. Either party may change its address stated herein by giving notice of the change in accordance with this paragraph. Until changed by notice in writing, notice, demands and communications shall be addressed as follows:

TO: Idaho Department of Lands (LESSOR)	TO: United States Department of Energy (LESSEE)
954 W. Jefferson St.	c/o Kathy Blackburn
P.O. Box 83720	850 Energy Drive
Boise, ID 83720-0050	Idaho Falls, ID 83402

19. **Waiver.**

The waiver by the Lessor of any breach of any term, covenant, or condition of this lease shall not be deemed to be a waiver of any past, present, or future breach of the same or any other term, covenant, or condition of this lease. The acceptance of rent by the Lessor hereunder shall not be construed to be a waiver of any term of this lease. No payment by the Lessee of a lesser amount than shall be due according to the terms of this lease shall be deemed or construed to be other than a part payment on account of the most recent rent due, nor shall any endorsement or statement of any check or letter accompanying any payment be deemed to create an accord and satisfaction.

20. **Attorneys' Fees and Costs.**

In the event that either party to this lease shall interpret or enforce any of the provisions hereof by any action at law or in equity, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney's fees, accountants' fees and appraisers and fees of other experts, incurred therein by the prevailing party, including all such costs and expenses incurred with respect to an appeal and such may be included in the judgment entered in such action.

21. **Officials, Agents and Employees Not Personally Liable.**

In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or obligation contained in this lease, express or implied, nor for any statement, representation or warranty made in connection herewith.

22. **Surrender of Leased Site.**

Upon the expiration or termination by default of this lease term, all right, title, and interest of Lessee to any of the improvements constructed upon or placed upon the leased site that are not removed shall be deemed to revert to the State of Idaho. Lessor has the right to enter the premises and remove any of the improvements or otherwise dispose of such improvements, and charge the cost of removal and/or disposal and restoration to Lessee. Lessee

shall also be responsible for all collection costs including legal fees and interest. Lessee upon termination of this lease shall quietly surrender the leased site to Lessor.

23. Miscellaneous.

- A. Modification. This lease may be modified in any particular only by the prior written consent of the authorized representatives of the Lessor and Lessee.
- B. Complete Statement of Terms. No other understanding, whether oral or written, whether made prior to or contemporaneously with this lease, shall be deemed to enlarge, limit, or otherwise effect the operation of this lease.
- C. Lessee's Non-Discrimination. Lessee shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.
- D. Paragraph Headings. The paragraph headings, titles, and captions used in this lease are for convenience only and are not part of this lease.
- E. Entire Agreement. This lease contains the entire agreement between the parties as of the date concerning the subject matter hereof and supersedes all prior agreements. The execution of this lease has not been induced by either party, or any agent of either party, by representations, promises, or undertakings whatsoever between the respective parties concerning this lease except those which are expressly contained herein.
- F. Governing Law and Forum. This lease shall be construed in accordance with and governed by the laws of the State of Idaho and the parties consent to the jurisdiction of Idaho State Courts located in Ada County in the event of any dispute with respect to this lease.
- G. Binding on Heirs and Successors. It is understood and agreed that all terms, covenants, and conditions hereof shall be binding upon the approved subleases, approved assignees and Lessee's heirs or successors in interest.
- H. Severability. In the event any provision of this lease shall be held invalid or unenforceable according to law, for any reason whatsoever, then the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.