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## JOINT FACILITY OPERATING AGREEMENT

THIS AGREEMENT, made and entered into this 6 day of September, 1995, by and between Lightning Dock Geothermal, Inc., a New Mexico corporation with offices at 224 W. Greening, Las Cruces, New Mexico 88005 (hereinafter called "LDG") and AmeriCulture, Inc., a New Mexico corporation with offices at 536 Paul Place, Los Alamos, NM 87544 (hereinafter called "AmeriCulture").

### WITNESSETH:

WHEREAS, the parties, either jointly or singularly, have an interest in and to certain real property located in Hidalgo County, New Mexico, which property, for the purposes of this Agreement, will be identified as follows (hereinafter referred to as the "Property"). The Property comprises about 15 acres and is described as follows:

A tract of land situate in the Northwest quarter of the Northeast quarter (NW 1/4, NE 1/4) of Section 7, Township 25 South, Range 19 West of the N.M.P.M. in Hidalgo County, New Mexico.

WHEREAS, AmeriCulture owns the surface and minerals in and to the Property and is desirous of obtaining use of the Geothermal Rights therein from LDG under the terms and conditions set forth in this Agreement, and

WHEREAS, AmeriCulture is desirous of entering into an agreement with LDG, under the terms and conditions as set forth herein, whereby AmeriCulture will have the right to utilize the geothermal resources in the Property for Non-Power uses (as hereinafter defined), and

WHEREAS, LDG wishes to engage in geothermal exploration and development operations for Power-Use (as hereinafter defined) under the Property to the extent permitted by the parties rights and interests therein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein contained hereto and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereby agree as follows:

*I. Definitions*

- A. "Geothermal Resources" shall mean geothermal steam and associated geothermal resources including but not limited to (1) all products of geothermal processes embracing indigenous steam, hot water and hot brines and, (2) steam and other gases, hot water and hot brines resulting from the artificial introduction or injection of water, gas or other fluids into geothermal formations or the earth, and (3) heat or other associated energy found in geothermal formations.
- B. "Power Use" shall mean the utilization of Geothermal Resources to generate electricity.
- C. "Non-Power Use" shall mean utilizing Geothermal Resources for non-electrical generating use such as space heating of aquaculture facilities, greenhouses, kilns, drying rooms, housing, storage, washing of commercial products or bathing or similar uses.
- D. "Federal Regulations" shall mean regulations promulgated by the U.S. Department of Interior covering geothermal operating requirements as published in 43 Code of Federal Regulations Part 3260—Geothermal Resources Operations (10-1-93 edition, as may be modified by future changes).
- E. "Facility Operator" shall mean the operator, licensee, or the individual, corporation, association, or municipality that operates any facility on a Federal geothermal lease for the beneficial utilization of geothermal resources.

## II. *Terms of this Agreement*

The effective initiation date shall be the date on which AmeriCulture acquires the Property. The term of this Agreement shall be the same as the term of Federal Geothermal Lease NM34790.

## III. *Rights and Obligations of AmeriCulture*

A. In addition to those rights otherwise set forth in this agreement, AmeriCulture shall have the right to:

1. Drill and develop Geothermal Resources for Non-Power Use on the Property to a depth not to exceed 1,000 feet below the surface of the earth. Any attempt by AmeriCulture to drill or develop below such levels without the prior written consent of LDG shall constitute an act of default under this Agreement.
2. Conduct on the Property any operations reasonable and necessary for any Non-Power Use of Geothermal Resources providing such operations and activities pursuant thereto do not unreasonably interfere with the activities of LDG under this Agreement.

B. In addition to the obligations otherwise set forth in this Agreement, AmeriCulture shall have the obligation to:

1. Manage and conduct AmeriCulture's own operations. AmeriCulture shall have exclusive ownership, custody, and control of all buildings, other improvements, materials and equipment used in connection with AmeriCulture's Non-Power Use operations under this Agreement. All individuals employed by AmeriCulture alone, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by AmeriCulture. LDG shall not be

responsible for or liable to any property or person for anything done or omitted to be done by AmeriCulture in the conduct of AmeriCulture's operations hereunder.

2. Bear all costs of AmeriCulture's activities and operations under this Agreement.
3. Satisfy and fully comply with any and all applicable local, state and federal ordinances, laws, regulations or requirements and all of the requirements and the terms and conditions of the Federal Lease.
4. Obtain at AmeriCulture's expense all permits required to conduct the activities and operations permitted hereunder.
5. Be bound in the conduct of AmeriCulture's operations by the terms and conditions of Federal Geothermal Resources Lease NM 34790 and this Agreement does hereby incorporate by reference all of the terms and conditions of said Federal Lease.
6. Timely file with the appropriate Federal and State agencies all reports that shall be required of AmeriCulture and to furnish LDG with copies of any such reports on a timely basis. In this regard, the provisions of 43 Code of Federal Regulations Part 3260 are fully incorporated by reference in this Agreement.
7. In accordance with the provisions of 43 Code of Federal Regulations Part 3262.4, AmeriCulture shall submit a properly prepared Plan of Operations prior to commencement of geothermal operations on Federal Lease NM 34790.
8. In accordance with the provisions of 43 Code of Federal Regulations Part 3263, AmeriCulture shall install and maintain geothermal utilization equipment consisting of devices to measure and record flow rate and heat consumption prior to commencement of geothermal operations on Federal Lease NM 34790 for any or all

geothermal wells producing on Federal Lease NM 34790 employed for beneficial use by AmeriCulture.

9. Before commencing geothermal operations from Federal Lease NM 34790, AmeriCulture shall have in place an approved Disposal Order issued by the New Mexico Environment Department in accordance with provisions of the New Mexico Water Quality Control Regulations.
10. Defend, indemnify and hold harmless LDG, its successors and assigns, from and against any and all claims, demands, losses, damages or liabilities and from and against any and all costs and expenses arising out of or by reason of any activities of AmeriCulture conducted pursuant to or permitted by this Agreement.

#### IV. *Rights and Obligations of LDG*

- A. In addition to those rights otherwise set forth in this Agreement and the Federal Lease, LDG shall have the right to:
  1. Conduct any and all Power-Use activities and operations, except power plant construction, on the Property which are permitted by the Federal Lease.
  2. Full and complete use of the surface of the Property for all of LDG's exploration and development activities under this Agreement.
  3. Access to the Property for all purposes permitted under the Federal Lease. AmeriCulture agrees to cooperate with LDG in the selection of any work sites and roadways necessary for such purposes.

B. In addition to those obligations otherwise set forth in this Agreement, LDG shall have the obligation to:

1. Conduct its activities and operations in a good and workmanlike manner and to refrain from interfering with AmeriCulture's activities and operations unless reasonable and necessary to its own rights permitted herein.
2. Comply with the Federal Lease in so far as it applies to the Power-Use activities and operations of LDG and to timely prepare and file all reports of such lease as are required by the Power-Use activities and operations under the lease.
3. If LDG's drilling activities result in a depletion of AmeriCulture's heat source for non-power purposes, then upon the commencement of geothermal production by LDG, LDG shall provide AmeriCulture with effluent heat in an amount equivalent to that by which AmeriCulture's resource is depleted.
4. Defend, indemnify and hold harmless AmeriCulture, his successors and assigns, from and against any and all claims, demands, losses, damages or liabilities and from and against all costs and expenses arising out of or by reason of any activities of LDG taken or permitted by this Agreement.

V. *Designation of Operator and Bond*

- A. LDG shall appoint AmeriCulture as Facility Operator for the purpose of conducting on its Property any Non-Power Use of geothermal resources under the Federal Lease NM 34790. A copy of the designation of Facility Operator is attached to this letter and is incorporated herein by reference.
- B. Prior to commencing geothermal operations on Federal Lease NM 34790, AmeriCulture shall submit a bond in the amount of \$10,000 so as to provide surety as a Performance

Bond. This bond shall be submitted in form and content as required by the Las Cruces District Office of the Bureau of Land Management.

## VI. *Royalty Provision*

- A. In conformance with applicable rules and regulations of the U.S. Minerals Management Service (MMS), AmeriCulture shall establish a Payor Account for geothermal royalties due and payable. Such royalty payments shall comply with computational methods and dollar amounts as stipulated by the MMS for all geothermal production used for beneficial purposes from AmeriCulture's operation on Federal Lease NM 34790.
- B. AmeriCulture shall timely pay to MSS all royalty payments due on the Federal Lease for Non-Power use by AmeriCulture pursuant to the schedule mentioned in Article VI.A. above.
- C. Failure of AmeriCulture to make any of the payments required by Articles VI.B. above shall constitute a default of AmeriCulture's obligations hereunder.

## VII. *Default*

LDG shall have the right to terminate this Operating Agreement upon the occurrence of any act of default by AmeriCulture. Termination shall become effective ten (10) days after receipt by AmeriCulture of written notice thereof.

## VIII. *Assignment or Sublease of Interest*

AmeriCulture shall not assign or sublease AmeriCulture's interest in this Agreement without the prior written consent of LDG, provided, however, that AmeriCulture shall have the right to assign its rights hereunder to any financial institution which intends to provide financing for AmeriCulture's operation permitted hereunder.

LDG shall have the right to assign or sublease its rights or any part thereof, under the Federal Lease provided that any such assignment or sublease be made subject to this Agreement.

IX. *Surrender*


The parties acknowledge that LDG has the right under the Federal Lease to surrender all or any part of the Lease during the term thereof. In the event that LDG so elects to surrender all or any part of the lease such acreage may instead be assigned to AmeriCulture if a request to this effect is made in writing, provided, however, that AmeriCulture shall provide a good and sufficient bond approved by the Government, prior to any such assignment. In the event an assignment is made to AmeriCulture pursuant to this paragraph then this Agreement shall no longer apply to the land so assigned.

X. *Successors in Interest*

This Agreement shall inure to the benefit of and be binding on all heirs, devisees, personal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date hereinbefore written.

AmeriCulture:

  
Gary L. Seawright, President

Lightning Dock Geothermal, Inc.:

Attest:

  
Roy A. Curniff, President

  
Roger L. Bowers, Vice President

Attachment: Designation of Facility Operator



**LOS ALAMOS NATIONAL BANK**

Post Office Box 60, Los Alamos, New Mexico 87544 / Telephone (505) 662-5171

**Irrevocable Letter of Credit No. 1207**

September 11, 1995

Department of the Interior  
Bureau of Land Management  
Las Cruces District Office  
1800 Marques  
Las Cruces, NM 88005

To whom it may concern:

We hereby establish an Irrevocable Letter of Credit No. 1207 in your favor for the account of AmeriCulture of Los Alamos, New Mexico for a sum not exceeding Ten Thousand and no/100's (\$10,000.00) U. S. Currency Dollars, available by your draft at sight on us and accompanied by documents specified below:

1. Beneficiary's statement manually signed by an officer, on its letterhead stating either:
  - A. That an event of default has occurred under the lease between Lessor and AmeriCulture; or
  - B. That voluntary or involuntary bankruptcy proceedings have been commenced by or against AmeriCulture.

This letter of credit will be effective September 11, 1995 and will expire on September 11, 1996 but such expiration date shall be automatically extended without amendment for a period of one year on September 11, 1996, and on each successive expiration date thereafter, unless at least sixty days before the then current expiration, we provide notice to the Department of the Interior, Bureau of Land Management by certified mail that we elected not to extend the letter of credit. Upon expiration of the ninety day notice period, all sums due and which may become due under the letter of credit by presenting your draft at sight on us and a beneficiary's statement manually signed by an officer on its letterhead reading exactly as follows: "AmeriCulture has not obtained an irrevocable standby letter of credit from a financial institution (acceptable to Lessor) to substitute for Los Alamos National Bank's letter of credit prior to its expiration date."

We hereby engage with you that all drafts drawn under and in compliance with this letter of credit will be duly honored if drawn and presented for payment at the drawee on or before the expiration date of this letter of credit.

Except as otherwise stated, the credit is subject to the "Uniform Customs and Practice for Documentary Credits", 1993 Revision, International Chamber of Commerce Publication No. 500.

Sincerely,



Steve W. Wells  
President

SWW/dbc