

## DONATION AGREEMENT

THIS DONATION AGREEMENT (“Agreement”) is made and entered into between \_\_\_\_\_, a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ (“Grantor”) and **THE BUREAU OF ECONOMIC GEOLOGY, THE UNIVERSITY OF TEXAS AT AUSTIN, for the use and benefit of THE UNIVERSITY OF TEXAS AT AUSTIN** (“Grantee”).

WHEREAS, Grantor desires to donate to Grantee certain well cores and rock samples or cuttings specifically described in **Exhibit A** attached hereto and made part hereof (“Material”); and

WHEREAS, the Material is described in **Exhibit A** by 1) state or area, 2) county or block, and 3) unique well identification (UWI) number and/or American Petroleum Institute (API) well number, each in accordance with API Bulletin D12A, January 1979, and MMS (Mineral Management Service) Field Operations Reporter’s Handbook, November 2000, to which reference is hereby made for all purposes; and

WHEREAS, Grantee desires to accept the donation of the Material from Grantor.

NOW, THEREFORE, Grantor agrees to donate the Material to Grantee and Grantee hereby agrees to accept the Material in accordance with the following terms and conditions:

1. Charitable or Non-Profit Organization. Grantee represents and warrants that it is a qualified charitable organization or a non-profit educational organization under section 170(c) of the Internal Revenue Code of 1986, as amended.
2. Purpose of Donation. The Material is donated to Grantee exclusively for the public purpose of scientific research or education, or both, and for no other purpose.
3. Public Access. The Material shall be made reasonably available to the public, including Grantor. However, the Material shall be used solely in the United States of America.
4. Transfer of Ownership. As of the date this Agreement is executed by Grantee, the Material will be held by Grantor for the benefit of Grantee and the benefits and burdens of ownership of the Material will pass to Grantee at that time. If any of the Material is incorrectly or inadequately described, the description will be corrected or supplemented upon proof of the proper description. Grantee does not provide estimates of value for tax purposes.

5. **Maintenance and Use of Material.** Grantee agrees to maintain the Material in accordance with all applicable laws and regulations, as a public resource so long as it is economically practical and reasonably scientifically useful to do so, subject to governmental action, fire, flood, and other casualty. Grantee agrees to reposit the Material and curate it in a manner that ensures its safe keeping and scientific integrity; provided however, Grantor recognizes that the Material will be used for scientific purposes, including taking samples for analyses that may result in the consumption or loss of some of the Material. Grantee reserves the right to dispose of any donated Material in response to space restrictions. Grantee agrees to bear all costs associated with the curation and continuing maintenance of the Material. Grantee agrees to use the Material in a careful and proper manner and assumes sole responsibility and liability for death of or injury to person and damage to or loss of property resulting from or arising out of the possession, use or storage of the Material, and Grantee agrees that Grantor will not be responsible for any loss, claim, damage, liability, cost, or expense of any kind and nature.

6. **Compliance with Laws.** Grantee shall comply with all laws, ordinances, and regulations relating to the possession, use, and storage of the Material.

7. **Disclaimer and Release.** Grantee accepts the Material in its present condition on a “where is” and “as is” basis with all faults and without representation or warranty of any kind—express, statutory, or implied—as to title, description, physical or environmental condition, quality, value, fitness for purpose, merchantability, or otherwise, and, as of the date of Grantee’s possession, Grantee assumes any and all responsibility and risk related thereto. With respect to the Material received and accepted by Grantee, and to the extent authorized under the Constitution and laws of the State of Texas, Grantee hereby releases Grantor, its affiliates, agents, employees, and officers from and waives any and all claims of every nature and kind whatsoever, present and future, known and unknown, suspected and unsuspected, against Grantor, or any of its affiliates, agents, employees, and officers, including any rights of indemnification, contribution, or recourse and any claims under applicable law or regulation, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Clean Water Act (33 U.S.C. §§466 et seq.), the Safe Drinking Water Act (14 U.S.C. §§1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.), and the Toxic Substance Control Act (15 U.S.C. §§2601-2629).

8. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Texas.

9. **Notices.** All notices and other communications required, permitted or desired to be given hereunder must be in writing and sent by: (a) U.S. mail, properly

addressed as shown below, and with all postage and other charges fully prepaid, (b) hand delivery, or (c) facsimile transmission. Date of service by mail and hand delivery is the date on which such notice is received by the addressee and by facsimile is the date sent (as evidenced by fax machine confirmation of receipt), or if such date is not on a business day, then on the next date which is a business day. Each party may change its address by notifying the other party in writing.

10. Amendments and Severability. No amendments or other changes to this Agreement shall be effective or binding on either of the parties unless the same shall be in writing and signed by both Grantor and Grantee. The invalidity of any one or more provisions of this Agreement shall not affect the validity of this Agreement as a whole, and in case of any such invalidity, this Agreement shall be construed as if the invalid provision had not been included herein.

11. **Conspicuousness of Provisions.** The parties acknowledge that the provisions contained in this Agreement that are set out in “bold” satisfy the requirement of the express negligence rule and any other requirement at law or in equity that provisions contained in a contract be conspicuously marked or highlighted.

12. Entire Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings, letters of intent, and agreements (whether oral or written) between the parties relating to the Material and constitutes the entire understanding and agreement between the parties with respect to the Material.

13. **Deceptive Trade Practices- WAIVER OF CONSUMER RIGHTS.** As partial consideration for the parties agreeing to enter into this Agreement, the parties each can and do expressly waive the provisions of the Texas Deceptive Trade Practices - Consumer Protection Act, Article 17.41 et seq., Texas Business and Commerce Code, a law that gives consumers special rights and protections, and all other consumer protection laws of the State of Texas, or any other state, applicable to this transaction that may be waived by the parties. It is not the intent of the parties hereto to waive and the parties shall not waive any applicable law or sub-part thereof which is prohibited by law from being waived.

14. Execution in Counterparts. This Agreement may be executed in counterparts, which shall when taken together constitute one (1) valid and binding agreement.

15. Headings. The titles and headings set forth in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement.

16. Non-Waiver. The waiver of a breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as

to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

17. No Partnership Created. It is not the purpose or intention of this Agreement to create (and it shall not be construed as creating) a joint venture, partnership, or any type of association, and the parties are not authorized to act as agent or principal for each other with respect to any matter related hereto.

18. Assignment or Transfer by Grantee. Upon thirty (30) days advance written notice to Grantor, Grantee may assign or transfer all or a portion of the Material to any person or party that is financially capable to assume the obligations of Grantee under this Agreement, provided that such person or party shall assume in a written instrument delivered to Grantor, all obligations of Grantee under this Agreement as to the assigned or transferred Material. In the event of such assignment or transfer, Grantee shall remain liable to Grantor for all obligations under the Agreement, and Grantee shall provide Grantor an updated inventory of the Material indicating the person or party in possession of the Material and the location of same. The foregoing conditions shall apply to any and all subsequent assignments or transfers.

19. Successors and Assigns. The terms, covenants, and conditions contained in this Agreement shall be binding upon and shall inure to the benefit of Grantor and Grantee and their respective successors and assigns.

20. Survival of Representations and Warranties. All representations, warranties, disclaimers, waivers, covenants, and agreements contained in this Agreement shall survive the expiration or termination of this Agreement. The parties have made no representations or warranties, except those expressly set forth in this Agreement.

21. Delivery. Grantor agrees to pay all transportation costs associated with shipping the Material to the Austin Core Research Center, 10100 Burnet Road, J. J. Pickle Research Campus, Building 131, Austin, Texas 78758.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Grantor:**

**Grantee:**

**Bureau of Economic Geology,  
Jackson School of Geosciences,  
THE UNIVERSITY OF TEXAS AT AUSTIN**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_