

INTERAGENCY AGREEMENT

1. PARTIES

The parties to this agreement (Agreement) are the North Dakota Industrial Commission, Department of Mineral Resources (STATE), and North Dakota Department of Environmental Quality (CONTRACTOR), each a "Party" and collectively "Parties".

2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Agreement, shall provide the following:

CONTRACTOR staff from the Division of Air Quality will assess methane emissions from approximately 85 wells before and after they have been plugged.

STATE will provide CONTRACTOR within 15 days of the Agreement Effective Date a complete list of wells, not to exceed 85 total, to be assessed.

CONTRACTOR will perform a pre-plug baseline assessment of the wellhead consisting of an optical gas survey using a Teledyne FLIR Optical Gas Imaging (OGI) camera starting as soon as possible. If observable hydrocarbon/volatile organic compound (VOC) emissions are noted with the OGI camera, CONTRACTOR will use a Honeywell Area Rae Multiple Gas Monitor to estimate the hydrocarbon/VOC emission concentration.

Once STATE notifies CONTRACTOR of a completed plugging, CONTRACTOR will perform a post-plugging assessment that consists of an optical gas survey using the OGI camera. If observable hydrocarbon/VOC emissions are noted with the OGI camera, CONTRACTOR will use the Honeywell Area Rae Multiple Gas Monitor to estimate the hydrocarbon/VOC emission concentration.

Depending on the time of year and distance between well survey locations, CONTRACTOR estimated that the pre-plug assessments can be accomplished in three (3) days, with an additional three (3) days for the post-plug assessments. During winter and wet weather this may be extended due to lack of daylight/extended travel times, and additional reimbursement may be necessary. Any onsite production equipment (e.g. tanks, treaters, separators) will not be surveyed and is not included in the Contractual Amount for CONTRACTOR to perform the pre and post assessments for 85 wells.

CONTRACTOR requires that STATE provide the GPS location of the wells to be surveyed, as well as confirming the accessibility of the location (i.e. is there vehicle access to the wellhead). CONTRACTOR will notify STATE at least three (3) business days prior to site visits, so STATE can do a well site access review to determine access conditions. If a site cannot be accessed due to weather or other unknowns, STATE and CONTRACTOR will discuss rescheduling the site visit timing.

CONTRACTOR will provide weekly updates to the STATE once work starts and to complete the assessments by September 1st, 2023, however this date is subject to change dependent on STATE's plugging schedule. CONTRACTOR will provide the STATE with a summary report of activities conducted for this project which includes two (2) OGI videos for each wellhead

surveyed (a pre-plug and a post-plug video), as well as the data log from the Honeywell Area Rae Multiple Gas Monitor when applicable. Readings will only be taken if hydrocarbon/VOC emissions are observed from the wellhead with the OGI camera.

3. COMPENSATION

a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Agreement an amount not to exceed \$6,500 (Contractual Amount).

CONTRACTOR's budget is for two (2) coordinated trips (pre-trip and post-trip) to inspect all 85 well sites each trip. If additional trips are required to complete the Scope of Work or the number of well sites increase, CONTRACTOR may require additional compensation and the Contractual Amount will be amended. CONTRACTOR's estimate to complete the Scope of Work is provided below.

Cost estimate for six days (48 hours)

Salary and Fringe for two people (48 hours/person)	\$4,800
4 nights lodging (\$88.20) for two people	\$800
Per diem (\$35) for two people	\$420
Indirect (10% x Salary and Fringe)	\$480
Total	\$6,500

The Contractual Amount is firm for the duration of this Agreement and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Agreement, unless amended.

b. Payment

STATE shall make payment under this Agreement within forty-five (45) calendar days after receipt of an undisputed invoice from CONTRACTOR.

4. TERM OF AGREEMENT

This Agreement term (Term) begins on November 1, 2022, or its Effective Date, and ends on April 4, 2024. This Agreement will not automatically renew. If a well is not plugged by the end of the Term of Agreement, CONTRACTOR is not responsible for any work beyond this date.

5. TERMINATION

a. Termination by Mutual Agreement

This Agreement may be terminated by mutual consent of both Parties executed in writing.

b. Termination for Lack of Funding or Authority

Either Party may terminate the whole or any part of this Agreement, effective upon delivery of written notice to the other Party or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

c. Termination for Cause

STATE may terminate this Agreement effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Agreement within the time specified or any extension agreed to by STATE; or
- 2) If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

CONTRACTOR may terminate this Agreement effective upon delivery of written notice to STATE, or any later date stated in the notice:

- 1) If STATE fails to provide payment required by this Agreement in accordance with Compensation Section of this Agreement and within the time specified or any extension agreed to by the Parties; or
- 2) If STATE fails to perform any of the other provisions of this Agreement, or so fails to pursue the payment for services as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of the Parties provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

6. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Agreement pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software

subscriptions, maintenance, or licenses.

7. NOTICE

All notices or other communications required under this Agreement must be given by registered or certified mail and are complete on the date postmarked when addressed to the Parties at the following addresses:

STATE	CONTRACTOR
Cody VanderBusch	Amy Cannon
Reclamation Specialist	Grants and Contracts Officer
600 E Boulevard Ave – Dept 405	4201 Normandy Street
Bismarck, ND 58505	Bismarck, ND 58503-1324

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

8. ASSIGNMENT AND SUBCONTRACTS

Neither Party may assign nor otherwise transfer or delegate any right or duty without the other Party's express written consent.

CONTRACTOR may enter subcontracts provided that any subcontract acknowledges the binding nature of this Agreement and incorporates this Agreement, including Attachment A. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. Neither Party has the authority to contract for or incur obligations on behalf of the other Party.

9. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Agreement. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

10. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Agreement, including the attachment, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both Parties.



11. SEVERABILITY

If any term of this Agreement is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Agreement did not contain that term.

12. EFFECTIVENESS OF CONTRACT

This Agreement is not effective until fully executed by both Parties. If no start date is specified

in the Term of Agreement, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

CONTRACTOR	STATE OF NORTH DAKOTA
North Dakota Department of Environmental Quality	Acting through its North Dakota Industrial Commission, Department of Mineral Resources
BY: 	BY: 
L. David Glatt, P.E.	Lynn D. Helms
Director	Department of Mineral Resources Director
Date: 11/22/2022	Date: 11/29/2022

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ATTACHMENT A

CONTRACTOR agrees to comply with all applicable provisions of the Davis-Bacon Act:

(40 U.S.C. parts 3141–3144, 3146- 3148; 42 U.S.C. part 3212)

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

CONTRACTOR agrees to comply with the Contract Work Hours and Safety Standards Act:

(40 U.S.C. parts 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week ATTACHMENT B of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

CONTRACTOR agrees to comply with the provisions of the Copeland Act:

(29 CFR part 3)

The Copeland Act’s Anti-Kickback provision prohibits contractors and subcontractors performing work on covered contracts from in any way inducing an employee to give up any part of the compensation to which he or she is entitled. The Copeland Act and implementing regulations also require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis and in cash or a negotiable instrument payable on demand.

CONTRACTOR agrees to comply with the Build America, Buy America Act:

(7 CFR Part 210.21(d))

The Build America, Buy America Act was enacted as part of the Infrastructure Investment and Jobs Act on November 15, 2021. Under the Build America, Buy America requirements, all iron, steel, manufactured products, and construction materials used for infrastructure projects under an award must be produced in the United States. These requirements took effect on May 14, 2022.

“Domestically produced” means that manufacturing and fabrication of applicable products are performed within the United States or its territories. Products used temporarily during construction are not subject to this requirement.

Agencies may waive the domestic content procurement preference if (1) a waiver is in the public interest, (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or satisfactory quality, or (3) the application of the domestic content preference would increase the cost of the overall project by more than 25 percent.