

WAIVER AND RELEASE

(the “Waiver”)

TO: [Prime Contractor] (the “Prime Contractor”)

DATE: [date]

RE: Waiver of Site Rehabilitation Program Pre-Payment Requirement

RECITALS:

- A. The Government of Alberta, Department of Energy (the “Province”) administers the Site Rehabilitation Program (the “Program”), pursuant to which oilfield service companies may apply for grant funding to assist with the closure or reclamation of oilfield infrastructure in Alberta;
- B. The Prime Contractor and the Province are party to a Site Rehabilitation Program Grant Agreement, dated as of [agreement date] (the “Grant Agreement”), bearing Program application no. [grant application no.] (the “Application”), granting the Prime Contractor \$[total grant amount] upon completion of certain site rehabilitation work as described in the Application, of which \$[outstanding amount] remains undistributed (the “Grant Funds”);
- C. Under the Grant Agreement the Prime Contractor has undertaken certain oilfield site rehabilitation work (the “Approved Work”). The Prime Contractor has entered into agreements with subcontractors (the “Subcontractors”), pursuant to which the Subcontractors have, in connection with the Approved Work, agreed to provide certain rehabilitation and remediation services (the “Subcontract Work”);
- D. The Program’s invoicing and payment guidelines, as may be amended from time to time (the “Guidelines”), require the Prime Contractor to submit proof of full payment of all Subcontractors for work completed in connection with the Grant Agreement (the “Pre-Payment Requirement”). Disbursement of the Grant Funds will not occur until the Pre-Payment Requirement is satisfied; and
- E. The Province shall waive the Pre-Payment Requirement and disburse the Grant Funds to the Prime Contractor following completion of the conditions listed in this Waiver.

WAIVER OF PRE-PAYMENT REQUIREMENT

- 1. **Obligations Incomplete.** The Prime Contractor has failed to discharge the Pre-Payment Requirement as described in the Guidelines and sections 2.2(c) and 4.3 of the Grant Agreement, disqualifying them from disbursement by the Province of the Grant Funds until the Pre-Payment Requirement is discharged.

2. **Waiver of Pre-Payment Requirement.** The Province shall waive the Pre-Payment Requirement and disburse the Grant Funds to the Prime Contractor (the “**Initial Disbursement**”) upon receipt and satisfactory review of:
 - a. **Forbearance Certificates.** The Prime Contractor shall collect and deliver to the Province, a certificate from each Subcontractor that has performed Subcontractor Work under the Application and Grant Agreement, in the form provided by the Province (each a “**Forbearance Certificate**”);
 - b. **Direction to Pay.** The Prime Contractor shall provide to the Province an executed direction to pay (the “**Direction**”), directing the Prime Contractor’s bank (the “**Bank**”) to disburse the Grant Funds to the Subcontractors in satisfaction of any amounts owing for Subcontract Work (the “**Subcontractor Disbursement**”), and such Direction shall be acknowledged by the Bank;
 - c. **List of Subcontractors.** The Prime Contractor shall provide to the Province a list of all Subcontractors which have completed Subcontract Work in connection with the Application and Grant Agreement (the “**Subcontractor List**”); and
 - d. **Subcontractor Invoices.** The Prime Contractor shall provide to the Province all invoices for the Subcontract Work completed in connection with the Application and Grant Agreement, detailing, among other things, the work completed and the outstanding balance owed to each individual Subcontractor (each a “**Subcontractor Invoice**” and together with the Forbearance Certificates, the Direction and the Subcontractor List, the “**Transaction Documents**”).
3. **Delivery of Transaction Documents.** The Prime Contractor shall deliver the Transaction Documents to the Province by attaching them to this Waiver as Schedules, and submitting the compiled Waiver (the “**Submission**”), in PDF Form, to the Province’s Electronic Transfer System for review by the Province.
4. **Review of Transaction Documents.** Upon receipt of the Submission, the Province shall review the Transaction Documents to ensure all required information is present and, upon satisfactory review, the Province shall authorize the deposit of the Initial Disbursement into the account of the Prime Contractor (the “**Deposit Account**”).
5. **Covenants.** The Prime Contractor covenants as follows:
 - a. **Security Interests.** The Deposit Account is not subject to any lien, charge, encumbrance, security interest or otherwise which, upon deposit of the Grant Funds, would rank in priority to or prevent or impede the Subcontractor Disbursement.
 - b. **Good Standing.** The Prime Contractor is in good standing with the Bank, and the Bank has no recourse or cause of action against the Prime Contractor which would materially impede or delay the Subcontractor Disbursement.
 - c. **Insolvency.** No insolvency proceeding of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement

with creditors, voluntary or involuntary, affecting the Prime Contractor or any of its assets or properties, is pending or, to the knowledge of the Prime Contractor, threatened. The Prime Contractor has not taken any action in contemplation of, or that would constitute the basis for, the institution of any such insolvency proceedings.

- d. **No Legal Action.** There is no legal action, suit, arbitration or other legal, administrative or other governmental investigation, inquiry or proceeding (whether federal, provincial, local, or foreign) pending or, to the knowledge of the Prime Contractor, threatened against the Prime Contractor that, if adversely determined, may impair or otherwise affect the Prime Contractor's ability to perform its obligations under this Agreement or is reasonably likely to cause a material delay in effecting the Subcontractor Disbursement.
6. **Obligations Satisfied.** Upon deposit of the Initial Disbursement in the Deposit Account, the Prime Contractor acknowledges and agrees that the Province has satisfied in full all obligations owed to the Prime Contractor under the Grant Agreement.
7. **Limitation of Liability.** In consideration of the waiver of the Pre-Payment Requirement, the receipt and sufficiency of which is hereby acknowledged, the Prime Contractor does hereby remise, release and fully and forever discharge the Province from any and all manner of actions, causes of action, claims or demands at law or in equity, or by statute which the Prime Contractor had, now has or may have, but for the execution of this Waiver, by reason of, related to, arising out of or in any way connected with the Province's waiver of the Pre-Payment Requirement, the Initial Disbursement or the Subcontractor Disbursement.
8. **Liability to Province and Indemnification.** Should the Prime Contractor, after receipt of the Initial Disbursement, fail to effect the Subcontractor Disbursement, for any reason, the Prime Contractor shall be liable to the Province for the sum of the outstanding balances owed to the Subcontractors for the Subcontract Work. In addition, the Prime Contractor shall indemnify and hold harmless the Province, its employees and agents against and from any and all third-party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from: (i) the Prime Contractor's breach of this Waiver, or (ii) the negligence, other tortious act or wilful misconduct of the Prime Contractor, or those for whom the Prime Contractor is legally responsible, in relation to the performance of its obligations under this Waiver.
9. **Limitation.** This Waiver operates solely in respect of the Pre-Payment Requirement, and nothing in this Waiver waives, amends or alters any other right or obligation described in the Grant Agreement.

[Signature Page Follows]

This Waiver is executed as of the date first written above.

**HIS MAJESTY THE KING IN RIGHT OF
ALBERTA, as represented by the Minister of
Energy**

Per: _____
Name: _____
Title: _____

This Waiver is received and acknowledged by the Prime Contractor.

[PRIME CONTRACTOR]

Per: _____
Name: _____
Title: _____

**Received and acknowledged this ____ day of _____,
20__**

SCHEDULE A
List of Subcontractors

SCHEDULE B
Direction to Pay
See Attached.

SCHEDULE C

[Subcontractor 1] Forbearance Certificate and Invoices

See Attached.

SCHEDULE D

[Subcontractor 2] Forbearance Certificate and Invoices

See Attached.

SCHEDULE E

[Subcontractor 3] Forbearance Certificate and Invoices

See Attached.