

**NORTH DAKOTA BROWNFIELDS STATE RESPONSE PROGRAM
ACCESS AGREEMENT**

1. **Parties.** This Agreement is entered into by the North Dakota Department of Environmental Quality (NDDEQ) and _____, the owner of the real property that is subject to this Agreement (Owner). NDDEQ has approved the application for the Property described in Paragraph 2 to provide assistance in conducting an environmental assessment and/or provide cleanup assistance, as part of the North Dakota Brownfields State Response Program under Section 128(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
2. **Property.** The Owner owns the real property located at _____, _____ County, North Dakota (Property), described in **Exhibit A. Exhibit A**, incorporated herein by reference, is a composite exhibit that includes evidence of ownership in the form of a deed and a legal description, as well as a detailed labeled map identifying the location of the Property.
3. **Right of Access.** In consideration of the benefits to public health and the environment, the Owner gives permission to NDDEQ, its agents, and contractors to access and enter the Property to assess the Property for contamination that may be present and, if necessary, remove and remediate contamination. Any access to building(s) or structure(s) on the Property is included in this Agreement. Permissible activities include but are not limited to the following:
 - a. Removing solid waste, asbestos containing material, lead containing material, petroleum impacted soil, universal and hazardous waste from the Property;
 - b. Sampling, monitoring, and inspecting air, soil vapor, surface water, groundwater, sediment, and/or soil;
 - c. Sampling and inspecting other materials suspected of containing a hazardous substance;
 - d. Constructing one or more groundwater monitoring wells, groundwater extraction wells, soil borings, test pits, and/or excavations;
 - e. Installing, using, and maintaining other monitoring equipment;
 - f. Maintaining any monitoring well or extraction well installed by NDDEQ on the Property; and
 - g. Photographing or videotaping portions of the Property (including buildings or other structures), objects, and materials at the Property as necessary to facilitate environmental assessments or cleanup activities.
4. **Tools and Equipment.** All tools, equipment, and other property brought to the Property by or at the direction of NDDEQ, its agents, or contractors remains the property of NDDEQ, its agents, or contractors, as applicable.
5. **Business Hours.** NDDEQ, its agents, and contractors may enter the Property during normal business hours and during other times as agreed to by the Owner.
6. **Insurance.** NDDEQ's contractors shall maintain a minimum level of insurance as defined in their contract with NDDEQ.
7. **No Admission.** The Owner's entering this Agreement is not intended, nor should it be construed, as an admission of liability on the part of the Owner for any contamination that may be present on the Property.
8. **Owner's Use of Property.** The Owner retains the right to use the Property, and NDDEQ and its agents and contractors will work with the Owner regarding minimizing activities that may interfere with the Owner's management and use of the Property. However, neither NDDEQ nor its agents and

contractors are responsible for any inconvenience, economic injury, or business damage that the Owner may suffer due to NDDEQ's, its agents', and contractors' performance of any permissible activity. This Agreement does not modify any legal right the parties may have regarding negligent acts.

9. **Owner's Non-Interference.** The Owner shall not interfere with the performance of permissible activities by NDDEQ, its agents, or contractors. The Owner shall not damage any tools or equipment belonging to NDDEQ, its agents, or contractors located on the Property. The Owner shall notify NDDEQ thirty (30) days prior to beginning any construction, demolition, or other work on the Property that may damage or destroy any part of the equipment installed or located on the Property under this Agreement. The Owner shall be responsible for any damage to tools or equipment done in violation of this Paragraph.
10. **Property Restoration.** Any inadvertent damage to the Property by NDDEQ, its agents, or contractors must be repaired to the extent reasonably possible. In no event shall NDDEQ replace buildings, structures, fixtures, or other features removed or damaged as part of the assessment or cleanup.
11. **Notice to Lessee.** If the Property is leased, the Owner shall give prompt notice of this Agreement to any lessee of the Property.
12. **Duration.** This Agreement shall remain in effect through the period of time necessary to complete the assessment, removal, and/or cleanup.
13. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action, or other right.
14. **NDDEQ's Liability.** NDDEQ will not be liable for any act of omission of its employees, agents, assigns, or contractors beyond that liability granted by the State Tort Claims Act, N.D.C.C. ch. 32-12.2. Neither NDDEQ, nor any party acting on its behalf, shall be considered a "responsible party" or "generator of hazardous waste" as it relates to any contamination at the Property solely because of undertaking the permissible activities.
15. **Entire Agreement.** This Agreement shall constitute the entire agreement between NDDEQ and the Owner regarding this grant of access. No modification, amendment, or waiver of the terms and conditions of this Agreement shall be binding on NDDEQ unless approved in writing by both parties. Nothing in this Agreement is intended to modify the North Dakota Brownfields State Response Program's requirements or applicable law, and the conditions of the application submitted for the Property remain in full force and effect.
16. **Applicable Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
17. **Severability.** If any provision of this Agreement is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. **Effective Date.** This Agreement is effective when signed by both parties.
19. **Execution.** This Agreement may be executed by electronic means and in multiple, identical counterparts, each of which must be an original but all of which together will constitute one and the same instrument.
20. **Authority to Bind.** Each individual executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes this Agreement.

Property Owner

Owner Name: _____

Signature: _____

By: _____ (printed)

Title: _____

Date: _____

North Dakota Department of Environmental Quality

Signature: _____

By: L. David Glatt, P.E.

Title: Director

Date: _____