



## REQUEST FOR PROPOSAL (RFP)

**FROM:** Timberlands Sequestration, LLC

**DATE:** November 7, 2024

**SUBJECT:** RFP for Mudlogging  
Timberlands Sequestration Project

**RESPONSE DUE:** December 20, 2024

### 1.0 BACKGROUND, OVERVIEW, AND SCOPE

#### 1.1 Background

In September 2024, Timberlands Sequestration, LLC (“TS”), a wholly owned subsidiary of Blue Sky Infrastructure, LLC, was awarded a grant from the U.S. Department of Energy (“DOE”) under the Carbon Storage Assurance Facility Enterprise (“CarbonSAFE”) Program to perform site characterization activities and will help advance and de-risk project development to enable commercialization and commercial operations in Alabama.

#### 1.2 Overview

TS requests a bid for mudlogging services (the “Work”) for a stratigraphic test well (the “Test Well”) as part of the TS Project with an anticipated spud in October 2025.

The primary objectives of the Test Well are:

- to collect the requisite subsurface data to confirm storage quality and continuity,
- complete a well to Class VI standards, and
- conduct injectivity testing to establish/confirm the injectability range for the proposed initial injection interval.

TS intends to collect mudlogging data as part of an extensive petrologic, petrophysical, mineralogical and geochemical dataset.

Well location details will be provided to prospective bidders upon execution of the attached NDA.

### 1.3 Scope

TS is seeking a mudlogging company to perform mudlogging on the Test Well. The service must include:

- Logging Unit
  - o Mob/demob
- Real-Time Monitoring
  - o 24-hr staffing
  - o Proactive identification and reporting of hazards
  - o 30 ft sample frequency
  - o Gas detection
  - o CO2 detection
  - o Sample photography and description
  - o Oil based mud handling
- Data Recording and Reporting
  - o Twice daily reporting
  - o End of well reports
  - o Sample preservation, labeling, storage, and shipment
  - o Digital storage and backup

Please include optional costs for:

- X-ray Fluorescence (“XRF”)
- Mass Spectroscopy

## 2.0 SERVICES REQUIRED

Services for this RFP include:

- Sample capture, preparation, and description
- Gas detection
- Hazard identification
- Reporting
- Sample cataloging, storage, and shipment

## 3.0 PROJECT TIMELINE

TS intends to award the contract the Work as early as January 2025. TS targets spudding the well in October 2025 and completing the well in December 2025.

## 4.0 PROPOSAL REQUIREMENTS AND PROCESS

### 4.1 DOE Grant Compliance

Pursuant to the requirements set forth under the cooperation agreement with the DOE for the grant funded work, Federal Award Procurement Requirements must be followed. If bidders plan to subcontract any portion of the work, they must adhere to procurement procedures and thresholds as set forth in 2 CFR 200.317 *et seq.*. A brief high-level summary is below:

- Informal Procurement Methods
  - o Micro-purchase awards:  $\leq$  \$10,000
    - May be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable
    - To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers
  - o Small purchase awards:  $>$  \$10,000 but  $\leq$  \$250,000
    - Price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity
    - However, formal procurement methods are not required (i.e., does not need to be publicly advertised)
- Formal Procurement Methods
  - o Required for procurement for property or services  $>$  \$250,000
  - o Require public advertising (e.g., posting RFP on website) unless a non-competitive procurement can be used
- Noncompetitive Procurement
  - o Noncompetitive procurement can only be awarded if one or more of the following apply:
    - The aggregate dollar amount of the acquisition of property or services does not exceed the micro-purchase threshold (\$10,000);
    - The item is available only from a single source;
    - Emergency need for the requirement will not permit delay resulting from publicizing a competitive solicitation;
    - The Federal awarding agency expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
    - After solicitation of a number of sources, competition is determined inadequate.

2 CFR 300 also requires contractors and subcontractors to comply with the below mentioned laws. Compliance with these laws will be included in our agreement.

- i. Contracting with Small Businesses, Minority Businesses, Women's Businesses, and Labor Surplus Area Firms.

- ii. Copeland “Anti-Kickback” Act.
- iii. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)
- iv. Buy America Requirements for Infrastructure Projects
- v. Equal Employment Opportunity
- vi. Suspension and Debarment
- vii. Prohibition on certain telecommunications and video surveillance services or equipment.
- viii. Davis Bacon Act
- ix. Compliance with the Contract Work Hours and Safety Standards Act.
- x. Clean Air Act
- xi. Federal Water Pollution Control Act

#### 4.2 Bid Deliverables

- Signed acknowledgement of adherence to DOE procurement policies
- Full Itemized cost estimate for mudlogging services described above in the Scope, including:
  - o Mobilization and demobilization fees
  - o Daily rates
  - o Mileage rates
  - o Per Diem
  - o Itemized costs for all additional services and fees
- Credentials of logging staff and technical support staff
  - o Please indicate if loggers are degreed geologists
- Any project discounts applied
- Past 5 years of OSHA-compliant safety statistics for bidder
- A signed statement acknowledging that project manager will comply with all regulatory requirements.
- Regulatory Compliance Plan
  - o Certificates of insurance
  - o Federal, State, and local codes and regulations to be satisfied
- In your response, please describe your method of charging for your services. TS prefers a fixed price contract, but may use a time-and-materials type contract only (1) after a determination that no other contract is suitable and (2) then the contract must include a ceiling price that the contractor exceeds at its own risk. You may not use the cost plus a percentage of cost and percentage of construction cost methods of contracting.
- Please state whether your company is a Small Business, Minority Business, Women’s Business, Veterans-Owned Business, or a Labor Surplus Area Firms.
  - o **“Labor Surplus Area Firm”** means a firm that, together with its first-tier subcontractors, will perform primarily in Labor Surplus Areas. “Labor Surplus

Areas” are localities that have a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the national rate.

- **“Minority Businesses”** means a business concern in which at least 51% of the concern is owned and day-to-day managed and controlled by a minority, or in the case of a publicly owned business, at least 51% of the stock is owned by a minority, with one or more minorities managing and controlling the daily operation of the business.
  - **“Small Business”** means an independently owned and operated concern, including its affiliates, that is not dominant in the field of operation in which it is bidding on contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see FAR Part 19).
  - **“Veteran-Owned Business”** means a business concern in which at least 51% of the concern is owned and day-to-day managed and controlled by a minority, or in the case of a publicly owned business, at least 51% of the stock is owned by a veteran, with one or more veterans managing and controlling the daily operation of the business.
  - **“Women Businesses”** means a business concern in which at least 51% of the concern is owned and day-to-day managed and controlled by women, or in the case of a publicly owned business, at least 51% of the stock is owned by women, with one or more women managing and controlling the daily operation of the business.
- If using any subcontractors, you will need to take affirmative steps to use Small Businesses, Minority Businesses, Women’s Businesses, Veteran-Owned Businesses and Labor Surplus Area Firms

### 4.3 Invoicing

Awardee must provide monthly invoices by the 15th of month following the invoice period. Payment will be remitted on a net 50-day basis via ACH transfer.

### 4.4 Accrual

On the third to final business day in each calendar month during the term of the contract, Awardee must provide a cost estimate for services rendered during such month. For example, in a month when the final business day is a Friday, the awardee must provide the estimate by the preceding Wednesday. Awardee shall use commercially reasonable efforts to provide good faith, monthly cost estimates. The monthly accrual estimates shall reflect all estimated costs including labor, expenses, and subcontracts.

### 4.5 RFP Disclaimer

This Request for Proposal (RFP) is issued solely for information and planning purposes and does not constitute an offer that can be accepted to form a binding contract. Any responses to this RFP are provided at the respondent's own expense, and no contractual obligation or commitment of any kind is formed as a result of submission. The issuing party reserves the right to reject any or all responses, amend, modify, or cancel this RFP at any time without notice or liability.

## 5.0 SELECTION PROCESS

All proposals will be evaluated based on the following criteria.

- Demonstrated competence and experience to perform the Scope of Work
- Safety and regulatory compliance record
- Thoughtfulness and comprehensiveness of response
- Cost competitiveness

## 6.0 ATTACHMENTS

- i. TS Procurement Appendix
- ii. NDA

## TS Procurement Appendix

### Compliance Provisions

- I. **Contracting with Small Businesses, Minority Businesses, Women’s Businesses, and Labor Surplus Area Firms.** Contractor must take all necessary affirmative steps to assure that Small Businesses, Minority Businesses, Women’s Businesses, and Labor Surplus Area Firms are used when possible. Affirmative steps must include:
  - A. Placing qualified Small Businesses, Minority Businesses and Women’s Businesses on solicitation lists;
  - B. Assuring that Small Businesses, Minority Businesses and Women’s Businesses are solicited whenever they are potential sources;
  - C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Small Businesses, Minority Businesses and Women’s Businesses;
  - D. Establishing delivery schedules, where the requirement permits, which encourage participation by Small Businesses, Minority Businesses and Women’s Businesses;
  - E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - F. Requiring Contractor to take the affirmative steps in A – E for itself and its subcontractors.

**“Labor Surplus Area Firm”** means a firm that, together with its first-tier subcontractors, will perform primarily in Labor Surplus Areas. “Labor Surplus Areas” are localities that have a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the national rate.

**“Minority Businesses”** means a business concern in which at least 51% of the concern is owned and day-to-day managed and controlled by a minority, or in the case of a publicly owned business, at least 51% of the stock is owned by a minority, with one or more minorities managing and controlling the daily operation of the business.

**“Small Business”** means an independently owned and operated concern, including its affiliates, that is not dominant in the field of operation in which it is bidding on contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see FAR Part 19).

**“Women Businesses”** means a business concern in which at least 51% of the concern is owned and day-to-day managed and controlled by women, or in the case of a publicly owned business, at least 51% of the stock is owned by women, with one or more women managing and controlling the daily operation of the business.

- II. **Copeland “Anti-Kickback” Act.**

- A. Contractor. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
  - B. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the cognizant federal agency of the grant funded work believes may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
  - C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- III. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**. Contractor certifies to Company and will require each subcontractor to certify to Contractor that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- IV. **Buy America Requirements for Infrastructure Projects**. Contractor should, to the greatest extent practicable for work paid in whole or part by the United States Federal government, provide a preference for the purchase, acquisition, or use of goods, products, or materials Produced in the United States (including but not limited to iron, aluminum, steel, cement, and other Manufactured Products) and require the same from subcontractors.
- A. **“Produced in the United States”** means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - B. **“Manufactured Products”** means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.



- V. **Equal Employment Opportunity.** During the performance of this Agreement, if Contractor is providing construction services, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- A. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - B. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
  - C. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - D. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- E. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency of the grant funded work may direct as a means of enforcing such provisions, including sanctions for noncompliance.

**VI. Suspension and Debarment**

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Contractor verifies, represents, and confirms that by entering into this Agreement that none of Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by Company. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Company, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D. Contractor will comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the work. Contractor will include a provision requiring such compliance in its lower tier covered transactions.

**VII. Prohibition on certain telecommunications and video surveillance services or equipment.** Contractor is prohibited from obligating or expending compensation for grant funded work for:–

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**VIII. Davis Bacon Act.<sup>1</sup>**

- A. If the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 are applicable, Contractor must comply with them and with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- B. If the requirements in the preceding section are applicable, then the Contractor is 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, and Contractor is required to pay wages not less than once a week.

**IX. Compliance with the Contract Work Hours and Safety Standards Act.<sup>2</sup>**

- A. Overtime requirements. Neither Contractor nor subcontractor which employs laborers or mechanics on the work shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. Company shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.
- D. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

**X. Clean Air Act<sup>3</sup>**

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

- B. Contractor agrees to report each violation to Company and understands and agrees that Company will, in turn, report each violation as required to assure notification to the Department of Energy, and the appropriate Environmental Protection Agency Regional Office.
- C. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

XI. **Excessive Profits.** Contractor will not charge amounts in excess of profits generally made on similar projects for non-government grant funded customers.\_

XII. **Federal Water Pollution Control Act<sup>4</sup>**

- A. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. Contractor agrees to report each violation to Company and understands and agrees that Company will, in turn, report each violation as required to assure notification to the Department of Energy, and the appropriate Environmental Protection Agency Regional Office.
- C. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

## Mutual Confidentiality Agreement

This Mutual Confidentiality Agreement (this “**Agreement**”), effective as of [\_\_\_\_], 2024 (the “**Effective Date**”), is entered into by and between Blue Sky Infrastructure, LLC, a Delaware limited liability company having its principal place of business at 1333 West Loop South, Suite 830, Houston, Texas 77027 (“**Blue Sky**”) and [\_\_\_\_], a [\_\_\_\_] [\_\_\_\_] having its principal place of business at [\_\_\_\_] (together, the “**Parties**,” and each, a “**Party**”).

WHEREAS, in connection with the evaluation of a potential business relationship between the Parties or one or both Parties’ providing services or goods to the other Party (the “**Purpose**”), the Parties desire to share certain information that is non-public, confidential, or proprietary in nature.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, the Parties agree as follows:

1) Confidential Information. Except as set out in Section 2 below, “**Confidential Information**” means all non-public, confidential, or proprietary information, including, but not limited to, any trade secrets disclosed before, on or after the Effective Date, by a Party (a “**Disclosing Party**”) to the other Party (a “**Recipient**”) or its affiliates, or to any of such Recipient’s or its affiliates’ employees, consultants, contractors, officers, directors, managers, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, “**Representatives**”), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” including, without limitation:

a) all information concerning the Disclosing Party’s and its affiliates’, and their customers’, suppliers’, and other third parties’ past, present, and future business affairs including, without limitation: geological and geophysical information; well and log data; maps, reports, interpretations and charts; engineering, modeling, and other technical data; title and land information; finances; customer or potential customer information; supplier information; products; services; organizational structure and internal practices, forecasts, sales and other financial results; records and budgets; and business, marketing, development, sales, and other commercial strategies;

b) the Disclosing Party’s unpatented inventions, ideas, methods, and discoveries, trade secrets, know-how, unpublished patent applications, and other confidential intellectual property;

c) any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives; and

d) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials (the “**Notes**”) prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

2) Exclusions from Confidential Information. Except as required by applicable federal, state, or local law or regulation, the term “**Confidential Information**” as used in this Agreement shall not include information that:

a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;

b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary, or contractual obligation to the Disclosing Party;

c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, before being disclosed by or on behalf of the Disclosing Party under this Agreement; or

d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

3) Recipient Obligations. The Recipient shall:

a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose, or otherwise in any manner to the Disclosing Party's detriment;

c) not disclose any such Confidential Information to any person or entity, except to (i) the Recipient's Representatives who (A) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement; (B) are informed by the Recipient of the confidential nature of the Confidential Information; and (C) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement or (ii) the Department of Energy who have a need to know the Confidential Information for purposes of the grant funding that Blue Sky or one of its subsidiaries is a recipient of.

d) be responsible for any breach of this Agreement caused by any of its Representatives.

4) Additional Confidentiality Obligations. Except as required by applicable federal, state, or local law or regulation, or otherwise as mutually agreed in writing by the Parties, neither Party shall itself disclose, nor permit any of its Representatives to disclose to any person:

a) that the Confidential Information has been made available to it or its Representatives, or that it has inspected any portion of the Confidential Information;

b) that discussions or negotiations may be, or are, underway between the Parties regarding the Confidential Information or the Purpose, including the status thereof; or

c) any terms, conditions, or other arrangements that are being discussed or negotiated in relation to the Confidential Information or the Purpose.

5) Required Disclosure. Any disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information under applicable federal, state, or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Before making any such disclosure, the Recipient shall make commercially reasonable efforts to provide the Disclosing Party with:

a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, on the advice of the Recipient's legal counsel, such Legal Order specifically requires the Recipient to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

6) Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed. Notwithstanding the foregoing, the Recipient may retain copies of Confidential Information that are stored on the Recipient's IT backup and disaster recovery systems until the ordinary course deletion thereof. The Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

7) Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire two (2) years from the Effective Date, provided that with respect to Confidential Information that constitutes a trade secret under applicable law, such rights and obligations will survive such expiration until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Recipient or its Representatives, and, provided that either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of two (2) years from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient.

8) No Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its



Representatives relating to or resulting from the Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

9) No Transfer of Rights, Title, or Interest. Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient or any of its Representatives.

10) No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

11) Remedies. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

12) Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in the city of Houston and County of Harris, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum *non conveniens*. Service of process, summons, notice, or other document by mail to such Party's address set out herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

13) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (with confirmation of transmission) if sent before 5:00 p.m. Central Time, and on the next business day if sent after such time; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set out on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

14) Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and

oral, regarding such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

15) Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

17) Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

18) Department of Energy Assurances. The confidentiality restrictions herein, shall not restrict Blue Sky, counterparty, or any of their Representatives from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

19) Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.



IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

**Blue Sky Infrastructure, LLC**

\_\_\_\_\_  
Name:

Title:

**[Counterparty]**

\_\_\_\_\_  
Name:

Title: