

BOARD OF COUNTY COMMISSIONERS
Sublette County, Wyoming
P.O. Box 250
PINEDALE, WY 82941

August 10, 2009

FILED
AUG 11 2009
Jim Ruby, Executive Secretary
Environmental Quality Council

Wyoming Environmental Quality Council
Herschler Building 1st Floor West
Room 1714, 122 West 25th Street
Cheyenne, WY 82002

RE: Comments on petition asking the Environmental Quality Council (EQC) to set the Wyoming Ambient Air Quality Standard (WAAQS) for ozone in Sublette County at a level of 0.065 parts per million.

Dear Council Members:

The Sublette County Commission asks that the EQC not accept the petition for the following reasons:

- The current cooperative process between Sublette County energy operators, Wyoming Department of Environmental Quality (WDEQ), Bureau of Land Management (BLM), Environmental Protection Agency (EPA), and the Sublette County Commission is working effectively, and proactive measures developed and installed as a result of this process will likely show significant improvement in the air quality in Sublette County. It is likely the air quality is already improving as evidenced by monitoring data collected this past year. We ask that you review the ozone response plans developed, in a cooperative effort, by energy companies, WDEQ, and BLM and included as part of the Record of Decision for the Pinedale Anticline and the Pinedale BLM Resource Management Plan, as evidence of the steps presently being taken to improve air quality in Sublette County.
- The petition before you will not achieve the goal of cleaner air in Sublette County and Wyoming. In fact, we have concern that if the EQC accepts this petition, the result will likely cause unnecessary diversion of both WDEQ and energy company resources, from developing and implementing procedures to improve air quality to trying to react to a proposed rulemaking to be applied only in Sublette County. However, if the EQC decides to move forward with rulemaking to lower the ozone standard for just Sublette County, the Sublette County Commission

requests that the WDEQ be tasked with developing the rules. In that sense, we maintain that to accept this petition would be counterproductive.

- In reviewing monitoring data reflecting the background levels of ozone in Yellowstone National Park during pre oil and gas development, we learn that the Maximum 4th high 8-hr. average for Yellowstone for the period of 1995 to 1998 was 64ppb. (Annual Data Summary; Yellowstone National Park, NPS Gaseous Air Pollutant Monitoring Network, 1998). We also learn that the Maximum 4th high 8-hr. average for Yellowstone averaged for the period of 2006 to 2008 was 66 ppb. (WDEQ Technical Support Document For Recommended 8-hr. Ozone Designation, March 26, 2009, Table S.1-1. The important point to be made by reviewing this data is, that IF the Ambient Air Quality Standard for ozone is set at 0.065, it will likely mean that it will ultimately be impossible for Sublette County to reach that level, when the background level would, at times, be either at or above the standard. That also indicates to us that if ultimately the standard is lowered, it will take a much broader approach than just in Sublette County or even in Wyoming to have any chance of meeting a standard of 0.065.
- As of March 12, 2008, the new national ozone standard was lowered from 84 ppb to 75 ppb by EPA. The EPA is required to re-evaluate the ozone standard every five years. The current standard is being challenged and is under review by the court system, and the Obama administration has asked the court to delay further action in order to give EPA time to reconsider the 75 ppb standard. The likely result will be another lowering of the standard based on another review of the science available on a national scale. If the standard is ultimately lowered, that action will cause a more broad scale approach to take place. That action, if it occurs, will then cause a review, of not only emissions occurring in Sublette County, but a broad scale review of all ozone levels, including background levels contributing to the ozone in Sublette County but occurring elsewhere. For these reasons, we feel that the EPA is the proper organization to review the National Ambient Air Quality Standards process and this is currently underway at EPA.
- The Sublette County Commission is currently helping fund a joint effort with WDEQ and Sublette County to determine the actual human health risks associated with the precursors of ozone, in other words, VOCs, and NOx. Monitoring protocol has been established and air samples are currently being collected by the Sublette County Conservation District and will be analyzed by a contract developed by the Wyoming Department of Health. The goal of this joint effort is to determine what, if any, actual human health risks are associated with the current levels of ozone precursors, based on the level of contaminants in the air samples and the time of exposure. A copy of the study is included for your review.

In light of all of the above efforts currently being undertaken to address air quality in Sublette County, we again comment, that to accept the petition and begin a rule making

process would be counterproductive, and would only lessen our ability to address the air quality issues associated with energy production in Sublette County.

Thank you for the opportunity to comment on this proposed action.

Sincerely,

A handwritten signature in black ink that reads "William W. Cramer". The signature is written in a cursive style with a large, prominent "W" at the beginning.

William W. Cramer
Chairman

**SERVICES CONTRACT BETWEEN
SUBLETTE COUNTY COMMISSIONERS
AND AIR RESOURCE SPECIALISTS, INC.**

1. **Parties.** The parties to this Contract are the Sublette County Commissioners, P.O. Box 250, Pinedale, Wyoming, 82941; and Air Resource Specialists, Inc., (Contractor), 1901 Sharp Point Drive, Suite E, Fort Collins, Colorado, 80525.

2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall coordinate and analyze ambient air quality sampling for the purposes of characterizing the general air quality, including ozone, for Sublette County, Wyoming. Data collected will be used in a study of the risks to human health for citizens of Sublette County who are exposed to air toxics and ozone as they live and work in the County. The objectives are to collect samples generally in the towns and other populated areas of the County, and to evaluate whether air contaminants are being transported into the County. The Town of Pinedale is the county seat and largest populated area in Sublette County, which is experiencing heavy conventional natural gas development.

3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted [Effective Date]. The term of the Contract is eighteen (18) months from the Effective Date. The contract generally provides for a one (1) year monitoring period with final data to be delivered within three (3) months of the conclusion of the monitoring period. All services shall be completed during this term. This Contract may be renewed by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of renewal and any renewal will be determined at the discretion of the Sublette County Commissioners.

4. **Payment.** Sublette County Commissioners agree to pay Contractor for the services described in Attachment A, which is attached and made a part of this Contract, and as further modified in this section below. This Contract is a Task Order Contract based on the estimates described in Attachment A which is attached and made a part of this Contract. The total amount paid under this Contract shall not exceed seven hundred ninety-two thousand five hundred eighty-four dollars (\$792,584.00). The Contractor shall send all monthly invoices to the Project Lead (currently: Alicia Boltz, Wyo DEQ Air Quality Division, 122 W. 25th Street, Cheyenne, WY 82002), who shall promptly review such invoices and provide a recommendation for payment to the Sublette County Commissioners. Payment shall be made upon the approval of the Sublette County Commissioners. No payment shall be made for services performed prior to the date upon which the last required signature is affixed to this Contract.

Funding for this project is expected to be made available in 3 phases. The work and funding level associated with each phase is described below.

Phase 1 shall constitute the following scope of work and shall not exceed three hundred thousand dollars (\$300,000):

- Procurement of necessary instrumentation to equip the nine (9) urban and six (6) boundary stations identified in Attachment A (includes: 5 ozone stations, 15 HAPs and formaldehyde stations with 2 collocated stations, and 13 portable meteorological stations and associated data loggers as described in Attachment A).
- Site selection and installation of the nine (9) urban stations identified in Attachment A.
- Development of a quality system as described in Attachment A (includes preparation of a Quality Assurance Project Plan and associated Standard Operating Procedures).
- Operation as described in Attachment A of the nine (9) urban stations for a period of approximately 3 months (includes: monitoring site support, HAPs and formaldehyde analysis, and data management).

Phase 2 shall constitute the following scope of work and shall not exceed two hundred seventy nine thousand one hundred two dollars (\$279,192):

- Operations as described in Attachment A for the remainder of the first year of operations for the nine (9) urban stations established in Phase 1.

Phase 3 shall constitute the following scope of work and shall not exceed two hundred thirteen thousand three hundred ninety two dollars (\$213,392):

- Site selection and installation of the six (6) boundary stations identified in Attachment A.
- Operations as described in Attachment A of six (6) boundary stations for a period of one (1) year.

Funding shall be provided from the Sublette County Commissioners.

5. **Responsibilities of Contractor.** The services to be provided by Contractor are described in Attachment A which is attached and made a part of this Contract.

6. **Special Provisions.**

A. **Access.** The Contractor shall ensure that representatives of the Sublette County Commissioners have safe access to the project work whenever it is in preparation or progress and shall provide proper facilities for such access and inspection. The Sublette County Commissioners or any authorized representatives shall have access to any books, documents, plans, reports, papers, and other records of the Contractor that are pertinent to the project for the purpose of making audit, examination, excerpts, copies and transcriptions thereof. The Contractor shall ensure that any party to a sub agreement will afford this same access to any project work, sites, documents, and records.

B. **Energy Conservation.** Contractor shall comply with the mandatory standards and policies relating to energy efficiency outlined in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

C. **Limitation of Payments.** Sublette County Commissioners obligation to pay the Contractor for services rendered pursuant to this Contract is conditioned upon the availability of funds which are allocated to pay the Contractor. If funds are not allocated and

available for Sublette County Commissioners to pay the Contractor for these services, the Sublette County Commissioners may terminate this Contract at the end of the period for which the funds are available.

Sublette County Commissioners shall notify Contractor at the earliest possible time if this Contract will or may be affected by a shortage of funds. No liability shall accrue to the Sublette County Commissioners in the event this provision is exercised, and the Sublette County Commissioners shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit the Sublette County Commissioners to terminate this Contract in order to acquire similar services from another party.

D. Monitor Activities. Sublette County Commissioners shall have the right to monitor all Contract related activities of the Contractor and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Contractor personnel in every phase of performance of Contract related work.

Contractor shall continuously monitor the activities of its employees, agents, and representatives to assure the Contract is being administered in accordance with the provisions of this Contract and all applicable State and federal laws, rules and regulations.

E. No Finder's Fees. No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

F. Nondiscrimination. The Contractor shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, and the Age Discrimination Act of 1975. The Contractor shall not discriminate against any individual on the grounds of age, sex, race, color, religion, national origin or disability in connection with the performance of this Contract. The Contractor shall include the provisions of this section in every subcontract awarded over Ten Thousand Dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

G. Publicity. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify Sublette County Commissioners as the sponsoring agencies and shall not be released without prior written approval from the Sublette County Commissioners.

H. Subcontractors. Any subcontractors and outside associates or consultants required by the Contractor in connection with the services or work to be performed or rendered under this Contract shall be limited to the individuals or firms specifically identified and agreed to during negotiations or those specifically authorized by the Sublette County Commissioners during the performance of this Contract. Any substitutions in or additions to

such subcontractors, associates or consultants shall be subject to the prior written approval of the Sublette County Commissioners.

I. Suspension of Work and Delays. Sublette County Commissioners may suspend Contractor's work upon Seven (7) calendar days written notice to Contractor. Suspension for any reason exceeding Forty-Five (45) days shall make this Contract subject to renegotiation or termination as provided for elsewhere in this Contract.

Any suspension that is caused by and acknowledged by the Sublette County Commissioners shall extend the time schedule for performance in a manner satisfactory to the Sublette County Commissioners and Contractor, and Contractor shall be compensated for services performed and charges prior to the suspension date, plus suspension charges. Any suspensions caused by the Contractor and/or his subcontractors will result in no compensatory obligation by the Sublette County Commissioners. Any extended suspension by the Contractor and/or its subcontractors may result in a compensatory obligation by the Contractor. Suspension charges may include, but shall not be limited to, services and costs associated with organizing analyses and documents, rescheduling and reassigning personnel and equipment, and issuing necessary or customary notices to appropriate government agencies.

7. General Provisions.

A. Amendments. Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

B. Americans with Disabilities Act. The Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.

C. Applicable Law/Venue. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Ninth Judicial District, Sublette County, Wyoming.

D. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

E. Assumption of Risk. The Contractor shall assume the risk of any loss of funding, either administrative or program dollars, due to Contractor's failure to comply with state or federal requirements. The Sublette County Commissioners shall notify the Contractor of any state or federal determination of noncompliance.

F. Audit. The Sublette County Commissioners any of its representatives shall have access to any books, documents, papers, and records of the Contractor which are

pertinent to this Contract. The Contractor shall, immediately upon receiving written instruction from the Sublette County Commissioners, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the Sublette County Commissioners.

(1) Contractor agrees to comply with the Retention and Custodial Requirement For Records specified in the "Common Rule For Uniform Administrative Requirements for Grants and Cooperative Agreements With State And Local Governments," which requires the Contractor to retain all financial records, supporting documents, statistical records, and all other records pertinent to this Contract for a period of three (3) years subject to the qualifications contained in paragraph 2, subparagraphs a. through c. of the circular.

(2) Contractor agrees to provide free access to any pertinent books, documents, and papers to the Sublette County Commissioners, or any of their duly authorized representatives for the purposes of inspection, audit, and copying. Contractor agrees to provide proper facilities for such access and inspection.

(3) Contractor agrees to include paragraph 7.F.(1) in all subcontracts in excess of Ten Thousand Dollars (\$10,000) that are in performance of this Contract.

G. Award of Related Contracts. The Sublette County Commissioners may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Sublette County Commissioners in all such cases.

H. Compliance with Law. The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract. The Contractor is responsible for applying all applicable laws, rules and regulations to any lower tier sub agreement of this Contract.

I. Confidentiality. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Sublette County Commissioners for its release.

J. Conflicts of Interest. Contractor shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which results in a disadvantage to the Sublette County Commissioners or a disclosure which would adversely affect the interests of the Sublette County Commissioners. Contractor shall notify the Sublette County Commissioners of any potential or actual conflicts of interest arising during the course of the Contractor's performance under this contract. This contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the Contractor shall take steps to insure that the file, evidence, evaluation and data are provided the Sublette County Commissioners or its designee. This does not prohibit or affect the

Contractor's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities or attorneys so long as no conflict exists.

K. Entirety of Contract. This Contract, consisting of nine (9) pages, and Attachment A, consisting of Sections 2, 3, 5 and 6 of the proposal for Ambient Air Monitoring Provisions Sublette County Human Health Risk Assessment Air Toxics Inhalation Project, dated November 18, 2008, consisting of twenty-six (26) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

L. Ethics. Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*), and any and all ethical standards governing Contractor's profession.

M. Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

N. Indemnification. The Contractor shall indemnify, defend and hold harmless the Sublette County Commissioners and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Contractor's malpractice.

O. Kickbacks. The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, Sublette County Commissioners may, at its discretion, terminate this Contract without liability to Sublette County Commissioners, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

P. Notices. All notices arising out of, or from, the provisions of this contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, or delivery in person.

Q. Notice and Approval of Proposed Sale or Transfer of the Contractor. The Contractor shall provide the Sublette County Commissioners with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the

assets of the Contractor. Such notice shall be provided in accordance with the notice provision of this Contract.

R. Ownership of Documents/Work Product/Information/Equipment. All documents, reports, records, field notes, data, samples, specimens, and information of any kind resulting from performance of this Contract are at all times the property of the Sublette County Commissioners. All equipment purchased by the Contractor for performance of work under this Contract is at all times the property of the Wyoming Department of Environmental Quality and shall be available for work performed under this Contract and any extensions thereto. All purchased equipment shall be delivered to DEQ upon completion of the Contract.

S. Patent or Copyright Protection. The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction.

T. Proof of Insurance. The Contractor shall not commence work under this Contract until the Contractor has obtained the following insurance coverage and provided the corresponding certificates of insurance:

(i). Business Automobile Liability Insurance. Contractor shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

(ii). Commercial General Liability Insurance. Contractor shall provide coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including products and completed operations in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per claimant and Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

(iii). Professional Liability or Errors and Omissions Liability Insurance. The Contractor shall provide proof of professional liability insurance or errors and omissions liability insurance to protect the Sublette County Commissioners from any and all claims arising from the Contractor's alleged or real professional errors, omissions or mistakes in the performance of professional duties in an amount not less than Five Hundred Thousand Dollars (\$500,000.00).

(iv). Workers' Compensation or Employers' Liability Insurance. The Contractor shall provide proof of Workers' Compensation coverage pursuant to the Wyoming Worker's Safety and Compensation program, if appropriate. Contractor's insurance shall include "Stop Gap" coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per employee for each accident and disease.

U. Work Performed in Advance of Contract. The Sublette County Commissioners shall not be liable to the Contractor for any work performed prior to the execution of this Contract by the Sublette County Commissioners and Contractor hereby

expressly waives any and all claims for service performed in expectation of this Contract prior to its execution.

V. Suspension and Debarment, Voluntary Exclusion. By signing this Contract, Contractor certifies that it is not suspended, debarred, or voluntarily excluded from Federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred, or voluntarily excluded. Further, Contractor agrees to notify the Sublette County Commissioners by certified mail should Contractor or any of its agents become debarred, suspended, or voluntarily excluded during the term of this Contract.

W. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

X. Termination of Contract. This Contract may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract. If the Sublette County Commissioners terminates this Contract for cause, it will send notice by certified mail, return receipt requested. Upon such notice, the Contractor shall immediately cease all work unless the notice directs otherwise. The Contract may be terminated, without cause, by either party upon thirty (30) days written notice.

Y. Third Party Beneficiary Rights. Except as provided in Section R, the parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

Z. Time is of the Essence. Time is of the essence in all provisions of the Contract.

AA. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

BB. Wage and Hour Provisions. Pursuant to the Wyoming Prevailing Wage Act of 1967, Wyo. Stat. §§ 27-4-401 - 413, as amended, not less than the prevailing hourly rate of wages for work shall be paid to all workers unless otherwise specified in writing by the State Procurement Administrator.

CC. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

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8. **Signatures.** By signing this Contract, the parties certify that they have read and understood it, that they agree to be bound by the terms of the Contract, that they have the authority to sign it, and that they have received a signed and dated copy of the Contract.


The effective date of this Contract is the date of the signature last affixed to this page.

SUBLETTE COUNTY COMMISSIONERS



Joel Bousman

11/26/08
Date



William W. Cramer

11/26/08
Date

John Linn

Date

AIR RESOURCE SPECIALISTS, INC.



Scott Cismoski, Program Manager

11/26/2008
Date