

## INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites you to submit a bid for the reclamation of the following wells:

Reclamation Package 1

See Attached list

To be considered, the bid must be on the form provided by the Industrial Commission, which must be fully completed in accordance with the accompanying "INSTRUCTIONS TO BIDDERS," and must be received in the Bismarck office of the Industrial Commission, Oil & Gas Division, no later than **3:00 p.m. December 1, 2022**. The Commission may reject any and all bids.

For additional information or blank bid forms, please go to the North Dakota Industrial Commission, Oil & Gas Division home page, <https://www.dmr.nd.gov/oilgas/> or contact Cody VanderBusch at (701)-328-8020.

## INSTRUCTIONS TO BIDDERS

1. Form of Bids. Bids must be submitted on the attached bid form. **Provide an attachment listing each wells bid cost along with the equipment salvage value, potential extras estimate (including estimate breakdown) and then net total. The combined total will be placed on the bid sheet. The bonds will be based on the highest cost well.**
  
2. Submission of Bids. Bids must be enclosed in a sealed envelope, and the outside of the envelope must have the following on it:

Bid of: (Name of Contractor & Business Address)

N.D. Contractor's License No: (No. and Class of License)

Date License was Issued or Renewed: \_\_\_\_\_

Bid Package Name and Number: \_\_\_\_\_

ATTN: Mr. Cody VanderBusch

SEALED BID DO NOT OPEN

NDIC Oil & Gas Division  
1016 E. Calgary Ave  
Bismarck, N.D. 58503-5512
  
3. Examination of Site. Prospective bidders may make a visual inspection of the well and well site to ascertain the nature and location of the work and the conditions which can affect the work and its cost. The Commission is not bound by any oral statement concerning the condition of the well or well site made by its staff or agents prior to the execution of the equipment removal contract. **Note.** If no access is visible, please contact landowner before entering.
  
4. Bidder Qualifications. No contract will be awarded unless: (a.) the bidder holds a current contractor's license in the class within which the value of the project falls issued at least ten days prior to the date set for receiving bids, and the bid envelope contains a copy of the license or a certificate of its renewal issued by the secretary of state (N.D.C.C. §43-07-12); and (b.) the bidder files along with its bid or after being notified that it is the successful bidder, a certificate from the ND State Tax Commissioner that bidder has paid all delinquent income, sales, and use taxes, if any (N.D.C.C. § 43- 07-11.1).
  
5. Bid Deadline. All bids are due in the office of the Industrial Commission, Oil and Gas Division, by **3:00 p.m. December 1, 2022.** The office is at **1016 E. Calgary Ave., Bismarck, ND.** Bids received after this deadline will not be considered.
  
6. Review of Bids. The public opening of the bids will be held at **3:00 p.m. December 1, 2022** at the **Industrial Commission, Oil and Gas Division, 1016 E. Calgary Ave., Bismarck, ND.**
  
7. Withdrawal of Bids. Bids may be withdrawn by bidder's written request received prior to the time set in

paragraph 5.

8. Rejection of Bids. The Commission may reject any and all bids and may waive any technical or formal defect in a bid.
9. Notification of Award. The successful bidder, if any, will be notified of the award of the work within thirty days after the bid opening.
10. Contract. The bidder whose bid is accepted must enter into a written contract with the Commission within ten days after the award is made. The contract contains, among other things, provisions requiring the contractor to acquire insurance and provide bonds in the amount of the bid.
11. Timeline. Work can't start before **January 2, 2023** and must be completed by **April 1, 2024 and invoices received by May 30, 2024.**
12. Cancellation of Award. The Commission may cancel the award of any contract at any time before execution of the contract by all parties without any liability to the Commission.
13. Title to Material and Objects on Site. The Commission has title to all confiscated equipment on the well site. Any person who removes confiscated equipment or fluids from a well or well site without permission is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates this section could be guilty of a Class C Felony.
14. Bidders shall follow all federal requirements including but not limited to Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (see **Attachment A**).
15. Changes in Bid Specifications. The Commission may, during the bidding period, advise bidders of alterations to any part of the bid. All such changes are included in the work covered by the bid and are a part of the specifications.
16. Approved Procedures. Bidders must bid on the approved procedures. Cost for the required report submittals and photos shall be included in the bid.
17. Other Changes. Any changes to procedures **MUST** be approved by Commission staff. **Unapproved changes will not be reimbursed.**
18. Overtures. Only overtures that are required by the Commission shall be paid, all other costs shall be included within the bid cost. Hidden costs or undisclosed costs will not be reimbursed.
19. Completed Work. Bidders must complete the work in a timely manner to Commission requirements.

20. Well List. The Commission may at any time add or remove wells from the package due to reasons deemed appropriate by the Commission.
21. Note. Bidders must ensure they meet and follow all bidder instructions and requirements as indicated in the bidding package.

Additional information - IOGCC report on the issue of idle and orphan oil and gas wells can be found at:

[https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc\\_idle\\_and\\_orphan\\_wells\\_2021\\_final\\_web\\_0.pdf](https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf)

**ATTACHMENT A**  
**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

- (1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*
- (2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*
  - (A) the basic hourly rate of pay; and*
  - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*
    - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*
    - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

- (a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*
- (b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*
- (c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*
  - (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*
  - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*
  - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor*

on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

(d) *Discharge of Obligation.*- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.

(e) *Overtime Pay.*- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.

40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) *Payment of Wages.*-

(1) *In general.*- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of this subchapter during a national emergency.

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No, 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145)** - makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** – Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.



**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** –Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must:

(1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions: <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## ATTACHMENT B

### Package 1 wells

FileNo	Well Name & Number	Status	County	STR	Wh_Qtr	Field	Wh_Lat	Wh_Long
13713	AALUND 4-35	PA	DIVIDE	35-162-99	NWNW	AMBROSE	48.819469	-103.505264
3505	NUSS 1	PA	Burke	21-162-92	SENE	Black Slough	48.84537582	-102.6146857
7152	Paulson 1	AB	BURKE	19-162-92	NESE	Black Slough	48.84181488	-102.6585754
13102	BUSCH 1	AB	BURKE	21-162-92	SWNW	Black Slough	48.84537964	-102.6310583
4058	Chola Sherwood Unit 10-1	AB	RENVILLE	9-159-84	NWNW	Chola	48.61675232	-101.5367581
4064	Chola Sherwood Unit 6-1	AB	RENVILLE	4-159-84	NWSW	Chola	48.62357743	-101.5368855
5073	Chola Sherwood Unit 9-1	AB	RENVILLE	8-159-84	NWNE	Chola	48.6163415	-101.5470513
6328	Chola Sherwood Unit 9-2	AB	RENVILLE	8-159-84	NENE	Chola	48.61675389	-101.5415981
40347 7-01	Chola CTB	AB	RENVILLE	5-159-84	SESE	Chola	48.6218	-101.5418
8989	STATE OF NORTH DAKOTA 1-36	AB	RENVILLE	36-164-84	NWSW	Elmore	48.98620254	-101.5165117
12782	SMITH 1-21	AB	BURKE	18-161-91	SENE	NE Foothills	48.75501841	-102.6146703
11227	ENERGY MEYER 1	AB	RENVILLE	35-163-84	SENE	Hurley	48.90229529	-101.5219159
11303	ENERGY MEYER 2	AB	RENVILLE	35-163-84	NWNE	Hurley	48.90591697	-101.5261836
90066	ENERGY MEYER SWD 1	AB	RENVILLE	35-163-84	SENE	Hurley	48.90176944	-101.5192794
13351	TRIPLETT 1-2	PA	RENVILLE	2-159-86	NESE	IVANHOE	48.62421016	-101.7366767
17440	MESA 24-2H	AB	Burke	2-163-89	SESW	LAKESIDE	48.96733761	-102.1875374
29241	Nangchen 155-86-11-HS1	PA	WARD	11-155-86	SESE	LONE TREE	48.25533973	-101.6856669
19783	Schlak #2	PA	RENVILLE	30-160-86	SENE	NORMA	48.65685856	-101.8239499
25472	Schlak #3	PA	RENVILLE	30-160-86	NENE	NORMA	48.66047658	-101.823928
10058	BELLA 1	AB	BURKE	18-161-91	SENE	Northeast Foothills	48.77280606	-102.5381608
3419	RADENZ 1	PA	Burke	30-163-89	SWSE	PERELLA	48.91037612	-102.2699869
21720	Laura Funke #4	PA	RENVILLE	30-160-86	NWSW	SOUTH GREENE	48.65364779	-101.709231
18483	KALLBERG 1 H	PA	BURKE	18-159-90	LOT1	Thompson Lake	48.602694	-102.3631586
12491	SUNDSBAK 1-14	PA	WARD	14-153-84	NENE	TORNING	48.07925996	-101.4275091
3503	CHRISTENSEN ET AL 2	PA	Burke	4-162-90	NWNE	WOBURN	48.89238522	-102.3576953

# ATTACHMENT C

## RECLAMATION SPECIFICATIONS

### WELL SITE

### INTRODUCTION

The objective of this project is to reclaim the well site to comply with all requirements of North Dakota Administrative Code Section 43-02-03-34.1.

### SPECIFICATIONS

- A. Contractor shall arrange for all tools, equipment, products and any other items required to properly reclaim the well site. Contractor is responsible for locating all utility lines before reclamation work begins. Contractor is responsible for disposal of equipment, junk and debris on the site.
- B. Contractors reporting requirements:
- 1) A picture of the well location before work starts, during work (mid-way point) and after the site is reclaimed.
  - 2) Daily activity reports will be submitted into the Commission for review. Each report must contain, dates, times, and work that was done.
  - 3) If an amendment to the approved reclamation bid is required, and the Commission staff approve the change, an estimation of the cost for the change shall be included within that day's daily activity report.
  - 4) Contractors must follow all Federal requirements set forth within the grant requirements and as detailed within the bidding contract. (see **Attachment A**)
- C. To reclaim the well site the contractor shall:
- 1) Remove any equipment and junk.
  - 2) Strip surfacing material.
  - 3) Flush and cap flowlines below 3'. If not below 3' final grade they need to be removed.
  - 4) Remove contamination down to 4' or to levels of 10,000 ppm with no free product for TPH and Electrical conductivity (EC) of 2000 micro siemens/cm. (**prior approval will be needed with estimate prior to starting this work**)
  - 5) Re-contour the site to blend in with the surrounding topography to restore the natural drainage of the area.
  - 6) Bury rocks as needed.
  - 7) Bring in and Spread 6" of topsoil.
  - 8) Cultivate/rip all disturbed areas to alleviate compaction and prepare for seeding.
  - 9) Seed to the native grass specification below if seeding is required.
- D. Landowner:
- The well site is owned by (name and phone number)\_\_\_\_\_.
- E. Contractor must give the Commission 48 hours advance notice before starting reclamation work.
- F. Contractors invoice requirements:

- 1) All invoices must be complete and final when submitted. Invoices need be submitted within **60 days** from the date the work was completed.
  - 2) Invoices shall identify any operations that are an additional cost to the original procedure and had to be approved by Commission staff. **Unapproved changes will not be reimbursed.**
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of final acceptance. Contractor shall bear the entire cost and expense of all repairs that may be necessary within that time due to imperfections in work or materials. Contractor is not liable for equipment, material, or workmanship supplied by the Commission.
- H. Contractor must complete the work in a timely manner to Commission requirements.

### **Native Grass Seeding Specifications**

<b>Grass Species</b>	PLS lb/ac <sup>1</sup> *
Western wheatgrass	2.5
Green needlegrass	2.0
Slender wheatgrass	1.5
Little bluestem	1.0
Prairie sandreed	1.0
Sideoats grama	2.0
Blue grama	0.5
Big bluestem	---
Switchgrass	---
Canada wildrye	---
Indiangrass	---
Total seed mixture	10.5

<sup>1</sup>PLS = Pure live seed: Seeding rates are 1.5 times the normal seeding rate based on 30 seed/ft<sup>2</sup>.

**BID**

Bid for reclamation of the following well sites:

See attached list of wells

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, RECLMATION SPECIFICATIONS, RECLAMATION CONTRACT, LABOR AND MATERIAL PAYMENT BOND and PERFORMANCE BOND bidder proposes and agrees to do all work called for in the specifications and contract and to furnish the services, equipment, and labor necessary for the full completion of the work for the price of  
(Gross) \_\_\_\_\_ - (Salvage Value) \_\_\_\_\_  
+ (Potential extras estimate) \_\_\_\_\_  
= (Total bid amount) \_\_\_\_\_ dollars (\$).

Contractor hereby agrees that it shall comply with all Federal requirements including Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (as noted in **Attachment A** of Bid Notification).

If the bidder's bid is accepted, the Industrial Commission will inform the bidder in writing within thirty days after the bid opening. Within ten days after receipt of such a notice, bidder will appear in the office of the North Dakota Industrial Commission, Oil and Gas Division, and execute the Reclamation Contract. Bidder agrees that if bidder fails to enter into a contract, bidder is liable to the Commission for all expenses incurred by and damages suffered by the Commission as a result of the failure.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Email

# LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the  
 State of North Dakota, (Surety), are held and firmly bound unto the State of North Dakota in the full and just  
 sum of \_\_\_\_\_ **AND NO/100 DOLLARS (\$ .00)**, to be paid to the State of North  
 Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors and  
 assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall duly and promptly  
 pay all laborers, mechanics, subcontractors and material men who perform work or furnish material under the  
 contract and all persons who shall supply the Principal or the subcontractor with materials, services, bonds and  
 insurance for the carrying on of the work, then this obligation shall be void; otherwise it shall remain in full force  
 and effect.

The Surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<p><b>FOR STATE USE ONLY:</b></p> <p>Surety is licensed in ND: _____</p> <p>Date verified: _____</p> <p>Verified by: _____</p>	<p>Contractor: _____</p> <hr/> <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>Surety: _____</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>By: _____</p> <p style="text-align: center;">Attorney-in-fact (Seal and Signature)</p> <hr/> <p style="text-align: center;">Agency</p> <hr/> <p style="text-align: center;">Address</p>
--	---

# PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
\_\_\_\_\_  
(Principal), and \_\_\_\_\_  
\_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the State of North Dakota,  
(Surety), are held and firmly bound unto the State of North Dakota in the full and just sum of  
\_\_\_\_\_ **AND NO /100 DOLLARS (\$.00)**, to be paid to the State  
of North Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors  
and assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
wells:

### See Bid Notification, Attachment B

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
executed.

NOW THEREFORE, the conditions of this obligation are such that if the above Principal shall promptly  
and faithfully perform all of the provisions of the contract, and all obligations thereunder including the  
specifications, and any alterations provided for, and shall in a manner satisfactory to the State of North Dakota,  
complete the work contracted for including any alterations, and shall hold harmless the State of North Dakota  
from any expense incurred through the failure of the Principal to complete the work as specified, then this  
obligation shall be void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of any extension of time and any alterations made in the terms of the  
contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
sum by more than 10%.

<b>FOR STATE USE ONLY:</b>	Contractor: _____
	Signature _____
	Date _____
	Surety: _____
	Date _____
Surety is licensed in ND:	By: _____ Attorney-in-fact (Seal and Signature)
Date verified: _____	Agency _____
Verified by: _____	Address _____



## WELL RECLAMATION CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, (COMMISSION) and [contractor's legal name and address] (CONTRACTOR);

### I

#### SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by COMMISSION, shall provide all materials and labor necessary for and shall perform the work described in the Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following wells:

See attached list of wells.

### II

#### TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract must be completed by **April 1, 2024** and all invoices must be received by **May 30, 2024**. There is an urgency by the Commission to get the work done in a timely and effective manner.

### III

#### COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), to be paid within thirty days after COMMISSION has accepted the work. If COMMISSION determines, in its sole discretion, that the well cannot be removed according to the Reclamation Specifications attached hereto as Exhibit A, COMMISSION may modify the Reclamation Specifications to ensure the well site is properly reclaimed by CONTRACTOR. If such modifications (per potential extras estimate) result in increased material and labor costs, CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges as determined by COMMISSION, for the additional material and labor. In the case where such modifications result in decreased material and labor costs, CONTRACTOR's compensation will be decreased by an amount based on the usual and customary changes relative to the material and labor expenses, as determined by COMMISSION.

### IV

#### CONTRACT DOCUMENTS

The contract documents that accompany this contract are the Invitation to Bid, Instructions to Bidder, Bid Form, Reclamation Specifications and Contractor's Performance Bond and Labor and Materials Payment Bond and are incorporated as part of the contract. In the event of any inconsistency or conflict among the documents making up this contract, the terms of the contract shall control.

V  
LIABILITY AND INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this contract, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

VI  
INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the

- policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by COMMISSION;
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the COMMISSION. The policies shall be in form and terms approved by COMMISSION.
  - 3) COMMISSION will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify COMMISSION under this agreement shall not be limited by the insurance required by this agreement.
  - 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverage of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
  - 5) The insurance required in this agreement, through a policy or endorsement, shall include:
    - a) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
    - b) A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance, or self-retention maintained by the State and that any insurance, self-insurance, or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
    - c) Cross liability/severability of interest for all policies and endorsements;
    - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and
    - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
  - 6) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - 7) Failure to provide insurance as required in this contract is a material breach of contract entitling COMMISSION to terminate this contract immediately.
  - 8) CONTRACTOR shall provide at least 30-day notice of any cancellation or material

change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## VII MERGER AND MODIFICATION

This contract, including the incorporated documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified with in this contract. This contract may not be modified, supplemented, or amended in any manner, except by written agreement signed by both parties.

## VIII ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty under this contract without COMMISSION's written consent, provided, however, that CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

## IX ATTORNEYS' FEES

In the event a lawsuit is brought by COMMISSION to obtain performance due under this contract, and COMMISSION is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay COMMISSION's reasonable attorney fees and costs in connection to the lawsuit.

## X APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated 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*.

## XI INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a COMMISSION employee for any purpose, including application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this contract shall be construed to represent the creation of an employer/employee relationship. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

XII  
NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including but not limited to, those relating to nondiscrimination, accessibility, and civil rights (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums.

CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling the COMMISSION to terminate in accordance with the Termination for Cause section of this Contract.

XIII  
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 are unaffected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XIV  
STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR will maintain all of these records for at least three years (3) following completion of this contract and be able to provide them upon reasonable notice. The COMMISSION, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

XV  
SPOILIATION - PRESERVATION OF EVIDENCE

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

XVI  
TERMINATION OF CONTRACT

- a. Termination by Mutual Consent. This contract may be terminated by mutual consent of both parties executed in writing.
- b. Early Termination in the Public Interest. COMMISSION is entering into this contract for the purpose of carrying out the public policy of the state of North Dakota, as determined by the Governor, Legislative Assembly, agencies and courts. If this contract ceases to further the public policy of the state of North Dakota, COMMISSION, in its sole discretion, by written notice to CONTRACTOR, may terminate this contract in whole or in part.
- c. Termination for Lack of Funding or Authority. COMMISSION, by written notice to CONTRACTOR, may terminate in whole or any part of this contract, 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 contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

- d. Termination for Cause. COMMISSION may terminate this contract 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 contract within the time specified or any extension agreed to by COMMISSION; or
  - (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

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

XVII  
NOTICE

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ or \_\_\_\_\_  
\_\_\_\_\_

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.

XVIII  
TAXPAYER ID

CONTRACTOR's North Dakota tax ID number is: \_\_\_\_\_  
CONTRACTOR's federal employer ID number is: \_\_\_\_\_

XIX  
PAYMENT OF TAXES BY COMMISSION

COMMISSION is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001. COMMISSION will furnish certificates of exemption upon request by the CONTRACTOR.

XX  
EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties. If the dates of execution are different, then the later date of execution is the effective date.

XXI  
FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, acts of God, or war if 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.

XXII  
RENEWAL

This contract will not automatically renew. If COMMISSION desires to renew, COMMISSION will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

XXIII  
ALTERNATIVE DISPUTE RESOLUTION - JURY TRIAL

By entering into this contract, COMMISSION does not agree to binding arbitration, mediation, or other forms of mandatory Alternative Dispute Resolution. The parties may enforce their rights and remedies in judicial proceedings. COMMISSION does not waive any right to a jury trial.

XXIV  
CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from COMMISSION under this contract that COMMISSION has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by COMMISSION. COMMISSION shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that COMMISSION determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of COMMISSION and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

XXV  
COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, in accordance with the Contract's Confidentiality clause, COMMISSION must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact COMMISSION promptly upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

XXVI  
WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment, or materials created for COMMISSION or purchased by COMMISSION under this contract belong to COMMISSION and must be immediately delivered to COMMISSION at COMMISSION'S request upon termination of this contract. CONTRACTOR agrees that all work(s) under this contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COMMISSION all rights and interests CONTRACTOR may have in the work(s) it prepares under this contract, including any right to derivative use of the work(s). CONTRACTOR shall execute all necessary documents to enable COMMISSION to protect its rights under this section.

XXVII  
COMPLIANCE WITH FEDERAL LAWS

Contractor agrees to comply with the additional Federal requirements and standard terms and conditions found in Exhibit B.



STATE OF NORTH DAKOTA  
Acting through its  
N.D. Industrial Commission  
Department of Mineral Resource  
Oil & Gas Division

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

**EXHIBIT A  
LIST OF WELLS**

**EXHIBIT B  
Reclamation SPECIFICATIONS**

**EXHIBIT C**  
**FEDERAL STANDARD TERMS AND CONDITIONS**

**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a-5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

*(1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*

*(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*

*(A) the basic hourly rate of pay; and*

*(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*

*(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*

*(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

*(a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*

*(b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the*

*State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*

*(c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*

*(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*

*(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*

*(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.*

*(d) Discharge of Obligation.- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.*

*(e) Overtime Pay.- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.*

*40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages*

*Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.*

*40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts*

*(a) Payment of Wages.-*

*(1) In general.- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.*

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

*This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.*

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

*The President may suspend the provisions of this subchapter during a national emergency.*

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No. 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including

each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2)Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3)Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4)Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient’s and Subrecipient’s contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1)through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5)The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145) -** makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** –Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** – Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must: (1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.



**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and Executive Order No. 11,990, 1977 Protection of Wetlands – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions:

<https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites you to submit a bid for the reclamation of the following wells:

Reclamation Package 2

See Attached list

To be considered, the bid must be on the form provided by the Industrial Commission, which must be fully completed in accordance with the accompanying "INSTRUCTIONS TO BIDDERS," and must be received in the Bismarck office of the Industrial Commission, Oil & Gas Division, no later than **3:00 p.m. December 1, 2022**. The Commission may reject any and all bids.

For additional information or blank bid forms, please go to the North Dakota Industrial Commission, Oil & Gas Division home page, <https://www.dmr.nd.gov/oilgas/> or contact Cody VanderBusch at (701)-328-8020.

## INSTRUCTIONS TO BIDDERS

1. Form of Bids. Bids must be submitted on the attached bid form. **Provide an attachment listing each wells bid cost along with the equipment salvage value, potential extras estimate (including estimate breakdown) and then net total. The combined total will be placed on the bid sheet. The bonds will be based on the highest cost well.**
  
2. Submission of Bids. Bids must be enclosed in a sealed envelope, and the outside of the envelope must have the following on it:

Bid of: (Name of Contractor & Business Address)

N.D. Contractor's License No: (No. and Class of License)

Date License was Issued or Renewed: \_\_\_\_\_

Bid Package Name and Number: \_\_\_\_\_

ATTN: Mr. Cody VanderBusch

SEALED BID DO NOT OPEN

NDIC Oil & Gas Division  
1016 E. Calgary Ave  
Bismarck, N.D. 58503-5512
  
3. Examination of Site. Prospective bidders may make a visual inspection of the well and well site to ascertain the nature and location of the work and the conditions which can affect the work and its cost. The Commission is not bound by any oral statement concerning the condition of the well or well site made by its staff or agents prior to the execution of the equipment removal contract. **Note.** If no access is visible, please contact landowner before entering.
  
4. Bidder Qualifications. No contract will be awarded unless: (a.) the bidder holds a current contractor's license in the class within which the value of the project falls issued at least ten days prior to the date set for receiving bids, and the bid envelope contains a copy of the license or a certificate of its renewal issued by the secretary of state (N.D.C.C. §43-07-12); and (b.) the bidder files along with its bid or after being notified that it is the successful bidder, a certificate from the ND State Tax Commissioner that bidder has paid all delinquent income, sales, and use taxes, if any (N.D.C.C. § 43- 07-11.1).
  
5. Bid Deadline. All bids are due in the office of the Industrial Commission, Oil and Gas Division, by **3:00 p.m. December 1, 2022.** The office is at **1016 E. Calgary Ave., Bismarck, ND.** Bids received after this deadline will not be considered.
  
6. Review of Bids. The public opening of the bids will be held at **3:00 p.m. December 1, 2022** at the **Industrial Commission, Oil and Gas Division, 1016 E. Calgary Ave., Bismarck, ND.**
  
7. Withdrawal of Bids. Bids may be withdrawn by bidder's written request received prior to the time set in

paragraph 5.

8. Rejection of Bids. The Commission may reject any and all bids and may waive any technical or formal defect in a bid.
9. Notification of Award. The successful bidder, if any, will be notified of the award of the work within thirty days after the bid opening.
10. Contract. The bidder whose bid is accepted must enter into a written contract with the Commission within ten days after the award is made. The contract contains, among other things, provisions requiring the contractor to acquire insurance and provide bonds in the amount of the bid.
11. Timeline. Work can't start before **January 2, 2023** and must be completed by **April 1, 2024 and invoices received by May 30, 2024.**
12. Cancellation of Award. The Commission may cancel the award of any contract at any time before execution of the contract by all parties without any liability to the Commission.
13. Title to Material and Objects on Site. The Commission has title to all confiscated equipment on the well site. Any person who removes confiscated equipment or fluids from a well or well site without permission is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates this section could be guilty of a Class C Felony.
14. Bidders shall follow all federal requirements including but not limited to Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (see **Attachment A**).
15. Changes in Bid Specifications. The Commission may, during the bidding period, advise bidders of alterations to any part of the bid. All such changes are included in the work covered by the bid and are a part of the specifications.
16. Approved Procedures. Bidders must bid on the approved procedures. Cost for the required report submittals and photos shall be included in the bid.
17. Other Changes. Any changes to procedures **MUST** be approved by Commission staff. **Unapproved changes will not be reimbursed.**
18. Overtures. Only overtures that are required by the Commission shall be paid, all other costs shall be included within the bid cost. Hidden costs or undisclosed costs will not be reimbursed.
19. Completed Work. Bidders must complete the work in a timely manner to Commission requirements.

20. Well List. The Commission may at any time add or remove wells from the package due to reasons deemed appropriate by the Commission.
21. Note. Bidders must ensure they meet and follow all bidder instructions and requirements as indicated in the bidding package.

Additional information - IOGCC report on the issue of idle and orphan oil and gas wells can be found at:

[https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc\\_idle\\_and\\_orphan\\_wells\\_2021\\_final\\_web\\_0.pdf](https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf)

**ATTACHMENT A**  
**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

- (1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*
- (2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*
  - (A) the basic hourly rate of pay; and*
  - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*
    - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*
    - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

- (a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*
- (b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*
- (c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*
  - (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*
  - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*
  - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor*

on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

(d) *Discharge of Obligation.*- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.

(e) *Overtime Pay.*- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.

40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) *Payment of Wages.*-

(1) *In general.*- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of this subchapter during a national emergency.

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No, 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.



(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145)** - makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** – Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**—Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**—Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**—These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors**—Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace**— Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must:

(1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying**— The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection**— Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government**— No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions: <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## ATTACHMENT B

### Package 2 wells

FileNo	Well Name & Number	Status	County	STR	Wh_Qtr	Field	Wh_Lat	Wh_Long
7266	E. C. INGERSOLL 1	AB	BOTTINEA U	35-162-79	SENW	Kane	48.81551188	-100.8756097
7270	RUTH VEDQUAM 2	AB	BOTTINEA U	35-162-79	SESE	Kane	48.80819043	-100.8659252
7888	E. C. INGERSOLL 2	AB	BOTTINEA U	35-162-79	NWNW	Kane	48.81952766	-100.8814093
14662	C. L. BRANDT 2	AB	BOTTINEA U	1-161-79	SWNW	Kane	48.80124828	-100.8597692
15379	INGERSOLL 3	AB	BOTTINEA U	35-162-79	NENW	Kane	48.81860616	-100.8768769
40811 8-01	Kane Madison Unit Central Battery	AB	BOTTINEA U	35-162-79	SESE	Kane	48.81113	-100.8698
90006	BLOWERS 1 SWD	PA	BOTTINEA U	17-160-83	SESW	Lansford	48.67653951	-101.4229528
10890	GEORGE ADAMS 23- 6	AB	BOTTINEA U	6-160-82	NESW	Mountrose	48.71080315	-101.3134809
10919	GEORGE ADAMS ET AL 13-6	AB	BOTTINEA U	6-160-82	NWSW	Mountrose	48.71081608	-101.3176665
10954	DALE G. LEATHERS 31-6	AB	BOTTINEA U	6-160-82	NWNE	Mountrose	48.71717282	-101.3084118
10883	GEORGE ADAMS 21- 6	PA	BOTTINEA U	6-160-82	NENW	Mountrose	48.71719798	-101.312255
10905	GEORGE ADAMS 22- 6	PA	BOTTINEA U	6-160-82	SENW	Mountrose	48.71358293	-101.3135648
11278	SEM 22-8	AB	BOTTINEA U	22-162-79	SENE	Refuge	48.84459975	-100.8874374
5501	FORDE 2	PA	BOTTINEA U	2-162-97	NWSW	South Landa	48.88433577	-100.8821475
8018	NEWHOUSE 1-3	AB	BOTTINEA U	3-162-79	SENE	South Landa	48.88817048	-100.8873976
13488	NEWHOUSE 2R	AB	BOTTINEA U	3-162-79	NESE	South Landa	48.88503009	-100.8863068
14641	FORDE 1R	AB	BOTTINEA U	2-162-79	SWSW	South Landa	48.88170683	-100.8818934
40546 6-01	South Landa Madison Unit CTB	AB	BOTTINEA U	3-162-79	SENE	South Landa	48.88783	-100.885
10845	CHRISTENSON 1	AB	BOTTINEA U	8-160-78	NENW	Southwest Starbuck	48.70356365	-100.7682221
11195	LERVIK 2-5	AB	BOTTINEA U	5-160-78	SESW	Southwest Starbuck	48.70724874	-100.7691162
12154	GOODMAN 3-9	AB	BOTTINEA U	9-160-78	NWNW	Southwest Starbuck	48.70308921	-100.7522065
14510	SOLBERG 2-9	AB	BOTTINEA U	9-160-78	NWNE	Southwest Starbuck	48.70336159	-100.7414544
4103	ANDERSON H 1	AB	BOTTINEA U	33-164-78	NESW	Northeast Landa	48.98410319	-100.795174
3862	ANDERSON SWD SYSTEM D1	PA	BOTTINEA U	33-164-78	SWSW	Northeast Landa	48.9862552	-100.7889225

Note: Dale G. Leathers 31-6 to George Adams 21-6: has 1000' of a water gathering pipeline that will need flushed and capped.

# ATTACHMENT C

## RECLAMATION SPECIFICATIONS

### WELL SITE

### INTRODUCTION

The objective of this project is to reclaim the well site to comply with all requirements of North Dakota Administrative Code Section 43-02-03-34.1.

### SPECIFICATIONS

- A. Contractor shall arrange for all tools, equipment, products and any other items required to properly reclaim the well site. Contractor is responsible for locating all utility lines before reclamation work begins. Contractor is responsible for disposal of equipment, junk and debris on the site.
- B. Contractors reporting requirements:
- 1) A picture of the well location before work starts, during work (mid-way point) and after the site is reclaimed.
  - 2) Daily activity reports will be submitted into the Commission for review. Each report must contain, dates, times, and work that was done.
  - 3) If an amendment to the approved reclamation bid is required, and the Commission staff approve the change, an estimation of the cost for the change shall be included within that day's daily activity report.
  - 4) Contractors must follow all Federal requirements set forth within the grant requirements and as detailed within the bidding contract. (see **Attachment A**)
- C. To reclaim the well site the contractor shall:
- 1) Remove any equipment and junk.
  - 2) Strip surfacing material.
  - 3) Flush and cap flowlines below 3'. If not below 3' final grade they need to be removed.
  - 4) Remove contamination down to 4' or to levels of 10,000 ppm with no free product for TPH and Electrical conductivity (EC) of 2000 micro siemens/cm. (**prior approval will be needed with estimate prior to starting this work**)
  - 5) Re-contour the site to blend in with the surrounding topography to restore the natural drainage of the area.
  - 6) Bury rocks as needed.
  - 7) Bring in and Spread 6" of topsoil.
  - 8) Cultivate/rip all disturbed areas to alleviate compaction and prepare for seeding.
  - 9) Seed to the native grass specification below if seeding is required.
- D. Landowner:
- The well site is owned by (name and phone number)\_\_\_\_\_.
- E. Contractor must give the Commission 48 hours advance notice before starting reclamation work.
- F. Contractors invoice requirements:

- 1) All invoices must be complete and final when submitted. Invoices need be submitted within **60 days** from the date the work was completed.
  - 2) Invoices shall identify any operations that are an additional cost to the original procedure and had to be approved by Commission staff. **Unapproved changes will not be reimbursed.**
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of final acceptance. Contractor shall bear the entire cost and expense of all repairs that may be necessary within that time due to imperfections in work or materials. Contractor is not liable for equipment, material, or workmanship supplied by the Commission.
- H. Contractor must complete the work in a timely manner to Commission requirements.

### **Native Grass Seeding Specifications**

<b>Grass Species</b>	PLS lb/ac <sup>1</sup> *
Western wheatgrass	2.5
Green needlegrass	2.0
Slender wheatgrass	1.5
Little bluestem	1.0
Prairie sandreed	1.0
Sideoats grama	2.0
Blue grama	0.5
Big bluestem	---
Switchgrass	---
Canada wildrye	---
Indiangrass	---
Total seed mixture	10.5

<sup>1</sup>PLS = Pure live seed: Seeding rates are 1.5 times the normal seeding rate based on 30 seed/ft<sup>2</sup>.

**BID**

Bid for reclamation of the following well sites:

See attached list of wells

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, RECLMATION SPECIFICATIONS, RECLAMATION CONTRACT, LABOR AND MATERIAL PAYMENT BOND and PERFORMANCE BOND bidder proposes and agrees to do all work called for in the specifications and contract and to furnish the services, equipment, and labor necessary for the full completion of the work for the price of  
(Gross) \_\_\_\_\_ - (Salvage Value) \_\_\_\_\_  
+ (Potential extras estimate) \_\_\_\_\_  
= (Total bid amount) \_\_\_\_\_ dollars (\$).

Contractor hereby agrees that it shall comply with all Federal requirements including Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (as noted in **Attachment A** of Bid Notification).

If the bidder's bid is accepted, the Industrial Commission will inform the bidder in writing within thirty days after the bid opening. Within ten days after receipt of such a notice, bidder will appear in the office of the North Dakota Industrial Commission, Oil and Gas Division, and execute the Reclamation Contract. Bidder agrees that if bidder fails to enter into a contract, bidder is liable to the Commission for all expenses incurred by and damages suffered by the Commission as a result of the failure.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Email

# LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the  
 State of North Dakota, (Surety), are held and firmly bound unto the State of North Dakota in the full and just  
 sum of \_\_\_\_\_ **AND NO/100 DOLLARS (\$ .00)**, to be paid to the State of North  
 Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors and  
 assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall duly and promptly  
 pay all laborers, mechanics, subcontractors and material men who perform work or furnish material under the  
 contract and all persons who shall supply the Principal or the subcontractor with materials, services, bonds and  
 insurance for the carrying on of the work, then this obligation shall be void; otherwise it shall remain in full force  
 and effect.

The Surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<p><b>FOR STATE USE ONLY:</b></p> <p>Surety is licensed in ND: _____</p> <p>Date verified: _____</p> <p>Verified by: _____</p>	<p>Contractor: _____</p> <hr/> <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>Surety: _____</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>By: _____</p> <p style="text-align: center;">Attorney-in-fact (Seal and Signature)</p> <hr/> <p style="text-align: center;">Agency</p> <hr/> <p style="text-align: center;">Address</p>
--	---



# PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the State of North Dakota,  
 (Surety), are held and firmly bound unto the State of North Dakota in the full and just sum of  
 \_\_\_\_\_ **AND NO /100 DOLLARS (\$.00)**, to be paid to the State  
 of North Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors  
 and assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the above Principal shall promptly  
 and faithfully perform all of the provisions of the contract, and all obligations thereunder including the  
 specifications, and any alterations provided for, and shall in a manner satisfactory to the State of North Dakota,  
 complete the work contracted for including any alterations, and shall hold harmless the State of North Dakota  
 from any expense incurred through the failure of the Principal to complete the work as specified, then this  
 obligation shall be void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<b>FOR STATE USE ONLY:</b>	Contractor: _____
	Signature
Surety is licensed in ND:	Date
Date verified: _____	Surety: _____
Verified by:	Date
	By: _____ Attorney-in-fact (Seal and Signature)
	Agency
	Address

## WELL RECLAMATION CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, (COMMISSION) and [contractor's legal name and address] (CONTRACTOR);

### I

#### SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by COMMISSION, shall provide all materials and labor necessary for and shall perform the work described in the Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following wells:

See attached list of wells.

### II

#### TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract must be completed by **April 1, 2024** and all invoices must be received by **May 30, 2024**. There is an urgency by the Commission to get the work done in a timely and effective manner.

### III

#### COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), to be paid within thirty days after COMMISSION has accepted the work. If COMMISSION determines, in its sole discretion, that the well cannot be removed according to the Reclamation Specifications attached hereto as Exhibit A, COMMISSION may modify the Reclamation Specifications to ensure the well site is properly reclaimed by CONTRACTOR. If such modifications (per potential extras estimate) result in increased material and labor costs, CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges as determined by COMMISSION, for the additional material and labor. In the case where such modifications result in decreased material and labor costs, CONTRACTOR's compensation will be decreased by an amount based on the usual and customary changes relative to the material and labor expenses, as determined by COMMISSION.

### IV

#### CONTRACT DOCUMENTS

The contract documents that accompany this contract are the Invitation to Bid, Instructions to Bidder, Bid Form, Reclamation Specifications and Contractor's Performance Bond and Labor and Materials Payment Bond and are incorporated as part of the contract. In the event of any inconsistency or conflict among the documents making up this contract, the terms of the contract shall control.

V  
LIABILITY AND INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this contract, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

VI  
INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the

- policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by COMMISSION;
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the COMMISSION. The policies shall be in form and terms approved by COMMISSION.
  - 3) COMMISSION will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify COMMISSION under this agreement shall not be limited by the insurance required by this agreement.
  - 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverage of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
  - 5) The insurance required in this agreement, through a policy or endorsement, shall include:
    - a) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
    - b) A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance, or self-retention maintained by the State and that any insurance, self-insurance, or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
    - c) Cross liability/severability of interest for all policies and endorsements;
    - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and
    - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
  - 6) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - 7) Failure to provide insurance as required in this contract is a material breach of contract entitling COMMISSION to terminate this contract immediately.
  - 8) CONTRACTOR shall provide at least 30-day notice of any cancellation or material

change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## VII MERGER AND MODIFICATION

This contract, including the incorporated documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified with in this contract. This contract may not be modified, supplemented, or amended in any manner, except by written agreement signed by both parties.

## VIII ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty under this contract without COMMISSION's written consent, provided, however, that CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

## IX ATTORNEYS' FEES

In the event a lawsuit is brought by COMMISSION to obtain performance due under this contract, and COMMISSION is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay COMMISSION's reasonable attorney fees and costs in connection to the lawsuit.

## X APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated 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*.

## XI INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a COMMISSION employee for any purpose, including application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this contract shall be construed to represent the creation of an employer/employee relationship. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

XII  
NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including but not limited to, those relating to nondiscrimination, accessibility, and civil rights (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums.

CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling the COMMISSION to terminate in accordance with the Termination for Cause section of this Contract.

XIII  
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 are unaffected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XIV  
STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR will maintain all of these records for at least three years (3) following completion of this contract and be able to provide them upon reasonable notice. The COMMISSION, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

XV  
SPOILIATION - PRESERVATION OF EVIDENCE

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

XVI  
TERMINATION OF CONTRACT

- a. Termination by Mutual Consent. This contract may be terminated by mutual consent of both parties executed in writing.
- b. Early Termination in the Public Interest. COMMISSION is entering into this contract for the purpose of carrying out the public policy of the state of North Dakota, as determined by the Governor, Legislative Assembly, agencies and courts. If this contract ceases to further the public policy of the state of North Dakota, COMMISSION, in its sole discretion, by written notice to CONTRACTOR, may terminate this contract in whole or in part.
- c. Termination for Lack of Funding or Authority. COMMISSION, by written notice to CONTRACTOR, may terminate in whole or any part of this contract, 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 contract or are no longer eligible for the funding proposed for payments authorized by this contract.

- (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

- d. Termination for Cause. COMMISSION may terminate this contract 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 contract within the time specified or any extension agreed to by COMMISSION; or

- (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

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

XVII  
NOTICE

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ or \_\_\_\_\_  
\_\_\_\_\_

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.

XVIII  
TAXPAYER ID

CONTRACTOR's North Dakota tax ID number is: \_\_\_\_\_  
CONTRACTOR's federal employer ID number is: \_\_\_\_\_

XIX  
PAYMENT OF TAXES BY COMMISSION

COMMISSION is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001. COMMISSION will furnish certificates of exemption upon request by the CONTRACTOR.

XX  
EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties. If the dates of execution are different, then the later date of execution is the effective date.

XXI  
FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, acts of God, or war if 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.

XXII  
RENEWAL

This contract will not automatically renew. If COMMISSION desires to renew, COMMISSION will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

XXIII  
ALTERNATIVE DISPUTE RESOLUTION - JURY TRIAL

By entering into this contract, COMMISSION does not agree to binding arbitration, mediation, or other forms of mandatory Alternative Dispute Resolution. The parties may enforce their rights and remedies in judicial proceedings. COMMISSION does not waive any right to a jury trial.



XXIV  
CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from COMMISSION under this contract that COMMISSION has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by COMMISSION. COMMISSION shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that COMMISSION determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of COMMISSION and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

XXV  
COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, in accordance with the Contract's Confidentiality clause, COMMISSION must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact COMMISSION promptly upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

XXVI  
WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment, or materials created for COMMISSION or purchased by COMMISSION under this contract belong to COMMISSION and must be immediately delivered to COMMISSION at COMMISSION'S request upon termination of this contract. CONTRACTOR agrees that all work(s) under this contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COMMISSION all rights and interests CONTRACTOR may have in the work(s) it prepares under this contract, including any right to derivative use of the work(s). CONTRACTOR shall execute all necessary documents to enable COMMISSION to protect its rights under this section.

XXVII  
COMPLIANCE WITH FEDERAL LAWS

Contractor agrees to comply with the additional Federal requirements and standard terms and conditions found in Exhibit B.

STATE OF NORTH DAKOTA  
Acting through its  
N.D. Industrial Commission  
Department of Mineral Resource  
Oil & Gas Division

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

**EXHIBIT A  
LIST OF WELLS**

**EXHIBIT B  
Reclamation SPECIFICATIONS**

**EXHIBIT C**  
**FEDERAL STANDARD TERMS AND CONDITIONS**

**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a-5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

*(1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*

*(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*

*(A) the basic hourly rate of pay; and*

*(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*

*(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*

*(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

*(a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*

*(b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the*

*State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*

*(c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*

*(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*

*(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*

*(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.*

*(d) Discharge of Obligation.- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.*

*(e) Overtime Pay.- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.*

*40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages*

*Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.*

*40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts*

*(a) Payment of Wages.-*

*(1) In general.- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.*

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

*This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.*

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

*The President may suspend the provisions of this subchapter during a national emergency.*

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No. 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including

each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2)Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3)Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4)Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient’s and Subrecipient’s contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1)through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5)The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145) -** makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** –Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.



**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** – Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must: (1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions:

<https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites you to submit a bid for the reclamation of the following wells:

Reclamation Package 3

See Attached list

To be considered, the bid must be on the form provided by the Industrial Commission, which must be fully completed in accordance with the accompanying "INSTRUCTIONS TO BIDDERS," and must be received in the Bismarck office of the Industrial Commission, Oil & Gas Division, no later than **3:00 p.m. December 1, 2022**. The Commission may reject any and all bids.

For additional information or blank bid forms, please go to the North Dakota Industrial Commission, Oil & Gas Division home page, <https://www.dmr.nd.gov/oilgas/> or contact Cody VanderBusch at (701)-328-8020.

## INSTRUCTIONS TO BIDDERS

1. Form of Bids. Bids must be submitted on the attached bid form. **Provide an attachment listing each wells bid cost along with the equipment salvage value, potential extras estimate (including estimate breakdown) and then net total. The combined total will be placed on the bid sheet. The bonds will be based on the highest cost well.**
  
2. Submission of Bids. Bids must be enclosed in a sealed envelope, and the outside of the envelope must have the following on it:

Bid of: (Name of Contractor & Business Address)

N.D. Contractor's License No: (No. and Class of License)

Date License was Issued or Renewed: \_\_\_\_\_

Bid Package Name and Number: \_\_\_\_\_

ATTN: Mr. Cody VanderBusch

SEALED BID DO NOT OPEN

NDIC Oil & Gas Division  
1016 E. Calgary Ave  
Bismarck, N.D. 58503-5512
  
3. Examination of Site. Prospective bidders may make a visual inspection of the well and well site to ascertain the nature and location of the work and the conditions which can affect the work and its cost. The Commission is not bound by any oral statement concerning the condition of the well or well site made by its staff or agents prior to the execution of the equipment removal contract. **Note.** If no access is visible, please contact landowner before entering.
  
4. Bidder Qualifications. No contract will be awarded unless: (a.) the bidder holds a current contractor's license in the class within which the value of the project falls issued at least ten days prior to the date set for receiving bids, and the bid envelope contains a copy of the license or a certificate of its renewal issued by the secretary of state (N.D.C.C. §43-07-12); and (b.) the bidder files along with its bid or after being notified that it is the successful bidder, a certificate from the ND State Tax Commissioner that bidder has paid all delinquent income, sales, and use taxes, if any (N.D.C.C. § 43- 07-11.1).
  
5. Bid Deadline. All bids are due in the office of the Industrial Commission, Oil and Gas Division, by **3:00 p.m. December 1, 2022.** The office is at **1016 E. Calgary Ave., Bismarck, ND.** Bids received after this deadline will not be considered.
  
6. Review of Bids. The public opening of the bids will be held at **3:00 p.m. December 1, 2022** at the **Industrial Commission, Oil and Gas Division, 1016 E. Calgary Ave., Bismarck, ND.**
  
7. Withdrawal of Bids. Bids may be withdrawn by bidder's written request received prior to the time set in

paragraph 5.

8. Rejection of Bids. The Commission may reject any and all bids and may waive any technical or formal defect in a bid.
9. Notification of Award. The successful bidder, if any, will be notified of the award of the work within thirty days after the bid opening.
10. Contract. The bidder whose bid is accepted must enter into a written contract with the Commission within ten days after the award is made. The contract contains, among other things, provisions requiring the contractor to acquire insurance and provide bonds in the amount of the bid.
11. Timeline. Work can't start before **January 2, 2023** and must be completed by **April 1, 2024 and invoices received by May 30, 2024.**
12. Cancellation of Award. The Commission may cancel the award of any contract at any time before execution of the contract by all parties without any liability to the Commission.
13. Title to Material and Objects on Site. The Commission has title to all confiscated equipment on the well site. Any person who removes confiscated equipment or fluids from a well or well site without permission is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates this section could be guilty of a Class C Felony.
14. Bidders shall follow all federal requirements including but not limited to Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (see **Attachment A**).
15. Changes in Bid Specifications. The Commission may, during the bidding period, advise bidders of alterations to any part of the bid. All such changes are included in the work covered by the bid and are a part of the specifications.
16. Approved Procedures. Bidders must bid on the approved procedures. Cost for the required report submittals and photos shall be included in the bid.
17. Other Changes. Any changes to procedures **MUST** be approved by Commission staff. **Unapproved changes will not be reimbursed.**
18. Overtures. Only overtures that are required by the Commission shall be paid, all other costs shall be included within the bid cost. Hidden costs or undisclosed costs will not be reimbursed.
19. Completed Work. Bidders must complete the work in a timely manner to Commission requirements.

20. Well List. The Commission may at any time add or remove wells from the package due to reasons deemed appropriate by the Commission.
21. Note. Bidders must ensure they meet and follow all bidder instructions and requirements as indicated in the bidding package.

Additional information - IOGCC report on the issue of idle and orphan oil and gas wells can be found at:

[https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc\\_idle\\_and\\_orphan\\_wells\\_2021\\_final\\_web\\_0.pdf](https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf)

**ATTACHMENT A**  
**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

- (1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*
- (2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*
  - (A) the basic hourly rate of pay; and*
  - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*
    - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*
    - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

- (a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*
- (b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*
- (c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*
  - (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*
  - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*
  - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor*

on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

(d) *Discharge of Obligation.*- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.

(e) *Overtime Pay.*- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.

40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) *Payment of Wages.*-

(1) *In general.*- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of this subchapter during a national emergency.

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts



*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No, 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145)** - makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** – Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**—Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**—Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**—These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors**—Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace**— Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must:

(1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying**— The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection**— Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government**— No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions: <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## ATTACHMENT B

### Package 3 wells

FileNo	Well Name & Number	Status	County	STR	Wh_Qtr	Field	Wh_Lat	Wh_Long
14797	RICE-STATE 2H	AB	BOTTINEA U	35-162-79	SENW	Renville	48.7761075	-101.3155634
15510	ASHEIM 1	AB	BOTTINEA U	35-162-79	SESE	Renville	48.77621326	-101.3348547
16067	RICE 7	AB	BOTTINEA U	35-162-79	NWNW	Renville	48.77263884	-101.3245431
17736	HELLER 6-31	AB	BOTTINEA U	1-161-79	SWNW	Renville	48.81600756	-101.3579419
18452	GLESSING 7-16	AB	BOTTINEA U	35-162-79	NENW	Renville	48.77916254	-101.3459956
19027	ERICKSON ET AL 1B	AB	BOTTINEA U	6-160-82	NESW	Renville	48.82155199	-101.3538187
19028	ERICKSON ET AL 3B	AB	BOTTINEA U	6-160-82	NWSW	Renville	48.82155536	-101.3527803
19143	ERICKSON ET AL 2B	AB	BOTTINEA U	6-160-82	NWNE	Renville	48.82155368	-101.3532995
19236	ASHEIM 2	AB	BOTTINEA U	22-162-79	SENE	Renville	48.77657243	-101.3332988
19315	RICE 11	AB	BOTTINEA U	3-162-79	SENE	Renville	48.77849576	-101.3209506
20775	RIISE 12	AB	BOTTINEA U	3-162-79	NESE	Renville	48.77216773	-101.3288557
20776	RICE 13	AB	BOTTINEA U	2-162-79	SWSW	Renville	48.78289927	-101.3138145
20963	RIISE 4X	AB	BOTTINEA U	8-160-78	NENW	Renville	48.77132639	-101.3203541
17788	RICE STATE 3H	PA	BOTTINEA U	16-161-82	NWNW	Renville	48.774269	-101.321102
21902 7-01	Erickson CTB	AB	BOTTINEA U	30-162-82	SWSE	Renville	48.8222	-101.3518

Note: There are around 16 miles of pipelines in the Renville Field that will need to be capped and flushed. There is also around 3 miles of line from Erickson CTB to the Cramer 1 SWD.

**ATTACHMENT C**  
**RECLAMATION SPECIFICATIONS**

WELL SITE

INTRODUCTION

The objective of this project is to reclaim the well site to comply with all requirements of North Dakota Administrative Code Section 43-02-03-34.1.

SPECIFICATIONS

- A. Contractor shall arrange for all tools, equipment, products and any other items required to properly reclaim the well site. Contractor is responsible for locating all utility lines before reclamation work begins. Contractor is responsible for disposal of equipment, junk and debris on the site.
- B. Contractors reporting requirements:
- 1) A picture of the well location before work starts, during work (mid-way point) and after the site is reclaimed.
  - 2) Daily activity reports will be submitted into the Commission for review. Each report must contain, dates, times, and work that was done.
  - 3) If an amendment to the approved reclamation bid is required, and the Commission staff approve the change, an estimation of the cost for the change shall be included within that day's daily activity report.
  - 4) Contractors must follow all Federal requirements set forth within the grant requirements and as detailed within the bidding contract. (see **Attachment A**)
- C. To reclaim the well site the contractor shall:
- 1) Remove any equipment and junk.
  - 2) Strip surfacing material.
  - 3) Flush and cap flowlines below 3'. If not below 3' final grade they need to be removed.
  - 4) Remove contamination down to 4' or to levels of 10,000 ppm with no free product for TPH and Electrical conductivity (EC) of 2000 micro siemens/cm. (**prior approval will be needed with estimate prior to starting this work**)
  - 5) Re-contour the site to blend in with the surrounding topography to restore the natural drainage of the area.
  - 6) Bury rocks as needed.
  - 7) Bring in and Spread 6" of topsoil.
  - 8) Cultivate/rip all disturbed areas to alleviate compaction and prepare for seeding.
  - 9) Seed to the native grass specification below if seeding is required.
- D. Landowner:
- The well site is owned by (name and phone number)\_\_\_\_\_.
- E. Contractor must give the Commission 48 hours advance notice before starting reclamation work.
- F. Contractors invoice requirements:

- 1) All invoices must be complete and final when submitted. Invoices need be submitted within **60 days** from the date the work was completed.
  - 2) Invoices shall identify any operations that are an additional cost to the original procedure and had to be approved by Commission staff. **Unapproved changes will not be reimbursed.**
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of final acceptance. Contractor shall bear the entire cost and expense of all repairs that may be necessary within that time due to imperfections in work or materials. Contractor is not liable for equipment, material, or workmanship supplied by the Commission.
- H. Contractor must complete the work in a timely manner to Commission requirements.

### **Native Grass Seeding Specifications**

<b>Grass Species</b>	PLS lb/ac <sup>1</sup> *
Western wheatgrass	2.5
Green needlegrass	2.0
Slender wheatgrass	1.5
Little bluestem	1.0
Prairie sandreed	1.0
Sideoats grama	2.0
Blue grama	0.5
Big bluestem	---
Switchgrass	---
Canada wildrye	---
Indiangrass	---
Total seed mixture	10.5

<sup>1</sup>PLS = Pure live seed: Seeding rates are 1.5 times the normal seeding rate based on 30 seed/ft<sup>2</sup>.

**BID**

Bid for reclamation of the following well sites:

See attached list of wells

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, RECLMATION SPECIFICATIONS, RECLAMATION CONTRACT, LABOR AND MATERIAL PAYMENT BOND and PERFORMANCE BOND bidder proposes and agrees to do all work called for in the specifications and contract and to furnish the services, equipment, and labor necessary for the full completion of the work for the price of  
(Gross) \_\_\_\_\_ - (Salvage Value) \_\_\_\_\_  
+ (Potential extras estimate) \_\_\_\_\_  
= (Total bid amount) \_\_\_\_\_ dollars (\$).

Contractor hereby agrees that it shall comply with all Federal requirements including Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (as noted in **Attachment A** of Bid Notification).

If the bidder's bid is accepted, the Industrial Commission will inform the bidder in writing within thirty days after the bid opening. Within ten days after receipt of such a notice, bidder will appear in the office of the North Dakota Industrial Commission, Oil and Gas Division, and execute the Reclamation Contract. Bidder agrees that if bidder fails to enter into a contract, bidder is liable to the Commission for all expenses incurred by and damages suffered by the Commission as a result of the failure.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Email



# LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the  
 State of North Dakota, (Surety), are held and firmly bound unto the State of North Dakota in the full and just  
 sum of \_\_\_\_\_ **AND NO/100 DOLLARS (\$ .00)**, to be paid to the State of North  
 Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors and  
 assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall duly and promptly  
 pay all laborers, mechanics, subcontractors and material men who perform work or furnish material under the  
 contract and all persons who shall supply the Principal or the subcontractor with materials, services, bonds and  
 insurance for the carrying on of the work, then this obligation shall be void; otherwise it shall remain in full force  
 and effect.

The Surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<p><b>FOR STATE USE ONLY:</b></p>  <p>Surety is licensed in ND:</p>  <p>Date verified: _____</p>  <p>Verified by: _____</p>	<p>Contractor: _____</p>  <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>Surety: _____</p>  <p style="text-align: center;">Date</p> <hr/> <p>By: _____</p> <p style="text-align: center;">Attorney-in-fact (Seal and Signature)</p> <hr/> <p style="text-align: center;">Agency</p> <hr/> <p style="text-align: center;">Address</p>
---	---

# PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
\_\_\_\_\_  
(Principal), and \_\_\_\_\_  
\_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the State of North Dakota,  
(Surety), are held and firmly bound unto the State of North Dakota in the full and just sum of  
\_\_\_\_\_ **AND NO /100 DOLLARS (\$.00)**, to be paid to the State  
of North Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors  
and assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
wells:

### See Bid Notification, Attachment B

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
executed.

NOW THEREFORE, the conditions of this obligation are such that if the above Principal shall promptly  
and faithfully perform all of the provisions of the contract, and all obligations thereunder including the  
specifications, and any alterations provided for, and shall in a manner satisfactory to the State of North Dakota,  
complete the work contracted for including any alterations, and shall hold harmless the State of North Dakota  
from any expense incurred through the failure of the Principal to complete the work as specified, then this  
obligation shall be void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of any extension of time and any alterations made in the terms of the  
contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
sum by more than 10%.

<b>FOR STATE USE ONLY:</b>	Contractor: _____
	Signature _____
	Date _____
	Surety: _____
	Date _____
	By: _____ Attorney-in-fact (Seal and Signature)
Surety is licensed in ND: _____	Agency _____
Date verified: _____	Address _____
Verified by: _____	

## WELL RECLAMATION CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, (COMMISSION) and [contractor's legal name and address] (CONTRACTOR);

### I

#### SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by COMMISSION, shall provide all materials and labor necessary for and shall perform the work described in the Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following wells:

See attached list of wells.

### II

#### TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract must be completed by **April 1, 2024** and all invoices must be received by **May 30, 2024**. There is an urgency by the Commission to get the work done in a timely and effective manner.

### III

#### COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), to be paid within thirty days after COMMISSION has accepted the work. If COMMISSION determines, in its sole discretion, that the well cannot be removed according to the Reclamation Specifications attached hereto as Exhibit A, COMMISSION may modify the Reclamation Specifications to ensure the well site is properly reclaimed by CONTRACTOR. If such modifications (per potential extras estimate) result in increased material and labor costs, CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges as determined by COMMISSION, for the additional material and labor. In the case where such modifications result in decreased material and labor costs, CONTRACTOR's compensation will be decreased by an amount based on the usual and customary changes relative to the material and labor expenses, as determined by COMMISSION.

### IV

#### CONTRACT DOCUMENTS

The contract documents that accompany this contract are the Invitation to Bid, Instructions to Bidder, Bid Form, Reclamation Specifications and Contractor's Performance Bond and Labor and Materials Payment Bond and are incorporated as part of the contract. In the event of any inconsistency or conflict among the documents making up this contract, the terms of the contract shall control.

V  
LIABILITY AND INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this contract, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

VI  
INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the

- policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by COMMISSION;
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the COMMISSION. The policies shall be in form and terms approved by COMMISSION.
  - 3) COMMISSION will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify COMMISSION under this agreement shall not be limited by the insurance required by this agreement.
  - 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverage of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
  - 5) The insurance required in this agreement, through a policy or endorsement, shall include:
    - a) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
    - b) A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance, or self-retention maintained by the State and that any insurance, self-insurance, or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
    - c) Cross liability/severability of interest for all policies and endorsements;
    - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and
    - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
  - 6) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - 7) Failure to provide insurance as required in this contract is a material breach of contract entitling COMMISSION to terminate this contract immediately.
  - 8) CONTRACTOR shall provide at least 30-day notice of any cancellation or material

change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## VII MERGER AND MODIFICATION

This contract, including the incorporated documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified with in this contract. This contract may not be modified, supplemented, or amended in any manner, except by written agreement signed by both parties.

## VIII ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty under this contract without COMMISSION's written consent, provided, however, that CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

## IX ATTORNEYS' FEES

In the event a lawsuit is brought by COMMISSION to obtain performance due under this contract, and COMMISSION is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay COMMISSION's reasonable attorney fees and costs in connection to the lawsuit.

## X APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated 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*.

## XI INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a COMMISSION employee for any purpose, including application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this contract shall be construed to represent the creation of an employer/employee relationship. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

XII  
NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including but not limited to, those relating to nondiscrimination, accessibility, and civil rights (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums.

CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling the COMMISSION to terminate in accordance with the Termination for Cause section of this Contract.

XIII  
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 are unaffected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XIV  
STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR will maintain all of these records for at least three years (3) following completion of this contract and be able to provide them upon reasonable notice. The COMMISSION, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

XV  
SPOILIATION - PRESERVATION OF EVIDENCE

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

XVI  
TERMINATION OF CONTRACT

- a. Termination by Mutual Consent. This contract may be terminated by mutual consent of both parties executed in writing.
- b. Early Termination in the Public Interest. COMMISSION is entering into this contract for the purpose of carrying out the public policy of the state of North Dakota, as determined by the Governor, Legislative Assembly, agencies and courts. If this contract ceases to further the public policy of the state of North Dakota, COMMISSION, in its sole discretion, by written notice to CONTRACTOR, may terminate this contract in whole or in part.
- c. Termination for Lack of Funding or Authority. COMMISSION, by written notice to CONTRACTOR, may terminate in whole or any part of this contract, 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 contract or are no longer eligible for the funding proposed for payments authorized by this contract.

- (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

- d. Termination for Cause. COMMISSION may terminate this contract 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 contract within the time specified or any extension agreed to by COMMISSION; or

- (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

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

XVII  
NOTICE

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



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ or \_\_\_\_\_  
\_\_\_\_\_

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.

XVIII  
TAXPAYER ID

CONTRACTOR's North Dakota tax ID number is: \_\_\_\_\_  
CONTRACTOR's federal employer ID number is: \_\_\_\_\_

XIX  
PAYMENT OF TAXES BY COMMISSION

COMMISSION is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001. COMMISSION will furnish certificates of exemption upon request by the CONTRACTOR.

XX  
EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties. If the dates of execution are different, then the later date of execution is the effective date.

XXI  
FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, acts of God, or war if 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.

XXII  
RENEWAL

This contract will not automatically renew. If COMMISSION desires to renew, COMMISSION will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

XXIII  
ALTERNATIVE DISPUTE RESOLUTION - JURY TRIAL

By entering into this contract, COMMISSION does not agree to binding arbitration, mediation, or other forms of mandatory Alternative Dispute Resolution. The parties may enforce their rights and remedies in judicial proceedings. COMMISSION does not waive any right to a jury trial.

XXIV  
CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from COMMISSION under this contract that COMMISSION has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by COMMISSION. COMMISSION shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that COMMISSION determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of COMMISSION and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

XXV  
COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, in accordance with the Contract's Confidentiality clause, COMMISSION must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact COMMISSION promptly upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

XXVI  
WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment, or materials created for COMMISSION or purchased by COMMISSION under this contract belong to COMMISSION and must be immediately delivered to COMMISSION at COMMISSION'S request upon termination of this contract. CONTRACTOR agrees that all work(s) under this contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COMMISSION all rights and interests CONTRACTOR may have in the work(s) it prepares under this contract, including any right to derivative use of the work(s). CONTRACTOR shall execute all necessary documents to enable COMMISSION to protect its rights under this section.

XXVII  
COMPLIANCE WITH FEDERAL LAWS

Contractor agrees to comply with the additional Federal requirements and standard terms and conditions found in Exhibit B.

STATE OF NORTH DAKOTA  
Acting through its  
N.D. Industrial Commission  
Department of Mineral Resource  
Oil & Gas Division

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

**EXHIBIT A  
LIST OF WELLS**

**EXHIBIT B  
Reclamation SPECIFICATIONS**

**EXHIBIT C**  
**FEDERAL STANDARD TERMS AND CONDITIONS**

**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a-5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

*(1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*

*(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*

*(A) the basic hourly rate of pay; and*

*(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*

*(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*

*(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

*(a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*

*(b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the*

*State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*

*(c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*

*(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*

*(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*

*(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.*

*(d) Discharge of Obligation.- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.*

*(e) Overtime Pay.- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.*

*40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages*

*Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.*

*40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts*

*(a) Payment of Wages.-*

*(1) In general.- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.*

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

*This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.*

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

*The President may suspend the provisions of this subchapter during a national emergency.*

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No. 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including

each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2)Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3)Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4)Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient’s and Subrecipient’s contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1)through (4) of this section and also a clause requiring the subcontractors to include these



clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5)The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145) -** makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** –Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** – Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must: (1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions:

<https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites you to submit a bid for the reclamation of the following wells:

Reclamation Package 4

See Attached list

To be considered, the bid must be on the form provided by the Industrial Commission, which must be fully completed in accordance with the accompanying "INSTRUCTIONS TO BIDDERS," and must be received in the Bismarck office of the Industrial Commission, Oil & Gas Division, no later than **3:00 p.m. December 1, 2022**. The Commission may reject any and all bids.

For additional information or blank bid forms, please go to the North Dakota Industrial Commission, Oil & Gas Division home page, <https://www.dmr.nd.gov/oilgas/> or contact Cody VanderBusch at (701)-328-8020.

## INSTRUCTIONS TO BIDDERS

1. **Form of Bids.** Bids must be submitted on the attached bid form. **Provide an attachment listing each wells bid cost along with the equipment salvage value, potential extras estimate (including estimate breakdown) and then net total. The combined total will be placed on the bid sheet. The bonds will be based on the highest cost well.**
  
2. **Submission of Bids.** Bids must be enclosed in a sealed envelope, and the outside of the envelope must have the following on it:  
  
Bid of: (Name of Contractor & Business Address)  
N.D. Contractor's License No: (No. and Class of License)  
Date License was Issued or Renewed: \_\_\_\_\_  
  
Bid Package Name and Number: \_\_\_\_\_  
  
ATTN: Mr. Cody VanderBusch  
SEALED BID DO NOT OPEN  
  
NDIC Oil & Gas Division  
1016 E. Calgary Ave  
Bismarck, N.D. 58503-5512
  
3. **Examination of Site.** Prospective bidders may make a visual inspection of the well and well site to ascertain the nature and location of the work and the conditions which can affect the work and its cost. The Commission is not bound by any oral statement concerning the condition of the well or well site made by its staff or agents prior to the execution of the equipment removal contract. **Note.** If no access is visible, please contact landowner before entering.
  
4. **Bidder Qualifications.** No contract will be awarded unless: (a.) the bidder holds a current contractor's license in the class within which the value of the project falls issued at least ten days prior to the date set for receiving bids, and the bid envelope contains a copy of the license or a certificate of its renewal issued by the secretary of state (N.D.C.C. §43-07-12); and (b.) the bidder files along with its bid or after being notified that it is the successful bidder, a certificate from the ND State Tax Commissioner that bidder has paid all delinquent income, sales, and use taxes, if any (N.D.C.C. § 43- 07-11.1).
  
5. **Bid Deadline.** All bids are due in the office of the Industrial Commission, Oil and Gas Division, by **3:00 p.m. December 1, 2022.** The office is at **1016 E. Calgary Ave., Bismarck, ND.** Bids received after this deadline will not be considered.
  
6. **Review of Bids.** The public opening of the bids will be held at **3:00 p.m. December 1, 2022** at the **Industrial Commission, Oil and Gas Division, 1016 E. Calgary Ave., Bismarck, ND.**
  
7. **Withdrawal of Bids.** Bids may be withdrawn by bidder's written request received prior to the time set in

paragraph 5.

8. Rejection of Bids. The Commission may reject any and all bids and may waive any technical or formal defect in a bid.
9. Notification of Award. The successful bidder, if any, will be notified of the award of the work within thirty days after the bid opening.
10. Contract. The bidder whose bid is accepted must enter into a written contract with the Commission within ten days after the award is made. The contract contains, among other things, provisions requiring the contractor to acquire insurance and provide bonds in the amount of the bid.
11. Timeline. Work can't start before **January 2, 2023** and must be completed by **April 1, 2024 and invoices received by May 30, 2024.**
12. Cancellation of Award. The Commission may cancel the award of any contract at any time before execution of the contract by all parties without any liability to the Commission.
13. Title to Material and Objects on Site. The Commission has title to all confiscated equipment on the well site. Any person who removes confiscated equipment or fluids from a well or well site without permission is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates this section could be guilty of a Class C Felony.
14. Bidders shall follow all federal requirements including but not limited to Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (see **Attachment A**).
15. Changes in Bid Specifications. The Commission may, during the bidding period, advise bidders of alterations to any part of the bid. All such changes are included in the work covered by the bid and are a part of the specifications.
16. Approved Procedures. Bidders must bid on the approved procedures. Cost for the required report submittals and photos shall be included in the bid.
17. Other Changes. Any changes to procedures **MUST** be approved by Commission staff. **Unapproved changes will not be reimbursed.**
18. Overtures. Only overtures that are required by the Commission shall be paid, all other costs shall be included within the bid cost. Hidden costs or undisclosed costs will not be reimbursed.
19. Completed Work. Bidders must complete the work in a timely manner to Commission requirements.

20. Well List. The Commission may at any time add or remove wells from the package due to reasons deemed appropriate by the Commission.
21. Note. Bidders must ensure they meet and follow all bidder instructions and requirements as indicated in the bidding package.

Additional information - IOGCC report on the issue of idle and orphan oil and gas wells can be found at:

[https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc\\_idle\\_and\\_orphan\\_wells\\_2021\\_final\\_web\\_0.pdf](https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf)

**ATTACHMENT A**  
**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

- (1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*
- (2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*
  - (A) the basic hourly rate of pay; and*
  - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*
    - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*
    - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

- (a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*
- (b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*
- (c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*
  - (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*
  - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*
  - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor*



on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

(d) *Discharge of Obligation.*- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.

(e) *Overtime Pay.*- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.

40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) *Payment of Wages.*-

(1) *In general.*- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of this subchapter during a national emergency.

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No, 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145)** - makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** – Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** –Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must:

(1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions: <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## ATTACHMENT B

### Package 4 wells

FileNo	Well Name & Number	Status	County	STR	Wh_Qtr	Field	Wh_Lat	Wh_Long
13884	RICE TRUST 1	AB	BOTTINEA U	8-161-82	NWSE	Renville	48.7834653	-101.3305472
14729	RICE ET AL 1H	AB	BOTTINEA U	8-161-82	NESE	Renville	48.78327974	-101.3226125
15002	Cramer 1	AB	BOTTINEA U	8-161-82	SENW	Renville	48.7864792	-101.3352116
15179	RICE 4	AB	BOTTINEA U	8-161-82	SWSE	Renville	48.77945263	-101.3305581
15180	RICE 3	AB	BOTTINEA U	8-161-82	SWNE	Renville	48.78612498	-101.3308346
15245	RICE 5	AB	BOTTINEA U	8-161-82	NESE	Renville	48.78139419	-101.3270107
15246	GLESSING 1	AB	BOTTINEA U	8-161-82	NESW	Renville	48.78355542	-101.3352176
15360	GLESSING 2	AB	BOTTINEA U	8-161-82	SESW	Renville	48.77944645	-101.3354302
15591	GLESSING 3	AB	BOTTINEA U	8-161-82	SWSW	Renville	48.77951749	-101.3400449
16082	RICE 8	AB	BOTTINEA U	8-161-82	SESE	Renville	48.78008426	-101.3238977
17839	CRAMER 3	AB	BOTTINEA U	8-161-82	NENW	Renville	48.78938933	-101.3347242
18558	CRAMER 4	AB	BOTTINEA U	8-161-82	SWNW	Renville	48.78572105	-101.3418509
19314	RICE 10	AB	BOTTINEA U	8-161-82	SWSE	Renville	48.77819176	-101.3320931
90090	CRAMER 1 SWD	AB	BOTTINEA U	8-161-82	SENW	Renville	48.78514973	-101.3331522
408574-01	Rice-Glessing UTB	AB	BOTTINEA U	8-161-82	NWSE	Renville	48.7855	-101.3297
408575-01	Rice-Ashiem UTB	AB	BOTTINEA U	9-161-82	SWSW	Renville	48.7802	-101.3204

Note: There are around 16 miles of pipelines in the Renville field that will need to be capped and flushed. There is also around 3 miles of line from Erickson CTB to the Cramer 1 SWD.

# ATTACHMENT C

## RECLAMATION SPECIFICATIONS

### WELL SITE

### INTRODUCTION

The objective of this project is to reclaim the well site to comply with all requirements of North Dakota Administrative Code Section 43-02-03-34.1.

### SPECIFICATIONS

- A. Contractor shall arrange for all tools, equipment, products and any other items required to properly reclaim the well site. Contractor is responsible for locating all utility lines before reclamation work begins. Contractor is responsible for disposal of equipment, junk and debris on the site.
- B. Contractors reporting requirements:
- 1) A picture of the well location before work starts, during work (mid-way point) and after the site is reclaimed.
  - 2) Daily activity reports will be submitted into the Commission for review. Each report must contain, dates, times, and work that was done.
  - 3) If an amendment to the approved reclamation bid is required, and the Commission staff approve the change, an estimation of the cost for the change shall be included within that day's daily activity report.
  - 4) Contractors must follow all Federal requirements set forth within the grant requirements and as detailed within the bidding contract. (see **Attachment A**)
- C. To reclaim the well site the contractor shall:
- 1) Remove any equipment and junk.
  - 2) Strip surfacing material.
  - 3) Flush and cap flowlines below 3'. If not below 3' final grade they need to be removed.
  - 4) Remove contamination down to 4' or to levels of 10,000 ppm with no free product for TPH and Electrical conductivity (EC) of 2000 micro siemens/cm. (**prior approval will be needed with estimate prior to starting this work**)
  - 5) Re-contour the site to blend in with the surrounding topography to restore the natural drainage of the area.
  - 6) Bury rocks as needed.
  - 7) Bring in and Spread 6" of topsoil.
  - 8) Cultivate/rip all disturbed areas to alleviate compaction and prepare for seeding.
  - 9) Seed to the native grass specification below if seeding is required.
- D. Landowner:
- The well site is owned by (name and phone number)\_\_\_\_\_.
- E. Contractor must give the Commission 48 hours advance notice before starting reclamation work.
- F. Contractors invoice requirements:

- 1) All invoices must be complete and final when submitted. Invoices need be submitted within **60 days** from the date the work was completed.
  - 2) Invoices shall identify any operations that are an additional cost to the original procedure and had to be approved by Commission staff. **Unapproved changes will not be reimbursed.**
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of final acceptance. Contractor shall bear the entire cost and expense of all repairs that may be necessary within that time due to imperfections in work or materials. Contractor is not liable for equipment, material, or workmanship supplied by the Commission.
- H. Contractor must complete the work in a timely manner to Commission requirements.

### **Native Grass Seeding Specifications**

<b>Grass Species</b>	PLS lb/ac <sup>1</sup> *
Western wheatgrass	2.5
Green needlegrass	2.0
Slender wheatgrass	1.5
Little bluestem	1.0
Prairie sandreed	1.0
Sideoats grama	2.0
Blue grama	0.5
Big bluestem	---
Switchgrass	---
Canada wildrye	---
Indiangrass	---
Total seed mixture	10.5

<sup>1</sup>PLS = Pure live seed: Seeding rates are 1.5 times the normal seeding rate based on 30 seed/ft<sup>2</sup>.



**BID**

Bid for reclamation of the following well sites:

See attached list of wells

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, RECLMATION SPECIFICATIONS, RECLAMATION CONTRACT, LABOR AND MATERIAL PAYMENT BOND and PERFORMANCE BOND bidder proposes and agrees to do all work called for in the specifications and contract and to furnish the services, equipment, and labor necessary for the full completion of the work for the price of  
(Gross) \_\_\_\_\_ - (Salvage Value) \_\_\_\_\_  
+ (Potential extras estimate) \_\_\_\_\_  
= (Total bid amount) \_\_\_\_\_ dollars (\$).

Contractor hereby agrees that it shall comply with all Federal requirements including Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (as noted in **Attachment A** of Bid Notification).

If the bidder's bid is accepted, the Industrial Commission will inform the bidder in writing within thirty days after the bid opening. Within ten days after receipt of such a notice, bidder will appear in the office of the North Dakota Industrial Commission, Oil and Gas Division, and execute the Reclamation Contract. Bidder agrees that if bidder fails to enter into a contract, bidder is liable to the Commission for all expenses incurred by and damages suffered by the Commission as a result of the failure.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Email

# LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the  
 State of North Dakota, (Surety), are held and firmly bound unto the State of North Dakota in the full and just  
 sum of \_\_\_\_\_ **AND NO/100 DOLLARS (\$ .00)**, to be paid to the State of North  
 Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors and  
 assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall duly and promptly  
 pay all laborers, mechanics, subcontractors and material men who perform work or furnish material under the  
 contract and all persons who shall supply the Principal or the subcontractor with materials, services, bonds and  
 insurance for the carrying on of the work, then this obligation shall be void; otherwise it shall remain in full force  
 and effect.

The Surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<p><b>FOR STATE USE ONLY:</b></p>  <p>Surety is licensed in ND:</p>  <p>Date verified: _____</p>  <p>Verified by:</p>	<p>Contractor: _____</p>  <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>Surety: _____</p>  <p style="text-align: center;">Date</p> <hr/> <p>By: _____</p> <p style="text-align: center;">Attorney-in-fact (Seal and Signature)</p> <hr/> <p style="text-align: center;">Agency</p> <hr/> <p style="text-align: center;">Address</p>
---	---

# PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
\_\_\_\_\_  
(Principal), and \_\_\_\_\_  
\_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the State of North Dakota,  
(Surety), are held and firmly bound unto the State of North Dakota in the full and just sum of  
\_\_\_\_\_ **AND NO /100 DOLLARS (\$.00)**, to be paid to the State  
of North Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors  
and assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
wells:

### See Bid Notification, Attachment B

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
executed.

NOW THEREFORE, the conditions of this obligation are such that if the above Principal shall promptly  
and faithfully perform all of the provisions of the contract, and all obligations thereunder including the  
specifications, and any alterations provided for, and shall in a manner satisfactory to the State of North Dakota,  
complete the work contracted for including any alterations, and shall hold harmless the State of North Dakota  
from any expense incurred through the failure of the Principal to complete the work as specified, then this  
obligation shall be void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of any extension of time and any alterations made in the terms of the  
contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
sum by more than 10%.

<b>FOR STATE USE ONLY:</b>	Contractor: _____
	Signature _____
	Date _____
	Surety: _____
	Date _____
	By: _____ Attorney-in-fact (Seal and Signature)
Surety is licensed in ND: _____	Agency _____
Date verified: _____	Address _____
Verified by: _____	

## WELL RECLAMATION CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, (COMMISSION) and [contractor's legal name and address] (CONTRACTOR);

### I

#### SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by COMMISSION, shall provide all materials and labor necessary for and shall perform the work described in the Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following wells:

See attached list of wells.

### II

#### TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract must be completed by **April 1, 2024** and all invoices must be received by **May 30, 2024**. There is an urgency by the Commission to get the work done in a timely and effective manner.

### III

#### COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), to be paid within thirty days after COMMISSION has accepted the work. If COMMISSION determines, in its sole discretion, that the well cannot be removed according to the Reclamation Specifications attached hereto as Exhibit A, COMMISSION may modify the Reclamation Specifications to ensure the well site is properly reclaimed by CONTRACTOR. If such modifications (per potential extras estimate) result in increased material and labor costs, CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges as determined by COMMISSION, for the additional material and labor. In the case where such modifications result in decreased material and labor costs, CONTRACTOR's compensation will be decreased by an amount based on the usual and customary changes relative to the material and labor expenses, as determined by COMMISSION.

### IV

#### CONTRACT DOCUMENTS

The contract documents that accompany this contract are the Invitation to Bid, Instructions to Bidder, Bid Form, Reclamation Specifications and Contractor's Performance Bond and Labor and Materials Payment Bond and are incorporated as part of the contract. In the event of any inconsistency or conflict among the documents making up this contract, the terms of the contract shall control.

V  
LIABILITY AND INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this contract, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

VI  
INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the

- policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by COMMISSION;
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the COMMISSION. The policies shall be in form and terms approved by COMMISSION.
  - 3) COMMISSION will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify COMMISSION under this agreement shall not be limited by the insurance required by this agreement.
  - 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverage of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
  - 5) The insurance required in this agreement, through a policy or endorsement, shall include:
    - a) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
    - b) A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance, or self-retention maintained by the State and that any insurance, self-insurance, or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
    - c) Cross liability/severability of interest for all policies and endorsements;
    - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and
    - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
  - 6) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - 7) Failure to provide insurance as required in this contract is a material breach of contract entitling COMMISSION to terminate this contract immediately.
  - 8) CONTRACTOR shall provide at least 30-day notice of any cancellation or material

change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## VII MERGER AND MODIFICATION

This contract, including the incorporated documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified with in this contract. This contract may not be modified, supplemented, or amended in any manner, except by written agreement signed by both parties.

## VIII ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty under this contract without COMMISSION's written consent, provided, however, that CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

## IX ATTORNEYS' FEES

In the event a lawsuit is brought by COMMISSION to obtain performance due under this contract, and COMMISSION is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay COMMISSION's reasonable attorney fees and costs in connection to the lawsuit.

## X APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated 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*.

## XI INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a COMMISSION employee for any purpose, including application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this contract shall be construed to represent the creation of an employer/employee relationship. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

XII  
NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including but not limited to, those relating to nondiscrimination, accessibility, and civil rights (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums.

CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling the COMMISSION to terminate in accordance with the Termination for Cause section of this Contract.

XIII  
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 are unaffected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XIV  
STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR will maintain all of these records for at least three years (3) following completion of this contract and be able to provide them upon reasonable notice. The COMMISSION, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

XV  
SPOILIATION - PRESERVATION OF EVIDENCE

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



XVI  
TERMINATION OF CONTRACT

- a. Termination by Mutual Consent. This contract may be terminated by mutual consent of both parties executed in writing.
- b. Early Termination in the Public Interest. COMMISSION is entering into this contract for the purpose of carrying out the public policy of the state of North Dakota, as determined by the Governor, Legislative Assembly, agencies and courts. If this contract ceases to further the public policy of the state of North Dakota, COMMISSION, in its sole discretion, by written notice to CONTRACTOR, may terminate this contract in whole or in part.
- c. Termination for Lack of Funding or Authority. COMMISSION, by written notice to CONTRACTOR, may terminate in whole or any part of this contract, 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 contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

- d. Termination for Cause. COMMISSION may terminate this contract 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 contract within the time specified or any extension agreed to by COMMISSION; or
  - (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

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

XVII  
NOTICE

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ or \_\_\_\_\_  
\_\_\_\_\_

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.

XVIII  
TAXPAYER ID

CONTRACTOR's North Dakota tax ID number is: \_\_\_\_\_  
CONTRACTOR's federal employer ID number is: \_\_\_\_\_

XIX  
PAYMENT OF TAXES BY COMMISSION

COMMISSION is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001. COMMISSION will furnish certificates of exemption upon request by the CONTRACTOR.

XX  
EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties. If the dates of execution are different, then the later date of execution is the effective date.

XXI  
FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, acts of God, or war if 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.

XXII  
RENEWAL

This contract will not automatically renew. If COMMISSION desires to renew, COMMISSION will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

XXIII  
ALTERNATIVE DISPUTE RESOLUTION - JURY TRIAL

By entering into this contract, COMMISSION does not agree to binding arbitration, mediation, or other forms of mandatory Alternative Dispute Resolution. The parties may enforce their rights and remedies in judicial proceedings. COMMISSION does not waive any right to a jury trial.

XXIV  
CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from COMMISSION under this contract that COMMISSION has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by COMMISSION. COMMISSION shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that COMMISSION determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of COMMISSION and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

XXV  
COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, in accordance with the Contract's Confidentiality clause, COMMISSION must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact COMMISSION promptly upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

XXVI  
WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment, or materials created for COMMISSION or purchased by COMMISSION under this contract belong to COMMISSION and must be immediately delivered to COMMISSION at COMMISSION'S request upon termination of this contract. CONTRACTOR agrees that all work(s) under this contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COMMISSION all rights and interests CONTRACTOR may have in the work(s) it prepares under this contract, including any right to derivative use of the work(s). CONTRACTOR shall execute all necessary documents to enable COMMISSION to protect its rights under this section.

XXVII  
COMPLIANCE WITH FEDERAL LAWS

Contractor agrees to comply with the additional Federal requirements and standard terms and conditions found in Exhibit B.

STATE OF NORTH DAKOTA  
Acting through its  
N.D. Industrial Commission  
Department of Mineral Resource  
Oil & Gas Division

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

**EXHIBIT A  
LIST OF WELLS**

**EXHIBIT B  
Reclamation SPECIFICATIONS**

**EXHIBIT C**  
**FEDERAL STANDARD TERMS AND CONDITIONS**

**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a-5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

*(1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*

*(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*

*(A) the basic hourly rate of pay; and*

*(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*

*(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*

*(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

*(a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*

*(b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the*

*State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*

*(c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*

*(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*

*(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*

*(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.*

*(d) Discharge of Obligation.- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.*

*(e) Overtime Pay.- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.*

*40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages*

*Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.*

*40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts*

*(a) Payment of Wages.-*

*(1) In general.- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.*

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

*This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.*

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

*The President may suspend the provisions of this subchapter during a national emergency.*

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No. 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including



each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2)Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3)Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4)Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient’s and Subrecipient’s contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1)through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5)The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145) -** makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** –Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** – Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must: (1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions:

<https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites you to submit a bid for the reclamation of the following wells:

Reclamation Package 5

See Attached list

To be considered, the bid must be on the form provided by the Industrial Commission, which must be fully completed in accordance with the accompanying "INSTRUCTIONS TO BIDDERS," and must be received in the Bismarck office of the Industrial Commission, Oil & Gas Division, no later than **3:00 p.m. December 1, 2022**. The Commission may reject any and all bids.

For additional information or blank bid forms, please go to the North Dakota Industrial Commission, Oil & Gas Division home page, <https://www.dmr.nd.gov/oilgas/> or contact Cody VanderBusch at (701)-328-8020.

## INSTRUCTIONS TO BIDDERS

1. Form of Bids. Bids must be submitted on the attached bid form. **Provide an attachment listing each wells bid cost along with the equipment salvage value, potential extras estimate (including estimate breakdown) and then net total. The combined total will be placed on the bid sheet. The bonds will be based on the highest cost well.**
  
2. Submission of Bids. Bids must be enclosed in a sealed envelope, and the outside of the envelope must have the following on it:

Bid of: (Name of Contractor & Business Address)

N.D. Contractor's License No: (No. and Class of License)

Date License was Issued or Renewed: \_\_\_\_\_

Bid Package Name and Number: \_\_\_\_\_

ATTN: Mr. Cody VanderBusch

SEALED BID DO NOT OPEN

NDIC Oil & Gas Division  
1016 E. Calgary Ave  
Bismarck, N.D. 58503-5512
  
3. Examination of Site. Prospective bidders may make a visual inspection of the well and well site to ascertain the nature and location of the work and the conditions which can affect the work and its cost. The Commission is not bound by any oral statement concerning the condition of the well or well site made by its staff or agents prior to the execution of the equipment removal contract. **Note.** If no access is visible, please contact landowner before entering.
  
4. Bidder Qualifications. No contract will be awarded unless: (a.) the bidder holds a current contractor's license in the class within which the value of the project falls issued at least ten days prior to the date set for receiving bids, and the bid envelope contains a copy of the license or a certificate of its renewal issued by the secretary of state (N.D.C.C. §43-07-12); and (b.) the bidder files along with its bid or after being notified that it is the successful bidder, a certificate from the ND State Tax Commissioner that bidder has paid all delinquent income, sales, and use taxes, if any (N.D.C.C. § 43- 07-11.1).
  
5. Bid Deadline. All bids are due in the office of the Industrial Commission, Oil and Gas Division, by **3:00 p.m. December 1, 2022.** The office is at **1016 E. Calgary Ave., Bismarck, ND.** Bids received after this deadline will not be considered.
  
6. Review of Bids. The public opening of the bids will be held at **3:00 p.m. December 1, 2022** at the **Industrial Commission, Oil and Gas Division, 1016 E. Calgary Ave., Bismarck, ND.**
  
7. Withdrawal of Bids. Bids may be withdrawn by bidder's written request received prior to the time set in

paragraph 5.

8. Rejection of Bids. The Commission may reject any and all bids and may waive any technical or formal defect in a bid.
9. Notification of Award. The successful bidder, if any, will be notified of the award of the work within thirty days after the bid opening.
10. Contract. The bidder whose bid is accepted must enter into a written contract with the Commission within ten days after the award is made. The contract contains, among other things, provisions requiring the contractor to acquire insurance and provide bonds in the amount of the bid.
11. Timeline. Work can't start before **January 2, 2023** and must be completed by **April 1, 2024 and invoices received by May 30, 2024.**
12. Cancellation of Award. The Commission may cancel the award of any contract at any time before execution of the contract by all parties without any liability to the Commission.
13. Title to Material and Objects on Site. The Commission has title to all confiscated equipment on the well site. Any person who removes confiscated equipment or fluids from a well or well site without permission is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates this section could be guilty of a Class C Felony.
14. Bidders shall follow all federal requirements including but not limited to Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (see **Attachment A**).
15. Changes in Bid Specifications. The Commission may, during the bidding period, advise bidders of alterations to any part of the bid. All such changes are included in the work covered by the bid and are a part of the specifications.
16. Approved Procedures. Bidders must bid on the approved procedures. Cost for the required report submittals and photos shall be included in the bid.
17. Other Changes. Any changes to procedures **MUST** be approved by Commission staff. **Unapproved changes will not be reimbursed.**
18. Overtures. Only overtures that are required by the Commission shall be paid, all other costs shall be included within the bid cost. Hidden costs or undisclosed costs will not be reimbursed.
19. Completed Work. Bidders must complete the work in a timely manner to Commission requirements.

20. Well List. The Commission may at any time add or remove wells from the package due to reasons deemed appropriate by the Commission.
21. Note. Bidders must ensure they meet and follow all bidder instructions and requirements as indicated in the bidding package.

Additional information - IOGCC report on the issue of idle and orphan oil and gas wells can be found at:

[https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc\\_idle\\_and\\_orphan\\_wells\\_2021\\_final\\_web\\_0.pdf](https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf)



**ATTACHMENT A**  
**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

- (1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*
- (2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*
  - (A) the basic hourly rate of pay; and*
  - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*
    - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*
    - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

- (a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*
- (b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*
- (c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*
  - (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*
  - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*
  - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor*

on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

(d) *Discharge of Obligation.*- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.

(e) *Overtime Pay.*- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.

40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) *Payment of Wages.*-

(1) *In general.*- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of this subchapter during a national emergency.

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No, 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145)** - makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** – Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** –Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must:

(1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions: <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## ATTACHMENT B

### Package 5 wells

FileNo	Well Name & Number	Status	County	STR	Wh_Qtr	Field	Wh_Lat	Wh_Long
5848	MAHONEY 2	AB	BOTTINEA U	12-163-81	SWSW	Kuroki	48.95377635	-101.122703
14709	STAVENS 14-1	AB	BOTTINEA U	14-163-81	NENE	Kuroki	48.95015912	-101.1275691
15643	CAMERON 1	AB	BOTTINEA U	1-163-81	SWSW	Kuroki	48.96725085	-101.1217231
17611	STAVENS 1 HZ	AB	BOTTINEA U	11-163-81	SESE	Kuroki	48.95427205	-101.1268584
17653	CAMERON 1 HZ	AB	BOTTINEA U	1-163-81	SWSW	Kuroki	48.96725935	-101.121065
18264	CAMERON 1-11 H	AB	BOTTINEA U	1-163-81	NESW	Kuroki	48.97106036	-101.115595
18962	LODOEN 11-7H	AB	BOTTINEA U	11-163-81	SWNE	Kuroki	48.96005409	-101.1314449
19062	WRIGHT 12-12H	AB	BOTTINEA U	12-163-81	SWNW	Kuroki	48.95916507	-101.1227948
19229	CAMERON 1-14	AB	BOTTINEA U	1-163-81	SESW	Kuroki	48.96685332	-101.1154632
19463	CAMERON 1 - 12	AB	BOTTINEA U	1-163-81	NWSW	Kuroki	48.97079796	-101.1204432
21279	WRIGHT 12-10	AB	BOTTINEA U	12-163-81	NESE	Kuroki	48.95539695	-101.1077895
90094	DEMARS WSW 1	AB	BOTTINEA U	12-163-81	NENW	Kuroki	48.96429901	-101.1152035
5478	MOORE-JENSEN 1-R	AB	BOTTINEA U	15-162-80	SESW	South Westhope	48.85157772	-101.0295283
5848	MOORE-JENSEN 2-R	AB	BOTTINEA U	15-162-80	NWSW	South Westhope	48.85606105	-101.0350145
10219	MARTIN 1	AB	BOTTINEA U	2-162-80	SWSE	South Westhope	48.88069626	-101.0024372
5367	WRIGHT 13-12	PA	BOTTINEA U	12-163-81	NWSW	Kuroki	48.95722726	-101.1219728
5638	STAVENS 1	PA	BOTTINEA U	11-163-81	SESE	Kuroki	48.95334014	-101.1268757
15464	WRIGHT 3	PA	BOTTINEA U	12-163-81	SWNW	Kuroki	48.9606	-101.121944
17503	LODOEN 1	PA	BOTTINEA U	11-163-81	SESE	Kuroki	48.96064099	-101.1276151
19194	LODOEN 11 - 8 H	PA	BOTTINEA U	11-163-81	NENE	Kuroki	48.962478	-101.125822
401172- 01	Kuroki Madison Unit	AB	BOTTINEA U	12-163-81	NENW	Kuroki	48.9666	-101.1164
13299	KOEHLER 32-23 #2	PA	BOTTINEA U	23-162-81	SWNE	Stinson	48.84497056	-101.1336418

Note: There is around 11 miles of flowlines and water transfer lines kine the Kuroki field.

# ATTACHMENT C

## RECLAMATION SPECIFICATIONS

### WELL SITE

### INTRODUCTION

The objective of this project is to reclaim the well site to comply with all requirements of North Dakota Administrative Code Section 43-02-03-34.1.

### SPECIFICATIONS

- A. Contractor shall arrange for all tools, equipment, products and any other items required to properly reclaim the well site. Contractor is responsible for locating all utility lines before reclamation work begins. Contractor is responsible for disposal of equipment, junk and debris on the site.
- B. Contractors reporting requirements:
- 1) A picture of the well location before work starts, during work (mid-way point) and after the site is reclaimed.
  - 2) Daily activity reports will be submitted into the Commission for review. Each report must contain, dates, times, and work that was done.
  - 3) If an amendment to the approved reclamation bid is required, and the Commission staff approve the change, an estimation of the cost for the change shall be included within that day's daily activity report.
  - 4) Contractors must follow all Federal requirements set forth within the grant requirements and as detailed within the bidding contract. (see **Attachment A**)
- C. To reclaim the well site the contractor shall:
- 1) Remove any equipment and junk.
  - 2) Strip surfacing material.
  - 3) Flush and cap flowlines below 3'. If not below 3' final grade they need to be removed.
  - 4) Remove contamination down to 4' or to levels of 10,000 ppm with no free product for TPH and Electrical conductivity (EC) of 2000 micro siemens/cm. (**prior approval will be needed with estimate prior to starting this work**)
  - 5) Re-contour the site to blend in with the surrounding topography to restore the natural drainage of the area.
  - 6) Bury rocks as needed.
  - 7) Bring in and Spread 6" of topsoil.
  - 8) Cultivate/rip all disturbed areas to alleviate compaction and prepare for seeding.
  - 9) Seed to the native grass specification below if seeding is required.
- D. Landowner:
- The well site is owned by (name and phone number)\_\_\_\_\_.
- E. Contractor must give the Commission 48 hours advance notice before starting reclamation work.
- F. Contractors invoice requirements:



- 1) All invoices must be complete and final when submitted. Invoices need be submitted within **60 days** from the date the work was completed.
  - 2) Invoices shall identify any operations that are an additional cost to the original procedure and had to be approved by Commission staff. **Unapproved changes will not be reimbursed.**
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of final acceptance. Contractor shall bear the entire cost and expense of all repairs that may be necessary within that time due to imperfections in work or materials. Contractor is not liable for equipment, material, or workmanship supplied by the Commission.
- H. Contractor must complete the work in a timely manner to Commission requirements.

### **Native Grass Seeding Specifications**

<b>Grass Species</b>	PLS lb/ac <sup>1</sup> *
Western wheatgrass	2.5
Green needlegrass	2.0
Slender wheatgrass	1.5
Little bluestem	1.0
Prairie sandreed	1.0
Sideoats grama	2.0
Blue grama	0.5
Big bluestem	---
Switchgrass	---
Canada wildrye	---
Indiangrass	---
Total seed mixture	10.5

<sup>1</sup>PLS = Pure live seed: Seeding rates are 1.5 times the normal seeding rate based on 30 seed/ft<sup>2</sup>.

**BID**

Bid for reclamation of the following well sites:

See attached list of wells

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, RECLMATION SPECIFICATIONS, RECLAMATION CONTRACT, LABOR AND MATERIAL PAYMENT BOND and PERFORMANCE BOND bidder proposes and agrees to do all work called for in the specifications and contract and to furnish the services, equipment, and labor necessary for the full completion of the work for the price of  
(Gross) \_\_\_\_\_ - (Salvage Value) \_\_\_\_\_  
+ (Potential extras estimate) \_\_\_\_\_  
= (Total bid amount) \_\_\_\_\_ dollars (\$).

Contractor hereby agrees that it shall comply with all Federal requirements including Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (as noted in **Attachment A** of Bid Notification).

If the bidder's bid is accepted, the Industrial Commission will inform the bidder in writing within thirty days after the bid opening. Within ten days after receipt of such a notice, bidder will appear in the office of the North Dakota Industrial Commission, Oil and Gas Division, and execute the Reclamation Contract. Bidder agrees that if bidder fails to enter into a contract, bidder is liable to the Commission for all expenses incurred by and damages suffered by the Commission as a result of the failure.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Email

# LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the  
 State of North Dakota, (Surety), are held and firmly bound unto the State of North Dakota in the full and just  
 sum of \_\_\_\_\_ **AND NO/100 DOLLARS (\$ .00)**, to be paid to the State of North  
 Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors and  
 assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall duly and promptly  
 pay all laborers, mechanics, subcontractors and material men who perform work or furnish material under the  
 contract and all persons who shall supply the Principal or the subcontractor with materials, services, bonds and  
 insurance for the carrying on of the work, then this obligation shall be void; otherwise it shall remain in full force  
 and effect.

The Surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<p><b>FOR STATE USE ONLY:</b></p>  <p>Surety is licensed in ND:</p>  <p>Date verified: _____</p>  <p>Verified by: _____</p>	<p>Contractor: _____</p>  <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>Surety: _____</p>  <p style="text-align: center;">Date</p> <hr/> <p>By: _____</p> <p style="text-align: center;">Attorney-in-fact (Seal and Signature)</p> <hr/> <p style="text-align: center;">Agency</p> <hr/> <p style="text-align: center;">Address</p>
---	---

# PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the State of North Dakota,  
 (Surety), are held and firmly bound unto the State of North Dakota in the full and just sum of  
 \_\_\_\_\_ **AND NO /100 DOLLARS (\$.00)**, to be paid to the State  
 of North Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors  
 and assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the above Principal shall promptly  
 and faithfully perform all of the provisions of the contract, and all obligations thereunder including the  
 specifications, and any alterations provided for, and shall in a manner satisfactory to the State of North Dakota,  
 complete the work contracted for including any alterations, and shall hold harmless the State of North Dakota  
 from any expense incurred through the failure of the Principal to complete the work as specified, then this  
 obligation shall be void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<b>FOR STATE USE ONLY:</b>	Contractor: _____
	Signature
Surety is licensed in ND:	Date
Date verified: _____	Surety: _____
Verified by:	Date
	By: _____ Attorney-in-fact (Seal and Signature)
	Agency
	Address

## WELL RECLAMATION CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, (COMMISSION) and [contractor's legal name and address] (CONTRACTOR);

### I

#### SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by COMMISSION, shall provide all materials and labor necessary for and shall perform the work described in the Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following wells:

See attached list of wells.

### II

#### TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract must be completed by **April 1, 2024** and all invoices must be received by **May 30, 2024**. There is an urgency by the Commission to get the work done in a timely and effective manner.

### III

#### COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), to be paid within thirty days after COMMISSION has accepted the work. If COMMISSION determines, in its sole discretion, that the well cannot be removed according to the Reclamation Specifications attached hereto as Exhibit A, COMMISSION may modify the Reclamation Specifications to ensure the well site is properly reclaimed by CONTRACTOR. If such modifications (per potential extras estimate) result in increased material and labor costs, CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges as determined by COMMISSION, for the additional material and labor. In the case where such modifications result in decreased material and labor costs, CONTRACTOR's compensation will be decreased by an amount based on the usual and customary changes relative to the material and labor expenses, as determined by COMMISSION.

### IV

#### CONTRACT DOCUMENTS

The contract documents that accompany this contract are the Invitation to Bid, Instructions to Bidder, Bid Form, Reclamation Specifications and Contractor's Performance Bond and Labor and Materials Payment Bond and are incorporated as part of the contract. In the event of any inconsistency or conflict among the documents making up this contract, the terms of the contract shall control.

V  
LIABILITY AND INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this contract, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

VI  
INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the

- policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by COMMISSION;
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the COMMISSION. The policies shall be in form and terms approved by COMMISSION.
  - 3) COMMISSION will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify COMMISSION under this agreement shall not be limited by the insurance required by this agreement.
  - 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverage of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
  - 5) The insurance required in this agreement, through a policy or endorsement, shall include:
    - a) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
    - b) A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance, or self-retention maintained by the State and that any insurance, self-insurance, or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
    - c) Cross liability/severability of interest for all policies and endorsements;
    - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and
    - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
  - 6) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - 7) Failure to provide insurance as required in this contract is a material breach of contract entitling COMMISSION to terminate this contract immediately.
  - 8) CONTRACTOR shall provide at least 30-day notice of any cancellation or material

change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## VII MERGER AND MODIFICATION

This contract, including the incorporated documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified with in this contract. This contract may not be modified, supplemented, or amended in any manner, except by written agreement signed by both parties.

## VIII ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty under this contract without COMMISSION's written consent, provided, however, that CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

## IX ATTORNEYS' FEES

In the event a lawsuit is brought by COMMISSION to obtain performance due under this contract, and COMMISSION is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay COMMISSION's reasonable attorney fees and costs in connection to the lawsuit.

## X APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated 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*.

## XI INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a COMMISSION employee for any purpose, including application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this contract shall be construed to represent the creation of an employer/employee relationship. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.



XII  
NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including but not limited to, those relating to nondiscrimination, accessibility, and civil rights (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums.

CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling the COMMISSION to terminate in accordance with the Termination for Cause section of this Contract.

XIII  
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 are unaffected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XIV  
STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR will maintain all of these records for at least three years (3) following completion of this contract and be able to provide them upon reasonable notice. The COMMISSION, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

XV  
SPOILIATION - PRESERVATION OF EVIDENCE

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

XVI  
TERMINATION OF CONTRACT

- a. Termination by Mutual Consent. This contract may be terminated by mutual consent of both parties executed in writing.
- b. Early Termination in the Public Interest. COMMISSION is entering into this contract for the purpose of carrying out the public policy of the state of North Dakota, as determined by the Governor, Legislative Assembly, agencies and courts. If this contract ceases to further the public policy of the state of North Dakota, COMMISSION, in its sole discretion, by written notice to CONTRACTOR, may terminate this contract in whole or in part.
- c. Termination for Lack of Funding or Authority. COMMISSION, by written notice to CONTRACTOR, may terminate in whole or any part of this contract, 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 contract or are no longer eligible for the funding proposed for payments authorized by this contract.

- (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

- d. Termination for Cause. COMMISSION may terminate this contract 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 contract within the time specified or any extension agreed to by COMMISSION; or

- (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

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

XVII  
NOTICE

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ or \_\_\_\_\_  
\_\_\_\_\_

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.

XVIII  
TAXPAYER ID

CONTRACTOR's North Dakota tax ID number is: \_\_\_\_\_  
CONTRACTOR's federal employer ID number is: \_\_\_\_\_

XIX  
PAYMENT OF TAXES BY COMMISSION

COMMISSION is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001. COMMISSION will furnish certificates of exemption upon request by the CONTRACTOR.

XX  
EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties. If the dates of execution are different, then the later date of execution is the effective date.

XXI  
FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, acts of God, or war if 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.

XXII  
RENEWAL

This contract will not automatically renew. If COMMISSION desires to renew, COMMISSION will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

XXIII  
ALTERNATIVE DISPUTE RESOLUTION - JURY TRIAL

By entering into this contract, COMMISSION does not agree to binding arbitration, mediation, or other forms of mandatory Alternative Dispute Resolution. The parties may enforce their rights and remedies in judicial proceedings. COMMISSION does not waive any right to a jury trial.

XXIV  
CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from COMMISSION under this contract that COMMISSION has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by COMMISSION. COMMISSION shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that COMMISSION determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of COMMISSION and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

XXV  
COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, in accordance with the Contract's Confidentiality clause, COMMISSION must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact COMMISSION promptly upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

XXVI  
WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment, or materials created for COMMISSION or purchased by COMMISSION under this contract belong to COMMISSION and must be immediately delivered to COMMISSION at COMMISSION'S request upon termination of this contract. CONTRACTOR agrees that all work(s) under this contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COMMISSION all rights and interests CONTRACTOR may have in the work(s) it prepares under this contract, including any right to derivative use of the work(s). CONTRACTOR shall execute all necessary documents to enable COMMISSION to protect its rights under this section.

XXVII  
COMPLIANCE WITH FEDERAL LAWS

Contractor agrees to comply with the additional Federal requirements and standard terms and conditions found in Exhibit B.

STATE OF NORTH DAKOTA  
Acting through its  
N.D. Industrial Commission  
Department of Mineral Resource  
Oil & Gas Division

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

**EXHIBIT A  
LIST OF WELLS**

**EXHIBIT B  
Reclamation SPECIFICATIONS**

**EXHIBIT C**  
**FEDERAL STANDARD TERMS AND CONDITIONS**

**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a-5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

*(1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*

*(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*

*(A) the basic hourly rate of pay; and*

*(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*

*(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*

*(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

*(a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*

*(b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the*

*State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*

*(c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*

*(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*

*(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*

*(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.*

*(d) Discharge of Obligation.- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.*

*(e) Overtime Pay.- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.*

*40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages*

*Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.*

*40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts*

*(a) Payment of Wages.-*

*(1) In general.- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.*



(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

*This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.*

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

*The President may suspend the provisions of this subchapter during a national emergency.*

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No. 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including

each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2)Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3)Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4)Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient’s and Subrecipient’s contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1)through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5)The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145) -** makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** –Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** – Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must: (1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and Executive Order No. 11,990, 1977 Protection of Wetlands – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions:

<https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites you to submit a bid for the reclamation of the following wells:

Reclamation Package 7

See Attached list

To be considered, the bid must be on the form provided by the Industrial Commission, which must be fully completed in accordance with the accompanying "INSTRUCTIONS TO BIDDERS," and must be received in the Bismarck office of the Industrial Commission, Oil & Gas Division, no later than **3:00 p.m. December 1, 2022**. The Commission may reject any and all bids.

For additional information or blank bid forms, please go to the North Dakota Industrial Commission, Oil & Gas Division home page, <https://www.dmr.nd.gov/oilgas/> or contact Cody VanderBusch at (701)-328-8020.

## INSTRUCTIONS TO BIDDERS

1. **Form of Bids.** Bids must be submitted on the attached bid form. **Provide an attachment listing each wells bid cost along with the equipment salvage value, potential extras estimate (including estimate breakdown) and then net total. The combined total will be placed on the bid sheet. The bonds will be based on the highest cost well.**
  
2. **Submission of Bids.** Bids must be enclosed in a sealed envelope, and the outside of the envelope must have the following on it:

Bid of: (Name of Contractor & Business Address)

N.D. Contractor's License No: (No. and Class of License)

Date License was Issued or Renewed: \_\_\_\_\_

Bid Package Name and Number: \_\_\_\_\_

ATTN: Mr. Cody VanderBusch

SEALED BID DO NOT OPEN

NDIC Oil & Gas Division  
1016 E. Calgary Ave  
Bismarck, N.D. 58503-5512
  
3. **Examination of Site.** Prospective bidders may make a visual inspection of the well and well site to ascertain the nature and location of the work and the conditions which can affect the work and its cost. The Commission is not bound by any oral statement concerning the condition of the well or well site made by its staff or agents prior to the execution of the equipment removal contract. **Note.** If no access is visible, please contact landowner before entering.
  
4. **Bidder Qualifications.** No contract will be awarded unless: (a.) the bidder holds a current contractor's license in the class within which the value of the project falls issued at least ten days prior to the date set for receiving bids, and the bid envelope contains a copy of the license or a certificate of its renewal issued by the secretary of state (N.D.C.C. §43-07-12); and (b.) the bidder files along with its bid or after being notified that it is the successful bidder, a certificate from the ND State Tax Commissioner that bidder has paid all delinquent income, sales, and use taxes, if any (N.D.C.C. § 43- 07-11.1).
  
5. **Bid Deadline.** All bids are due in the office of the Industrial Commission, Oil and Gas Division, by **3:00 p.m. December 1, 2022.** The office is at **1016 E. Calgary Ave., Bismarck, ND.** Bids received after this deadline will not be considered.
  
6. **Review of Bids.** The public opening of the bids will be held at **3:00 p.m. December 1, 2022** at the **Industrial Commission, Oil and Gas Division, 1016 E. Calgary Ave., Bismarck, ND.**
  
7. **Withdrawal of Bids.** Bids may be withdrawn by bidder's written request received prior to the time set in

paragraph 5.

8. Rejection of Bids. The Commission may reject any and all bids and may waive any technical or formal defect in a bid.
9. Notification of Award. The successful bidder, if any, will be notified of the award of the work within thirty days after the bid opening.
10. Contract. The bidder whose bid is accepted must enter into a written contract with the Commission within ten days after the award is made. The contract contains, among other things, provisions requiring the contractor to acquire insurance and provide bonds in the amount of the bid.
11. Timeline. Work can't start before **January 2, 2023** and must be completed by **April 1, 2024 and invoices received by May 30, 2024.**
12. Cancellation of Award. The Commission may cancel the award of any contract at any time before execution of the contract by all parties without any liability to the Commission.
13. Title to Material and Objects on Site. The Commission has title to all confiscated equipment on the well site. Any person who removes confiscated equipment or fluids from a well or well site without permission is subject to a civil penalty, up to \$12,500 per day, to be imposed by the Commission. Any person who willfully violates this section could be guilty of a Class C Felony.
14. Bidders shall follow all federal requirements including but not limited to Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (see **Attachment A**).
15. Changes in Bid Specifications. The Commission may, during the bidding period, advise bidders of alterations to any part of the bid. All such changes are included in the work covered by the bid and are a part of the specifications.
16. Approved Procedures. Bidders must bid on the approved procedures. Cost for the required report submittals and photos shall be included in the bid.
17. Other Changes. Any changes to procedures **MUST** be approved by Commission staff. **Unapproved changes will not be reimbursed.**
18. Overtures. Only overtures that are required by the Commission shall be paid, all other costs shall be included within the bid cost. Hidden costs or undisclosed costs will not be reimbursed.
19. Completed Work. Bidders must complete the work in a timely manner to Commission requirements.



20. Well List. The Commission may at any time add or remove wells from the package due to reasons deemed appropriate by the Commission.
21. Note. Bidders must ensure they meet and follow all bidder instructions and requirements as indicated in the bidding package.

Additional information - IOGCC report on the issue of idle and orphan oil and gas wells can be found at:

[https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc\\_idle\\_and\\_orphan\\_wells\\_2021\\_final\\_web\\_0.pdf](https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf)

**ATTACHMENT A**  
**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

- (1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*
- (2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*
  - (A) the basic hourly rate of pay; and*
  - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*
    - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*
    - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

- (a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*
- (b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*
- (c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*
  - (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*
  - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*
  - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor*

on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.

(d) *Discharge of Obligation.*- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.

(e) *Overtime Pay.*- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.

40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) *Payment of Wages.*-

(1) *In general.*- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of this subchapter during a national emergency.

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No, 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145)** - makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** – Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**—Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**—Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**—These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors**—Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace**— Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must:

(1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying**— The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection**— Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government**— No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions: <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>

## ATTACHMENT B

### Package 7 wells

FileNo	Well Name & Number	Status	County	STR	Wh_Qtr	Field	Wh_Lat	Wh_Long
16135	LM 2	AB	MCKENZIE	15-152-98	NENW	BANKS	47.99051443	-103.2125897
16196	PEDERSON 1-10H	AB	MCKENZIE	10-152-98	SESE	BANKS	47.99320528	-103.1992922
14442	BEAUDOIN 36-1	PA	DUNN	36-144-97	E2SW	CABERNET	47.24475902	-102.9186196
11802	TEMPLE-HAUGEN 27-2	PA	MCKENZIE	27-153-95	CNE	CHARLSON	48.04903098	-102.8766388
15648	LYNN 2	PA	MCKENZIE	21-153-102	NWSW	INDIAN HILL	48.05821942	-103.6433448
15781	LYNN 3H	PA	MCKENZIE	27-153-101	NENE	INDIAN HILL	48.05178514	-103.6509888
9519	TANK 1-3	PA	MCKENZIE	3-150-96	NWSE	JOHNSON CORNER	47.83892293	-102.9481069
5612	NELSON 13-28 SWD	PA	WILLIAMS	28-157-95	NWSW	MIDWAY	48.39264122	-102.9692296
90013	KLANDL 26-31X SWD	PA	MCKENZIE	26-148-105	NWNE	MONDAK	47.61854609	-104.0200949
4971	HOWIE 11X2	PA	SLOPE	2-136-100	NWNW	ROCKY RIDGE	46.62570609	-103.2141418
5914	HOWIE 1 SWD	PA	SLOPE	2-136-100	SWNE	ROCKY RIDGE	46.6232529	-103.2015376
6015	HOWIE 2	PA	SLOPE	2-136-100	NESE	ROCKY RIDGE	46.61872012	-103.1980077
12852	R. K. E. 44-16H	PA	MCKENZIE	16-145-101	SESE	ROUGH RIDER	47.3753882	-103.5481005
7200	FOLKVORD-STATE 1-36 SWD	PA	MCKENZIE	36-146-105	NENE	SQUAW GAP	47.42778114	-103.9947887
11926	HENRY TORSTENSON 2	AB	MCKENZIE	27-151-99	SWSW	TOBACCO GARDEN	47.86482398	-103.3438067
9241	BOWEN, CHARLES 21-1	PA	WILLIAMS	21-153-102	NWNE	TRENTON	48.06639934	-103.8065484
8935	ROLFSRUD 11-17	PA	MCKENZIE	17-153-96	NESW	WESTBERG	47.98305374	-102.9980745



# ATTACHMENT C

## RECLAMATION SPECIFICATIONS

### WELL SITE

### INTRODUCTION

The objective of this project is to reclaim the well site to comply with all requirements of North Dakota Administrative Code Section 43-02-03-34.1.

### SPECIFICATIONS

- A. Contractor shall arrange for all tools, equipment, products and any other items required to properly reclaim the well site. Contractor is responsible for locating all utility lines before reclamation work begins. Contractor is responsible for disposal of equipment, junk and debris on the site.
- B. Contractors reporting requirements:
- 1) A picture of the well location before work starts, during work (mid-way point) and after the site is reclaimed.
  - 2) Daily activity reports will be submitted into the Commission for review. Each report must contain, dates, times, and work that was done.
  - 3) If an amendment to the approved reclamation bid is required, and the Commission staff approve the change, an estimation of the cost for the change shall be included within that day's daily activity report.
  - 4) Contractors must follow all Federal requirements set forth within the grant requirements and as detailed within the bidding contract. (see **Attachment A**)
- C. To reclaim the well site the contractor shall:
- 1) Remove any equipment and junk.
  - 2) Strip surfacing material.
  - 3) Flush and cap flowlines below 3'. If not below 3' final grade they need to be removed.
  - 4) Remove contamination down to 4' or to levels of 10,000 ppm with no free product for TPH and Electrical conductivity (EC) of 2000 micro siemens/cm. (**prior approval will be needed with estimate prior to starting this work**)
  - 5) Re-contour the site to blend in with the surrounding topography to restore the natural drainage of the area.
  - 6) Bury rocks as needed.
  - 7) Bring in and Spread 6" of topsoil.
  - 8) Cultivate/rip all disturbed areas to alleviate compaction and prepare for seeding.
  - 9) Seed to the native grass specification below if seeding is required.
- D. Landowner:
- The well site is owned by (name and phone number)\_\_\_\_\_.
- E. Contractor must give the Commission 48 hours advance notice before starting reclamation work.
- F. Contractors invoice requirements:

- 1) All invoices must be complete and final when submitted. Invoices need be submitted within **60 days** from the date the work was completed.
  - 2) Invoices shall identify any operations that are an additional cost to the original procedure and had to be approved by Commission staff. **Unapproved changes will not be reimbursed.**
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of final acceptance. Contractor shall bear the entire cost and expense of all repairs that may be necessary within that time due to imperfections in work or materials. Contractor is not liable for equipment, material, or workmanship supplied by the Commission.
- H. Contractor must complete the work in a timely manner to Commission requirements.

### **Native Grass Seeding Specifications**

<b>Grass Species</b>	PLS lb/ac <sup>1</sup> *
Western wheatgrass	2.5
Green needlegrass	2.0
Slender wheatgrass	1.5
Little bluestem	1.0
Prairie sandreed	1.0
Sideoats grama	2.0
Blue grama	0.5
Big bluestem	---
Switchgrass	---
Canada wildrye	---
Indiangrass	---
Total seed mixture	10.5

<sup>1</sup>PLS = Pure live seed: Seeding rates are 1.5 times the normal seeding rate based on 30 seed/ft<sup>2</sup>.

**BID**

Bid for reclamation of the following well sites:

See attached list of wells

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, RECLMATION SPECIFICATIONS, RECLAMATION CONTRACT, LABOR AND MATERIAL PAYMENT BOND and PERFORMANCE BOND bidder proposes and agrees to do all work called for in the specifications and contract and to furnish the services, equipment, and labor necessary for the full completion of the work for the price of  
(Gross) \_\_\_\_\_ - (Salvage Value) \_\_\_\_\_  
+ (Potential extras estimate) \_\_\_\_\_  
= (Total bid amount) \_\_\_\_\_ dollars (\$).

Contractor hereby agrees that it shall comply with all Federal requirements including Davis-Bacon Act; Build America, Buy America; Contract Work Hours and Safety Standards Act; and Copeland Act (as noted in **Attachment A** of Bid Notification).

If the bidder's bid is accepted, the Industrial Commission will inform the bidder in writing within thirty days after the bid opening. Within ten days after receipt of such a notice, bidder will appear in the office of the North Dakota Industrial Commission, Oil and Gas Division, and execute the Reclamation Contract. Bidder agrees that if bidder fails to enter into a contract, bidder is liable to the Commission for all expenses incurred by and damages suffered by the Commission as a result of the failure.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Business Telephone Number

\_\_\_\_\_  
Email



# LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the  
 State of North Dakota, (Surety), are held and firmly bound unto the State of North Dakota in the full and just  
 sum of \_\_\_\_\_ **AND NO/100 DOLLARS (\$ .00)**, to be paid to the State of North  
 Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors and  
 assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall duly and promptly  
 pay all laborers, mechanics, subcontractors and material men who perform work or furnish material under the  
 contract and all persons who shall supply the Principal or the subcontractor with materials, services, bonds and  
 insurance for the carrying on of the work, then this obligation shall be void; otherwise it shall remain in full force  
 and effect.

The Surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<p><b>FOR STATE USE ONLY:</b></p> <p>Surety is licensed in ND: _____</p> <p>Date verified: _____</p> <p>Verified by: _____</p>	<p>Contractor: _____</p> <hr/> <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>Surety: _____</p> <hr/> <p style="text-align: center;">Date</p> <hr/> <p>By: _____</p> <p style="text-align: center;">Attorney-in-fact (Seal and Signature)</p> <hr/> <p style="text-align: center;">Agency</p> <hr/> <p style="text-align: center;">Address</p>
--	---

# PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
 \_\_\_\_\_ (Principal), and \_\_\_\_\_  
 \_\_\_\_\_, a corporation licensed to do business as a surety under the laws of the State of North Dakota,  
 (Surety), are held and firmly bound unto the State of North Dakota in the full and just sum of  
 \_\_\_\_\_ **AND NO /100 DOLLARS (\$.00)**, to be paid to the State  
 of North Dakota or its assigns, to which payment we bind ourselves, heirs, executors, administrators, successors  
 and assigns, jointly, severally, firmly by this bond.

WHEREAS, the Principal has entered into a contract with the State of North Dakota, acting by and through  
 the North Dakota Industrial Commission, dated \_\_\_\_\_ for reclamation of the following  
 wells:

**See Bid Notification, Attachment B**

WHEREAS, it is one of the conditions of the award of the contract pursuant to statutes that this bond be  
 executed.

NOW THEREFORE, the conditions of this obligation are such that if the above Principal shall promptly  
 and faithfully perform all of the provisions of the contract, and all obligations thereunder including the  
 specifications, and any alterations provided for, and shall in a manner satisfactory to the State of North Dakota,  
 complete the work contracted for including any alterations, and shall hold harmless the State of North Dakota  
 from any expense incurred through the failure of the Principal to complete the work as specified, then this  
 obligation shall be void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of any extension of time and any alterations made in the terms of the  
 contract, unless the cumulative cost of such alterations cause the total project cost to exceed the original contract  
 sum by more than 10%.

<b>FOR STATE USE ONLY:</b>	Contractor: _____
	Signature
Surety is licensed in ND:	Date
Date verified: _____	Surety: _____
Verified by:	Date
	By: _____ Attorney-in-fact (Seal and Signature)
	Agency
	Address

## WELL RECLAMATION CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, (COMMISSION) and [contractor's legal name and address] (CONTRACTOR);

### I

#### SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by COMMISSION, shall provide all materials and labor necessary for and shall perform the work described in the Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following wells:

See attached list of wells.

### II

#### TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract must be completed by **April 1, 2024** and all invoices must be received by **May 30, 2024**. There is an urgency by the Commission to get the work done in a timely and effective manner.

### III

#### COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), to be paid within thirty days after COMMISSION has accepted the work. If COMMISSION determines, in its sole discretion, that the well cannot be removed according to the Reclamation Specifications attached hereto as Exhibit A, COMMISSION may modify the Reclamation Specifications to ensure the well site is properly reclaimed by CONTRACTOR. If such modifications (per potential extras estimate) result in increased material and labor costs, CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges as determined by COMMISSION, for the additional material and labor. In the case where such modifications result in decreased material and labor costs, CONTRACTOR's compensation will be decreased by an amount based on the usual and customary changes relative to the material and labor expenses, as determined by COMMISSION.

### IV

#### CONTRACT DOCUMENTS

The contract documents that accompany this contract are the Invitation to Bid, Instructions to Bidder, Bid Form, Reclamation Specifications and Contractor's Performance Bond and Labor and Materials Payment Bond and are incorporated as part of the contract. In the event of any inconsistency or conflict among the documents making up this contract, the terms of the contract shall control.

V  
LIABILITY AND INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of CONTRACTOR or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this contract, except claims based upon the State's sole negligence or intentional misconduct. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

VI  
INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverage:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$1,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited complete operations, and non-owned disposal site coverage.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the



- policies shall be the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by COMMISSION;
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the COMMISSION. The policies shall be in form and terms approved by COMMISSION.
  - 3) COMMISSION will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify COMMISSION under this agreement shall not be limited by the insurance required by this agreement.
  - 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverage of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
  - 5) The insurance required in this agreement, through a policy or endorsement, shall include:
    - a) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
    - b) A provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance, or self-retention maintained by the State and that any insurance, self-insurance, or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
    - c) Cross liability/severability of interest for all policies and endorsements;
    - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary; and
    - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
  - 6) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - 7) Failure to provide insurance as required in this contract is a material breach of contract entitling COMMISSION to terminate this contract immediately.
  - 8) CONTRACTOR shall provide at least 30-day notice of any cancellation or material

change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## VII MERGER AND MODIFICATION

This contract, including the incorporated documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified with in this contract. This contract may not be modified, supplemented, or amended in any manner, except by written agreement signed by both parties.

## VIII ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty under this contract without COMMISSION's written consent, provided, however, that CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

## IX ATTORNEYS' FEES

In the event a lawsuit is brought by COMMISSION to obtain performance due under this contract, and COMMISSION is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay COMMISSION's reasonable attorney fees and costs in connection to the lawsuit.

## X APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated 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*.

## XI INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a COMMISSION employee for any purpose, including application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this contract shall be construed to represent the creation of an employer/employee relationship. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

XII  
NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including but not limited to, those relating to nondiscrimination, accessibility, and civil rights (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums.

CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling the COMMISSION to terminate in accordance with the Termination for Cause section of this Contract.

XIII  
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 are unaffected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XIV  
STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR will maintain all of these records for at least three years (3) following completion of this contract and be able to provide them upon reasonable notice. The COMMISSION, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

XV  
SPOILIATION - PRESERVATION OF EVIDENCE

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

XVI  
TERMINATION OF CONTRACT

- a. Termination by Mutual Consent. This contract may be terminated by mutual consent of both parties executed in writing.
- b. Early Termination in the Public Interest. COMMISSION is entering into this contract for the purpose of carrying out the public policy of the state of North Dakota, as determined by the Governor, Legislative Assembly, agencies and courts. If this contract ceases to further the public policy of the state of North Dakota, COMMISSION, in its sole discretion, by written notice to CONTRACTOR, may terminate this contract in whole or in part.
- c. Termination for Lack of Funding or Authority. COMMISSION, by written notice to CONTRACTOR, may terminate in whole or any part of this contract, 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 contract or are no longer eligible for the funding proposed for payments authorized by this contract.

- (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

- d. Termination for Cause. COMMISSION may terminate this contract 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 contract within the time specified or any extension agreed to by COMMISSION; or

- (2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

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

XVII  
NOTICE

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ or \_\_\_\_\_  
\_\_\_\_\_

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.

XVIII  
TAXPAYER ID

CONTRACTOR's North Dakota tax ID number is: \_\_\_\_\_  
CONTRACTOR's federal employer ID number is: \_\_\_\_\_

XIX  
PAYMENT OF TAXES BY COMMISSION

COMMISSION is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001. COMMISSION will furnish certificates of exemption upon request by the CONTRACTOR.

XX  
EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties. If the dates of execution are different, then the later date of execution is the effective date.

XXI  
FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, acts of God, or war if 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.

XXII  
RENEWAL

This contract will not automatically renew. If COMMISSION desires to renew, COMMISSION will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

XXIII  
ALTERNATIVE DISPUTE RESOLUTION - JURY TRIAL

By entering into this contract, COMMISSION does not agree to binding arbitration, mediation, or other forms of mandatory Alternative Dispute Resolution. The parties may enforce their rights and remedies in judicial proceedings. COMMISSION does not waive any right to a jury trial.

XXIV  
CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from COMMISSION under this contract that COMMISSION has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by COMMISSION. COMMISSION shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that COMMISSION determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. The duty of COMMISSION and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

XXV  
COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, in accordance with the Contract's Confidentiality clause, COMMISSION must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact COMMISSION promptly upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

XXVI  
WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment, or materials created for COMMISSION or purchased by COMMISSION under this contract belong to COMMISSION and must be immediately delivered to COMMISSION at COMMISSION'S request upon termination of this contract. CONTRACTOR agrees that all work(s) under this contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COMMISSION all rights and interests CONTRACTOR may have in the work(s) it prepares under this contract, including any right to derivative use of the work(s). CONTRACTOR shall execute all necessary documents to enable COMMISSION to protect its rights under this section.

XXVII  
COMPLIANCE WITH FEDERAL LAWS

Contractor agrees to comply with the additional Federal requirements and standard terms and conditions found in Exhibit B.

STATE OF NORTH DAKOTA  
Acting through its  
N.D. Industrial Commission  
Department of Mineral Resource  
Oil & Gas Division

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
DATE: \_\_\_\_\_

**EXHIBIT A  
LIST OF WELLS**

**EXHIBIT B  
Reclamation SPECIFICATIONS**



**EXHIBIT C**  
**FEDERAL STANDARD TERMS AND CONDITIONS**

**Federal Standard Terms and Conditions**

**SECTION 1 – DAVIS BACON ACT REQUIREMENTS**

**40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act** – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a-5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

40 U.S. Code Sec. 3141. Definitions

*In this subchapter, the following definitions apply:*

*(1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>*

*(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-*

*(A) the basic hourly rate of pay; and*

*(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-*

*(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and*

*(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.*

40 U.S. Code Sec. 3142. Rate of wages for laborers and mechanics

*(a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.*

*(b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the*

*State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.*

*(c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-*

*(1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;*

*(2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and*

*(3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.*

*(d) Discharge of Obligation.- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.*

*(e) Overtime Pay.- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141(2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title but not actually paid.*

*40 U.S. Code Sec. 3143. Termination of work on failure to pay agreed wages*

*Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.*

*40 U.S. Code Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts*

*(a) Payment of Wages.-*

*(1) In general.- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.*

(2) *Right of action.*- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) *List of Contractors Violating Contracts.*-

(1) *In general.*- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) *Restriction on awarding contracts.*- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

40 U.S. Code Sec. 3146. Effect on other federal laws

*This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.*

40 U.S. Code Sec. 3147. Suspension of this subchapter during a national emergency

*The President may suspend the provisions of this subchapter during a national emergency.*

40 U.S. Code Sec. 3148. Application of this subchapter to certain contracts

*This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.*

42 U.S. Code Sec. 3212. Maintenance of standards

*All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40. The Secretary shall not extend any financial assistance under this chapter for such a project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.*

Wage determination website: <https://sam.gov/content/wage-determinations>

U.S. Department of Labor DBA/Prevailing Wage information can be found here:

<https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>

<https://www.dol.gov/agencies/whd/government-contracts/construction>

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>

## **SECTION 2 – BUILD AMERICA, BUY AMERICA ACT**

**Pub. L. No. 117-58, §§ 70901-52 Build America, Buy America (BABA) Act** – The BABA strengthens the Buy American and Hire American Executive Order No. 13,858 2017, and requires that no later than May 14, 2022, the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including

each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Property solely on private land with no public access is not subject to Buy America. In addition, a Buy America waiver has been approved as described below:

The DOI is proposing a general applicability waiver of the Buy America Domestic Preference procurement requirements for DOI’s Federal Financial Assistance awards to provide recipients of financial assistance agreements with sufficient time to apply the Buy America preferences without having to disrupt current projects and to allow projects to continue to be executed swiftly without jeopardizing performance goals. This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified time period, while recipients of DOI Federal financial assistance agreements work to incorporate the new Buy America requirements.

BABA information: <https://www.doi.gov/grants/buyamerica>

More BABA information: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#bil>

BABA Waiver website: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## **SECTION 3 – CONSTRUCTION PROJECTS REQUIREMENTS**

### **40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act**

(1)Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week 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.

(2)Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 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 (b)(1) of this section.

(3)Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient 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 the 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)(2) of this section.

(4)Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient’s and Subrecipient’s contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1)through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5)The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**48 CFR 22.403-2 The Copeland (Anti-Kickback) Act ( 18 U.S.C.874 and 40 U.S.C.3145) -** makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

## **SECTION 4 - ENVIRONMENTAL PROJECTS REQUIREMENTS**

**42 U.S.C. part 4321 The National Environmental Policy Act** – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

**42 U.S.C. part 7401 Clean Air Act, 33 U.S.C. part 1251 Clean Water Act, and Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act** with respect to Federal contracts and financial assistance.

**16 U.S.C. part 1531 The Endangered Species Act** –Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

**16 U.S.C. part 1271 The Wild and Scenic Rivers Act**–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

**42 U.S.C. part 300f The Safe Drinking Water Act of 1974**–Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

**42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act**–These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors** – Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. part 214(c), in the performance of the contract or any subcontract.

## **SECTION 5 - OTHER STATUTE AND REGULATION REQUIREMENTS**

**2 C.F.R. part 1401 Requirements for Drug-Free Workplace** – Under the Drug-Free Workplace Act of 1988, 41 U.S.C. parts 701-707 a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must: (1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a work place drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

**43 C.F.R. part 18 New Restrictions on Lobbying** – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in 43 C.F.R. part 18, Appendix A Certification Regarding Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying (31 U.S.C. part 1352). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b)) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit 43 C.F.R. part 18.110 Certification and Disclosure Requirements for more information.

**41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection** – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

**41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government** – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public’s general benefit.

**42 U.S.C. part 2000(d) Title VI of the Civil Rights Act of 1964**, and the DOI implementing regulations published at 43 C.F.R. part 17 and Special Regulations at 43 C.F.R. part 4.800 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

**20 U.S.C. part 1681 Title IX of the Education Amendments of 1972**, and DOI implementing regulations published at 43 C.F.R. part 41.100 prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

**42 U.S.C. part 12101 The Americans with Disabilities Act of 1990** – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794, and the DOI implementing regulations published at 43 C.F.R. part 17 subpart B prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

**41 C.F.R. parts 101-19.6 Accessibility Standards** – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) 28 C.F.R. part 35; and Title III of the ADA 28 C.F.R. part 36. The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

**42 U.S.C part 6101 The Age Discrimination Act of 1975**, and DOI implementing regulations published at 43 C.F.R. parts 17.300-17.339 unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

**42 U.S.C. part 2000(e) Title VII of the Civil Rights Act of 1964** – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

**Executive Order No. 11,988, 1977 Floodplain Management** and **Executive Order No. 11,990, 1977 Protection of Wetlands** – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

**Executive Order No. 11,246, 1965 Equal Employment Opportunity** – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at 41 C.F.R. part 60-1.4(b).

### **Links for Additional Information on Federal Requirements/ Standard Terms and Conditions**

DOI Federal Standard Award Terms and Conditions:

<https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>