

## 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 plugging of the following wells:

Grace Oyloe 1-4  
NW SE Section 4-T152N-R103W  
Williams County, ND  
Well file no. 10080

Bowen, Charles 21-1  
NW NE Section 21-T153N-R102W  
Williams County, ND  
Well file no. 9241

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., February 5, 2021.** 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.
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: \_\_\_\_\_

ATTN: Mr. Cody VanderBusch

SEALED BID DO NOT OPEN

North Dakota Industrial Commission

Oil & Gas Division

1016 E Calgary Ave

Bismarck, N.D. 58503

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 plugging contract.
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., February 5, 2021. 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., February 5, 2021 at the Industrial Commission, Oil and Gas Division, 1016 E. Calgary Ave., Bismarck, ND.

NOTE: Bid will be awarded as a package, however, bids should be broken down individually and noted on the bid form beneath each of the well descriptions.

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 to provide a bond.
11. 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.
12. Title to Confiscated 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..
13. Changes in Specifications. The Commission may, during the bidding period, notify bidders of alterations to the Plugging Specifications. All such changes are included in the work covered by the bid and are a part of the specifications.

BID

Bid for plugging the following wells in Williams County, ND:

Grace Oylo 1-4  
NW SE Section 4-T152N-R103W  
Williams County, ND  
Well file no. 10080

Bowen, Charles 21-1  
NW NE Section 21-T153N-R102W  
Williams County, ND  
Well file no. 9241

Bid \$\_\_\_\_\_

Bid \$\_\_\_\_\_

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, PLUGGING SPECIFICATIONS, WELL PLUGGING 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 lump sum price of \_\_\_\_\_ - \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

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 Well Plugging 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 \_\_\_\_\_ 2021.

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

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Email Address

# PLUGGING SPECIFICATIONS

## SUBJECT WELL (1 of 2)

Grace Oyløe 1-4  
NW SE Sec.4-T152N-R103W  
Williams County, ND  
Well File No. 10080

## INTRODUCTION

The objective of this project is to plug the above referenced well, in compliance with requirements of Chapter 43-02-03 of the North Dakota Administrative Code.

## WELL DATA

9 5/8" surface casing @ 3007',  
5 1/2" intermediate casing @ 9289',  
Gross Perfs – 8958 – 8973'

## SPECIFICATIONS

- A. The contractor must be prepared to, and shall, control any blow/flow from the well in order to minimize surface damage and to limit liabilities.
- B. Contractor shall arrange for all tools, equipment, products, fluids and any other items required to properly plug this well. Contractor is responsible for disposal of all fluids.
- C. Once plugging procedures begin, these specifications are subject to change with approval of the NDIC Oil & Gas Division field inspector if down-hole conditions warrant.

### **D. Plugging Procedure:**

Note: All cement must be API class G or Premium, 15.8 ppg.

- 1. Test deadmen anchors, MIRU, make sure well is dead, unflange wellhead, NU BOPs. TOH laydown pump and rods
- 2. Dig out surface casing valve and bleed off.
- 3. Bleed off tubing and casing to hot oil truck. Unseat pump and POOH w/ pump and rods.
- 4. ND WH and NU BOP. Release TAC and TOO H and LD BHA.
- 5. Trip in hole with tubing and bit and scraper for 5-1/2" casing to 8958' (Top perf @ 8958'). Trip out of hole with tubing, bit, and scraper.

6. Trip in hole with tubing and CICR. Set CICR +/- 8,908'. Pressure test casing to 1000 psi. Circulate with clean heavy fluid.
  7. Rig up cement equipment. Establish injection rate. Mix 90 sks Class G cement. Squeeze 90 sks into formation and leave 10 sks on CICR. Rig down cement equipment. Trip out with workstring to 7,406 to prepare for Minnekahta balanced plug.
  8. CBL dated 4/19/1984 determined TOC @ 3,490'. CIBP's will be required +/- 50 below all squeeze perforations and directly below all balanced plugs until successful pressure test is witnessed.
  9. If casing fails pressure test set CIBP @ 7,406'. Prepare to set Minnekahta balanced plug @ 7,406'. (Top of Broom Creek @ 7,295').
  10. Rig up cement equipment. Mix 35 sks Class G cement. Spot balanced plug across Minnekahta (7150-6850') Rig down cement equipment. Trip out of hole with workstring to 4896' to prepare for Mowry balanced plug.
  11. If casing fails pressure test, set CIBP @ 4,896'. Prepare to set Mowry balanced plug @ 4,896'. (Top of the Mowry @ 4,746').
  12. Cut 5.5" casing at 3057 and recover the casing casing string.
  13. Run in with tubing to 3107 and balance a plug from 3,107' – 2,857', wait on cement and tag to verify cement top. If cement fell, another plug will need to be pumped.
  14. Pull up to 1937' and balance a 250' plug set a CIBP 50' above the cement plug.
  15. Pressure test casing and roll the hole with hot Fresh water.
  16. Rig down BOP and rig, Bolt wellhead back on.
  17. File Form 7 with NDIC.
  18. Dig up and pull out dead men.
  19. File form 7 plugging report upon completion of plugging.
- E. Certain information from NDIC files concerning the well is represented in the WELL DATA paragraph. The information represents, to the best of the Commission's knowledge, the well bore and well site conditions of the well to be plugged. Actual conditions may be different. The complete well file may be examined at the Bismarck office of the NDIC Oil & Gas Division, 1016 East Calgary Avenue, Bismarck, ND.

- F. Contractor shall notify the Commission 48 hours before commencing the plugging operations.
  
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of the Commission's final acceptance of the plugging. Contractor shall bear the entire cost and expense of all repairs that may, from any imperfection in work or material, be necessary within that time. Contractor shall not be liable for equipment, material, or workmanship supplied by the Commission.

# PLUGGING SPECIFICATIONS

## SUBJECT WELL (2 of 2)

Bowen, Charles 21-1  
NW NE Sec.21-T153N-R102W  
Williams County, ND  
Well File No. 9241

## INTRODUCTION

The objective of this project is to plug the above referenced well, in compliance with requirements of Chapter 43-02-03 of the North Dakota Administrative Code.

## WELL DATA

9 5/8" surface casing @ 4000',  
5 1/2" intermediate casing @ 13300',  
Gross Perfs – 10614' – 10620' and  
10883' – 10888'

## SPECIFICATIONS

- A. The contractor must be prepared to, and shall, control any blow/flow from the well in order to minimize surface damage and to limit liabilities.
- B. Contractor shall arrange for all tools, equipment, products, fluids and any other items required to properly plug this well. Contractor is responsible for disposal of all fluids.
- C. Once plugging procedures begin, these specifications are subject to change with approval of the NDIC Oil & Gas Division field inspector if down-hole conditions warrant.

### **D. Plugging Procedure:**

Note: All cement must be API class G or Premium, 15.8 ppg.

- 1. Test deadmen anchors, MIRU, make sure well is dead, unflange wellhead, NU BOPs.
- 2. Attempt to get through the liner open ended. A bit and scraper run was already performed above the liner. There is a tight spot at the top of the liner, may not be able to run in with tools. Attempt to get to 10,938, if unsuccessful consult with NDIC.
- 3. Rig up cement equipment and balance a plug from 10,938 to 10'245 of 27 sks class G cement with 35 % silica flour.



4. Pull out of cement, wait on cement and tag. If cement falls, another plug will need to be pumped. Pressure test casing to 1000 psi, if casing does not test, plugs will need to be balanced and tagged, or CIBP will need to be placed 50 feet below balance plugs and squeezes until a good pressure test is achieved.
  5. Pull up to 8,824', pump 20 sks of neat G, 15.8 ppg cement to cover the Madison.
  6. Pull up to 8,133 and pump 35 sks of 15.8 ppg, neat G cement to cover the liner top.
  7. TOOH, rig up wireline and perf at 7,164', set CICR @ 7,064'. Establish injection rate. Pump 100 sks neat G, 15.8 ppg cement. Squeeze 90 sks through the CICR, sting out and leave 10 sks on top.
  8. MIRU wireline. Perforate the Mowry @ 4,922', set CICR @ 4,872' with tubing. Rig up cementers and pump 100 sks of neat G, 15.8 ppg cement. Squeeze 90 sks below CICR, sting out leaving 10 sks on top. Trip out of hole.
  9. MIRU wireline, shoot perforations @ 4,050', set CICR @ 4'000' with tubing.
  10. Rig up cement equipment. Establish injection rate. Pump 100 sks class G, 15.8 ppg cement. Squeeze 90 sks below the CICR sting out and leave 10 sks on top. Rig down cement equipment. Trip out of hole.
  11. MIRU wireline unit and perforate at 100'. RD wireline unit. Rig up cement equipment. Hook up and circulate cement to surface.
  12. Cut off wellhead 4' below plow depth and weld on cap with ND File # 9241.
  13. Dig up and pull out dead men.
  14. File form 7 plugging report upon completion of plugging.
- E. Certain information from NDIC files concerning the well is represented in the WELL DATA paragraph. The information represents, to the best of the Commission's knowledge, the well bore and well site conditions of the well to be plugged. Actual conditions may be different. The complete well file may be examined at the Bismarck office of the NDIC Oil & Gas Division, 1016 East Calgary Avenue, Bismarck, ND.
- F. Contractor shall notify the Commission 48 hours before commencing the plugging operations.
- G. Contractor guarantees, against defects and workmanship, all work performed under the contract for a period of one year from the date of the Commission's final acceptance of the plugging. Contractor shall bear the entire cost and expense of all repairs that may, from any imperfection in work or material, be necessary within that time. Contractor shall not be liable for equipment, material, or workmanship supplied by the Commission.

# 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 plugging the following well:

Grace Oyloe 1-4 NWSE Sec. 4-T152N-R103W, Williams County, ND, Well File No. 10080  
Bowen, Charles 21-1 NWNE Sec. 21-T153N-R102W, Williams County, ND. Well File No. 9241

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%.

## FOR STATE USE ONLY:

Surety is licensed in ND: \_\_\_\_\_

Date verified: \_\_\_\_\_

Verified by: \_\_\_\_\_

Contractor: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Surety: \_\_\_\_\_

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Attorney-in-fact (Seal and Signature)

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Address

# 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 plugging of the following well:

Grace Oyloe 1-4 NWSE Sec. 4-T152N-R103W, Williams County, ND, Well File No. 10080  
Bowen, Charles 21-1 NWNE Sec. 21-T153N-R102W, Williams County, ND. Well File No. 9241

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%.

## FOR STATE USE ONLY:

Surety is licensed in ND: \_\_\_\_\_

Date verified: \_\_\_\_\_

Verified by: \_\_\_\_\_

Contractor: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Surety: \_\_\_\_\_

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Attorney-in-fact (Seal and Signature)

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Address

## WELL PLUGGING 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 Plugging Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following well:

Grace Oyloe 1-4  
NW SE Section 4-T152N-R103W  
Williams County, ND  
Well file no. 10080

Bowen, Charles 21-1  
NW NE Section 21-T153N-R102W  
Williams County, ND  
Well file no. 9241

### II TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract within ninety days after the effective date of this contract.

### 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 plugged according to the Plugging Specifications attached hereto as Exhibit A, COMMISSION may modify the Plugging Specifications to insure the well is properly plugged by CONTRACTOR. If such modifications 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, Plugging 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 within 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.

## XIII TAXPAYER ID

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

## XIV 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.

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: \_\_\_\_\_