

INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites the submission of bids for the abandonment of Alturas (Mondak) produced water gathering pipeline system in McKenzie County.

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 **3:00pm CDT October 19, 2020**.

For additional bid information please see the North Dakota Industrial Commission, Oil and Gas Division home page at <https://www.dmr.nd.gov/oilgas/>.

The Commission may reject any and all bids submitted.

INSTRUCTIONS TO BIDDERS

1. Form of Bids. Bids must be submitted on the attached bid form. **Include on the bid sheet the cost to abandon (purge and cap) approximately 50 miles of poly pipeline (including the removal of all associated above ground equipment such as pipe markers, pumps, valves, and risers, and the cost to reclaim the surface disturbed during removal), the cost to reclaim the Bennie Peer Lift Station, the cost to clean up three known contamination areas from historical spills on this pipeline system (including EC survey and soil samples), and the costs associated with locating the pipeline endpoints to complete the purging and capping necessary to properly abandon the pipeline system. Attach a price sheet for any unknown extras such as abandonment cost per footage of pipeline length, TENORM disposal, contamination removal, replacement fill material, topsoil purchase, equipment salvage, etc.**

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

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 pipeline system 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 pipeline system made by its staff or agents prior to the execution of the Pipeline Abandonment 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 **3:00pm CDT October 19, 2020.** 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 **3:00pm CDT October 19, 2020** 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.
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 Material and Objects on Site. The Commission has title to all equipment owned by the operator, former operator, or working interest owners on the sites.
13. Changes in Specifications. The Commission may, during the bidding period, advise bidders by letter of alterations to the Reclamation Specifications. All such changes are included in the work covered by the bid and are a part of the specifications.

BID

Bid for all services pertaining to the abandonment of pipeline system noted in the attachment:

See attachment A

Being fully familiar with the local conditions affecting the performance of the contract and having carefully examined the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, ABANDONMENT & RECLAMATION REQUIREMENTS, PIPELINE ABANDONMENT CONTRACT bidder proposes and agrees to perform 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 _____ 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 seven 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 Pipeline Abandonment 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 _____ 2020.

Name of Bidder

Signature

Business Address

Business Telephone Number

Email Address

Attachment A

Description of Pipeline System

Approximately 50 miles of poly pipeline (without tracer wire). Map included at bottom is intended to give an overview of the location of the pipeline system. This map has been digitized from USFS records and may not be complete. There is a south lateral running along a lease road in Sections 22, 26, and 27 in T147N R104W which is not included on the map that must be properly abandoned (area in red box on map). This section should be reviewed first. The pipeline system has a lateral that runs into Montana. Approximately 1,200' from the Stateline there is a block valve, which is where the 6" poly line going into North Dakota should be capped below grade.

There are 39 known above ground risers that we suspect are associated to this pipeline system which vary from 1" to 3" in size. These risers were used for blowing salt plugs out of the line.

There are 18 known above ground facilities, which include the Bennie Peer Lift Station (SESE 3-147N-R104W), block valves locations, and oil and gas well sites. Please note many wells that tied into this pipeline system have previously been plugged and the sites reclaimed.

There are 3 known areas of contamination which have resulted from this pipeline system leaking, which are located at:

- Bennie Peer Lift Station (SESE 3-147N-R104W). Slow leak of 2-3 gallons per day at cracked pump.
- Three-way block valve (NENE 10-147N-R104W). Slow leak of ½ gallon per day at bolted flange.
- Release from 8/15/2013 reported as 250bbl saltwater requires further cleanup and exposed pipeline to be removed. (NESE 22-T147N-R104W).

Locations of Associated Above Ground Infrastructure

Items highlighted in yellow in the table below will not line up with the map centerline but must still be investigated to determine if they are part of the system and addressed if they are.

<u>GPS LOCATION</u>	<u>DESCRIPTION</u>
47.59892, -103.91363	2" RISE
47.65761, -104.03503	SIGNAGE
47.57633, -103.90484	BENNIE PEER LIFT STATION
47.58559, -103.89264	1" RISER
47.58516, -103.89333	2" RISER
47.59443, -103.90911	SWD HATTER PIG LAUNCHER
47.59945, -103.91469	2" RISER
47.60909, -103.93356	1" RISER
47.61019, -103.94065	1" RISER
47.61162, -103.94479	SIGN
47.61037, -103.94791	3" RISER: POLY TO STEEL
47.61695, -103.94598	SIGN
47.62241, -103.94924	1,000 BBL BOLTED TANK
47.62171, -103.94934	SIGN
47.62183, -103.95028	2" RISER
47.63284, -103.95503	1" RISER

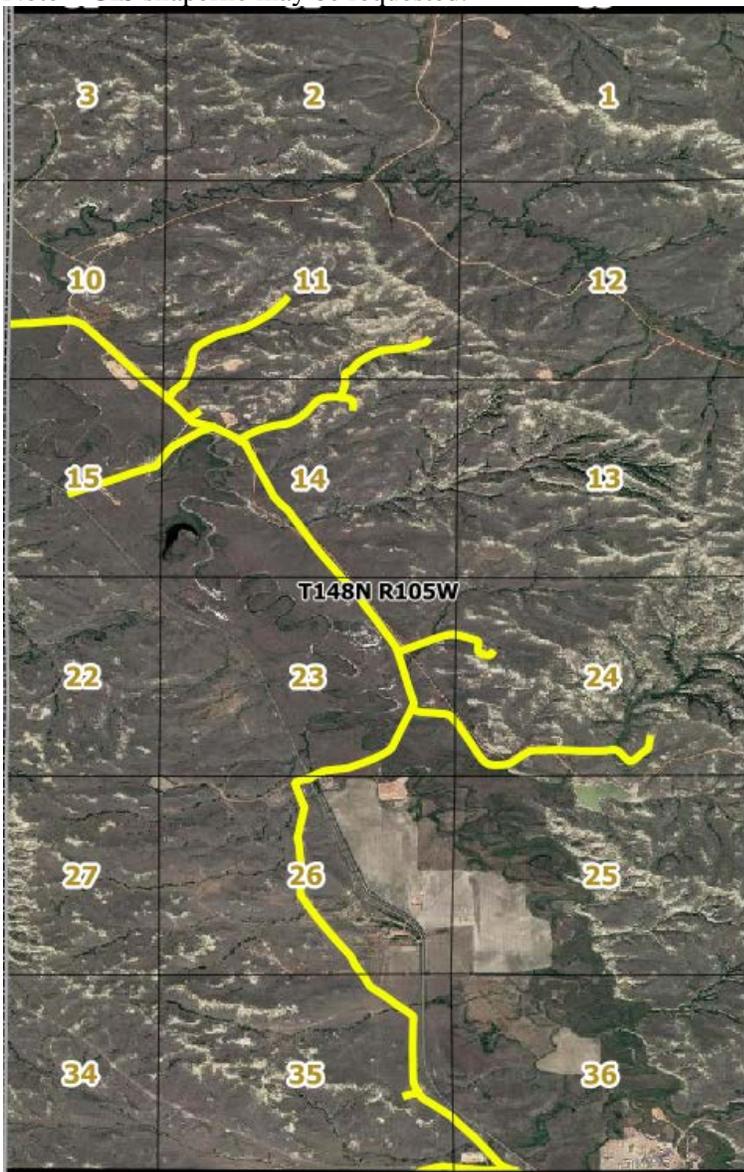
47.63491, -103.95659	SIGN
47.63712, -103.95688	1" RISER
47.63730, -103.95691	PIG RECEIVER
47.63896, -103.95841	1" RISER
47.64501, -103.96157	1" RISER
47.64501, -103.96173	BLOCK VALVES IN CULVERTS
47.64497, -103.96233	SIGN
47.52796, -103.90601	2" RISER VALVE
47.52473, -103.90701	2" RISER VALVE
47.52082, -103.90551	2" RISER
47.51941, -103.90291	1-3" POLY LINE TO SURFACE
47.53839, -103.90731	FILE 7166
47.57536, -103.88831	8" PIG RECEIVER
47.57965, -103.90452	SIGN
47.58489, -103.91114	2" RISER
47.58434, -103.91956	FILE 6904
47.59192, -103.92061	GUARD ONLY, NO RISER
47.57518, -103.94743	6" BLOCK VALVE, BELOW GRADE
47.65099, -104.04646	6" BLOCK VALVE MT
47.64974, -104.04652	2" RISER
47.61893, -104.02193	2" RISER
47.61892, -104.02047	6" PIG LAUNCHERS
47.64059, -104.03701	3" RISER BLOCK VALVE
47.64013, -104.03686	2" CHECK VALVE, FILE 6135
47.57529, -103.97585	6" 3-WAY, LEAKING
47.64467, -104.02885	2-WAY BLOCK VALVE
47.64406, -104.02622	2" RISER
47.64486, -104.02357	2" RISER
47.64746, -104.01909	2" RISER, DEAD GROUND
47.64879, -104.01921	2" RISER
47.65037, -104.01641	2" RISER
47.65092, -104.01402	2" POLY TRANSFER LINE, OIL IN TANK DIKING
47.64631, -104.01866	2" DISCONNECTED POLY LINE, FILE 6598
47.64672, -104.01901	2" RISER
47.64116, -104.02477	2" RISER, NO GUARD, 6' TALL
47.57518, -103.93575	COULEE CROSSING
47.63715, -104.02184	2" RISER, NO GUARD
47.63237, -104.01785	2" RISER IN CULVERT
47.63021, -104.01627	2" RISER
47.62872, -104.01496	BLOCK VALVE IN CULVERT
47.62158, -104.00539	3" RISER

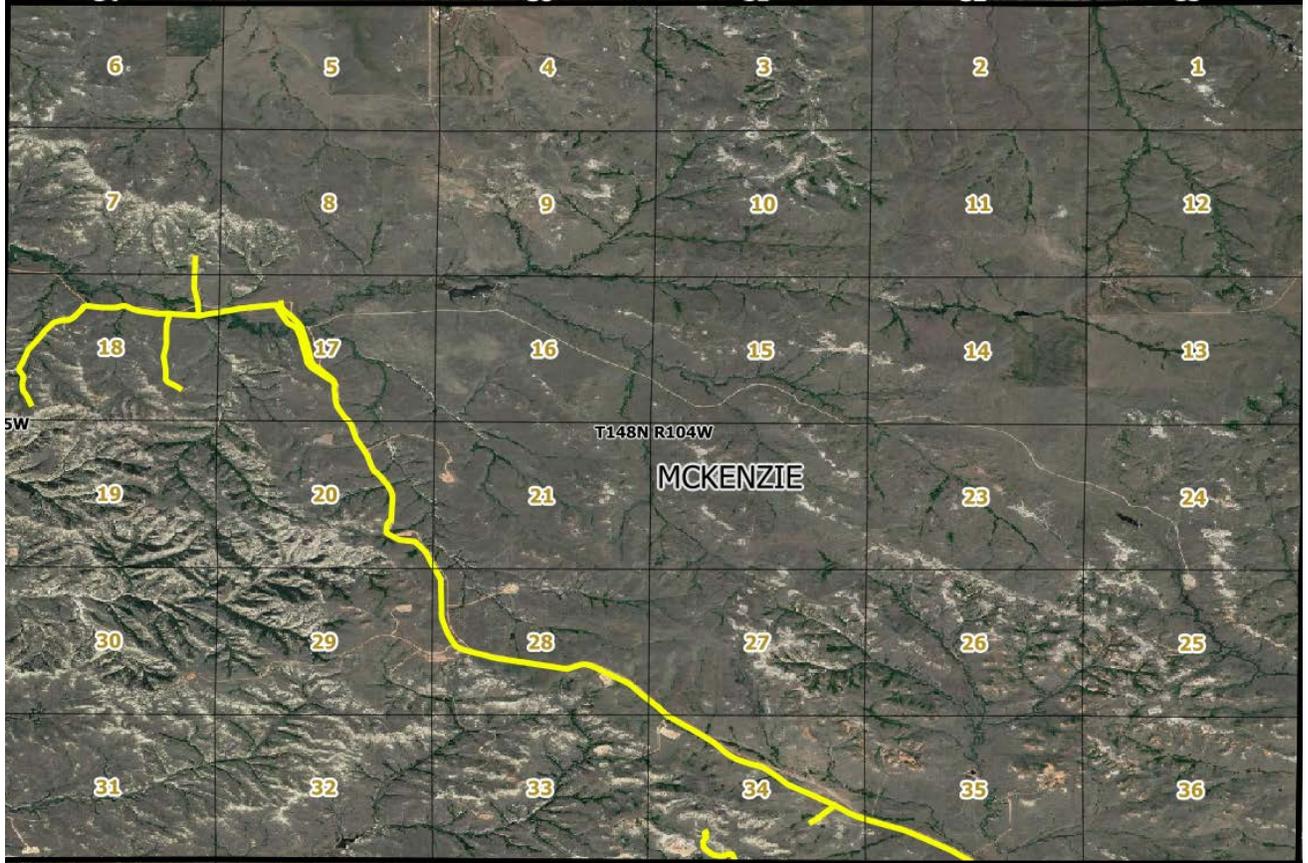
47.62043, -103.99487	3" RISER
47.62074, -103.98883	3" TRANSFER LINE
47.64284, -104.02537	2" RISER IN CULVERT
47.64477, -104.03006	2" RISER IN CULVERT
47.64921, -104.03027	2" RISER POLYLINE
47.65185, -104.02632	2" RISER POLYLINE
47.65364, -104.02371	3" TRANSFER LINE DISCONNECTED
47.57504, -103.88548	CULVERT WITH LID

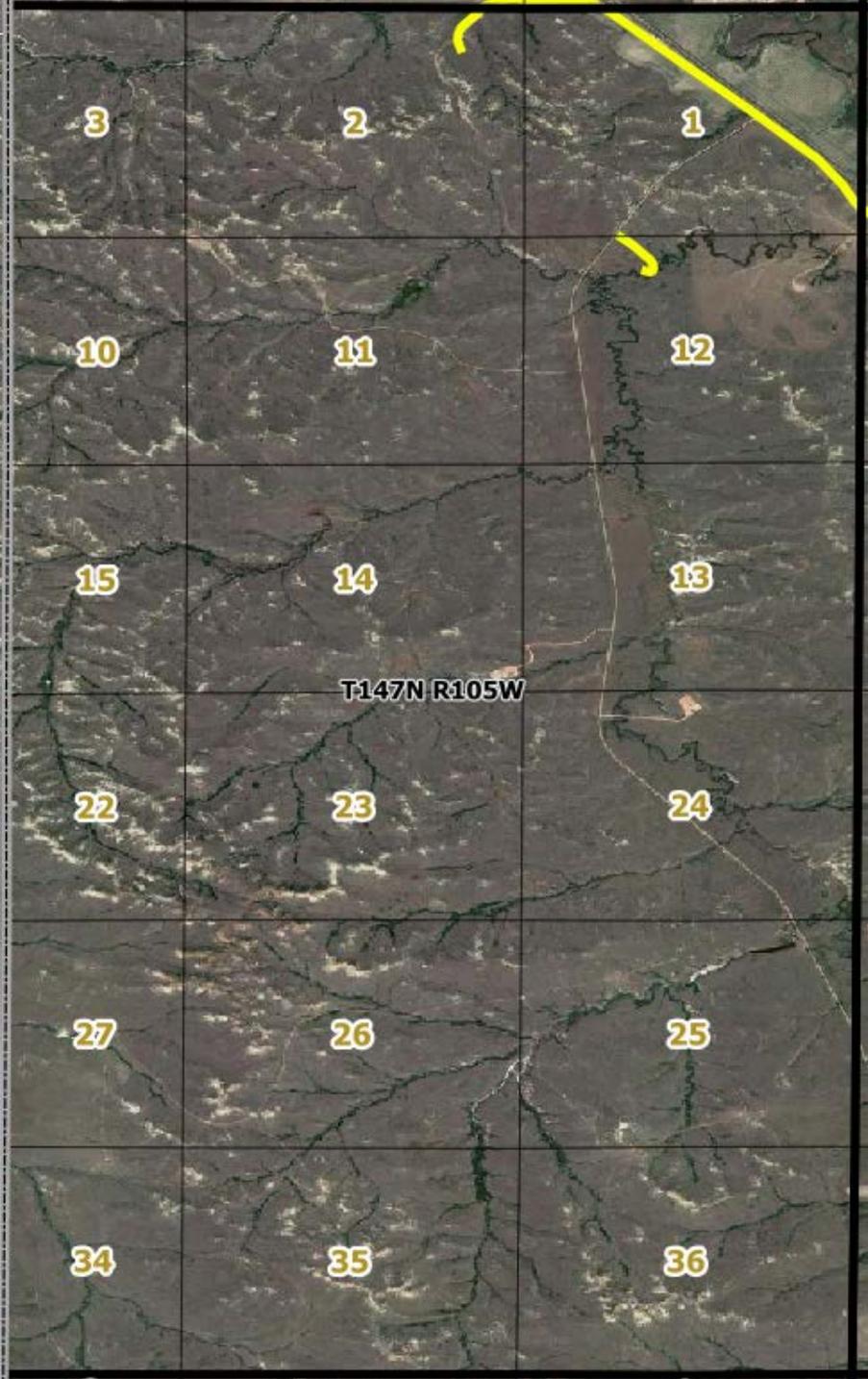
Note: Google Earth KMZ file may be requested.

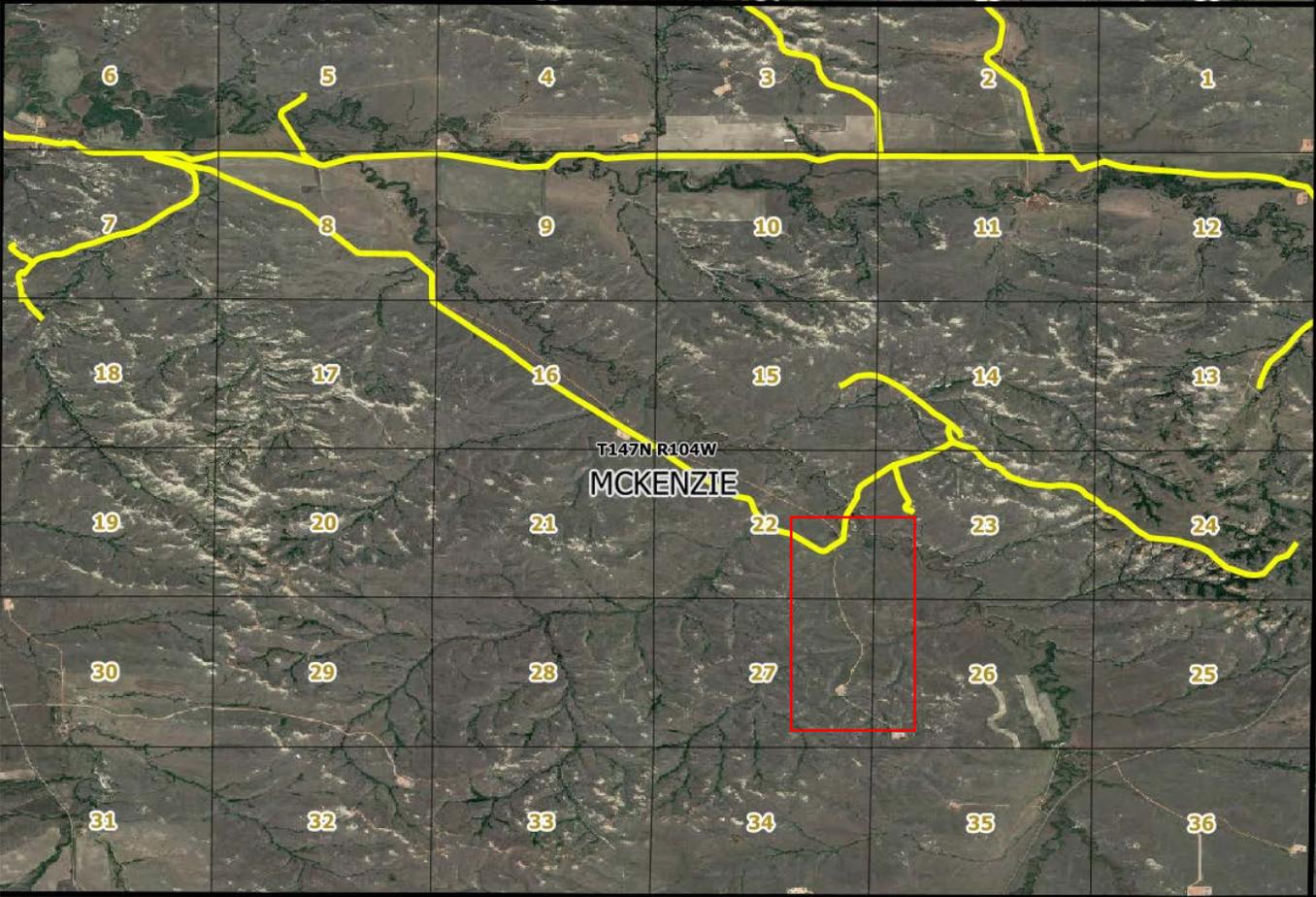
Map Locations by Township-Range

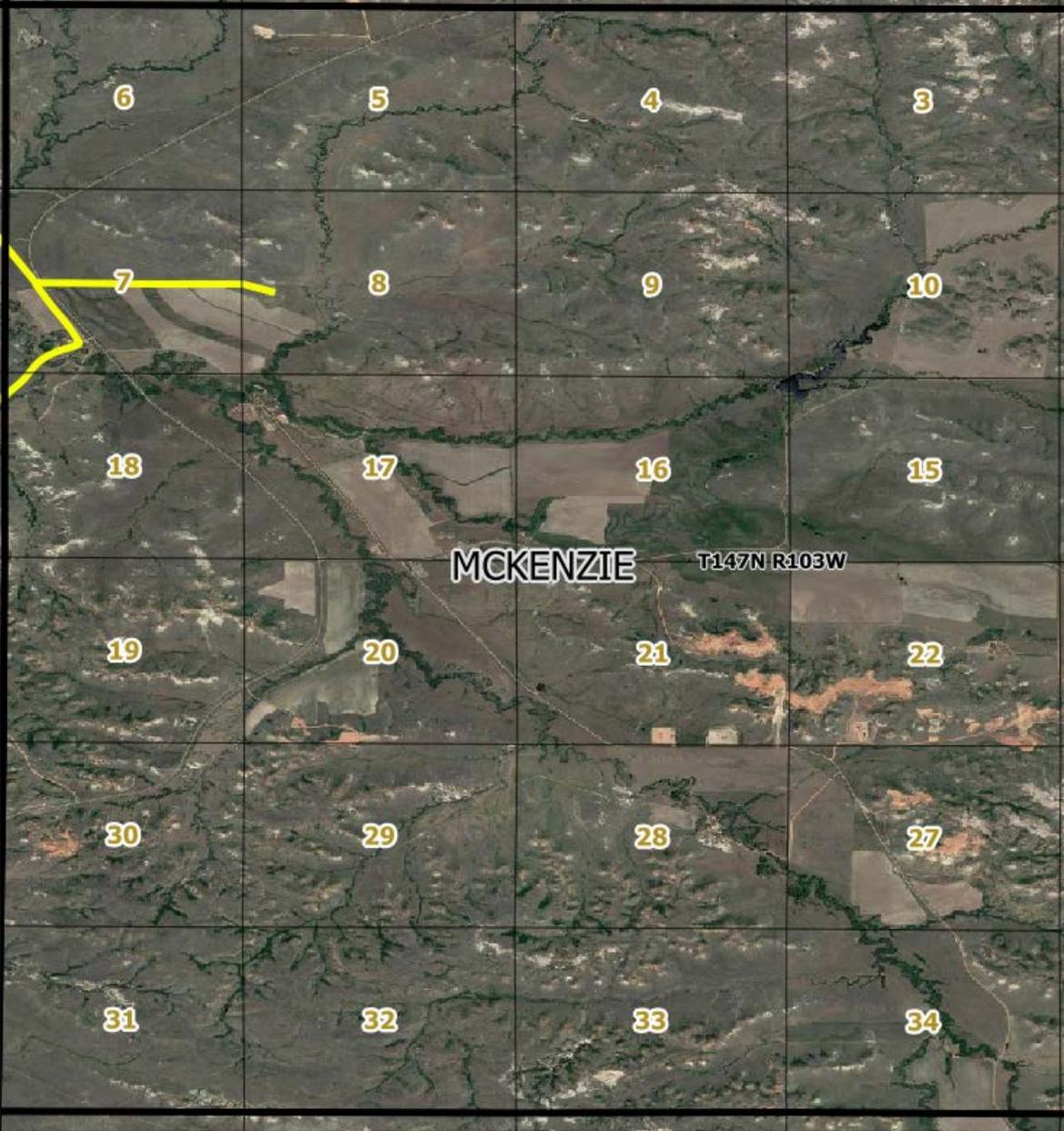
Note – GIS shapefile may be requested.











Abandonment & Reclamation Requirements

1. Contractor is required to make one call for utilities before starting work.
2. Contractor is required to notify NDIC Pipeline Inspector at least forty-eight hours prior to commencing abandonment work.
3. Prepare an abandonment plan. The plan should include details on how the system will be isolated for purging and where the expected cap locations will be. It must also include locations of all infrastructure that is to be removed and places where reclamation work is expected for the sites. It should also cover remediation plans for contaminated areas.
4. Identify applicable surface owner(s), provide a copy of the abandonment plan to the surface owner(s) at least 10 days prior to starting work, and provide NDIC with proof of notification.
5. Submit abandonment plan to NDIC for approval.
6. Pipelines must be purged with fresh water until water at receiving end shows chlorides (CL) of less than 250ppm with the use of chloride strips.
7. Each isolated length of pipeline must be cut and capped below surface at pipeline level.
8. Remove surfacing material from above ground pipeline sites (excluding locations used by another operator such as well sites). This material becomes property of the contractor.
9. Remove any contaminated material with an EC greater than 2000 uS/cm (CL around 250 ppm) and TPH greater than 10,000ppm (no Free fluid) down to 4' if needed. Dispose of contaminated material at an approved facility.
10. Recontour the site and access road, as applicable.
11. Spread topsoil. Use stockpiled or hauled in topsoil so there is a minimum of 6" of topsoil on the site.
12. Seed area only if surrounding area is in grass – Native seed is preferred unless surface owner wants something different. (**see attached seeding specs**)
13. Provide final documentation to the NDIC. Documentation to include, but not be limited to, before and after photographs where equipment was removed and surface was reclaimed, GPS coordinates for capped locations, volume totals used for purging, and final soil samples for areas where contamination was removed

NDAC 43-02-03-29.1 (15) (a)(b) Pipeline abandonment.

- a. At least forty-eight hours prior to abandoning any underground gathering pipeline, the underground gathering pipeline owner shall notify the director verbally.
- b. When an underground gathering pipeline or any part of such pipeline is abandoned as defined under subsection 1 of North Dakota Century Code section 38-08-02 after March 31, 2014, the owner shall leave such pipeline in a safe condition by conducting the following:
 - (1) Disconnect and physically isolate the pipeline from any operating facility, associated above ground equipment, or other pipeline.
 - (2) Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - (4) Remove cathodic protection from the pipeline.
 - (5) Permanently plug or cap all open ends by mechanical means or welded means.
 - (6) The site of all associated above ground equipment must be reclaimed pursuant to section 43-02-03-34.1.
 - (7) If the bury depth is not at least three feet below final grade, such portion of pipe must be removed.

NDAC 43-02-03-34.1. RECLAMATION OF SURFACE.

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, or a treating plant or saltwater handling facility is decommissioned, the site, access road, and other associated facilities constructed shall be reclaimed as closely as practicable to original condition pursuant to North Dakota Century Code section 38-08-04.12. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice shall include:

- a. The name and address of the reclamation contractor; (II-60) 04/2020
- b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;
- c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other associated facilities; and
- d. Reseeding plans, if applicable.

The commission will mail a copy of the approved notice to the surface owner.

All equipment, waste, and debris shall be removed from the site. All pipelines shall be purged and abandoned pursuant to section 43-02-03-29.1. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the site, access road, and other associated facilities constructed for the well, treating plant, or saltwater handling facility shall be reshaped as near as is practicable to original contour.

3. The stockpiled topsoil shall be evenly distributed over the disturbed area and, where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.

4. A site assessment may be required by the director, before and after reclamation of the site.

5. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.

6. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged or treating plant or saltwater handling facility is decommissioned and shall record documentation of the waiver with the recorder of the county in which the site or road is located.

Native Grass Seeding Specifications

<u>Species</u>	<u>lbs.</u> <u>PLS*/acre</u>
Western wheatgrass	8
Slender wheatgrass	5
Green needlegrass	4
Side-oats grama	<u>2</u>
	19

*PLS - Pure Live Seed (based on 50 PLS/sq. feet)

1. The seed bed should be firmly packed (footprints left in the soil should be less than 1/2 inch deep).
2. An early spring seeding (before May 24th) is preferred. A dormant fall seeding (after October 20th) is acceptable.
3. A cover crop of oats at 10 lbs. PLS/acre must be seeded on the disturbed area.
4. A drill designed specifically for native grass seeding will give the best seeding results. The seed should be planted at a depth of 1/2 to 1 inch. Precaution must be taken not to plant the seed too deeply in the soil or poor germination will result.
5. On areas where equipment cannot be used, broadcast seed and rake or drag to cover seed. Where seed is broadcast, double the seeding rate.
6. Use only North Dakota certified seed.

Caution: Be sure to clean out the drill before seeding to avoid any contamination with smooth brome grass or crested wheatgrass that may remain in the drill from previous use on private land. These are invasive grasses in native prairie and are not allowed on school trust lands. Contamination with or use of crested wheatgrass or smooth brome will result in the applicant being required to spray out the grass and reseed with the above native grass seed mixture. Sweet clover and alfalfa are also not allowed – only the above native grass seed mixture may be used for revegetation on school trust land.

PIPELINE ABANDONMENT 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 Abandonment & Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following pipeline gathering system:

See Attachment A

II TIME FOR COMPLETION

CONTRACTOR shall complete the work under this contract by December 30, 2020.

III COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed _____, to be paid within _____ days after COMMISSION has accepted the work. All invoices must be approved by the CONTRACTOR and received by the COMMISSION by the last day of the month following the month when the Commission has accepted the work. If COMMISSION determines, in its sole discretion, that the pipeline cannot be abandoned and reclaimed according to the Abandonment & Reclamation Specifications attached hereto as Exhibit A, COMMISSION may modify the Abandonment & Reclamation Specifications to ensure the well is properly reclaimed 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, and Abandonment & Reclamation Specifications 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.

The CONTRACTOR shall promptly and faithfully perform all of the provisions of the contract, and all obligations thereunder including the specifications, and any approved alterations provided for, and shall in a manner satisfactory to the State of North Dakota, complete the work contracted for including any approved alterations in a workmanlike manner, and shall hold harmless the State of North Dakota from any expense incurred through the failure of the CONTRACTOR to complete the work in a workmanlike manner as specified.

The CONTRACTOR shall duly and promptly pay all laborers, mechanics, subcontractors and material suppliers who perform work or furnish material under the contract and all persons who shall supply the CONTRACTOR or the subcontractor(s) with materials, services, and insurance for the carrying on of the work.

The CONTRACTOR or subcontractor(s) shall be liable only if it is found that work was not performed in a workmanlike manner.

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.

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 pandemic, 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

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

DATE: _____

DATE: _____