

INVITATION TO BID

The State of North Dakota, acting through the North Dakota Industrial Commission, Oil & Gas Division, invites the submission of bids for plugging the wells listed at the following website link <https://www.dmr.nd.gov/oilgas/C28495.pdf>

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 July 9, 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.
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, Dept. 405

600 East Boulevard

Bismarck, N.D. 58505

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 **3:00pm CDT July 9, 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 July 9, 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 on the well site.
13. Changes in Specifications. The Commission may, during the bidding period, advise bidders by letter 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 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, PLUGGING SPECIFICATIONS, WELL PLUGGING 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 (\$) per _____

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 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 _____ 2020.

Name of Bidder

Signature

Business Address

Business Telephone Number

Attachment A

ROGER KERSTEN ESTATE 1
SESE Section 4 -T160N-R79 W
BOTTINEAU County
File No. 3512

FUNKE 1
SENE Section 25-T160N-R86 W
RENVILLE County
File No. 17739

DONOVAN FUNKE 3
LOT2 Section 30-T160N-R85 W
RENVILLE County
File No. 21762

VENDSEL 1
E2SW Section 2 -T158N-R85 W
RENVILLE County
File No. 5166

STOA 41-1H
NENE Section 1 -T158N-R86 W
RENVILLE County
File No. 15732

CARL THORSON 2
NESE Section 7 -T159N-R94 W
BURKE County
File No. 1690

STEAD 44-14 2
SESE Section 14-T162N-R81 W
BOTTINEAU County
File No. 12583

STEAD 24-14 4 SWD
SESW Section 14-T162N-R81 W
BOTTINEAU County
File No. 12655

KOEHLER 31-23 1
NWNE Section 23-T162N-R81 W
BOTTINEAU County
File No. 13137

KOEHLER-STEAD 1H
N2S2 Section 14-T162N-R81 W
BOTTINEAU County
File No. 14647

KEARNEY 4-25H
LT4 Section 25-T164N-R97 W
DIVIDE County
File No. 16146

BRYANS 1-17
NENE Section 17-T158N-R85 W
RENVILLE County
File No. 5688

E. PEARSON 5-I22
NESE Section 22-T163N-R83 W
BOTTINEAU County
File No. 7175

SCORE 1
NWNW Section 21-T158N-R85 W
RENVILLE County
File No. 11788

SCORE 2
NWSE Section 16-T158N-R85 W
RENVILLE County
File No. 12159

ZARGON NORTH HAAS 1
SWSE Section 24-T163N-R83 W
BOTTINEAU County
File No. 15347

Exhibit A

Well Name
Sec. __, T__ N, R__ W, Q__ Q__
____ County, North Dakota
File No. ____
API: __-__-____-00-00

Well Data:

Surface casing: ____" ____# set @ ____'

Production casing: ____" ____# set @ ____'

Tubing: ____" ____# _____ - _____

Packer set @ ____' (_____ packer- _____ Model __)

Perforations: ____'-____', ____'-____', ____'-____'

Last cement bond log (CBL): __/__/____ (_____ quality), (TOC _____)

Procedure

1. Move in rig up workover rig. Nipple down wellhead, nipple up blow out preventer.
2. Lay down tubing and seal assembly from ____'.
3. Make a bit and scraper run.
4. Roll hole with 10# water (salt water).
5. Pick up Cast Iron Cement Retainer (CICR) run in hole and set at ____', pressure test casing to 1000 psi for 15 minutes.
6. Sting into cement retainer to establish injection rate.
7. Squeeze perforations with 150 sacks class G neat cement (1.15 yield), leave 10 sacks of cement on top of CICR.
8. Pull out of hole and lay down work string.
9. Perforate and squeeze above the Mowry Formation (Mowry top at ____'). Alternatively if CBL indicates pump a 250' balanced cement plug across the Mowry Formation
10. Pull out of hole and lay down work string to.
11. Perforate and squeeze at the top of the Pierre Formation (Pierre top at ____'). Alternatively if CBL indicates pump a 250' balanced cement plug across the the Pierre Formation.
12. Move in and rig up wireline to perforate at ____'. Rig down wireline. Hook up and circulate cement to surface.
13. Wait for cement to cure then nipple down blow out preventer, then cut off surface and production casing 4' below ground level.
14. Weld steel ID plate on top to comply with regulations.
15. Rig down, move off location, cut off anchors.
16. Tubing, rods, anchor or retrievable packer, and well head are part of the bid and will be property of the contractor.

6. Cased-hole Plugging:

Rule Cited NDAC:

- Chapter 43-02-03-33: Notice of Intention to Plug a Well
- Chapter 43-02-03-34: Method of Plugging
- Chapter 43-02-03-36: Liability

Scope

This document is intended for Field Inspectors employed by the State of North Dakota Department of Mineral Resources Oil & Gas Division (“inspectors”). The guidelines in this document are the preferred procedures for inspectors to review plugging procedures from the operators of oil, gas, and injection wells and execute the approved procedures on site. Variances from these practices may be granted by verbal or written approval from an inspector’s supervisor.

These guidelines are intended for wells that have a cemented production casing string and are equipped to produce or inject oil, gas, or water (“cased-wellbores”).

Safety

Before arriving on a location, determine personal protective equipment (PPE) needed. This may include a hard hat, steel-toed shoes, safety glasses, gloves, gas monitor, ear plugs, dust mask and FR clothing. Ensure that air packs and fire extinguishers are readily available.

Before entering any location observe wind direction and plan an exit strategy, as H₂S may be present. Voice any safety concerns during pre-job safety meeting at the muster point. During plugging, be aware of your position relative to the cement truck; inhalation or ingestion of cement dust can cause health concerns. Do not walk over any lines running to or from wellhead while plugging procedures are in progress.

A. Plugging Procedure Review

Pursuant of 43-02-03-33 Notice of Intention to Plug a Well: Prior to plugging a well, the consultant will submit a plugging procedure. Through the review process, District Supervisors will review the procedures submitted by the consultant and make any necessary changes prior to approving the procedures.

B. File Review

Upon receiving plugging procedures for a cased-wellbore, inspectors will review the state records for the well. Pertinent information includes:

- Depth of the wellbore and casing string information
- Current and past production zones & depths of perforations
- Cement bond log ("CBL") & top of cement behind the production casing (if available)
- Previous wellbore issues (e.g. casing leaks, tight areas, remediation, etc.)
- Depths of potential formations to be plugged or requiring isolation
- Any information provided in the plugging procedure that is not found in state records

Inspectors are encouraged to create a diagram that includes information found in the file review , but it is preferable for a diagram to be provided with the plugging procedure.

Formations requiring isolation change throughout the state. Inspectors are encouraged to consult field maps as well as their supervisors in order to identify formations capable of producing mineral resources.

C. Plugging Fluids

After mechanical isolation (e.g. bridge plug, retainer, etc.) is set in the wellbore, the wellbore will be circulated with clean 10ppg water or the heaviest field water available. Cement plugs will be displaced with heavy water from the same source. Cement plugs will have a cushion of fresh water pumped ahead and behind each plug to avoid contamination with fluids in the wellbore.

If the plugging procedures do not list the type of cement that will be used, the inspector will write the cement information into the document prior to approval.

- Where estimated bottom-hole static temperature is greater than or equal to ($\geq$) 220F, 35% silica flour by volume is required to be added to the cement mixture to meet state specifications.
 - Class G cement with 35% silica flour by volume is typically mixed @ 1.56* cu ft per sk and 15.6 ppg or greater to meet state specifications.

*Industry standards vary slightly so always check your calculations with company representative to assure you are using the same standards

- Where estimated bottom-hole static temperature is less than (<) 220F, “neat” Class G cement may be used for cement plugs to meet state specifications.
 - “Neat” Class G cement is typically mixed @ 1.15 cu_ft per sk and 15.8 ppg or greater to meet state specifications.
- For plugs pumped above the Dakota, “neat” Class G cement is required in order to avoid freshwater contamination.

D. Isolation of Active Production Zones

- Option 1 – Best suited for conventional wells:
 - A retainer will be set 50-100ft from the top of the perforations for each active zone for conventional wells. Attempts will be made to pump at least 90 sx cement below the retainer and leave the remaining 10 sx cement on top.
 Perforations for active production intervals will be scheduled to be squeezed with at least 100 sx cement, but cement volumes may be adjusted due to injection rates.
 If a well has collapsed casing or a tight spot and tubing can get through the tight spot a 250’ balanced plug (25 sx minimum) can be set and will need to be tagged.
 If the tight spot will not allow tubing to get thru tight spot and casing cannot be swedged out.
 A CR can be set above the tight spot and an injection rate can be attempted. Cement will have to be calculated to reach the perms.
- Option 2 TA’d wells:
 - CR or CIBP should be set within 100’ of perms or production liner top. 90 sx may or may not be required to be pumped below CR and 10 sx spotted on top. If a CIBP is set a 250’ balanced plug (25 sx minimum) should be spotted on top (cement may not be required for TA). If a small amount of cement was placed on the mechanical tool at the time of installation, additional cement may be required to meet the 250’ minimum.
- Option 3 – Best suited for wells with a horizontal lateral:
 - A mechanical plug should be set within 100’ of the liner top and a 150’ plug (25 sx minimum) should be spotted on top.
 - A minimum 250’ balanced plug may be set at KOP or just above the liner top (whichever is shallower) for Non Bakken lateral wells. All Bakken wells and gas wells require a tool to be used for zone isolation. A balanced plug is pumped with EOT (end-of-tubing) just below the perforations and extends at least 100’ above the top of the perforations for

conventional wells. The plug will need to be allowed to set up and is required to be tagged prior to pumping subsequent plugs. Additional cement or isolation may be required based on the results of tagging the plug. If CIBP or CICR is set with cement on top, the plug will not need to be tagged.

E. Isolation of Active Injection Zones

Perforations for active injection intervals will be scheduled to be squeezed with at least 100 sx cement. A retainer will be set 50-100ft from the top of the perforations for each active injection zone. Attempts will be made to squeeze at least 90 sx cement below the retainer and leave the remaining 10 sx cement on top.

If no squeeze pressure is observed during displacement, all 100 sx will be over-displaced below the retainer, and a second squeeze attempt will be made.

If the second squeeze is unsuccessful, a minimum 25 sx / 250ft plug will be circulated on top of the retainer.

When plugging a well with active perforations in the Dakota, it is recommended to place an additional Dakota – Fox Hills Isolation plug above the scheduled squeeze for the perforations at the surface casing shoe.

F. Casing Integrity Test

A casing integrity test will be scheduled. The test will take place after isolation has been obtained and the wellbore has been circulated with clean fluid. The test will be scheduled to at least 1000 psi pump pressure. If the casing fails the test, a CIBP will need to be set 50ft below perforations on any zones to be squeezed until casing integrity can be proven.

G. Isolation of Potential Production Zones

Where there is adequate cement behind the production casing, a minimum 25 sx OR 250ft balanced plug will be placed with the EOT approximately 50ft below the formation top. A single balanced plug may cover multiple producing zones.

Where there is inadequate cement behind the production casing, the casing will be perforated, and a squeeze attempted. The casing will be perforated approximately 50ft below the top of the producing zone. A retainer will be set between 50-100ft above the perforations. A minimum 100 sx squeeze will be scheduled.

H. Isolation of Known Casing Leaks & Previous Perforations

Previously squeezed perforations or known casing leaks below the Dakota – Fox Hills Isolation Plug must be properly isolated with cement. The area can be isolated with a balanced plug or the perforations may be re-squeezed.

I. Plug Placement for Nitrogen-Bearing Zones (Minnekahta / Minnelusa)

Nitrogen-bearing zones will be properly isolated in a way similar to potential production zones.

Where there is adequate cement behind the production casing, a minimum 25 sx OR 250ft balanced plug will be placed with EOT approximately 50ft below the top of the Minnekahta, which shall include the Minnelusa, Eroded Broom Creek (EBC) and Amsden where present.

Where there is inadequate cement behind the production casing, the casing will be perforated at least 50ft ABOVE the top of the Minnekahta for an isolation squeeze. A retainer will be set 50-100ft above the perforations. A minimum 100 sx squeeze will be scheduled.

Where there exists a nitrogen-bearing formation in the Minnelusa, but there is not a formation top on record, it is often acceptable to perforate or balance the plug 50ft below the top of the Spearfish formation.

J. Dakota –

- If there is adequate cement behind the production casing at the Dakota, a minimum 25 sx OR 250' balanced plug will be scheduled. This plug should be set in an area as near to the top of the Dakota (Mowry) as possible where there is adequate cement behind the casing. **IF there is inadequate cement behind the production casing at the Dakota, the casing will be perforated near the Newcastle or Mowry and a retainer set 100' above the perforations. A 100 sack squeeze will be scheduled.**

JA. Fox Hills (“Base of Surface” / “Fresh Water Zone”) Isolation -

- Be sure and check the setting depth of the surface casing to see if the shoe is set below fox hills. Older wells may require two squeezes (one below the Foxhills and one at the surface casing shoe) to adequately protect the Foxhills. If there is adequate cement behind the production casing at the surface casing shoe, a minimum 25 sx OR 250' balanced plug will be scheduled 50' below the base of surface pipe. If there is inadequate cement behind the production casing at the surface casing, a squeeze will be required the production casing should be perforated 50' below the surface casing shoe depth, and a retainer set 50-100ft above the perforations. A minimum 100 sx squeeze will be scheduled. For older wells with

short surface casing, the perforations should be in an area below the Fox Hills (500' min). The perforated interval may be adjusted further away from the surface casing shoe if necessary.

- For wells that operators wish to recover production casing, consult with your supervisor for the best plan of action. Each case will have its own unique set of circumstances and should be addressed as such.

K. Surface Plug

A surface plug is required inside the production casing and all annular regions from at least 60' below ground level to surface.

One method is to perforate the production casing at or below ($\geq$) 50ft below ground level. The cement crew may pump down the production casing and see returns up the annulus, or the more preferred method is to pump down the annulus and see returns up the production casing. Cement is adequate when good returns are seen at surface. This method may not produce adequate results if multiple casing strings are hung from the wellhead (e.g. cemented liners, water strings, etc.). **Be sure to gain circulation of fluid prior to cementing.**

A second common method is run a 1 " line at or below ($\geq$) 50ft. Cement is pumped down the 1 " line until good returns are seen at surface. This is done for each of the regions inside casing strings. This method requires the wellhead to be removed.

Witnessing Plugging

A. Pre-Job Meeting

A pre-job meeting may take place in-person, over the phone, by text message, etc. Operators should voice any concerns during the meeting.

A maximum pump pressure should be discussed for each plug during the pre-job meeting.

Approved procedures may need to be modified after a pre-job meeting.

B. Prepping the Wellbore

Inspectors are not required to be present while the operator is prepping the wellbore for plugging. All production equipment should be removed from the wellbore prior to plugging – failure to do so must be reported to the inspector.

It is recommended that the operator run a bit-and-scraper or gauge ring in order to identify problem areas in the wellbore. Scale build-up, casing collapse, high dog-leg severity, and other unfavorable situations can be identified using these methods.

After mechanical isolation has been set for the first plug, the wellbore will be circulated full of clean, heavy water.

Changes to the approved procedure may need to be made after prepping the wellbore.

C. Pressure Test

After isolating the top-most production or injection zone, the integrity of the casing must be tested. The inspector must witness the casing hold 1000 psi pump pressure before proceeding to pump additional plugs. A loss of 100 psi or 10% of the initial test pressure over 15 minutes is considered a failed test.

If the casing fails the initial integrity test, mechanical isolation must be set below each cement plug prior to pumping OR subsequent plugs must be tagged. Additional tests may be attempted after pumping each plug. Once an inspector has witnessed a passing casing integrity test, mechanical isolation is no longer required below subsequent plugs.

D. On-Site Responsibilities

Inspectors are responsible for:

- Verifying all procedures and mix & displacement numbers with the operator prior to pumping each plug, and verify the depth of the plug
- Witnessing quality control tests done on site
- Witnessing the cement being mixed and pumped in accordance with state standards
- Witnessing the set-up properties of a mixed-cement sample and grabbing a sample

E. Squeezes

The inspector will witness an injection rate test prior to mixing cement for a squeeze. If the injection rate exceeds the max pressure discussed for the squeeze and the pump rate is less than 1 barrel per minute (BPM), the operator should sting out of the retainer and spot cement to attempt a squeeze. Inspectors may seek permission from their supervisor to pump less cement than originally planned in this situation.

Pump pressure often climbs during displacement of cement. If the pump pressure exceeds the maximum pump pressure discussed for the plug, it is OK to sting out of the retainer and balance the remaining cement on top of the tool.

F. Surface Plug and Capping the Wellhead

If an inspector does not witness good cement returns for the surface plug, they are required to verify that there is cement at surface inside each casing string. This is generally done by receiving a picture of the casing stump or visiting the site after the wellhead has been cutoff (before the cap is welded on).

If the surface plug falls, additional cement will need to be added to ensure cement is at surface. All casing strings shall be cut off at least four (4) feet below the final surface contour, and a cap with file number shall be welded thereon.

G. Variances to Approved Procedures

Variances to approved plugging procedures are sometimes necessary due to conditions in the wellbore that were previously unknown. Inspectors are expected to be prepared with all relevant information and suggestions when discussing variances with their supervisor(s). Variances may be granted by the inspector's supervisor(s) verbally or by text, email, etc. Variances often do not require formal approval (i.e. submitting an updated plugging procedure).

H. Forms Due

43-02-03-33. NOTICE OF INTENTION TO PLUG WELL.

Prior to commencement of a plugging, the consultant is responsible for submitting a plugging procedure and a wellbore schematic.

Upon completion of plugging operations the consultant is responsible for compiling and submitting a Form 7 plugging report.

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:

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 well cannot be plugged according to the Plugging Specifications attached hereto as Exhibit A, COMMISSION may modify the Plugging Specifications to ensure 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, and Plugging 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 prior to approval of the Plugging Report 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 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

CONTRACTOR

By:_____

By:_____

Title:_____

Title:_____

DATE:_____

DATE:_____