

WELL PLUGGING CONTRACT

This agreement is made on the date indicated below between

("CONTRACTOR"), and the State of North Dakota by its Industrial Commission, Oil and Gas Division, ("COMMISSION").

I DESCRIPTION OF WORK

CONTRACTOR shall provide all materials and labor necessary to and shall perform the work described in the accompanying Plugging Specifications for each of the following well sites:

Grenora-Madison Unit #1
SWNW Sec. 28-T159N-R103W
Williams County, ND
Well File No. 2864

Grenora-Madison Unit #3
SW SW Sec. 29-T159N-R103W
Williams County, ND
Well File No. 3062

Grenora-Madison Unit #5
SWSW Sec. 28-T159N-R103W
Williams County, ND
Well File No. 3082

Grenora-Madison Unit #11
SWSE Sec. 31-T159N-R103W
Williams County, ND
Well File No. 3631

II TIME FOR COMPLETION

The work under this contract must be completed within ninety days after the date of this contract.

III COMPENSATION

The COMMISSION shall pay CONTRACTOR for the plugging _____ Dollars (\$_____) within thirty days after the COMMISSION has accepted the work. Should the condition of the well be such that it cannot be plugged according to the specifications, the COMMISSION may modify the Plugging Specifications to insure the well is properly plugged by CONTRACTOR. In particular, the responsibility of the CONTRACTOR may be revised by the COMMISSION. In the case where such revisions result in increased material and labor, the CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges, as determined by the COMMISSION, for the additional material and labor. In the case where such revisions result in decreased material and labor, the CONTRACTOR's compensation will be decreased by an amount based on the usual and customary charges relative to material and labor expenses, as determined by the COMMISSION.

IV CONTRACT DOCUMENTS

The Plugging Specifications are a part of this contract. The complete contract includes the Invitation to Bid, Instructions to Bidder, Bid Form, Plugging Specifications, and Contractor's Performance and Payment Bond.

V
LIABILITY AND INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State) from any and all claims of any nature, including all costs, expenses and attorney's fees, which may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of the State's sole negligence. 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. CONTRACTOR also agrees to defend, indemnify, and hold the State harmless 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, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages covering the CONTRACTOR for any and all claims of any nature which may in any manner arise out of or result from this agreement:

- 1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability with minimum liability limits of \$250,000 person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all North Dakota statutory requirements, including: a) an "all states endorsement" to cover claims occurring outside the State of North Dakota if any of the services provided under this contract involve work outside the State of North Dakota; and b) 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 if CONTRACTOR is domiciled outside the State of North Dakota.

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 the CONTRACTOR. The amount of any deductible or self retention is subject to approval by the 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. The policies shall be in form and terms approved by the COMMISSION. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.
- 3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the CONTRACTOR in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in 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 rights and coverages as CONTRACTOR under said policies. The additional insured endorsement for the commercial general liability policy shall be written on a form equivalent to the ISO 1985 CG 20 10-form, or such other form as approved by the State, and shall not limit or delete State's coverage in any way based upon State's acts or omissions.
- 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 the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative;
 - c. a provision that any attorney who represents the State under this policy 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;
 - d. 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;
 - e. cross liability/severability of interest for all policies and endorsements;
- 6) 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.
- 7) The CONTRACTOR shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to commencement of this agreement.
- 8) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to immediately terminate this agreement.

VII MERGER CLAUSE

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

VIII NONASSIGNMENT

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty under this contract without the COMMISSION's written consent.

IX
ATTORNEYS' FEES

If a lawsuit is brought by the COMMISSION to obtain performance of any kind under this contract, and the COMMISSION prevails, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay the COMMISSION's reasonable attorney fee and costs in connection to the lawsuit.

X
APPLICABLE LAW AND VENUE

This contract is governed by the laws of the State of North Dakota. Any action to enforce this contract must be brought in The District Court of Burleigh County, North Dakota.

XI
INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract. The CONTRACTOR, its employees, agents or representatives are not COMMISSION employees, for any purpose, including but not limited to, 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 Worker's Compensation Act. No part of this contract shall be construed to represent the creation of an employer/employee relationship. The CONTRACTOR will retain sole and absolute discretion in the manner and means of carrying out the CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

XII
AUTHORITY TO CONTRACT

CONTRACTOR shall not have the authority to contract for or incur obligations on behalf of the COMMISSION. However, the CONTRACTOR may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this agreement and incorporates this agreement, including any attachments. The CONTRACTOR agrees to be solely responsible for the performance of any SUB CONTRACTOR.

XIII
NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR shall give a hiring preference to North Dakota residents, with first preference to honorably discharged disabled veterans, and veterans of the United States Armed Forces (N.D.C.C. § 43-07-20). CONTRACTOR shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this agreement all licenses and permits required by law.

XIV
SEVERABILITY

If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected, and the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

XV
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 or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

XVI
SPOILIATION

CONTRACTOR agrees to promptly notify the COMMISSION of all potential claims which arise from or result from this agreement. CONTRACTOR further agrees to 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 to give to the COMMISSION the opportunity to review and inspect such evidence, including the scene of the accident.

XVII
COMPLIANCE WITH PUBLIC RECORDS LAW

CONTRACTOR understands that, except for certain disclosures, the COMMISSION must disclose to the public upon request records it receives from the CONTRACTOR. CONTRACTOR further understands that any records which it obtains or generates under this contract, except for certain records deemed confidential under state law, may be open to the public upon request under the state's open records law. CONTRACTOR agrees to contact the COMMISSION immediately upon receiving a request for information under the open records law and to comply with the COMMISSION's instructions on how to respond to the request.

XVIII
TERMINATION OF CONTRACT

Termination for lack of funding or authority. The COMMISSION may terminate this contract effective upon delivery of written notice to the CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:

- a) 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. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
- b) 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.
- c) 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.

Termination for cause. The COMMISSION by written notice of default to the CONTRACTOR may terminate the whole or any part of this contract:

- a) If the CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by the COMMISSION; or
- b) If the 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 the COMMISSION provided in the above clause related to defaults by the CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

XIX
NOTICE

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

_____ or _____

XX
TAXPAYER ID

CONTRACTOR's North Dakota tax ID number is: _____.
CONTRACTOR's federal employer ID number is: _____.

XXI
EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties; if the dates of signing below are different, then the later date of signing is the effective date.

N.D. Industrial Commission
Department of Mineral Resources
Oil & Gas Division

By: Director
DATE: _____

By: CONTRACTOR

Title:
DATE: _____