

WELL RECLAMATION CONTRACT

The parties to this contract are the State of North Dakota, acting through the North Dakota Industrial Commission, 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 to and shall perform the work described in the Reclamation Specifications, attached hereto as Exhibit A and incorporated into this contract, for the following well:

Wolf 29-1
SWSE Sec. 29-T139N-R95W
Stark County, ND
Well File No. 19272

Wieglanda 23-1
NESE Sec. 23-T139N-R94W
Stark County, ND
Well File No. 19601

Zastoupil 22-1
NESE Sec 22-T139N97W
Stark County, ND
Well File No. 19258

II TIME FOR COMPLETION

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

III COMPENSATION

COMMISSION will pay the CONTRACTOR for the services provided under this contract an amount not to exceed _____ Dollars (\$_____.00), to be paid within thirty days after COMMISSION has accepted the work. If COMMISSION determines, in its sole discretion, that the well cannot be reclaimed according to the Reclamation Specifications, COMMISSION may modify the Reclamation Specifications to insure the well is properly reclaimed by CONTRACTOR. If such modifications result in increased material and labor, CONTRACTOR's compensation will be increased by an amount equal to the usual and customary charges, for the additional material and labor, as determined by COMMISSION. In the case where such modifications result in decreased material and labor, 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 COMMISSION.

IV CONTRACT DOCUMENTS

The contract documents that accompany this contract are the Invitation to Bid, Instructions to Bidder, Bid Form, Reclamation Specifications and Contractor's Performance Bond and Labor and Materials Payment Bond.

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 agreement. 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 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 \$250,000 per person and \$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; and
- 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 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;

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 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;

f) 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

g) 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; and

7) Failure to provide insurance as required in this contract is a material breach of contract entitling COMMISSION to terminate this contract immediately.

VII MERGER AND MODIFICATION

This contract constitutes 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, 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. However, 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

If a lawsuit is brought by COMMISSION to obtain performance of any kind under this contract, and COMMISSION prevails, 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 brought in the district court of Burleigh County, North Dakota.

XI
INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract. 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. CONTRACTOR will retain 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 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 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.

XIII
SEVERABILITY

If any term of this agreement is declared to be illegal or unenforceable, the validity of the remaining terms are unaffected, and 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 or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

XV
SPOILIATION - NOTICE OF POTENTIAL CLAIMS

CONTRACTOR agrees to promptly notify COMMISSION of all potential claims which 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 to give COMMISSION the opportunity to review and inspect such evidence, including the scene of the accident.

XVI
TERMINATION OF CONTRACT

- a. Termination without cause. This contract may be terminated by mutual consent of both parties.
- b. Termination for lack of funding or authority. COMMISSION, by written notice of default 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.

- c. 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 its obligations under this contract, or pursues its obligations in a manner that endangers 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 mailed when addressed to the parties at the following addresses:

	or	

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, and certificates will be furnished upon request by the purchasing agency.

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

CONTRACTOR shall not be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond CONTRACTOR'S reasonable control and CONTRACTOR gives notice to COMMISSION immediately 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

COMMISSION does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to 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. § 44-04-18. 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, except for disclosures prohibited in this contract, 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, except for records that are confidential 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 immediately 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 or purchased under this contract belong to COMMISSION and must be delivered to COMMISSION at COMMISSION'S request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to COMMISSION all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable COMMISSION to protect its rights under this section.

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

By: _____
Title: _____
DATE: _____

CONTRACTOR

By: _____
Title: _____
DATE: _____