



# Public Service Commission

## State of North Dakota

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June 21, 2011

Mr. John Sebastian  
Hinshaw & Culbertson, LLP  
222 North LaSalle Street, Suite 300  
Chicago, IL 60601

RE: Buechler/Velva Abandoned Mine Lands (AML) Project  
Invoice No. 3 from Kern & Tabery, Inc.

Dear Mr. Sebastian:

Attached is a copy of the third invoice the AML Division has received from Kern & Tabery, Inc. for work that they have completed at the 2010 Buechler/Velva AML project and staff spreadsheets that are used to track contractor invoices and payments. The amount of Kern & Tabery's third invoice is \$36,294.00 for the mobilization of additional equipment and dirt work that has been completed. AML staff has reviewed the invoice and approves payment of this amount in accordance with Covenant No. 3 of the Tender Agreement. We understand that First National Insurance Company of America needs to make payment to Kern & Tabery within seven days of your receipt of this letter.

If you have any questions, please contact Jim Deutsch or Bill Dodd with the AML Division.

Sincerely,

Darrell Nitschke  
Executive Secretary

### Attachments

cc: Jeff Olson, First National Insurance Company of America  
Kevin Tabery, Kern & Tabery, Inc.

AML/2010/Buechler-Velva/KernTabery2011takeover/Surety\_K&T\_invoice3\_6-21-11.doc

INVOICE: 003

Project: BUECHLER/VELVA COMPLETION PROJECT  
 Project No.: 10168

Contractor: Kern & Tabery Inc.  
 222 SE 1st Street, Suite 3  
 Wadena, MN 56482

Contract No.: AM-588-10  
 Date of Invoice: 06/21/11  
 Dates Service Rendered: 6/6/11 to 6/18/11

Spec No.	Description	Orig. Quantity	Unit	Unit Price	Bid Amount	Previous Invoices		Current Invoice		Total To Date		
						Quantity	Amount	Quantity	Amount	Quantity	Amount	
(1)	Mobilization	1	L. Sum	\$75,432.00	\$75,432.00	0.50	\$37,716.00	0.15	\$11,314.80	0.65	\$49,030.80	
(2)	Water Management	1	L. Sum	\$9,000.00	\$9,000.00	0.20	\$1,800.00		\$0.00	0.2	\$1,800.00	
(3A)	Topsoil Salvage	1	Cu. Yds.	\$1.85	\$1.85	1600.00	\$2,960.00		\$0.00	1600	\$2,960.00	
(3B)	Topsoil Salvage-Respread	20048	Cu. Yds.	\$1.25	\$25,060.00		\$0.00		\$0.00	0	\$0.00	
(4)	Dirt Work	824586	Cu. Yds.	\$0.96	\$791,602.56	31660.00	\$30,393.60	26020	\$24,979.20	57680	\$55,372.80	
(5)	Culvert	240	Ft.	\$85.00	\$20,400.00		\$0.00		\$0.00	0	\$0.00	
(6)	Fert. Seed & Mulching	150	Acres	\$420.00	\$63,000.00		\$0.00		\$0.00	0	\$0.00	
(7)	Wattles	12000	Ft.	\$2.67	\$32,040.00		\$0.00		\$0.00	0	\$0.00	
(8)	Force Account	1	L. Sum	\$80,000.00	\$80,000.00		\$0.00		\$0.00	0	\$0.00	
(9)	Clean-up	1	L. Sum	\$3,360.00	\$3,360.00		\$0.00		\$0.00	0	\$0.00	
					Original Contract	\$1,099,896.41		\$72,869.60		\$36,294.00		\$109,163.60
					Change Orders (+)	\$0.00	Change Order(s)	\$0.00	Change Order(s)	\$0.00	Total CO.	\$0.00
					Change Orders (-)	\$0.00						
					Grand Total	\$1,099,896.41						
					Contract Balance	\$990,732.81						
							Amount Paid	\$72,869.60	AMOUNT DUE	\$36,294.00	Total Amt.	\$109,163.60

Project Manager:

AML Director:

*MEZ*  
*JW*  
 OKWD 6/21/11

AMOUNT DUE = \$36,294.00  
 Please note: Surety (Liberty) to pay first \$272,491.39

**CONTRACTOR PRODUCTION FIGURES**

Project: Buechler/Velva AML Project NDO04

Contractor: Kern & Tabery Inc. 222 SE 1st Street, Suite 3, Wadena, MN 56482

Submittal Number: 3

From: 6/6/2011 through 6/18/2011

<u>Items</u>	<u>Equipment Description</u>	<u>Operating Hrs.</u>	<u>Avg. Cycle Time</u>	<u>Avg. Load Capacity</u>	<u>Job Eff. Factor</u>	<u>Est. Volumes Moved</u>	<u>Totals</u>
1. Mobilization	\$75,432.00 total @ 15%						\$11,314.80
4. Dirt Work	D9G Dozer	60.5	3.0 minutes	10 CY	90%	12,100 cy @ \$0.96	\$11,616.00
	D8N Dozer	55.5	3.0 minutes	8 CY	90%	8,880 cy @ \$0.96	\$ 8,524.80
	D8R Dozer	31.5	3.0 minutes	8 CY	90%	5,040 cy @ \$0.96	\$ 4,838.40
					Volume	26,020 CY	
TOTAL DOLLARS THIS PAY REQUEST							<u>\$36,294.00</u>

The Contractors signature certifies the accuracy and completeness of these estimated production figures.

Kern & Tabery Inc.

Contractor



Contractor Signature Kevin Tabery, President-Treasurer

6/20/2011

Date

**FIGURE 3**

**Contractor Payment Requests  
2011 Buechler/Velva Project  
Kern & Tabery, Inc.  
Tender Agreement**

**Note:** Under Tender Agreement, Surety agreed to pay the first 272,491.40, which is the Contract Shortfall amount.  
When this amount is exhausted, PSC will pay the remainder of the Tender Agreement Amount.

**Pay 1 : For Surety Payment 5-23-11**

Dates of Service: May 18-21, 2011

Item	Units	Unit Price	Total	Cumulative Units	Cumulative \$\$	Bid Price	%
Mobilization LS	0.50	\$75,432.00	\$37,716.00	0.50	\$37,716.00	\$75,432.00	50.00%
Water Management LS	0.20	\$9,000.00	\$1,800.00	0.20	\$1,800.00	\$9,000.00	20.00%
Topsoil Salvage 3A CY	1600.00	\$1.85	\$2,960.00	1600.00	\$2,960.00	\$1.85	160000.00%
Topsoil Salvage 3B (respread) CY	0.00	\$1.25	\$0.00	0.00	\$0.00	\$25,060.00	0.00%
Dirt Work CY	11000.00	\$0.96	\$10,560.00	11000.00	\$10,560.00	\$791,602.56	1.33%
Culvert FT	0.00	\$85.00	\$0.00	0.00	\$0.00	\$20,400.00	0.00%
Fert/Seed/Mulch AC	0.00	\$420.00	\$0.00	0.00	\$0.00	\$63,000.00	0.00%
Wattles FT	0.00	\$2.67	\$0.00	0.00	\$0.00	\$32,040.00	0.00%
Force Account LS	0.00	\$80,000.00	\$0.00	0.00	\$0.00	\$80,000.00	0.00%
Clean Up LS	0.00	\$3,360.00	\$0.00	0.00	\$0.00	\$3,360.00	0.00%
<b>Total This Invoice</b>			<b><u>\$53,036.00</u></b>		<b>\$53,036.00</b>	<b>\$1,099,896.41</b>	<b>4.82%</b>

**Note:** The Topsoil Salvage 3A bid item was an unknown and was bid with a unit cost and 1 unit. Any costs for this item will be monitored and charged to the force account so that there will be no addition to the total contract price.

**Pay 2 : For Surety Payment 6-7-11**

Dates of Service: May 23 to June 4, 2011

Item	Units	Unit Price	Total	Cumulative Units	Cumulative \$\$	Bid Price	%
Mobilization LS	0.00	\$75,432.00	\$0.00	0.50	\$37,716.00	\$75,432.00	50.00%
Water Management LS	0.00	\$9,000.00	\$0.00	0.20	\$1,800.00	\$9,000.00	20.00%
Topsoil Salvage 3A CY	0.00	\$1.85	\$0.00	1600.00	\$2,960.00	\$1.85	160000.00%
Topsoil Salvage 3B (respread) CY	0.00	\$1.25	\$0.00	0.00	\$0.00	\$25,060.00	0.00%
Dirt Work CY	20660.00	\$0.96	\$19,833.60	31660.00	\$30,393.60	\$791,602.56	3.84%
Culvert FT	0.00	\$85.00	\$0.00	0.00	\$0.00	\$20,400.00	0.00%
Fert/Seed/Mulch AC	0.00	\$420.00	\$0.00	0.00	\$0.00	\$63,000.00	0.00%
Wattles FT	0.00	\$2.67	\$0.00	0.00	\$0.00	\$32,040.00	0.00%
Force Account LS	0.00	\$80,000.00	\$0.00	0.00	\$0.00	\$80,000.00	0.00%
Clean Up LS	0.00	\$3,360.00	\$0.00	0.00	\$0.00	\$3,360.00	0.00%
<b>Total This Invoice</b>			<b><u>\$19,833.60</u></b>		<b>\$72,869.60</b>	<b>\$1,099,896.41</b>	<b>6.63%</b>

**Pay 3 : For Surety Payment 6-21-11**

Dates of Service: June 6-18, 2011

Item	Units	Unit Price	Total	Cumulative Units	Cumulative \$\$	Bid Price	%
Mobilization LS	0.15	\$75,432.00	\$11,314.80	0.65	\$49,030.80	\$75,432.00	65.00%
Water Management LS	0.00	\$9,000.00	\$0.00	0.20	\$1,800.00	\$9,000.00	20.00%
Topsoil Salvage 3A CY	0.00	\$1.85	\$0.00	1600.00	\$2,960.00	\$1.85	160000.00%
Topsoil Salvage 3B (respread) CY	0.00	\$1.25	\$0.00	0.00	\$0.00	\$25,060.00	0.00%
Dirt Work CY	26020.00	\$0.96	\$24,979.20	57680.00	\$55,372.80	\$791,602.56	7.00%
Culvert FT	0.00	\$85.00	\$0.00	0.00	\$0.00	\$20,400.00	0.00%
Fert/Seed/Mulch AC	0.00	\$420.00	\$0.00	0.00	\$0.00	\$63,000.00	0.00%
Wattles FT	0.00	\$2.67	\$0.00	0.00	\$0.00	\$32,040.00	0.00%
Force Account LS	0.00	\$80,000.00	\$0.00	0.00	\$0.00	\$80,000.00	0.00%
Clean Up LS	0.00	\$3,360.00	\$0.00	0.00	\$0.00	\$3,360.00	0.00%
<b>Total This Invoice</b>			<b><u>\$36,294.00</u></b>		<b>\$109,163.60</b>	<b>\$1,099,896.41</b>	<b>9.92%</b>