

# **INVITATION FOR BID**

**408.16.02.002**

**2016 Wilton Phase 2 AML Project**

**ND 001**

**Burleigh County, ND**

**Abandoned Mine Lands Division**

**North Dakota Public Service Commission**

**Bismarck, North Dakota**

**February, 2016**

**INVITATION FOR BID**  
**2016 Wilton Phase 2 AML Project**  
**ND 001**  
**Burleigh County, ND**  
**Bid Number 408.16.02.002**

**FOREWORD**

- Part I. GENERAL INFORMATION**
- Part II. SPECIFIC PROVISIONS**
- Part III. ATTACHMENTS**
- Part IV. BID FORMS**

## **FOREWORD**

This is an Invitation for Bid (IFB) to reclaim Abandoned Mine Lands (AML) sites. These AML sites contain abandoned underground lignite coal mines and are located near Wilton, North Dakota.

The 2016 Wilton Phase 2 AML Project includes areas along state and county highways and adjacent township roads as shown on the map on page 45 and as further described:

- ND Highway 36 between Sections 4, 5, 6, 7, 8 & 9 , T142N, R79W, including the entire highway right-of-way;
- From the intersection of ND Highway 36 and 41<sup>st</sup> Street proceeding north ½ mile including the entire road right-of-way; and,
- Other areas as directed by the Commission's Project Manager.

The North Dakota Public Service Commission (Commission, PSC, Purchasing Agency or State) is interested in bids from qualified firms to achieve reclamation within this project area. Work must be completed as specified during the 2016 construction season.

A completed Prequalification Package must be received in the office of the North Dakota Public Service Commission no later than **5:00 p.m., Central Standard Time (CST), March 10, 2016**. (See page 11, Special Condition #10.) A mandatory pre-bid on-site meeting will be held at the project site for qualified bidders at **10:30 a.m. Central Daylight Time (CDT), March 28, 2016** at the intersection of 41<sup>st</sup> Street and ND State Highway 36 near Wilton, in Burleigh County, North Dakota (See page 11, Special Condition #11.) Failure to submit the Prequalification Package on time or failure to attend the on-site meeting will result in bidder disqualification.

To bid, submit the required materials to the Public Service Commission no later than **11:00 a.m. CDT, April 7, 2016**. The public bid opening will be held at 11:00 a.m. CDT, April 7, 2016, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

Any inquiries regarding the Invitation for Bid must in writing and addressed to William E. Dodd, Procurement Officer, North Dakota Public Service Commission, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58505-0480. Deadline for questions is **5:00 p.m. CDT, March 30, 2016**.

This document can be accessed from the State Procurement Internet website, **[www.nd.gov/spo/](http://www.nd.gov/spo/)**. Please be informed that maps, drilling information and other attachments may be excluded from the materials on the Internet and the Commission makes no guarantee of completeness, accuracy or availability of Internet documents.

**Part I.**  
**General Information**



**INVITATION FOR BID**  
State of North Dakota  
OMB/Central Services Division  
SFN 2464 (8-2008)

**North Dakota Public Service Commission**  
**Abandoned Mine Lands Division**  
600 East Boulevard Avenue, Dept 408  
Bismarck, ND 58505-0480  
PH: 701-328-4096

<b>Bid Number: 408.16.02.002</b>	<b>Bid Title:</b> 2016 Wilton Phase 2 AML Project	
<b>Date Issued: February 17, 2016</b>	<b>Procurement Officer:</b> William E. Dodd	
<b>Deadline for Questions:</b> March 30, 2016, 5:00 p.m., CDT	<b>Telephone:</b> 701-328-4101	<b>Fax:</b> 701-328-2133
<b>Bid Opening Date and Time:</b> April 7, 2016, 11:00 a.m., CDT, State Capitol, 12 <sup>th</sup> Floor, Commission Hearing Room	<b>E-mail:</b> <a href="mailto:wdodd@nd.gov">wdodd@nd.gov</a>	
<b>Performance Period:</b> June 1 – September 8, 2016	<b>Commodity or Service:</b> 962 – Miscellaneous Services #2 Sub Class 73 912 – Construction Services Gen Sub Class 23	

You are invited to participate in this Invitation for Bid. Please submit your bid response in conformance with the instructions specified herein.

By submitting a bid response, the bidder agrees and promises to sell, furnish, and deliver to the State all commodities and services contained in this Invitation for Bid for which a contract is awarded by the State. The bidder shall fully perform the contract in accordance with the all specifications, terms and conditions, and requirements contained in the Invitation for Bid and shall comply with all applicable provisions of the North Dakota Century Code Chapters 54-44.4, 46-02, 44-08 and North Dakota Administrative Code Chapter 4-12, made a part of the Invitation for Bid and contract by reference.

Written acceptance of the bidder's bid response by the State, by issuance of a purchase order or contract, constitutes a binding contract made and entered into by and between the State of North Dakota, acting through the Purchasing Agency named above, and the bidder named below:

<b>Bidder Company Name:</b>			
<b>Street Address:</b>			
<b>P.O. Box:</b>	<b>City</b>	<b>State:</b>	<b>Zip Code:</b>
<b>Toll Free Telephone:</b>		<b>Telephone:</b>	<b>Fax:</b>
<b>Federal I.D. or Social Security No.:</b>		<b>E-Mail:</b>	
<b>Type or Print Name of Person Signing:</b>		<b>Title:</b>	
<b>Authorized Signature:</b>			

## MAILING INSTRUCTIONS

Mail a completed and signed Invitation for Bid response in a sealed envelope to the address listed below. Invitation for Bid responses received after the date and time specified in the Invitation for Bid will be rejected. Address the envelope containing your response in the following manner:

BID NUMBER	<b>408.16.02.002</b>
BID TITLE	<b>2016 Wilton Phase 2 AML Project</b>
BID OPENING DATE	<b>April 7, 2016</b>
BID OPENING TIME	<b>11:00 a.m. CDT</b>
AGENCY	<b>PUBLIC SERVICE COMMISSION 600 EAST BOULEVARD AVE, DEPT 408 BISMARCK ND 58505-0480</b>

**Bidder Checklist.** Have you remembered to:

- Review all instructions, terms and conditions, and specifications to ensure your bid response complies?
- Double check your bid price(s)?
- Prepare your bid price as required by the attached bid form?
- Sign your bid and the Invitation for Bid form?
- Initial any alterations or corrections?
- Attach bid bond and MBE/WBE Certification?
- Addressed envelope as indicated?

### Bidder's Instructions

1. **Addition of Terms and Conditions.** Additional terms and conditions submitted with a bid response are of no effect unless accepted in writing by the Purchasing Agency. Bids with any additional terms and conditions may be rejected as non-responsive.
2. **Assistance to Bidders with a Disability.** Bidders with a disability who need an accommodation shall contact the Procurement Officer prior to the deadline for receipt of bids so that reasonable accommodation can be made.
3. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 60 days, unless otherwise specified by the Procurement Officer in writing.
4. **Bid Opening.** All bids received by the time and date of the bid opening will be publicly opened by the Purchasing Agency at **11:00 a.m. CDT, April 7, 2016**, in the Commission Hearing Room on the 12<sup>th</sup> floor of the State Capitol in Bismarck, North Dakota. Interested parties are invited to attend the bid opening.
5. **Bid Results.** Bidders desiring a copy of the bid results are instructed to request such and include a self-addressed, stamped, envelope or email address with their bid response. Bid results will be mailed when an award decision is made. Bidders may also obtain bid results or arrange to review the bid file by contacting the Purchasing Agency.

6. **Corrections.** The Bidder's authorized representative shall initial any corrections and alterations (i.e. erasers, whiteouts, correction tape, etc.) made to the bid response. Those bid responses with corrections and alterations that are not initialed are subject to confirmation by the Procurement Officer.
7. **Definitions:**
  - Bidder – any person or firm submitting a competitive bid in response to a solicitation.
  - Bid Results – a summary of all bid responses received and the award results.
  - Bid Response – the executed document submitted by a bidder in response to a solicitation.
  - Contractor – any person or firm having a contract with a governmental body.
  - Solicitation – the process of notifying prospective bidders that the state wishes to receive bids for furnishing goods or services.
8. **Facsimile Bids.** Bid responses faxed to the Purchasing Agency will be rejected. Bids may be faxed to a third party who shall put the bid in an envelope and deliver it to the Procurement Officer before the date and time specified in the solicitation.
9. **Late Bids.** It is the bidder's responsibility to ensure that a bid response is physically deposited with the Purchasing Agency prior to the date and time specified for the opening. Late bid responses will not be opened and will be rejected regardless of the degree of lateness or the reason.
10. **Minor Informalities.** The State reserves the right to waive minor informalities in bid responses in accordance with N.D.A.C. § 4-12-10. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders.
11. **Prices, Currency.** All prices must be in United States currency.
12. **Pricing (Unit and Total Prices).** The unit price is to be according to the unit of measurement specified in the solicitation. In the event of mathematical differences between the unit price and extended total, the unit price will prevail.
13. **Protests.** An interested party may protest the solicitation within seven days before the bid opening or protest the Notice of Intent to Award within seven days after receiving notice in accordance with N.D.C.C. § 54-44.4-12 and N.D.Admin.Code § 4-12-14. Notice of Award will be issued to all Bidders. Seven calendar days after award or issuance of the Notice of Intent to Award, it will be assumed that all interested parties knew or should have known all the facts surrounding the award.
14. **Questions and Clarifications.** All questions and requests for clarification regarding this solicitation must be addressed to the Procurement Officer. The requirements of this solicitation can only be altered by written amendment of the solicitation. Verbal communications from whatever source are of no effect. Questions must be received by **5:00 p.m. CDT, March 30, 2016**, to allow the Procurement Officer to issue any needed amendments in sufficient time before the bid opening date.

15. **Review of the Bids.** After the bid opening, bids become subject to North Dakota open records laws. Interested parties may request public information and make arrangements to review the bid file by contacting the Procurement Officer during normal working hours, between 8:00 a.m. and 12:00 p.m. and 1:00 p.m. and 5:00 p.m., Monday through Friday.
16. **Rejection.** The State reserves the right to reject any and all bids in whole or in part. Bid responses will be rejected if:
  - the bid response is not legible;
  - the bid response is not completed as requested;
  - the bid response is faxed to the Purchasing Agency;
  - the bid response is not responsive to the specifications or other requirements of the solicitation;
  - the bid response is received after the time and date specified;
  - the bidder was required to be registered as an approved Bidder by the deadline for receipt of bids, and failed to do so;
  - the bidder is determined to be not responsible, in accordance with N.D.Admin.Code § 4-12-11-04.
18. **Signature.** The bidder submitting the bid response or that bidder's duly authorized agent or representative shall sign the bid response manually in ink. The name and title of the person signing the bid response must be typed or printed below the signature.
19. **Specifications, Brand Name or Equivalent.** Unless otherwise indicated in the detailed specifications of this solicitation, the use of a specific brand name or make and model is for illustrative purposes only, and the State will consider equivalent products. If a commodity or service put forth by a Bidder is rejected as not being equivalent, the Procurement Officer will notify the bidder of the rejection.
20. **Specifications, Compliance.** All bids submitted in response to this Invitation for Bid must comply with the specifications contained herein, and the successful bidder will be held responsible. Noncompliance with specifications is grounds for rejection of the bid response. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the specifications stated herein shall contact the Procurement Officer in writing as soon as possible, so the Procurement Officer can determine whether the specifications need to be amended.
21. **Withdrawal or Changes to a Bid Response Prior to the Bid Opening Date and Time.** Before the bid opening date and time, the bidder's authorized representative may withdraw or change a bid response by making a written request to the Procurement Officer.
22. **Withdrawals After the Bid Opening Date and Time.** After the opening, no changes may be made to the bid response. The bidder may make a written request to withdraw the bid response, subject to approval by the Purchasing Agency. Bidders repeatedly withdrawing bids after the opening date may be removed from the State Bidders List.

## GENERAL TERMS AND CONDITIONS

General terms and conditions are contained in the attached Sample Contract.

## SPECIAL TERMS AND CONDITIONS

1. **Approved Bidder Registration.** Every person or business entity that desires to bid on contracts for commodities and services must be an approved Bidder in order to be placed on the bidders list. Bidders shall comply with the Bidder registration requirements related to approved bidder registration as set forth in N.D.C.C. § 54-44.4-09 and this solicitation:

**Bidders Shall Be Approved Before Contract Award.** Bids will be accepted from Bidders who are not currently Approved Bidders for the State of North Dakota; however, the successful bidder will be required to become approved prior to award, in accordance with N.D.C.C. § 54-44.4-09. To become an Approved Bidder, you shall: 1) register with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders Application to the ND State Procurement Office. Registration instructions and forms are available on-line at: [www.nd.gov/spo/](http://www.nd.gov/spo/). Contact the ND State Procurement Office at 701-328-2683 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance. The successful bidder shall register and become approved within thirty calendar days or shorter time specified in writing by the Purchasing Agency from the date of the Notice of Intent to Award. The bid or proposal may be rejected if the Bidder fails to register within the specified time period.

**Placement on the bidders list does not guarantee a Bidder will receive notice of every formal solicitation. Bidders shall maintain current information by submitting a Notice of Change form to the State Procurement Office (Fax 701-328-1615). Visit the website for forms: [www.nd.gov/spo/](http://www.nd.gov/spo/).**

2. **Award.** Award will be made to the responsible bidder with the lowest priced bid that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:
  - All or none.
3. **Award, Local Service.** Service within 10 days after receipt of the Notice to Proceed is required. Bidder shall have facilities or service providers within a commuting distance to meet this requirement.
4. **Bid Bond, Type.** No bid will be considered unless accompanied by a bidder's bond, certified check or cashier's check in a sum equal to five percent (5%) of the full amount of the bid. A bidder's bond must be executed by the bidder as principal and by a surety company authorized to do business in North Dakota as surety. A certified check or a cashier's check must be drawn on the Bank of North Dakota or a federally insured, solvent bank. If, within ten days after notice of an award, the successful bidder should fail to execute a contract with the owner, then the surety will pay unto the owner for the use and benefit of the owner five percent (5%) of the bid or bids on the contract on which there is a default or the certified check or cashier's check of the bidder will be forfeited to the owner.

The Commission will retain the bid bond, cashier's check or certified check of the three (3) lowest bidders until an award is made. In the event that the lowest bidder submits a check, the check may be negotiated and the money retained by the owner until the contract has been awarded and properly executed. All other unsuccessful bidders will have their bid bonds, cashier's checks or certified checks returned immediately. The successful bidder and other low bidders whose bonds or checks are retained will have their bid bonds, certified checks or cashier's checks returned after the Commission has successfully contracted the work.

5. **Payment and Performance Bonds.** The bidder whose bid is accepted is required to enter into a written contract with the Commission and to furnish a performance bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the faithful performance of the contract and also a payment bond, executed by a surety company authorized to do business in North Dakota, in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with the contract, including interest under N.D.C.C. § 13-01-14, for bills which are not paid within ninety (90) days. The bond must also provide, under N.D.C.C. § 65-04-10, that Contractor has made, or will make, prior to the commencement of any work by Contractor or any Subcontractor under the contract, full and true report to Workforce Safety and Insurance of the payroll expenditures for the employees to be engaged in the work, and that Contractor has paid, or will pay, the premium thereon prior to the commencement of work. Both bonds must be executed on forms approved by the Commission. Bonds must be secured from a company which has complied with the law and regulations of the U.S. Treasury Department and is acceptable as a surety or reinsurer of federal bonds under Sections 9304 to 9308 of Title 31 U.S.C. and appropriate statutes of the State of North Dakota. A list of qualified companies is published under Treasury Circular 570.
6. **Contract Period.** The contract or contracts issued as a result of this solicitation will be for the period from June 1, 2016 to December 31, 2016.
7. **Estimated Volume.** The volume of this Contract is estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and/or anticipated usage. Contractor or Contractors will be required to furnish actual requirements upon order. This Contract will not include items of a similar nature, which must be bought for emergency use.
8. **Indemnification and Insurance Requirements.** Bidders shall review the attached sample contract for indemnification and insurance requirements. The indemnification and insurance provisions are incorporated and made part of this solicitation and the resultant final contract. Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the Procurement Officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the Purchasing Agency in consultation with the North Dakota Risk Management Division. Upon Notice of Award, the successful Bidder shall obtain the required insurance coverage and provide the Procurement Officer with proof of coverage prior to contract approval. The coverage

must be satisfactory to the Purchasing Agency, in consultation with the North Dakota Risk Management Division. A Bidder's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

9. **Payment Terms.** Payment will normally be made within thirty (30) days after delivery and acceptance of commodities or services under this Contract and receipt of a correct invoice. All invoices and payment inquiries must be directed to the Commission's Project Manager. Contractors may request payment any time during the contract period; however, it is expected that payment schedules will coincide with accounts payable processing on the 10<sup>th</sup> and 25<sup>th</sup> of each month. Invoices must be submitted five (5) days prior to processing for review and to ensure timely payment. Invoices will not be considered without signature of Contractor. The Commission's Project Manager will maintain records of unit quantities and volumes for this project.
10. **Prequalification.** Contractors shall be prequalified by the Commission in order to bid on this project. All bidders **shall** submit a prequalification package regardless of past work history with the State of North Dakota or industry experience. To request prequalification, submit a Prequalification Package to the PSC. The Prequalification Package must be received in the office of the North Dakota Public Service Commission no later than **5:00 pm CST, March 10, 2016**. The Commission will make determinations as to which Contractors meet the prequalification standards, and will notify them prior to the mandatory pre-bid, on-site conference. Failure to submit a completed Prequalification Package on time will result in bidder disqualification.
11. **Pre-Bid, On-Site Conference.** A **mandatory** pre-bid, on-site conference is scheduled for **March 28, 2016**, to afford an opportunity to prospective bidders to receive clarification related to this solicitation. This conference will be held at **10:30 a.m. CDT** (approximate) at the intersection of 41<sup>st</sup> Street and ND State Highway 36 near Wilton, Burleigh County, North Dakota (see map on page 45). Prospective bidders shall attend the conference in order to bid. Failure to attend the meeting will result in bidder disqualification.
12. **Preservation of Markers.** Contractor shall carefully preserve survey and control stakes and any other markers. In case of their destruction or loss, Contractor shall be responsible for their replacement and any resulting damage including, but not limited to, any damages arising from mistakes that may be caused by the loss or disturbance of these stakes or markers.
13. **Pricing.** Pricing under this Contract must be as follows:  
  
**Firm Fixed.** The total bid price is to include all discounts and deductions, and is to be less federal and state taxes, for which exemption certificates will be furnished upon request. Pricing must be firm for the period of the contract.
14. **Safety Requirements.** Contractor shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the contract in general. Bidders shall review the attached sample contract for safety requirements.

15. **Schedule of Construction.** The successful bidder shall submit a written estimated Schedule of Construction to the Commission's Project Manager for written approval before Commission's Project Manager issues the Notice to Proceed. The Schedule of Construction must indicate the estimated starting and completion dates of drilling, mobilization for grouting and grouting. In addition, the schedule indicate the major items of equipment to be utilized, including but not limited to drilling rig(s) and grout pump(s), the order in which both drilling and grouting will be conducted and the sources of grout components. The purpose of this schedule is to assure completion of the work in a timely manner. The Commission's Project Manager will not issue a Notice to Proceed without an approved Schedule of Construction.
  
16. **Standard Specifications.** Standard Specifications for AML Reclamation Projects (February 2000) outlines requirements and provisions for AML reclamation projects and is available upon request or can be viewed on the Commission's website at [www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf](http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf).
  
17. **Time of Performance.** The project performance period is 100 consecutive calendar days beginning June 1, 2016 through September 8, 2016. The Commission will issue a Notice to Proceed to begin the performance period. Contractor shall return an acknowledged copy of the Notice to Proceed to the Commission. If work cannot begin on the date specified in the Notice to Proceed, Contractor shall provide a written explanation of the reasons for delay and a written request for an alternate firm start date. Contractor may not extend the performance period without prior written approval of the Commission's Project Manager. Failure to provide services required by this contract within the time specified may result in contract termination or liquidated damages as specified in Section 109.7 of the Standard Specification for AML Projects <http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf>.
  
18. **Work Week.** Contractor shall work a standard 5 day work week (Monday-Friday) restricted to daylight hours. A request for variance to the work schedule must be made in writing to the Commission's Project Manager at least 2 days in advance of the start of the variance. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.
  
19. **Service Representative.** Contractor shall provide a dedicated service representative to provide support for this Contract. Contractor shall provide the name and contact information for the service provider. During the contract period, Contractor shall notify the Procurement Officer in the event Contractor's service representative changes.

<b>NAME OF SERVICE REPRESENTATIVE:</b>	
<b>ADDRESS OF SERVICE REP:</b>	
<b>CITY &amp; STATE &amp; ZIP CODE:</b>	
<b>PHONE NUMBER:</b>	
<b>TOLL FREE NUMBER:</b>	
<b>FAX NUMBER:</b>	
<b>E-MAIL ADDRESS:</b>	

**SPECIAL TERMS AND CONDITIONS**  
**Sample Contract**

### SAMPLE CONTRACT

<b>Administrator:</b>	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400	
<b>Date:</b>		
_____	_____	_____
<b>Randy Christmann</b> Commissioner	<b>Julie Fedorchak</b> Chairman	<b>Brian P. Kalk</b> Commissioner

<b>Contractor</b>		
Name		
Address	City/State/Zip	Phone
Typed Name		Title
Signature		Date

<b>Agreement Information</b>	
Contract No.:	_____
Start Date:	_____
End Date:	_____
Program Title:	_____
<b>Type of Contract:</b>	<input type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimb. <input type="checkbox"/> Unit Price <input type="checkbox"/> Other

<b>Budget Information</b>	
Cost Center:	9000
Services:	_____
Optional on-site review:	_____
Expenses:	_____
ID	
<b>Type of Contractor:</b>	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Public Agency <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Other

This Contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and XXX (Contractor). This contract consists of this sheet, general provisions and specific provisions.

## **GENERAL PROVISIONS**

The parties to this Contract (Contract) are STATE of North Dakota, acting through its Public Service Commission (STATE) and \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (CONTRACTOR);

### **SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the work as described in PART II: SPECIFIC PROVISIONS beginning on page 27 of the 2016 Wilton Phase 2 AML Project Invitation for Bid.

### **COMPENSATION**

#### **Contractual Amount**

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \_\_\_\_\_ (Contractual Amount).

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

#### **Payment**

- 1) Payment made in accordance with this Compensation section will constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within thirty (30) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.
- 4) For any amount that is or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

### **Travel**

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

### **Prepayment**

STATE will not make any advance payments before performance by CONTRACTOR under this Contract.

### **Payment of Taxes by STATE**

State is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by the CONTRACTOR.

### **Taxpayer ID**

CONTRACTOR shall provide STATE with its federal employer ID number and North Dakota tax ID number upon executing this Contract.

### **Purchasing Card**

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

## **TERM OF CONTRACT**

This Contract begins on June 1, 2016 and ends on December 31, 2016.

### **No Automatic Renewal**

This Contract will not automatically renew. If STATE intends to renew this Contract, STATE shall provide written notice to CONTRACTOR of STATE's intent to renew this Contract before the scheduled termination date.

### **Extension Option**

STATE reserves the right to extend this Contract for an additional period of time, not to exceed six (6) months, beyond the current termination date of this Contract.

### **Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to one (1) option to renew this Contract under the same terms and conditions for a period of six (6) months.

## **TIME OF PERFORMANCE**

The project performance period is 100 consecutive calendar days beginning June 1, 2016 through September 8, 2016. The Commission will issue a Notice to Proceed to begin the performance period. Contractor shall return an acknowledged copy of the Notice to Proceed to the Commission. If work cannot begin on the date specified in the Notice to Proceed, Contractor shall provide a written explanation of the reasons for delay and a written request for an alternate firm start date. Contractor may not extend the performance period without prior written approval of the Commission's Project Manager. Failure to provide services required by this contract within the time specified may result in contract termination or liquidated damages as specified in Section 109.7 of the Standard Specification for AML Projects  
<http://www.psc.nd.gov/docs/guidelines/aml/aml-specifications.pdf>.

## **TIME IS OF THE ESSENCE**

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

## **TERMINATION OF CONTRACT**

### **Termination by Mutual Agreement**

This Contract may be terminated in whole or in part without cause by mutual consent of both parties executed in writing. The parties shall agree upon the termination conditions including the effective date and, in the case of partial terminations, that portion to be terminated.

### **Early Termination in the Public Interest**

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice of CONTRACTOR, may terminate this Contract in whole or in part.

### **Termination for Lack of Funding or Authority**

STATE may terminate the whole or any part of this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for work performed or purchases 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 accrued prior to termination.

### **Termination for Cause**

STATE 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 STATE; **or**
- 2) If CONTRACTOR fails to perform any of the other conditions or provisions of this Contract, or so fails to pursue the work so as to endanger performance of this Contract in accordance with its terms.

STATE will be liable only for payment provisions of this Contract for services satisfactorily rendered prior to the effective date of termination. Significant deviation from performance standards in this Contract may result in reduced or terminated financial participation of CONTRACTOR, subsequent to negotiations with STATE.

The rights and remedies of STATE provided in the termination provisions related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### **FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, 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.

### **INDEMNITY**

CONTRACTOR agrees to defend, indemnify, and hold harmless 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 STATE under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for STATE is necessary. Any attorney appointed to represent STATE shall 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 defend, indemnify, and hold 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.

## INSURANCE

- 1) **Required Coverages.** 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 coverages:
  - a) Commercial general liability, including premises or operations, Contractual, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
  - b) 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.
  - c) 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.
  - d) 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 STATE of North Dakota.
  
- 2) **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:
  - a) Any deductible or self-insured retention amount or 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 STATE.
  - b) 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 STATE. The policies shall be in form and terms approved by STATE.
  - c) STATE 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 STATE under this agreement shall not be limited by the insurance required in this Contract.
  - d) 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. STATE shall have all the benefits, rights and coverage's of an additional insured under these policies.
  - e) The insurance required in this agreement, through a policy or endorsement, shall include:
    - i. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against STATE;
    - ii. 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 STATE, and that any insurance, self-insurance or self-retention maintained by STATE shall be in excess of CONTRACTOR's insurance and shall not contribute with it;
- iii. Cross liability/severability of interest for all policies and endorsements;
  - iv. The legal defense provided to STATE under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for STATE is necessary; and,
  - v. 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.
- f) CONTRACTOR shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - g) Failure to provide insurance as required in this agreement is a material breach of Contract entitling STATE to terminate this agreement immediately.
  - h) If CONTRACTOR's insurance carrier cannot provide the insurance requirements listed above, CONTRACTOR will be required to purchase a project-specific insurance policy on behalf of State including but not limited to an Owner's Protective Liability insurance policy or a Project Management Protective Liability insurance policy with an occurrence limit of not less than \$1,000,000 and an aggregate of \$2,000,000. Said insurance shall be kept in force until the project is accepted by State.
  - i) The policy and endorsements may not be canceled or modified without thirty (30) days' prior notice to the undersigned State representative.
- 3) **Pollution Liability.** CONTRACTOR shall provide CONTRACTOR's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of 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 (if applicable).

## **SAFETY REQUIREMENTS**

CONTRACTOR shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the Contract in general. In addition, CONTRACTOR shall provide, inspect and maintain all safeguards, safety devices, protective equipment, safety programs and other needed actions CONTRACTOR determines necessary to reasonably protect the life, health and property of CONTRACTOR, subcontractors, STATE, the public and each of the employees, officers, assigns and agents of CONTRACTOR, subcontractors and STATE, in connection with the performance of work resulting from or arising out of the Contract.

CONTRACTOR shall have a written safety program to be used as guidelines and direction for CONTRACTOR's and subcontractor's activities. This program must meet all

federal, state and local laws, regulations and other legal requirements and include the following minimum provisions.

- 1) A worksite safety policy and mission statement.
- 2) Assigned responsibilities among management, supervisors and employees.
- 3) System for periodic self-inspections, including inspections of job sites, materials, work performance and equipment.
- 4) A thorough accident and injury reporting and investigation process.
- 5) Safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure.
- 6) Safety training program including safety "tool box" meetings and other systems for ongoing training and also including training for employees on the recognition, avoidance and prevention of unsafe conditions.

A copy of the written safety program must be provided to the STATE upon request.

It is a condition of this Contract, and must be made a condition of each subcontract entered into pursuant to this Contract, that STATE assumes no liability relating to its receipt and review of CONTRACTOR's safety plan or activities. Safety remains the responsibility of CONTRACTOR. Furthermore, the right of STATE to receive and review the safety plan or activities does not give rise to a duty on the part of STATE to exercise this right for the benefit of CONTRACTOR or any other person or entity.

## **WORKS FOR HIRE**

CONTRACTOR acknowledges 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 STATE 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). All materials developed by CONTRACTOR in performance of this Contract for STATE must be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable State to protect STATE's rights under this section. CONTRACTOR shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts entered into relating to this project.

## **WORK PRODUCT**

All work product, equipment or materials created for STATE or purchased for STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

## **NOTICE**

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

<b>State:</b>	<b>CONTRACTOR:</b>
Darrell Nitschke, Executive Secretary	
Public Service Commission	
600 E. Boulevard Avenue	
Department 408	
Bismarck, ND 58505-0480	

Notice provided under this provision does not meet the notice requirements for monetary claims against STATE found at N.D.C.C. § 32-12.2-04.

## **CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE 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 STATE. STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE 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 STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract, or any extensions or renewals of it.

## **COMPLIANCE WITH PUBLIC RECORDS**

CONTRACTOR understands that, in accordance with this Contract's confidentiality clause, STATE must disclose to the public upon request any records STATE receives from CONTRACTOR. CONTRACTOR further understands that any records 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 public records law. CONTRACTOR agrees to contact STATE promptly upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

## **INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a State employee for any purpose, including but not limited to the 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. 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 the Contract.

## **ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign this Contract, or otherwise transfer or delegate any right or duty, without STATE's express written consent, or assign any of the monies to be paid hereunder, nor may any part of the work done or material furnished under this Contract be sublet without STATE's express written consent.

CONTRACTOR may not enter into subcontracts for any of the work contemplated under this Contract unless included in the specific provisions of this Contract. Any such subcontract must acknowledge the binding nature of the Contract and must incorporate this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR does not have the authority to Contract for or incur obligations on behalf of STATE.

## **SPOILIATION – PRESERVATION OF EVIDENCE**

CONTRACTOR shall promptly notify State of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

## **MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Contract, including the following 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.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- 1) The terms of this Contract as may be amended;
- 2) STATE's Solicitation: Invitation for Bid 408.16.02.002 2016 Wilton Phase 2 AML Project;
- 3) Contractor's Bid Response;
- 4) Standard Specifications for AML Reclamation Projects (2002);
- 5) 2016 Wilton Phase 2 AML Project Pre-Qualification Package.

## **SEVERABILITY**

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is 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.

## **APPLICABLE LAW AND VENUE**

This Contract is governed by and construed in accordance with the laws of STATE of North Dakota. Any action to enforce this Contract must be adjudicated exclusively 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*.

## **DISPUTES**

CONTRACTOR agrees to attempt to resolve disputes arising from this Contract by informal administrative process and negotiations in lieu of litigation. Continued performance by CONTRACTOR during disputes is assured.

Any dispute concerning a question of fact arising under this Contract which is not settled by the informal means must be decided by the authorized representative of STATE who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR.

CONTRACTOR will be afforded an opportunity to be heard and to offer evidence in support of an appeal. Pending final decision of a dispute, CONTRACTOR shall proceed diligently with the performance of the Contract and in accordance with the decision of STATE.

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolutions. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

## **NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

This Contract and any subcontract hereunder is subject to the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights of 1964 and the Americans with Disabilities Act of 1990.

CONTRACTOR agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. 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 and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this Contract all licenses, registrations and permits required by law and shall be authorized to do business in STATE of North Dakota.

CONTRACTOR agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41U.S.C. 10a-10c, popularly known as the "Buy American Act".) This applies to all subcontractors and suppliers of CONTRACTOR. CONTRACTOR will include this clause in all agreements and Contracts.

### **MONITORING, EVALUATION AND 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 shall maintain all of these records for at least four (4) years following completion of this Contract and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination. Records must be retained beyond four years if audit findings have not been resolved.

CONTRACTOR agrees to cooperate with any monitoring, evaluating and/or audit conducted by STATE, or their designees who shall have full access to and the right to examine all books, records and other relevant documents.

CONTRACTOR agrees to take immediate corrective action on deficiencies disclosed through program monitoring of costs disallowed in the course of an audit, review, or monitoring.

### **NO CLAIM FOR ADDITIONAL WORK**

No claim for additional services not specifically herein provided, done, or furnished by CONTRACTOR will be allowed, nor shall CONTRACTOR do any work or furnish any material not covered by the Contract, unless such work is ordered in writing by STATE.

### **TIME KEEPING PROCEDURES**

CONTRACTOR shall require employees and subcontractors, if applicable, whose positions are funded under this Contract or included as match, to maintain adequate documentation for services provided. For positions that are funded from more than one source, an analysis of duties performed by program must also be prepared.

### **EQUAL OPPORTUNITY**

No individual shall be excluded from participation in, denied the benefits of, subjected to

discrimination under, or denied employment in the administration of or in connection with this Contract because of race, color, disability, or political affiliation or belief.

CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, disability, age, sex, political affiliation or belief or citizenship.

### **WORK WEEK**

CONTRACTOR shall work a standard 5 day work week (Monday-Friday) restricted to daylight hours. A request for variance to the work schedule must be made in writing to STATE at least 2 days in advance of the start of the variance. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.

### **EFFECTIVENESS OF CONTRACT**

This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.

### **LEGAL AUTHORITY**

CONTRACTOR assures that it possesses legal authority to participate in this Contract.

## **PART II. SPECIFIC PROVISIONS**

<b>Sec. 100</b>	<b>Project Objective</b>
<b>Sec. 200</b>	<b>Scope of Work</b>
<b>Sec. 300</b>	<b>Provisions</b>
<b>Sec. 400</b>	<b>Owner Responsibilities</b>
<b>Sec. 500</b>	<b>Utilization of Disadvantaged Business Enterprises</b>
<b>Sec. 600</b>	<b>Suspension of Work</b>

## **100. PROJECT OBJECTIVE**

The objective of this project is the reclamation of selected portions of abandoned underground lignite mine workings, and associated work items as described in this Invitation for Bid (IFB). Interested bidders shall fulfill all aspects of the IFB as presented.

## **200. SCOPE OF WORK**

The proposed scope of work for the 2016 Wilton Phase 2 AML Project involves rotary drilling and pressure-grout backfilling of abandoned underground mine workings, and the performance of other associated work items as specified. Subsurface reclamation (drilling and pressure-grout backfilling) will be conducted underneath and adjacent to roadways and structures as deemed necessary by the Commission's Project Manager or his authorized representative. All references to the Commission's Project Manager includes any representative authorized to make decisions for the Commission's Project Manager.

It is expected that the abandoned mine workings will be predominantly wet or inundated. Varying stages of mine collapse are evident with conditions ranging from open or partially open voids to heavily rubblized areas. Boreholes that penetrate void/rubble areas will be used to pressure-inject grout to stabilize subsurface formations to reduce the potential for surface subsidence.

Contractor is advised that portions of the sites are located within areas containing abandoned underground mine workings. Surface subsidence caused by upward void migration of abandoned mine workings has been documented within the general area. Contractor is required to understand that drilling, grouting, surface restoration and associated work specified in this IFB is inherently dangerous due to the location of the project and the presence of the abandoned mine workings. Contractor is required to take all necessary precautionary steps to adequately protect their work force, equipment and the general public at all times during project performance.

Contractor shall provide all material, equipment, and personnel necessary to perform the specified work. Contractor shall be capable of fulfilling this project within the prescribed performance period following issuance of the Notice to Proceed. The individual designated as the Project Superintendent shall be required to spend a minimum of 60% of his/her time at the project location once it begins and until it is completed.

Standard Specifications for AML Reclamation Projects presented under separate cover are understood to be incorporated into this Contract.

## **300. PROVISIONS**

The following special provisions must apply:

### **A. MOBILIZATION**

1. **Scope of Work** – This item consists of all preparatory work and operations, which will enable Contractor to start and finish the project. This includes, but is not limited to, necessary items such as personnel, equipment, supplies, facilities, and other incidentals. Movement of any of these items to and from the project site, any construction or dismantling, and any costs incurred are considered part of this line item.

Contractor shall furnish, install and maintain ample sanitary facilities for all workers at the project sites. Costs of furnishing, installing and maintaining the sanitary facilities must be included in the lump sum bid price for mobilization and no additional compensation will be allowed.

Contractor shall determine the presence of any and all utility facilities within the project areas and have the locations of these facilities appropriately marked prior to beginning work. The North Dakota “One Call” utility locating Hot Line phone number is **811** or **1-800-795-0555**; and the website is [www.ndonecall.com](http://www.ndonecall.com). One Call does NOT locate privately owned and operated underground facilities. Contractor shall make other arrangements for locating such facilities.

Contractor shall plan and conduct informational pre-construction workshop at Wilton. This workshop is intended to provide information and establish agreement and collaboration among interested parties on a framework for successful project completion. All parties who will or may be affected by the project shall be invited to the workshops. These should include all project land owners, adjacent property owners, tenants or residents, the project foreman, subcontractors, material testers, Commission’s Project Manager, and any other appropriate state or local authorities.

The pre-construction workshop must:

- 1) Include a general discussion of the project and project timetables;
- 2) Identify goals, objectives and concerns of all parties;
- 3) Establish roles and a communication framework; and
- 4) Define a procedure for rapid resolution of disputes to minimize conflict.

Based on information received in the initial meeting, Contractor will develop an outline that identifies goals and objectives, timetables, and a communication and issue resolution framework. This must be distributed to all participants.

Additional workshops or meetings may be required as directed by the Commission’s Project Manager.

2. **Method of Measurement** – Mobilization will be measured as a lump sum (L.S.) unit, must not exceed 10% of the total contract bid. This item must be allocated between mobilization (80%) and demobilization (20%).
3. **Basis of Payment** – Payment will be made at the lump sum bid price. Such payment is full compensation for furnishing all equipment, labor, materials

and incidentals to complete the work as specified. Commission's Project Manager may allow progressive partial payment of this item.

## **B. DRILLING**

1. **Scope of Work** – This item consists of the drilling of approximately 20,000 feet of rotary boring, 3,500 feet of casing and 50 feet of coring. With approval of the Commission's Project Manager, more than one rotary drilling rig may be used on this project.

### **2. Construction Requirements**

#### a) Rotary Drilling

Contractor shall provide rotary drilling equipment capable of drilling a minimum 4¾ inch diameter hole that must be of a sufficient size to accommodate Contractor's grout injection tube. Most rotary drilling will be conducted along roads and road rights-of-way. Areas near homes and other structures or facilities may also be drilled. Contractor shall be prepared to drill holes up to 150 feet in depth. Average drilling depths are expected to be 40-120 feet.

Rotary drilling along roadway shoulders and near homes may need to be angled. This may be accomplished by using the rig's leveling jacks and bridge planks or by using specialized drilling equipment. No extra payment will be made for any specialized drilling techniques, and bids should be made accordingly.

Air rotary drilling is preferred, but water injection is allowable. Auxiliary air compressor(s) must be utilized (if necessary) to enhance the removal of drill cuttings. Previous drilling at this site indicates varying amounts of glacial till over-riding bedrock formations. Alternating layers of sand, silt, clay, hard rock ledges, boulders, multiple lignite seams and water-bearing formations are expected.

Contractor may be required to remove and replace fences and to have overhead utility lines de-energized or moved temporarily if necessary to facilitate drilling. Contractor shall use plastic sheeting, tarpaulins or plywood sheeting or other methods to keep sensitive areas (i.e. yards), and any other areas as required by the Commission's Project Manager, from being contaminated by drill cuttings. In general, Contractor shall ensure that drilling is conducted with as little disturbance as possible. Drilling in sensitive areas will only be allowed during dry weather when significant rutting or other damage is unlikely.

There will be no equitable adjustment for bits (including rock bits) and Contractors should prepare their bids accordingly. All drill holes that intercept mined workings (void/rubble) must be cased with 3" I.D. Schedule 40 PVC pipe. Exploratory void/rubble holes previously drilled are also cased with 3" I.D. Schedule 40 PVC pipe. Contractor shall

make every effort to proceed with the drilling and grouting concurrently.

All drill holes must be capped or covered using drill hole covers and maintained when work is not occurring on that hole. Access of drilling equipment, grouting equipment and appurtenances to drill hole/injection hole locations must be included in this bid item. Accessibility must include, but not be limited to: fence removal and subsequent replacement or repair, surface grading, and snow removal.

**Clean-up under this line item must proceed on a daily basis.** Clean-up includes, but is not limited to, the removal of all drill cuttings and fluids and their proper disposal.

b) Casing

This item must consist of the casing of void and rubble holes encountered during drilling operations. Drilled holes must be cased at the discretion and direction of the Commission's Project Manager. Casing to be installed must be 3" I.D. Schedule 40 PVC pipe. It is estimated that 3,500 feet of casing will be installed during this project.

Casing will generally be placed from 4 inches below ground surface to 5 feet above the top of the mining void, or as otherwise directed by the Commission's Project Manager. An 8-12" diameter hole must be spudded to one foot below surface and the 3" I.D. casing must hang suspended on two (2) heavy gauge metal slips provided by Contractor. Casing must be installed using PVC cleaning solvent (primer) at all connections, PVC cement on all connections and a minimum of three screws at all connections. Pilot holes must be drilled prior to installation of the screws. These screws must be of a length to penetrate both male and female connections; however, the screws may not be exposed inside the casing after tightening (to allow for passage of a downhole video camera). The couplings used to make connections must be deep-socket pressure couplings only.

Installation of the casing must be immediate upon extraction of the drilling stem. The drilled hole must be sufficiently clean and open, to the extent that the casing will hang suspended in the hole and does not require down force to advance the casing during installation. If the casing pipe does not freely drop through the hole by gravity, the pipe must be pulled and the hole re-drilled. Each cased hole must be measured by Contractor immediately after casing installation and the depth recorded on the drilling form.

Contractor shall ensure that the casing does not deviate in elevation due to sloughing or settling. Casing caps consisting of a collar and threaded plug must be installed along with all other materials necessary to suspend the casing in the hole and these accessories will be included in the casing line item bid. Caps must also have the hole number, year drilled and casing length written on both the inside and outside with

permanent marker. Drill cuttings may be used for backfilling from the top of casing to surface. Contractor shall provide pink-top stake chasers. Two (2) stake chasers must be anchored with 6" long pole barn nails in undisturbed soil above each cased hole.

c) Coring

Contractor shall provide the equipment necessary to core specific intervals of backfill confirmation holes, or as specified by the Commission's Project Manager. It is anticipated that each core will be approximately ten (10) feet in length, depending on mine specific conditions. Generally, grout confirmation holes will be rotary drilled to the top of the grouted zone.

Coring will be conducted from that point through the bottom of the grout or the bottom of the mined workings. A ten (10) foot Christensen core barrel (or equivalent) will be required to extract a continuous core from the grouted mine workings.

The material to be cored may vary in consistency; however, grout is composed of cementitious admixtures and Contractor shall be prepared to provide both carbide tip inserts or diamond bits as conditions dictate.

Payment under the coring line item will be for the cored zone(s) only. Rotary drilling down to the core zone will be paid as specified under the rotary drilling line item. Contractor shall provide a 2 1/8 inch minimum diameter continuous core and extract a minimum recovery of 90% to receive full pay on this item.

Contractor shall provide a sufficient number of cardboard core boxes under this line item. Core samples will become the property of the PSC. It is estimated that 50 feet of coring will be required.

d) Drill Hole Records

All written drill hole records (Commission-supplied forms) must be completed by Contractor and submitted to the Commission's Project Manager for acceptance within twenty-four (24) hours of completion of the hole. Drill hole records must consist of notations opposite the observed depth of change in lithology and character of subsurface conditions. Drilling personnel shall be capable of accurately delineating and recording voids, rubble zones, water-bearing formations, coal seams and the contacts between these zones, as well as overburden lithology. Drill hole logs not submitted within twenty-four (24) hours of the time that the drill hole was completed may not be accepted for payment.

e) Drill Hole Backfilling

Contractor shall backfill all drill holes immediately following completion

of grouting work or abandonment of hole. Non-void drill holes and core holes must be backfilled with grout from the bottom of the hole to within one (1) foot of ground surface. With approval of the Commission's Project Manager, dry drill cuttings may be used to backfill non-void drill holes and core holes in dry overburden or mine areas. In wet overburden or mine areas or holes where water is injected, drill holes must be backfilled with grout or medium grade bentonite pellets to at least five (5) feet above the static water level. Contractor shall measure the static water level of all holes prior to backfilling, and record that depth on the drilling form. A plastic stemming hole plug must be placed approximately three (3) feet below surface. All non-void drill holes must be backfilled the day they are drilled.

Backfilling from one (1) foot below ground surface to surface must be accomplished using material similar to that which was removed during drilling (topsoil, sod, road gravel, asphalt, concrete, etc.).

All drill hole cuttings must be cleaned up daily and properly disposed as described under **Section E. Clean-Up**. Contractor shall ensure that complete backfilling of all holes is accomplished. Drill holes that plug or bridge during backfilling must be re-drilled and backfilled at Contractor's expense. Costs associated with drill hole backfilling must be included under the line item bids for "Drilling".

3. **Method of Measurement** – All drilled, cased, and cored holes must be measured to the nearest foot drilled, cased or cored, and recorded by Contractor at each drilling site (on Commission supplied drill hole logs) and verified in the field at the end of each working day by the Commission's Project Manager. For each individual hole, measurement must be made from ground surface to the bottom of any void encountered or, in the event a void is not encountered, from the ground surface to the bottom of the hole drilled (generally the bottom of the mined coal seam). Payment will be made for no more than one (1) foot drilled into the underclay (below the bottom of the mined coal seam).
4. **Basis of Payment** – Payment will be made at the contract unit price(s). Payment will be made only for holes recorded on Commission-supplied forms that are signed by Contractor and accepted by the Commission's Project Manager. Payment for coring will be based on the percentage extracted. Contractor shall recover a minimum continuous core of 90% of the core length to receive full pay on this item. Non-continuous cores will be paid as follows:

<b>Length of Longest Continuous Portion Recovered</b>		<b>Percent of Core Recovered</b>	<b>Payment as a Percentage of that shown in the bid</b>
Greater than 5 inches	and	65 – 89%	75%
Greater than 5 inches	and	40 – 64%	50%
Greater than 5 inches	and	5 – 39%	30%
Less than 5 inches	and	Greater than 50%	30%
Less than 5 inches	and	Less than 50%	10%

Such payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete the work as specified.

### **C. GROUT INJECTION**

1. **Scope of Work** – This item consists of pressure injection of approximately 7,500 cubic yards of grout into void and rubble zones through appropriate drill holes as specified.
2. **Construction Requirements** – Contractor shall inject grout in conformance with the Specifications utilizing two (2) inch or three (3) inch diameter injection pipe into mine voids and rubblized zones through existing cased holes as determined by the Commission’s Project Manager, and those holes drilled under **Section B. DRILLING**. If Contractor utilizes PVC casing as the grout injection conduit, a minimum of three (3) feet of steel casing must be used at the head to prevent bursting or breakage at ground surface. Contractor shall determine grout injection pressures. Contractor shall review lithologic drilling logs of injection holes (and adjacent holes) previous to grout injection and determine maximum injection pressures to be used. Contractor is liable for any damages (surface or sub-surface) that may arise from, or during grout injection processes.

Contractor shall use a laser level and provide skilled personnel to monitor ground movement continuously during pumping operations near all paved roads and within 250 feet of structures. The laser level(s), and a minimum of two (2) sensors, must be capable of detecting ground movement of 0.05 feet at 100 feet. Contractor is liable for repair or restoration of anything damaged by grouting activities. This may include repairs or replacement of roads, foundations, structures, driveways, yards or anything else damaged by grouting activities. Any damages resulting from grouting activities must be promptly reported to the Commission’s Project Manager and the property owner or controller.

Contractor shall develop a grouting sequence and submit the plan in writing to the Commission’s Project Manager for approval. The Commission’s Project Manager reserves the right to direct the location and sequence of drilling and grouting or to change the plan submitted by Contractor.

Grout injection must be conducted from the top of the mining void or rubble zone. A bottom-up tremmie method may be required in wet-mine areas or

as determined by the Commission's Project Manager. If bottom-up tremmie grouting is the required method of grout injection, grout must be injected into the subsurface rubble or voids in a sequence beginning at the bottom of the void and progressing upward in two (2) foot increments. This may be varied depending upon mine specific conditions encountered. The Commission's Project Manager will make this determination. If deemed necessary, formation or casing packers or an acceptable alternative may be required at Contractor's expense.

Contractor may be required to flush injection holes with water prior to grout injection. One method is using a water truck, a pump with a minimum discharge of 100 GPM and necessary fittings to adapt the water hose to the threaded fitting of the PVC casing. Flushing will be considered incidental to grout injection and will not entail extra payment.

Until grout injection is satisfactorily completed, Contractor shall ensure hole accessibility. Should Contractor elect to remove and clean his equipment at any point during the grouting operation, it will be done at the expense of Contractor. Contractor shall assure re-access to the hole in the event he elects to remove his equipment before a hole is completely grouted. Contractor is responsible for any expenses related to keeping the hole accessible including redrilling and casing the hole.

Grouting clean-up must progress following each day's construction activities as described in **Section E. Clean-Up**.

Contractor shall submit a plan defining the method of grout supply. Portable batching equipment is acceptable providing Contractor can demonstrate flexibility in alternating mix designs and slump on an as-needed basis and the operation of this equipment will not adversely impact traffic flow or public safety. Any portable plant must comply with OSHA and North Dakota State requirements for emission control. If excessive dust emissions occur, the Commission's Project Manager may require compliance testing. Grout must be delivered to the grout pump within 90 minutes of batching.

**The mixing and pumping equipment must provide for continuous measurement of the following:**

1. Grout pressure at the wellhead.
2. Flow rates of all on-site proportioned fluids.
3. Pumping rate of grout.
4. Cumulative volume of grout pumped.

When continuous volumetric or gravimetric batching of grout is performed on-site, grout mix component dispensing rates must also be continuously measurable and cumulative volumes measured.

Grout pumping equipment must be specifically designed for pressure injection of grout and have the capability to inject grout under controlled pressures and flow rates. Contractor shall demonstrate the grout pumping

capability of the pump prior to approval by the Commission's Project Manager.

**The grout pump must meet the following criteria for the type of grout pumped:**

1. The grout pump utilized must have the capability to regulate the pumping rate in increments of one (1) cubic yard per hour over the full flow rate range.
2. The grout pump must have the capability of pumping rates from 0 to 45 cubic yards per hour.

Grout pressure must be measured by means of a liquid-filled diaphragm in-line gauge. This must always be accessible for measurement by the Commission's Project Manager and Contractors during the grouting operation. Grout injection will not be allowed unless the gauge is properly installed and operating.

**The grout must consist of:**

1. Portland cement: 100 pounds per cubic yard.
2. Flyash: 600 pounds per cubic yard.
3. Aggregate: to achieve a yield of 27 cubic feet per cubic yard.
4. Superplasticizer: (High Range Water Reducer) 70 ounces per cubic yard.
5. Water: as required to achieve the specified slump range. Slumps must be measured at least five minutes after superplasticizer has been mixed into the grout.

No change from the approved mix is allowed without prior written approval from the Commission and ND Department of Health. Contractor may be required to run additional tests of any proposed alternate mix to demonstrate compliance with the grout performance specifications at the expense of Contractor.

**Cement:** Portland cement must be either Type I or Type II in accordance with the latest ASTM Standard. Cement to be used on this project must be the same type and brand throughout the life of the project. Any material changes require prior written approval by the Commission's Project Manager.

**Flyash:** Flyash preferred by the ND Department of Health for use on this project is available at the Great River Energy Coal Creek Station, Underwood, North Dakota. Flyash from the Basin Electric Power Cooperative Antelope Valley Station, Beulah, North Dakota, and Leland Olds Station, Stanton, North Dakota, are acceptable alternatives. Any material changes require prior written approval by the Commission's Project Manager.

**Aggregate:** Aggregate used for this project must be taken only from pits which have a NDDOT Material Source Certificate of Approval. Contractor shall provide a copy of the NDDOT Material Source Certificate of Approval to the Commission's Project Manager **prior** to the start of the project. Aggregate must be natural sand and consist of hard, strong, durable particles free from deleterious material. There may be no more than 1% of coal, lightweight lumps or clay lumps by weight. When aggregate is subject to five cycles of the sodium sulfate soundness test, the total corrected weight may not exceed 10% by weight.

Aggregate subjected to the colorimetric test for organic impurities and producing a color darker than the standard must be rejected unless they pass the mortar test. When subjected to the test for mortar making properties, the aggregate must develop a compressive strength at seven (7) days when using Type II Portland Cement of not less than 95% of the strength developed by a mortar prepared with the same cement and in accordance with AASHTO T-71.

**Aggregate must meet the following gradation requirements:**

**Passing**

3/8" mesh sieve	100%
No. 4 mesh sieve	80-90%
No. 30 mesh sieve	40-80%
No. 200 mesh sieve	5-25%

**Test Methods:** The following test methods may be used to evaluate the quality of aggregate:

Particle Size Analysis	AASHTO T 88
Plasticity Index	AASHTO T 89, 90
Soundness (Sodium Sulfate)	AASHTO T 104
Organic Impurities	AASHTO T 113
Coal and Light Particles	AASHTO T 113
Clay Lumps	AASHTO T 112
Clay Content	AASHTO T 176

The Commission's Project Manager may investigate Contractor's aggregate source and determine which tests should be run. Contractor shall pay for all such testing required to obtain approval of an aggregate source.

**Water:** Water utilized on this project for grout make-up must be municipally treated potable water or an alternate source if chemically tested and approved. It is estimated that approximately 400,000 gallons of water will be required.

**Superplasticizer:** Superplasticizer (High Range Water Reducer) must conform to ASTM C-494 Type F. Superplasticizer must be applied in conformance with the manufacturer's specifications. Generally, all grout components must be batched and the cement thoroughly wetted, grout

must be reversed to the discharge end of the drum, superplasticizer injected into the grout and agitated at mixing speed for 5 minutes before discharge unless otherwise approved by the Commission's Project Manager.

Superplasticizer use by Contractor must receive expressed written approval for use by the ND Department of Health prior to injection of grout.

Commission's Contractors have utilized *Conchem SPL*, *Eucon 37*, *Melchem* and *Rheobuild 200B* Superplasticizer in grout formulation testing and projects and have already received ND Department of Health approval for their use. This does not constitute a product endorsement, but rather indicates that products of equivalent chemical composition and physical performance will likely be given approval.

**Minimum performance criteria for grout:**

Compressive Strength	150 psi
Slump variation	6-11 inches
Yield calculation	27 cu ft. /cu yd.
Grout temperature	50 – 90 degrees Fahrenheit

**Unconfined compressive strength of 150 pounds per square inch (psi) must be achieved within twenty eight (28) days** in conformance with the latest ASTM Standards for 100% humidity curing.

Slump must be adjustable on-site over the range stipulated in one-half (1/2) inch increments by the introduction of thickening or thinning agents. Water may be used as a thinning agent. Variations of  $\pm$  one-half (1/2) inch from the ordered slumps are acceptable. Material slumps under or over stipulated allowances must be field-corrected or will be rejected.

Contractor shall ensure the pumpability of all mixes at the stipulated flow rates and meet the grout performance characteristics as stipulated. At all slumps, grout must be fluid and free from lumps or other deleterious materials. Grout must flow through the pump grate at all slumps. Excess lumps, balls, or the like in grout are the amount that interferes with the unloading and pumping of grout. The Commission's Project Manager may reject a load containing excess lumps, balls, or the like and may deduct pay for waste grout. Waste grout is grout that is not injected into the hole. At the Commission's Project Manager's discretion, the project may be suspended until grout quality issues are resolved.

**Records:** All information regarding the grouting operations must be recorded by Contractor and submitted to the Commission's Project Manager. This record must include the following:

1. Drill hole/injection hole location, number and depth.
2. Depth of the injection pipe.
3. Length of temporary casing (if used).
4. Grouting pressures and variations.

5. Grout mixes and variations thereof.
6. Total grout quantities placed per day.
7. Total grout quantities for each hole
8. Cumulative totals placed to date.
9. Methods of application.
10. How the hole was completed
11. Any other comments or observations.

Contractor shall provide these records on a daily basis to the Commission's Project Manager. A form for recording this data is provided as an attachment.

3. **Method of Measurement** – Volumes of grout must be measured by U.S. Standard Volumes. A cubic yard of grout must be measured based on the components batched at the plant and defined as the sum of the absolute volumes of the aggregate, water, cementing agents, all admixtures and air. The absolute volume (yield) is computed from material weight and specific gravity. The absolute volumes must equal 27 cubic feet. Yield calculations must conform to ASTM C-138 or ACI 211.1. Water added on-site may not be included in grout yield calculations. Certified tickets specifying the volume of grout delivered and the weight of the specific materials in a given batch must be provided to the Commission's Project Manager by the mix plant supervisor. All batch plants or batch operations must be certified to National Ready Mixed Concrete Association requirements.
4. **Basis of Payment** – Payment for grout injection will be at the contract price. Payment for grout will be based on the number of cubic yards injected in accordance with the Project Specifications and supported by certified tickets. Payment will not be made for rejected loads. Waste in excess of 2 cubic yards on any given day will be deducted from the pay.

In addition, payment for grout will be based on the results of the laboratory tests performed on the test cylinders of this item of work as follows:

<b><u>Test Results Based on 28 Day Compressive Strength</u></b>	<b><u>Payment as Percentage of that shown in the bid</u></b>
100% of Design ( $\geq 150$ psi).....	100%
90% of Design (135-149 psi).....	90%
80% of Design (120-134 psi).....	80%
less than 80% ( $\leq 120$ psi).....	0%

The unit cost paid will equal the proration of the tested sample to the design strength. No payment will be made for grout that attains less than 80% of the design strength. Invoice for payment will not be accepted prior to receipt of compressive strength results from the testing laboratory. Pro-rated rate will apply to the 50 yards of grout in the testing interval.

Contractor assumes all costs relating to the loss of any tools or equipment. Moving equipment onto and off of each hole site, setup and takedown are

considered incidental to this item of work and such costs are to be included in the unit price of the bid items.

Such payment is full compensation for furnishing all equipment, supervision, labor, material, supplies, maintenance and incidentals to complete the work as specified, including all engineering calculations and tests provided by Contractor.

#### **D. TRAFFIC CONTROL**

1. **Construction Requirements** –Drilling and grouting operations will be conducted on or near highways and in residential areas. Traffic must be allowed to proceed safely at all times. “Trucks Entering” or other appropriate signs must be used at any points where grout trucks or other equipment access public roads. Protection of the general public and project workers must consist of emplacing and maintaining any necessary barricades, lights, signs, signals, flag persons and other traffic control devices. Traffic control devices must be setup during working hours and taken down after working hours.

Reclamation work may require traffic to be slowed down to a safe speed and diverted from two-lane to one-lane away from ongoing. "Safe speed" is defined as a speed in which Contractor is able to stop oncoming traffic immediately if surface jacking of the roadway occurs. In the event that surface jacking does occur, Contractor may be required to divert traffic onto the opposite lane of travel or provide an acceptable detour.

Contractor shall submit to the Commission's Project Manager a detailed, quick response "Plan-of-Action" in the event sudden surface jacking occurs during pressure-grouting operations. Contractor shall instruct Contractor's work force (including subcontractors) of the duties and responsibilities regarding problem abatement and traffic control in preparation for an emergency situation.

All barricades, warning signs, lights, temporary signals and other protective devices must conform to the latest edition of the Uniform Traffic Control Devices for Streets and Highways, published by the U.S. Department of Transportation.

2. **Method of Measurement** – Traffic Control will be measured as a lump sum unit, must not exceed 10% of the total contract bid, and must include all equipment, personnel and materials as needed to perform the work as described herein.
3. **Basis of Payment** – Payment will be made at the lump sum unit bid price. Such payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete work as specified.

#### **E. CLEAN-UP**

1. **Scope of Work** – This item consists of the clean-up of the project site and any off-site area such as batch operation areas and parking or equipment storage areas or any areas utilized for the project and the restoration of all damaged or destroyed real property including, but not limited to: utilities, structures, yards, fences, roads, approaches, haulage ways, access points, crops and ditches.
2. **Construction Requirements** – Any damaged or removed items that must be replaced or repaired must be of a like workmanship, subject to approval by the Commission's Project Manager. Restoration may include, but will not be limited to, contouring or shaping, seeding, graveling, resurfacing and repair of roads, driveways, yards, fields and structures, as needed to achieve pre-construction conditions. All utility, survey and control staking must be removed from the site within three (3) days of verbal notice from the Commission's Project Manager.

All waste, including, but not limited to grout, flyash, cement, drill cuttings and PVC pipe must be disposed in a landfill authorized to accept that material.

Contractor may request to use a sinkhole to dispose waste which falls under the North Dakota Department of Health Guideline 38 – *Beneficial Use of Inert Waste*. A written request must be submitted to the Commission's Project Manager and approved in writing prior to use. The sinkhole approved for waste disposal must be completely filled as follows:

**Standard Requirements for Sinkhole Filling:**

1. Remove and stockpile topsoil or other suitable plant growth material from around/within sinkhole and borrow areas.
2. Excavate the sinkhole (as directed) with a backhoe or excavator.
3. Backfill sinkhole with approved fill material; if trucks are used, compaction with backhoe bucket and wheels is required between dumps. If a scraper is used, holes must be ramped into and filled in such a way to get maximum compaction.
4. Grade area to blend with adjacent topography and re-establish drainage.
5. Respread topsoil evenly over disturbed areas and finish-grade.
6. Seed disturbed areas with Commission approved seed mixture.
7. Till seeded areas with a Harley Box Rake or equivalent equipment sufficiently to break up all clods and cover all seed.

Additionally, a minimum of 2 feet of compacted soil plus 6 inches of top soil or other suitable plant growth material must cover the disposed materials.

3. **Method of Measurement** – Clean-up will be measured as a lump sum unit as shown on the bid schedule.
4. **Basis of Payment** – Payment will be made at the lump sum unit price. All clean-up and restoration must be approved by the Commission's Project

Manager prior to any payment. Full payment will be made at completion of the project and upon fulfillment of this item. Such payment is full compensation for furnishing all labor, materials, equipment, and incidentals required to complete work as specified. All bidding Contractors are required to submit a minimum bid amount of **\$15,000** under the clean-up line item.

#### **F. FORCE ACCOUNT**

1. **Scope of Work** – The scope of work performed under this item must consist of the provision of labor, equipment and material to undertake additional work that is not covered by specific bid items. For any force account work performed by a Subcontractor, Contractor will receive an additional allowance for administrative and overhead expense. The additional allowance will be a percentage of the total force account invoice equal to ten percent of the first \$5,000 plus three percent of the balance in excess of \$5,000. The Commission’s Project Manager reserves the right to procure force account services by the subcontractor of his choice. Examples of work the Commission’s Project Manager may procure under the Force Account may include sinkhole filling and ground water monitoring.
2. **Method of Measurement** – Measurement must be based on material quantities, equipment hours or other methods as determined by the Commission’s Project Manager and agreed to by Contractor. For Subcontractor force account work, measurement must be based on material quantities, equipment hours or other methods as determined by the Commission’s Project Manager and agreed to by the Subcontractor.
3. **Method of Payment** – Payment will be made based on the above-described method(s) of measurement. All bidding Contractors are required to submit a bid amount of **\$50,000** under the force account line item.

#### **400. OWNER RESPONSIBILITIES**

##### **A. Right-of-Entry**

The Public Service Commission is responsible for providing all necessary Right-of-Entry documentation to Contractor upon request. If requested, the Commission’s Project Manager will inform Contractor of the Right-of-Entry status to allow completion of detailed work schedules.

##### **B. Material Testing**

The Public Service Commission will contract with a Certified Engineering Laboratory for the collection and performance testing of approximately 450 grout material cylinders. Materials to be injected must conform to the physical, chemical, and or gradation characteristics specified in this IFB. It is estimated that three (3) material samples will be collected for each 50 cubic yards of grout injected.

The material samples must be broken at the appropriate time(s) in a Certified Testing Laboratory under the supervision of a Registered Professional Engineer and in accordance with ASTM C39-86 specifications to ascertain the actual strength of the injected grout. The results of these tests will be used in determining payment as specified in the Measurement and Payment provisions for Grout Injection.

Slump tests in conformance with ASTM C143-78 will be ongoing throughout the project performance period. The material testing Contractor will also provide to the Commission's Project Manager daily aggregate moisture content, grout temperatures, grout yields, batch plant inspection services and provide certification to the Commission's Project Manager of the actual quantities and quality of aggregates and admixtures in the grout material.

Contractor shall cooperate with the material testing Contractor. Contractor shall:

1. Provide the material testing Contractor a minimum of three (3) days' notice prior to the start date of grout injection operations.
2. Notify the materials testing Contractor as soon as possible if daily grout pumping operations will be delayed or canceled. At least 12 hours of advance notice must be given to the material testing Contractor if no work is planned for the following regularly scheduled work day. If no notice is given, Contractor shall reimburse the material testing Contractor for 4 hours of work at the material testing Contractor's contracted hourly rate as specified in the 2016 Wilton Phase 2 AML Project Material Testing contract. This notice requirement does not apply to work stoppage caused by adverse weather or equipment breakdowns.
3. Notify the material testing Contractor of any changes to the grout formulation or grouting procedures.
4. Provide the material testing Contractor copies of bills of lading and mill certification reports for each load of cement, flyash and all admixtures delivered for use on the project.
5. Provide safe conditions for collecting grout samples by the material testing Contractor in accordance with ASTM C172 Standard Practice of Sampling Freshly Mixed Concrete.

## **500. UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

Contractor must complete and submit attached forms for Utilization of Minority or Women-Owned Business Enterprises and Labor Surplus Area Concerns (see pages 59-61). The current Disadvantaged Business Enterprise (DBE) information can be accessed on the NDDOT website at the following link:

<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>

## **600. SUSPENSION OF WORK**

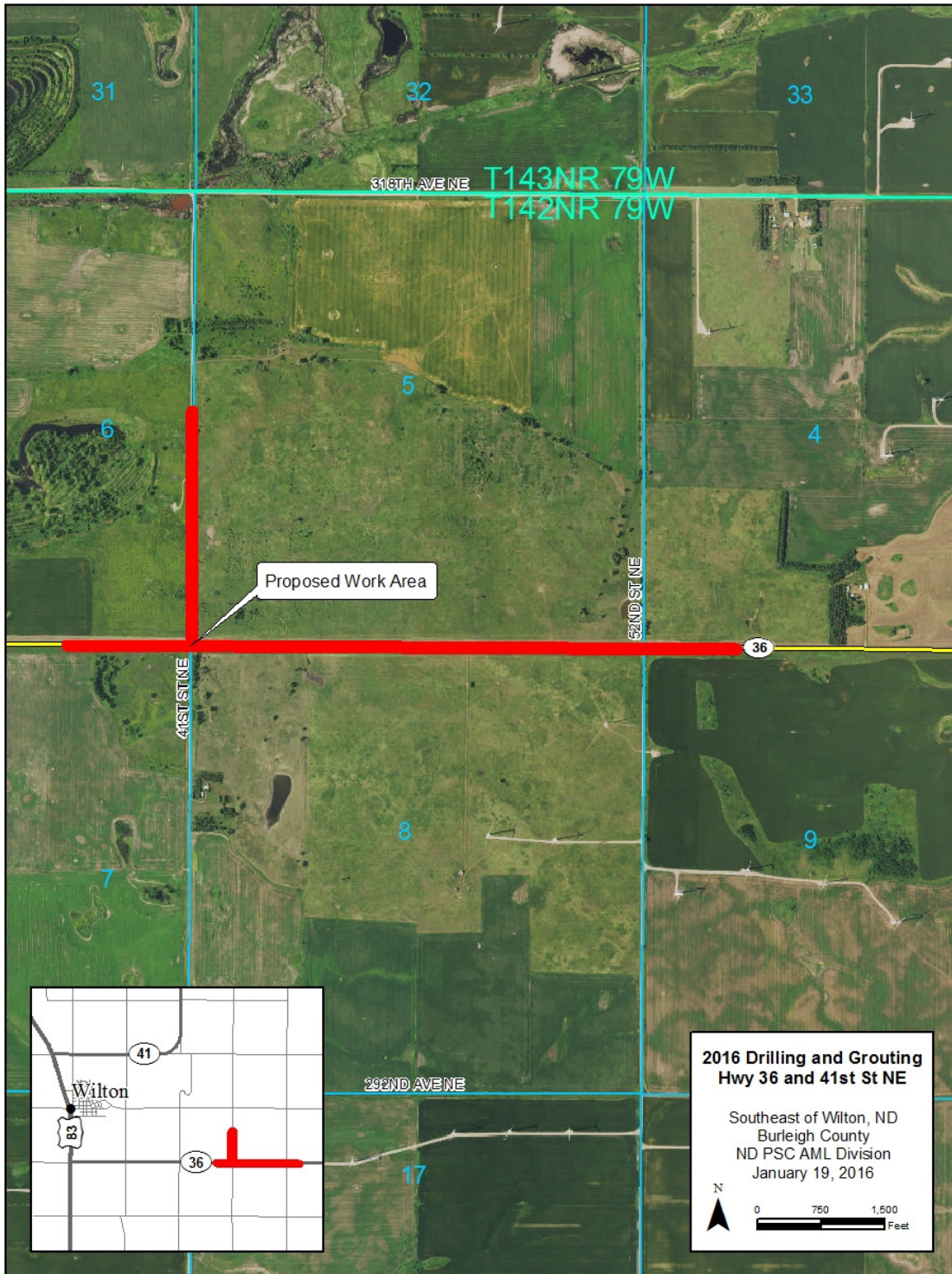
If any problems arise and/or persist, the Commission's Project Manager has the authority to suspend any ongoing item of work, as deemed necessary, until appropriate remedial

action is taken in accordance with Section 105.3 of Standard Specifications for AML Reclamation Projects (February 2000).

**PART III.  
ATTACHMENTS**

**Project Location Map  
Drilling/Coring Form  
Grout Injection Form**

### 2016 Wilton Proposed Sites General Overview Map of Site Location near Wilton, ND







**PART IV.**  
**BID FORMS**

- 1. Bid Bond**
- 2. Minority and Women-Owned Business Enterprise and  
Labor Surplus Area Concern Certifications**
- 3. Bid Forms**



**BID BOND**  
PUBLIC SERVICE COMMISSION  
ABANDONED MINE LANDS DIVISION  
SFN 13657 (Rev. 12-99)

Principal
Surety
Penal Sum

KNOW ALL MEN BY THESE PRESENTS, that the above named Principal and Surety, are hereby held and firmly bound unto the North Dakota Public Service Commission on behalf of the State of North Dakota as OWNER in the penal sum stated above for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

The Condition of the above obligation is such that whereas the Principal has submitted to the North Dakota Public Service Commission a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for the \_\_\_\_\_

NOW, THEREFORE,

- a. If said BID shall be rejected, or
- b. If said BID shall be accepted and the Principal shall execute and deliver a contract (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and Surety have subscribed their name and affix their seals, the day and year first set forth above.

**IMPORTANT:** Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in North Dakota.

SFN 13657 (Rev. 12-99)

Witness as to Principal:	
	(Principal: Individual, Partnership, or Corporation) (SEAL)
BY	(Partner or President)
BY	(Partner or Secretary)
	(Surety) (SEAL)
BY	

Countersigned by:

North Dakota Resident Agent	P.O./Address
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SFN 13657 (Rev. 12-99)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
known to me to be the person who is described in and who executed the foregoing instrument and acknowledges to me that he/she executed the  
same.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
a member of the co-partnership of \_\_\_\_\_ known to me to be the person who is described in and who  
executed the foregoing instrument and acknowledges to me that he/she executed the same as and for the act and deed of the said co-partnership.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
to me known, who, being by me duly sworn, deposes and says that he/she resides in the City of \_\_\_\_\_  
that he/she is the \_\_\_\_\_ of the \_\_\_\_\_  
\_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of  
the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors  
of said corporation, and that he/she signed his/her name thereto by like order.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF SURETY

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss  
\_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me personally comes \_\_\_\_\_,  
Attorney-in-Fact of \_\_\_\_\_ with whom I am personally acquainted, and who, being by  
me duly sworn, says that he/she resides in \_\_\_\_\_ that he/she is the Attorney-in-Fact  
of \_\_\_\_\_, the Company described in and which executed the  
foregoing instrument; that he/she know(s) the corporate seal of such Company; and that the seal affixed to the foregoing instrument is such  
corporate seal and that it was affixed by the order of the Board of Directors of said Company, and that he/she signed said instrument as  
Attorney-in-Fact of the said Company by like order.

\_\_\_\_\_  
Notary Public



**UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES AND  
LABOR SURPLUS AREA CONCERNS**  
PUBLIC SERVICE COMMISSION  
ABANDONED MINE LANDS DIVISION  
SFN 16755 (Rev. 12-99)

The requirements of this Special Provision will govern over any other contract provisions which may be in conflict or contrary thereto:

1. The Contractor agrees to use its best efforts to utilize minority or women-owned business enterprises (M/WBE) in the award of its subcontracts and in procuring supplies and materials to the fullest extent consistent with the efficient performance of its contract. As used in this contract, the term "minority or women-owned business enterprise" means a business, at least 51 percent of which is beneficially-owned and controlled by minority groups or women or, in the case of publicly-owned businesses, at least 51 percent of the voting interest and 51 percent of the beneficial ownership interests are held by minority groups or women. For the purpose of this definition, minority means a person who is Black, Hispanic, Asian American, American Indian, or Alaskan Native. Attached to this IFB is a list of M/WBE Contractors and Suppliers certified in North Dakota as a reference source for bidders. Bidders are in no way limited to this M/WBE list for subcontracting opportunities to M/WBE Contractors.
2. The Contractor agrees to establish and conduct an affirmative action program to ensure that minority or women-owned business enterprises will have an equitable opportunity to compete for subcontracts and furnishing of supplies. In this regard, the contracts shall:
  - a. Designate a liaison officer who will administer the Contractor's M/WBE Program.
  - b. Give adequate and timely consideration to the capabilities of known minority or women-owned business enterprises.
  - c. Ensure that known minority or women-owned business enterprises will have equal opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules.
  - d. Maintain records showing (1) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority or women-owned business enterprises, (2) awards to minority or women-owned business enterprises on the source list, and (3) specific efforts to identify and award subcontracts to minority or women-owned business enterprises.
  - e. Include this special provision "UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES" with certifications in all subcontracts.
  - f. Cooperate with the State in any studies and surveys of the Contractors' minority or women-owned business enterprises procedures and practices that the State may conduct from time to time.
  - g. Submit periodic reports with respect to the records referred to in subparagraph (d) above, in such form and manner and at such times (not more often than quarterly) as the State may prescribe.
3. The Contractor agrees to use its best efforts to utilize labor surplus area firms in the award of subcontracts. The term "labor surplus area" means a geographical area identified by the Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus. The term "labor surplus area" means a concern that, together with its first-tier subcontractor, will perform substantially in labor surplus areas. The term "perform substantially in labor surplus area" means that the costs incurred on account of manufacturing, production, or appropriate services in labor surplus areas exceed 50 percent of the contract price. Attached to this IFB is a list of labor surplus area counties in North Dakota as a reference source for bidders.

The Contractor agrees to establish and conduct a program which will encourage labor surplus area firms to compete for subcontracts within their capabilities. In this connection, the Contractor shall:

- a. Designate a liaison officer who will (1) maintain liaison with duly authorized representatives of the government on labor surplus area matters, (2) supervise compliance with the "Utilization of Labor Surplus Area Concerns" clause, and (3) administer the contractor's Labor Surplus Area Subcontracting Program;
- b. Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
- c. Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concern;
- d. Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and
- e. Include the "Utilization of Labor Surplus Area Concerns" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

Included in Parts 4, 5, and 6 - "BID FORMS" of this IFB are one M/WBE Subcontractor Certification, one M/WBE Supplier Certification, and one Labor Surplus Area Certification which must be completed by the bidder and returned with the bid package.

**FAILURE TO COMPLETE AND RETURN THESE FORMS SHALL RESULT IN BIDDER DISQUALIFICATION.**

**4. M/WBE SUBCONTRACTOR CERTIFICATION** (See Section 600 of Part III - Special Provisions)

**TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT, THE BIDDERS MUST EXECUTE ONE OF THE FOLLOWING CERTIFICATIONS:**

Name of Company
-----------------

**NEGATIVE CERTIFICATION**

The bidder does not intend to sublet any portion of the work. If later circumstances dictate subletting a part of the work, the requirement under the Affirmative Certification will be satisfied.

Signed By	Title	Date
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**AFFIRMATIVE CERTIFICATION**

The bidder intends to sublet a portion of the contract work and hereby certifies that it has an affirmative action program to seek out and consider minority business enterprises as potential subcontractors and to document the results of such contacts.

a. If work is to be subcontracted, provide a general description of items to be subcontracted.


b. The contacts made with potential Minority or Women-owned Business Enterprise subcontractors and the results thereof are listed below: (Use additional sheets if necessary)


Signed By	Title	Date
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**5. M/WBE SUPPLIER CERTIFICATION** (See Section 600 of Part III - Special Provisions)

**TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT, THE BIDDER MUST EXECUTE THE FOLLOWING CERTIFICATION:**

Name of Company
-----------------

The bidder hereby certifies that it has an affirmative action program to seek out and consider Minority or Women-owned Business Enterprises as potential suppliers and to document the results of such contacts. The contacts made with potential Minority or Women-owned Business Enterprise suppliers and the results thereof are listed below: (Use additional sheets if necessary)


Signed By	Title	Date
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**6. LABOR SURPLUS AREA CERTIFICATION**

**TO BE ELIGIBLE FOR AWARD OF THIS CONTRACT, THE BIDDER MUST EXECUTE ONE OF THE FOLLOWING CERTIFICATIONS:**

**NEGATIVE CERTIFICATION**

The bidder does not intend to sublet any portion of the work. If later circumstances dictate subletting a part of the work, the requirements under the Affirmative Certification will be satisfied.

Signed By	Title	Date
-----------	-------	------

**AFFIRMATIVE CERTIFICATION**

The bidder intends to sublet a portion of the contract work and hereby certifies that it has a labor surplus area concern program to seek out and consider potential subcontractors from labor surplus areas and to document the results of such contacts.

a. If work is to be subcontracted, provide a general description of items to be subcontracted.


b. The contacts made with potential Labor Surplus Area subcontractors and the results thereof are listed below:  
(Use additional sheets if necessary)


Signed By	Title	Date
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**BID FORM**  
**2016 Wilton Phase 2 AML Project**  
**408.16.02.002**

**BURLEIGH COUNTY, NORTH DAKOTA**

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Mobilization/Demobilization**	1	L.S.	X	_____ = _____
2.	Rotary Drilling	20,000	Ft.	X	_____ = _____
3.	Casing	3,500	Ft.	X	_____ = _____
4.	Coring	50	Ft.	X	_____ = _____
5.	Grout Injection	7,500	Yd. <sup>3</sup>	X	_____ = _____
6.	Traffic Control**	1	L.S.	X	_____ = _____
7.	Clean-Up (\$15,000 Minimum)	1	L.S.	X	_____ = _____
8.	Force Account	1	L.S.	X	<u>\$ 50,000</u> = _____

L.S. = (Lump Sum)

**Total (In Numbers)** \_\_\_\_\_

Written Total \_\_\_\_\_

**\*\* This bid item must not exceed 10% of the total contract bid.**

Also enclosed in this package is a bid bond, certified check or cashier's check in the amount of:

\_\_\_\_\_

\_\_\_\_\_  
Bidder Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail

\_\_\_\_\_  
Typed or Printed Name of Person Signing and Title

Signed: \_\_\_\_\_