



# NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

GARY E. JOHNSON  
Governor  
Jennifer A. Salisbury  
Cabinet Secretary

July 7, 2000

Lori Wrotenbery  
Director  
Oil Conservation Division

Mr. William Clark  
A-Plus Well Service, Inc.  
P.O. Box 1979  
Farmington, NM 87499

Re: Contract No. 00-521.25-205 Between the New Mexico Energy, Minerals and  
Natural Resources Department and A-Plus Well Service, Inc. for the Plugging of  
14 Wells and Clean-up of 17 Well Sites

Dear Mr. Clark:

Enclosed is the original and 4 copies of the above-captioned contract. Please sign all five  
copies and return to me as soon as possible so that we may expedite the processing of the  
contract.

If you have any questions, please do not hesitate to call me at (505) 827-7137 or Lyn  
Hebert, Attorney at (505) 827-1364.

Sincerely,

Dorothy Phillips  
Bond Administrator

Enclosures

*Section 1.1.5 - Removal of Structures  
(excluding production  
tools equipment)*

*fax - change*

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

WELL PLUGGING AND SERVICES CONTRACT

THIS CONTRACT made and entered into by and between the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department, hereinafter referred to as "EMNRD-OCD", and **A-Plus Well Service, Inc.**, hereinafter referred to as the "Contractor".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

**1 Scope of Work**

**1.1.a.** The Contractor shall perform the work necessary to properly plug and abandon or repair and make safe the below-listed well(s) and/or well site(s), in accordance with the Rules and Regulations of the EMNRD-OCD pursuant to the plugging procedures or other instructions given by the EMNRD-OCD representative.

OPERATOR	WELL NAME	LOCATION	COUNTY
Elmer C. White	Walker Dome #2	D-19-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #1Y	C-19-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #3	N-18-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #5	K-18-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #7	D-19-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #6	K-18-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #12	M-18-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #10	O-18-16N-09W	McKinley
Nerdlihc Company, Inc.	Bullseye #15	P-13-16N-10W	McKinley
Nerdlihc Company, Inc.	Bullseye #13	O-13-16N-10W	McKinley
Nerdlihc Company, Inc.	Bullseye #16	M-18-16N-09W	McKinley
Nerdlihc Company, Inc.	Marcelina #1	A-24-16N-10W	McKinley
Nerdlihc Company, Inc.	Marcelina #5	A-24-16N-10W	McKinley
Nerdlihc Company, Inc.	Marcelina #6	H-24-16N-10W	McKinley

**1.1.b.** The Contractor shall perform the work necessary to clear the surface area only at the following well sites including removal of structures and personal property and clean-up of all pits:

A.P.A. Developpment, Inc.	Santa Fe Leggs #1	O-11-21N-10W	San Juan
A.P.A. Development, Inc.	Santa Fe Leggs #2	N-11-21N-10W	San Juan
A.P.A. Development, Inc.	Santa Fe Barbs #1	M-10-21N-10W	San Juan

This contract is entered into pursuant to an emergency procurement pursuant to NMSA 1978, Section 13-1-127.

**1.2** The work shall be performed under the supervision of an EMNRD-OCD representative who shall be on site during the course of performance of the contract. EMNRD-OCD, through its on-site representative or the responsible District Supervisor, shall have the sole authority to approve any changes to the Scope of Work, including the authority to proceed under an hourly rate, and to approve the Contractor's final work product.

**1.3** Upon receiving a verbal Notice to Proceed, the Contractor shall move in and commence work within the time frame specified in the Notice to Proceed. The EMNRD-OCD may grant the Contractor additional time in which to move in upon a showing by the Contractor that the equipment was not available due to unavoidable delays on other work, or if weather conditions make it impractical to move in on location.

**1.4** All equipment, material, trash and junk shall be removed from the location and disposed of in accordance with applicable law and regulations.

## **2 Compensation**

**2.1** EMNRD-OCD shall pay to the Contractor in full payment for services rendered up to the sum of **One Hundred Ninty-Two Thousand Six Hundred and Five Dollars (\$192,605).**

**2.2** If downhole or other problems are encountered which could not be reasonably foreseen by a review of the Division records and an on-site inspection, and the Contractor has made a reasonable and good faith effort to resolve these problems under the turnkey provisions, if applicable, and the EMNRD-OCD onsite representative has approved such action, compensation in addition to the turnkey price may be charged and the contract will be amended to include the total of such amount. The number of units charged under such rates will be approved by the Division on site representative.

**2.3** The New Mexico gross receipts tax levied on the amounts payable under this contract shall be paid by the Contractor out of the sum set forth in section 2.1 above.

**2.4** Payment shall be made upon receipt of a detailed invoice, after plugging or other services have been approved by the responsible EMNRD-OCD District Office; payment shall be made after termination by the EMNRD-OCD, if the termination is for reasons of inability to successfully complete the plugging because of conditions beyond the control of contractor or EMNRD-OCD, with the concurrence of the EMNRD-OCD.

## **3 Term**

THIS CONTRACT SHALL BE EFFECTIVE **as of July 7, 2000.** This Contract shall terminate on **January 7, 2001,** unless terminated pursuant to Paragraphs 4 or 9, infra.

## **4 Termination**

**4.1** EMNRD-OCD may, by written order, terminate this contract or any portion thereof after determining that, for reasons beyond either EMNRD-OCD's or the Contractor's control, the Contractor is prevented from proceeding with or completing the work as originally assigned, and that termination would therefore be in the public interest. Such reasons for termination may include, but need not be limited to, orders from duly constituted authorities relating to energy conservation, restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor or conditions in the well which make completion of the work impossible or impractical.

**4.1.1** If EMNRD-OCD orders termination of this Contract effective on a certain date, payment will be made for the actual number of units or items of work completed at the contract unit price, or as mutually agreed for items of work partially completed or not started.

**4.1.2** Acceptable materials, obtained by the Contractor for the work but which have not been incorporated therein, may, at the option of EMNRD-OCD, be purchased from the Contractor at actual cost, delivered to a prescribed location, or otherwise disposed of as mutually agreed.

**4.1.3** After receipt of notice of termination from EMNRD-OCD, the Contractor may submit a claim for additional damages or costs not covered above or elsewhere. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor costs if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original contract, and any other cost or damage item for which the Contractor feels reimbursement should be made. In no event, however, will loss of anticipated profits be considered as part of any settlement.

**4.1.4** The Contractor agrees to make all cost records available to the extent necessary to determine the validity and amount of each item claimed.

**4.1.5** Termination of this contract or portion thereof shall not relieve the Contractor of any contractual responsibilities for the work completed.

**4.2** In the event the Contractor defaults on its obligations hereunder, as more specifically defined herein, EMNRD-OCD will give notice in writing to the Contractor of such default and will specify those provisions which have been violated and the corrective measures to be taken. If the Contractor, within a period of ten (10) working days after such notice, does not proceed in accordance therewith, then EMNRD-OCD may terminate this contract for breach and pursue any or all of the remedies contained herein.

**4.2.1** EMNRD-OCD will have full power and authority without violating this Agreement to take the prosecution of the work out of the hands of the Contractor. EMNRD-OCD may appropriate or use any or all equipment and materials on the ground as may be suitable and acceptable and may enter into an agreement for the completion of this contract according to the terms and provisions thereof or use such other methods as in the opinion of EMNRD-OCD will be required for the completion of this contract in an acceptable manner.

**4.2.2** All costs and charges incurred by EMNRD-OCD together with the cost of completing the work under contract will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under this contract, then the Contractor shall be liable and shall pay EMNRD-OCD the amount of such excess.

**4.2.3** The Contractor will be deemed in default if it:

- 4.2.3.1 Fails to begin the work under the contract within the time specified in the Notice to Proceed;
- 4.2.3.2 Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
- 4.2.3.3 Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable;
- 4.2.3.4 Discontinues the prosecution of the work and fails to resume work which has been discontinued within a reasonable time after notice to do so;
- 4.2.3.5 Becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency;
- 4.2.3.6 Allows a final judgment, in a suit filed in connection with this contract, to stand against the Contractor unsatisfied for a period of thirty (30) working days;
- 4.2.3.7 Makes an assignment, in connection with this contract, for the benefit of creditors; or
- 4.2.3.8 For any cause, except as provided in this contract, fails to perform the obligations under this contract to the satisfaction of the EMNRD-OCD.

## **5 Status of the Contractor**

The Contractor and the Contractor's agents and employees are independent contractors performing well plugging or other services for EMNRD-OCD and are not employees of the State of New Mexico. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this contract.

## **6 Assignment**

The Contractor shall not assign or transfer any interest in this contract or assign any claims for money due or to become due under this contract without the prior written approval of EMNRD-OCD.

## **7 Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this contract nor obligate itself in any manner to any third party, with respect to any rights or responsibilities under this contract, without the prior written approval of EMNRD-OCD.

## **8 Records and Audit**

The Contractor shall maintain detailed time records which indicate the date, time, and nature of services rendered. These records shall be subject to inspection by EMNRD-OCD, the Department of Finance and Administration, and the State Auditors for three (3) years after final payment has been made and all matters relating to performance under this contract have been settled. EMNRD-OCD shall have the right to audit billings both before and after payment. Payment under this contract shall not foreclose the right of EMNRD-OCD to recover excessive, illegal, or incorrect payments.

## **9 Appropriations**

The terms of this contract are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this contract. If sufficient appropriations and authorization are not made, this contract shall terminate upon written notice being given by EMNRD-OCD to the Contractor. EMNRD-OCD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

## **10 Release**

The Contractor, upon final payment of the amount due under this contract, releases EMNRD-OCD, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

## **11 Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of EMNRD-OCD.

## **12 Conflict of Interest**

Contractor warrants that it presently has no interest in and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of this contract.

## **13 Amendment**

This contract shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

## **14 Scope of Agreement**

This contract incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants, and understandings have been merged into this written contract. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this contract.

## **15 Civil and Criminal Liability Notice**

The Procurement Code, Chapter 13, Article 1 of the NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

## **16 Equal Opportunity Compliance**

The Contractor agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, age, or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this contract. If the Contractor is found to be not in

compliance with these requirements during the life of this contract, the Contractor agrees to take appropriate steps to correct those deficiencies.

## **17 Applicable Law**

This Agreement shall be governed by the laws of the State of New Mexico.

## **18 Waiver**

No waiver of any of the terms or conditions of this contract shall be valid or binding unless it is in writing and signed by the party having granted the waiver.

## **19 Notices**

**19.1** Unless EMNRD-OCD shall specify otherwise in writing, notices and all other matters concerning the work to be performed hereunder shall be addressed to EMNRD-OCD as follows:

Contract Monitor:	<b>Charlie Perrin</b>
Contracting Division:	Oil Conservation Division State of New Mexico <b>Aztec District Office</b> <b>1000 Rio Brazos Road</b> <b>Aztec, NM 87410</b> <b>Telephone (505)334-6178</b>

**19.2** Unless the Contractor shall specify otherwise in writing, notices and all other matters concerning the work to be performed hereunder shall be addressed to the Contractor as follows:

**William Clark**  
  
**A-Plus Well Service, Inc.**  
**P.O. Box 1979**  
**Farmington, NM 87499**  
**Telephone (505)325-2627**

**19.3** Any and all notices or other communications required or permitted by this contract or by law to be served or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given upon actual receipt by or three (3) working days subsequent to certified mailing to the party to whom it is directed.

## **20 Indemnification**

The Contractor shall indemnify and forever hold and save EMNRD-OCD, the State of New Mexico, its officers, and employees harmless against any and all suits, causes of action, claims, liabilities, damages, losses, and attorney's fees and all other expenses of any kind from any source which may arise out of this contract or any amendment hereto if caused by the tortious act or omission of the Contractor, its officers, employees, servants, or agents. Nothing in this Agreement shall be construed to waive or limit any defense at law to which EMNRD-OCD is entitled.

## **21 Duty to Insure**

**21.1** In respect solely to the work occasioned by this contract, the Contractor shall obtain and maintain at all times during the term of this contract, and any extension thereof, insurance of the kind and in the amounts herein

specified. Such insurance shall be provided by insurance companies authorized to do business in New Mexico and shall name the "State of New Mexico, Energy, Minerals and Natural Resources Department - Oil Conservation Division, and its agents and employees thereof" as either "Additional Insured", "Co-insured", or "Certificate Holder".

**21.1.1** Comprehensive public liability including general liability, bodily injury liability and property damage liability insurance and automobile liability insurance covering the ownership, operation, and maintenance of owned, non-owned, and hired vehicles in amounts not less than the amounts specified in the New Mexico Tort Claims Act, Sections 41-4-1 through 41-4-27, NMSA 1978.

**21.1.2** Worker's Compensation. The Contractor shall comply fully with the provisions of the New Mexico Worker's Compensation Act, Sections 52-1-1 through 52-1-70, NMSA 1978.

**21.2** The Contractor shall furnish EMNRD-OCD with written evidence of the insurance coverage required, including copies of all policies, prior to commencing work under this contract. The insurance coverage shall not be changed, canceled, or allowed to lapse without giving EMNRD-OCD thirty (30) working days prior written notice.

## **22 Disputes**

Subject to any other provisions of this contract, the means, ordered steps, and time frames for handling disputes between EMNRD-OCD and the Contractor are as follows:

**22.1** A dispute arises if EMNRD-OCD's Contract Monitor and the Contractor cannot resolve by ordinary communications and negotiations a question of fact arising under this contract and the aggrieved party delivers to the other party a written Statement of Dispute including proposed terms for relief. If the dispute remains unresolved ten (10) working days after delivery of the written Statement of Dispute, EMNRD-OCD's Contract Monitor shall prepare a written decision including the reasons thereof which shall be delivered via certified mail to the Contractor within twenty (20) working days of the delivery of the initial written Statement of Dispute. The decision of EMNRD-OCD's Contract Monitor shall be final and conclusive unless, within ten (10) working days from the date of delivery of said decision, EMNRD-OCD receives from the Contractor a written request for appeal of said decision, and the reasons therefor, addressed to the Director of the Oil Conservation Division.

**22.2** The Director of the Oil Conservation Division shall inquire into the facts concerning the dispute and shall render a written decision which shall be delivered via certified mail to the Contractor within ten (10) working days of receipt of the Contractor's appeal. The decision of the Director shall be final and conclusive unless, within ten (10) working days of the delivery of the Director's written decision, EMNRD-OCD receives from the Contractor a written request for appeal of said decision, and the reasons therefor, addressed to the Secretary of Energy, Minerals and Natural Resources Department.

**22.3** Upon receipt of the Contractor's request for an appeal, the Secretary or an authorized representative shall make prompt arrangements to meet with the Contractor to review the material considered by the Director of the Oil Conservation Division in reaching a final decision. The Secretary's final decision shall be delivered by certified mail within ten (10) working days after such meeting. The decision of the Secretary shall be final.

**22.4** The disputes procedures outlined in this clause do not preclude either party hereto appealing to a court of competent jurisdiction; provided, however, the parties hereto shall abide by the procedures provided for in this clause.

## **23 Attorney's Fees and Costs**

If the Contractor is found by a court of competent jurisdiction to have breached this contract, or any amendments hereto, or to have committed any tortious act relating to the scope of this contract, the State of New Mexico may recover from the Contractor actual attorney's fees and costs in connection with litigation brought to obtain such judicial



determination or in which EMNRD-OCD is otherwise obliged to undertake legal action.

## **24 Suspension of Work**

A Suspension of Work Notice may be issued by the on-site EMNRD-OCD Representative if the EMNRD-OCD Representative has any reasonable basis to believe that any action of the Contractor is contrary to the intent of this contract or if any health or safety standard is violated after verbal or written notice to cease such activities has gone unheeded. No work performed after documentation of issuance of a Suspension of Work Notice shall be eligible for payment while such notice is in effect. No work shall proceed until such notice is vacated by the EMNRD-OCD Director.

## **25 Signatures**

IN WITNESS WHEREOF, the parties have executed this contract as of the date first written below.

**FOR:**

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL  
RESOURCES DEPARTMENT - OIL  
CONSERVATION DIVISION**

By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

**FOR:**

**A-PLUS WELL SERVICE, INC.**

\_\_\_\_\_  
(Contractor)  
Federal ID # 850403057

By: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the state of New Mexico to pay gross receipts and compensating taxes

**FOR:**

**STATE OF NEW MEXICO TAXATION AND  
REVENUE DEPARTMENT**

I.D. NO.: 02208486-00-0

By: Lisa H Esquivel

Date: 4/1/00