

**RECR - 11**

**WORK PLANS,  
PURCHASE ORDERS  
AND BONDS**

**YEAR(S):  
2011-2012**



April 16, 2012  
File No.: 124547.1-ALB12WP001

Mr. Jim Griswold  
New Mexico Oil Conservation Division  
1200 South St. Francis Drive  
Santa Fe, New Mexico 87505

**Subject: Work Plan to Complete Remediation  
Hutcherson Pit Site  
Milnesand, New Mexico**

Dear Mr. Griswold:

Kleinfelder West, Inc. (Kleinfelder) is pleased to submit this work plan to the New Mexico Oil Conservation Division (NMOCD) to complete remediation activities at the above referenced property (the "Site"). The Site is located in Unit Letter E of Section 21, Township 8 south, Range 34 east, just southwest of Milnesand, New Mexico (See Figure 1, Site Location Map). Kleinfelder understands that the property is owned by a Mr. Shannon Kaiser.

The Subject Site consists of a former crude oil reserve pit. Several large blocks of concrete as well as steel cable and pipe is present near the northwest corner of the pit (See Figure 2, Site Map). Excavation activities were performed in June 2007 in an initial effort to remove the reserve pit material. The potential contaminants of concern (COCs) associated with this former reserve pit are benzene, toluene, ethylbenzene, and xylene (BTEX); total petroleum hydrocarbons (TPH); and chlorides. Work that was previously performed at the site consists of:

- A naturally occurring radioactive material (NORM) survey. The results indicated that NORM was not present.
- Approximately 4,700 cubic yards of petroleum- and chloride-impacted materials were excavated from the former reserve pit.
- Drill four soil borings to assess the depth of petroleum- and chloride-impacted soils remaining.

Upon completion of excavation, soil samples were collected and analyzed for TPH and chlorides. The results were analyzed and found to contain:

	N Pit Sidewall	E Pit Sidewall	S Pit Sidewall	W Pit Sidewall	Pit Bottom
Depth					
Benzene	<0.050	<0.050	<0.050	<0.050	<0.050
BTEX	<0.25	<0.25	<0.25	<0.25	<0.25
TPH	140	<65	<65	<65	<65
Chloride	1300	3700	160	17	5900

Concentrations in milligrams/kilogram (mg/kg)

In addition, a test pit was excavated in the bottom of the excavation after removal of materials. The test pit was excavated to assess the vertical profile of chloride concentrations. Soil samples were collected from the bucket as the excavation was advanced to the full reach of the trackhoe. The samples were analyzed for chlorides and reported to contain the following concentrations:

	5 ft Below Pit Floor	10 ft Below Pit Floor	19 ft Below Pit Floor
Total Depth (ft)	19	24	33
Chloride (mg/kg)	8600	4600	3000

The data indicates that the majority of TPH-impacted soils have been excavated. However, chloride concentrations above the NMOCD guideline concentration (1000 mg/kg) in the soil remain in the north sidewall, east sidewall, and pit bottom. The pit bottom samples indicate that the chloride concentrations are decreasing with depth.

A limited Phase II Subsurface Assessment (Phase II) was performed in February 2012. Four soil borings were advanced at the Subject Site to assess the horizontal and vertical profile of chloride and TPH concentrations. Results of soil samples collected from the soil borings did not indicate the presence of TPH associated with the pit. Chloride concentrations were present above the NMOCD guideline concentration. However, the reported concentrations appeared to decrease with depth to below the NMOCD guideline concentration at depths less than 50 ft bgs.

## SCOPE OF WORK

The purpose of this work is to complete the backfilling of the excavation and reseed the area. Details on completion of the remediation are detailed below. Kleinfelder received cost estimates from two remediation contractors, Gandy Corporation and EnviroWorks, LLC. Both firms are experienced remediation contractors and have performed projects in the vicinity of the site. Based on a review of their bids, Kleinfelder recommends that EnviroWorks perform the contractor work based on the prices provided. Copies of the bids are attached to this workplan.

### Task 1 - Project Preparation

This task includes preparing and submitting this work plan and other project preparation activities that occur after work plan approval, but before fieldwork mobilization. After receiving authorization to proceed, Kleinfelder will:

- Obtain a signed access agreement from the property owner;
- Provide an agreement to obtain fill material to Mr. Prueitt (see below);
- Complete the waste characterization documentation for disposal of construction debris to the landfill (if required);
- Develop a Health and Safety Plan (HASP) that addresses field work specified in the work plan;
- Develop work orders and contracts for subcontractors;
- Notify New Mexico One-Call to facilitate location of underground utilities and pipelines; and
- Notify the Client a minimum of 24 hours prior to the commencement of remediation activities.

## **Task 2 – Field Program**

A NMOCD representative (if available), Kleinfelder and the selected contractor employees will mobilize to the site to perform a project kickoff meeting. Prior to performing site work, a Kleinfelder representative will brief the contractor employees on site conditions as part of the project kickoff meeting. Also discussed during the project kickoff meeting will be the HASP, applicable JSA's, and stop work authority (SWA). Tailgate safety meetings will be conducted daily at the beginning of the day and as conditions change. The field program will consist of the following:

- The former reserve pit shall be backfilled to the existing grade. A caliche pit is located approximately 2.25 road miles north of the Subject Site. The caliche pit is owned by Mr. Larry Prueitt who is willing to provide caliche and top soil material for no charge. As a show of good faith, the contractor will leave a stockpile of a minimum of 10-yards of caliche and 10-yards of top soil at the pit. The contractor will also deliver a truck load of caliche and a truck load of top soil to Mr. Prueitt's home (located approximately 1 mile north of the caliche pit).
- Any on-site drill cuttings that are contained in drums will either be used for pit backfill above the liner.
- Concrete materials will be placed in the bottom of the excavation. The remaining wire and pipe will be hauled to a landfill for disposal. All fence materials shall be removed from the Subject Site and properly disposed of.
- Initial backfilling of the former reserve pit will be performed to a depth of approximately 5 ft below existing grade. Backfill material shall be wheel-roll compacted using the backfill equipment.
- When backfill material reaches a depth of 5 ft below existing grade, a 40 mil thick polyethylene liner will be placed over the backfill material. The liner shall extend at least to the edges of the former reserve pit (approximately 70 ft by 70 ft). Liner seams shall be overlapped a minimum of 24 inches. Debris that could potentially puncture the liner will be removed from the fill. A minimum of 12 inches of clean sand shall be placed over the liner to minimize the potential for punctures.
- The remainder of the former reserve pit shall be backfilled to grade. Backfill material shall be wheel-roll compacted using backfill equipment.

- After the completion of the backfill activities, the former reserve pit and borrow areas will be reseeded with a seed mix and rate that is recommended by the Bureau of Land Management. Seed will be hand raked into place and mulched. Upon completion of the seed planting process, each reseeded area will be watered to promote plant growth. The contractor will use a water truck and a hose (at low pressure to prevent movement of the seed) to apply the water to the planted areas one time only. Water is not available and will need to be hauled to the site.

Personal protective clothing including steel-toed work boots, gloves, safety glasses and hard hats will be required (basic Level D requirements) during all field tasks. Respirators will be on hand in the event they are needed. Kleinfelder will provide a HASP that will be reviewed and signed by on-site Kleinfelder personnel, subcontractors, and authorized visitors.

### **Task 3 – Reporting**

A short letter report summarizing remediation activities will be submitted. The letter report will include a Site description, project history, description of field events, a discussion of results, and recommendations (if any). The report will include:

- A scaled site plan showing the location of the pit (including latitude and longitude coordinates);
- Copies of landfill manifests; and
- Final site photographs.

### **SCHEDULE**

Kleinfelder will begin obtaining site access and preparing project documents upon receipt of your written authorization to proceed. Field work will be scheduled as soon as feasible based upon receipt of a signed access agreement from the property owner.

### **PROJECT BUDGET**

Our estimated time and materials fee for the scope of work described above is \$107,552.12 (\$100,516 excluding 7% New Mexico Gross Receipts Tax (NMGRT)). A breakdown of the costs is included as an attachment. NMGRT will not be charged if the Client provides us with a non-taxable transaction certificate. Should the NMGRT rate change at the time the work is completed, applicable fee adjustments will be made. Pricing is based upon the New Mexico Department of Transportation Price Agreement No. 10-805-00-07208. This price assumes the following:

- Backfill material will be able to be obtained from Mr. Pruiett's caliche pit without charge; and
- Site access will be provided by the land owners within the budget allotted.

### **CLOSING**

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions, and recommendations will be based on a limited number of

observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.


Acceptance of this work plan will indicate that the NMOCD has reviewed the document and determined that it does not need or want a greater level of service than provided. During the course of the performance of Kleinfelder's services, hazardous materials may be discovered. Kleinfelder will assume no responsibility or liability whatsoever for any expense, claim, loss of property value, damage, or injury that results from or in any way connected with pre-existing hazardous materials being encountered or present on the project site, or from the discovery of such hazardous materials. Notwithstanding anything contained in this work plan to the contrary, Kleinfelder shall not assume the status of an owner, operator, generator, or person who arranges for disposal, transport, storage, or treatment of hazardous materials within the meaning of any governmental statute, regulation, or order. NMOCD will be solely responsible for notifying all governmental agencies, and the public at large, of the existence, release, treatment, or disposal of any hazardous materials observed at the project site, either before or during performance of Kleinfelder's services. NMOCD will be responsible for all arrangements to lawfully store, treat, recycle, dispose, or otherwise handle hazardous materials, including cuttings and samples resulting from Kleinfelder's services.

This work plan is valid for a period of 45 days from the date of this work plan, unless a longer period is specifically required by the RFP in which case that time frame will apply. This work plan was prepared specifically for the client and its designated representatives and may not be provided to others without Kleinfelder's express permission.

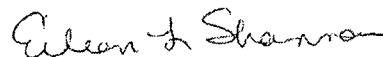
We appreciate the opportunity to provide these services to NMOCD. Should any questions arise concerning this work plan; we will be pleased to discuss them with you.

Respectfully submitted,  
**KLEINFELDER WEST, INC.**

Reviewed by:



Bernard Bockisch, PMP  
Senior Project Manager



Eileen Shannon, PG  
Project Professional

#### Appendices:

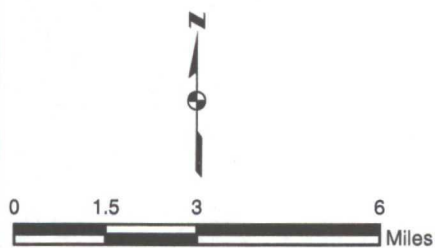
Figure 1 – Site Location Map  
Figure 2 – Site Plan  
Appendix A – Cost Breakdown  
Appendix B – Contractor's Quotes

## FIGURES

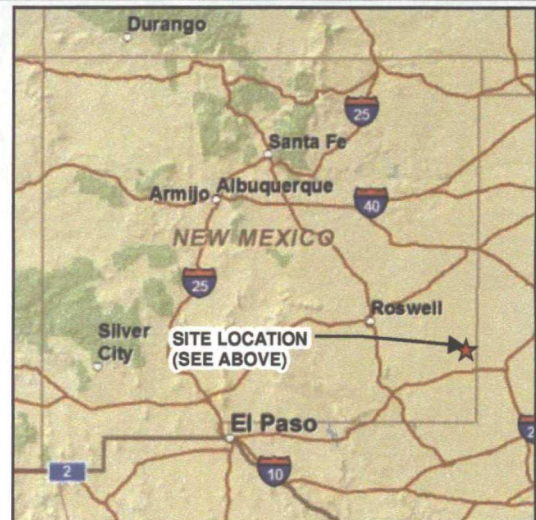





SOURCES: [http://services.arcgisonline.com/ArcGIS/rest/services/NGS\\_Topo\\_US\\_2D/MapServer](http://services.arcgisonline.com/ArcGIS/rest/services/NGS_Topo_US_2D/MapServer)

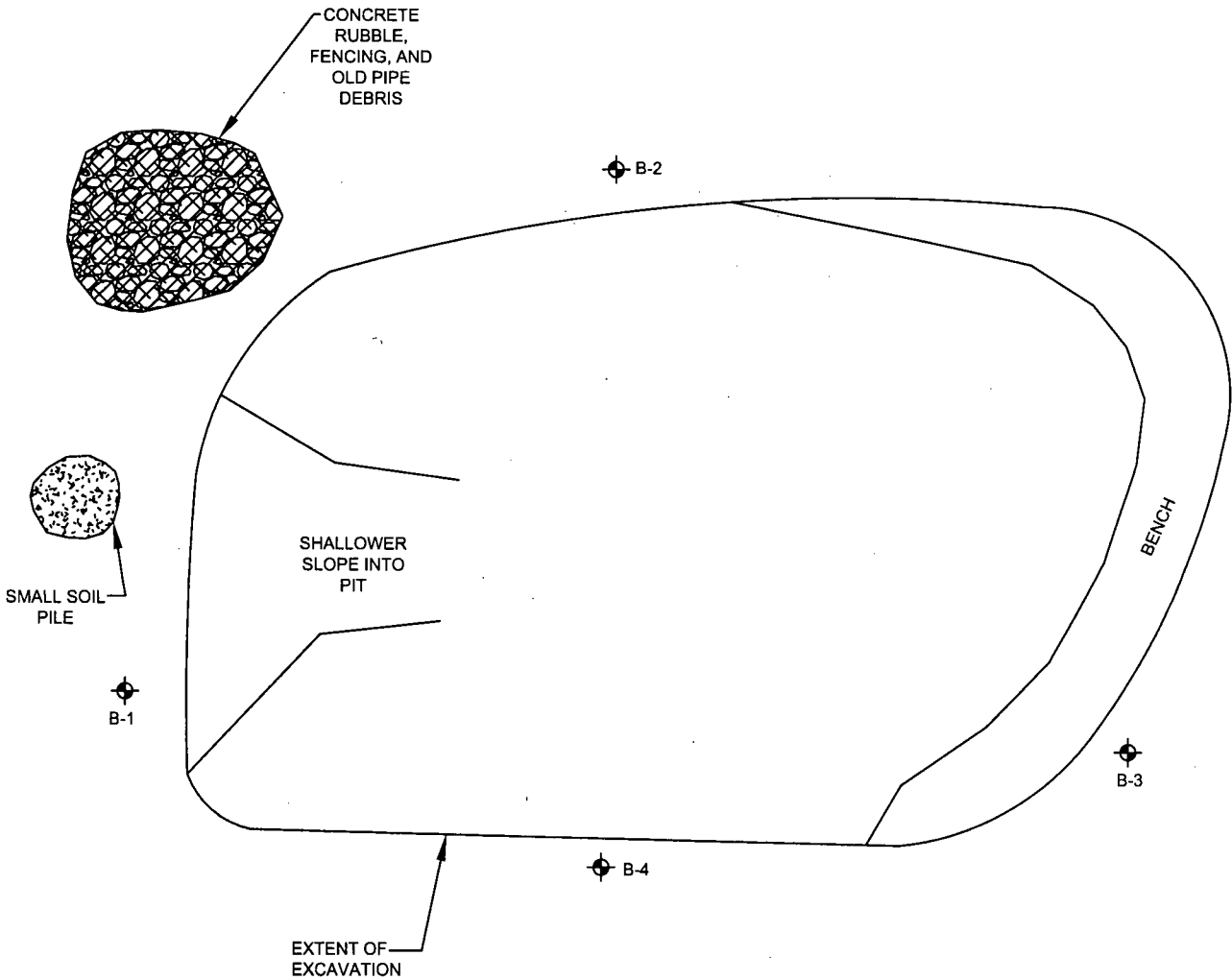


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	PROJECT NO. 124547	<b>SITE LOCATION MAP</b>  NMOCD HUTCHERSON PIT ROOSEVELT COUNTY NEAR MILNESAND, NEW MEXICO	FIGURE  <b>1</b>
	DRAWN: 02/06/2012		
	DRAWN BY: PD		
	CHECKED BY: BB		
	FILE NAME: 124547_SL.mxd		





LEGEND

✦ DRILLED BORINGS  
JANUARY 19, 2012



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ATTACHED IMAGES:  
ATTACHED XREFS:  
ALBUQUERQUE, NM



PROJECT NO.	124547
DRAWN:	02/06/2012
DRAWN BY:	PD
CHECKED BY:	BB
FILE NAME:	124547_02_01.dwg

SITE PLAN

NMOCD  
HUTCHERSON PIT  
ROOSEVELT COUNTY  
NEAR MILNESAND, NEW MEXICO

FIGURE

2

**APPENDIX A**  
**Cost Breakdown**

**LABOR FEE**

**Hutcherson Remediation**

LABOR CATEGORY											TOTAL HOURS	TOTAL TASK FEE
	Senior Scientist	Field Technician II	Project Scientist	Staff Scientist	Draftsperson	Administrator	Principal					
	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time					
	Labor Factor											
Billing rate (\$/hr)	\$114.00	\$63.00	\$94.00	\$83.00	\$64.00	\$69.00	\$171.00	\$0.00	\$0.00	\$0.00		
Task 1 Project Setup	32				4	8	2				46	\$4,798.00
Task 2 Field Program	40		100								140	\$13,960.00
Task 3 Report Preparation and Project Closeout	32				4	8	2				46	\$4,798.00
Task 4											0	\$0.00
Task 5											0	\$0.00
Task 6											0	\$0.00
Task 7											0	\$0.00
Task 8											0	\$0.00
Task 9											0	\$0.00
Task 10											0	\$0.00
LABOR HOURS	104	0	100	0	8	16	4	0	0	0	232	
LOADED LABOR FEE	\$11,856	\$0	\$9,400	\$0	\$512	\$1,104	\$684	\$0	\$0	\$0		\$23,556

**USAGES AND ODCS**  
**Hutcherson Remediation**

ODC Category	Lodging and Meals	Meals Only	Misc. Field Equip	Exp. Field Equip	Mileage	ODC 6	ODC 7	ODC 8	ODC 9	ODC 10	TOTAL ODCs	ODC BUDGET
	Unit	Per Day	Per Day	Per Day	Per Mile							
	Billing rate (\$/unit)	\$140.00	\$40.00	\$75.00	\$150.00	\$0.79	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Task 1 Project Setup											\$0.00	\$0.00
Task 2 Field Program	15	6	10	10	3,000						\$3,820.00	\$6,960.00
Task 3 Report Preparation and Project Closeout											\$0.00	\$0.00
Task 4											\$0.00	\$0.00
Task 5											\$0.00	\$0.00
Task 6											\$0.00	\$0.00
Task 7											\$0.00	\$0.00
Task 8											\$0.00	\$0.00
Task 9											\$0.00	\$0.00
Task 10											\$0.00	\$0.00
<b>TOTAL UNITS</b>	15	6	10	10	3,000	0	0	0	0	0		
<b>BILLING AMOUNT</b>	\$2,100.00	\$240.00	\$750.00	\$1,500.00	\$2,370.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		

**SUBCONSULTANT AND SUBCONTRACTOR FEE**

**Hutcherson Remediation**

SUBCONSULTANT OR SUBCONTRACTOR	EnviroWorks	NAME	NAME	NAME	NAME	NAME	NAME	NAME	NAME	NAME	TOTAL COST	TOTAL MARKED UP SUBS
Task 1 Project Setup	\$70,000.00										\$70,000.00	\$70,000.00
Task 2 Field Program											\$0.00	\$0.00
Closeout											\$0.00	\$0.00
Task 4											\$0.00	\$0.00
Task 5											\$0.00	\$0.00
Task 6											\$0.00	\$0.00
Task 7											\$0.00	\$0.00
Task 8											\$0.00	\$0.00
Task 9											\$0.00	\$0.00
Task 10											\$0.00	\$0.00
<b>DIRECT COST</b>	\$70,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$70,000.00	
Mark up (%)												
<b>MARKED UP COST</b>	\$70,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$70,000.00

**PROJECT SUMMARY**  
**Hutcherson Remediation**

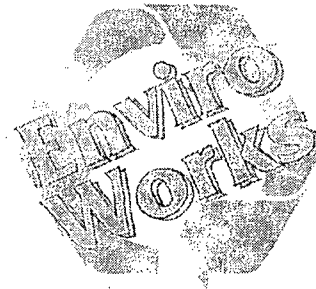
TASK	HOURS	LABOR BUDGET	ODC BUDGET	SUB BUDGET	TOTAL
Task 1 Project Setup	46	\$4,798.00	\$0.00	\$70,000.00	<b>\$74,798.00</b>
Task 2 Field Program	140	\$13,960.00	\$6,960.00	\$0.00	<b>\$20,920.00</b>
Task 3 Report Preparation and Project	46	\$4,798.00	\$0.00	\$0.00	<b>\$4,798.00</b>
Task 4	0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
Task 5	0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
Task 6	0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
Task 7	0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
Task 8	0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
Task 9	0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
Task 10	0	\$0.00	\$0.00	\$0.00	<b>\$0.00</b>
<b>TOTALS</b>	<b>232</b>	<b>\$23,556.00</b>	<b>\$6,960.00</b>	<b>\$70,000.00</b>	<b>\$100,516.00</b>

## **APPENDIX B**

### **Contractor's Quotes**



Kleinfelder  
Attn: Bernard Bockisch  
RE: North Lea Joint Venture Former Reserve Pit  
Former Hutcherson Crude Oil Reserve Pit



April 2, 2012

**Proposal #120402**

**North Lea Scope:**

Reserve Pit: Excavate to a depth of approximately 10' below the top of existing material.  
Remove material to nearby landfarm or landfill.

Stained Soil Area: Excavate approx. 20'x20'x20', with field screening during excavation.  
40 mil polyethylene liner shall be placed in the bottom of both excavations. A minimum of 1' of clean sand shall be placed over each liner.

Each excavation will be backfilled to grade using berm material and wheel-rolled compacted.  
Reseeding of reserve pit and stained area.

Remove and dispose of fence materials.

**\$ 180,005.72**

**Former Hutcherson Scope:**

Former Reserve Pit: Backfilled to existing grade. Cliché and top soil provided by others.  
Initial backfill to a depth of approx. 5' below existing grade. Backfill material will be wheel-roll compacted.

A 40 mil thick polyethylene will be placed over backfill. A minimum of 12" of clean sand shall be placed over liner.

Reserve pit will be reseeded.

Remove and dispose of fence material.

**\$ 63,504.94**

**TOTAL BID PRICE**

**\$ 243,510.66**

**Note:**

**This price is based on completing both locations simultaneously. If only one location is awarded, a cost increase will occur.**

Excludes all soil testing, surveying and SWIPP.

The above price does not include sales tax.

Any utilities encountered that are not spotted by NM One Call or the owner will be the owner's responsibility.

Any repairs to utilities not spotted will be cost +10%.

Any unforeseen costs by the utility companies will be an additional charge.

**Pricing good for 30 days.**

**Approved: \_\_\_\_\_ Date: \_\_\_\_\_**

Please feel free to contact us if you have any questions at 505-286-4891 or by email at [bart@enviroworksforyou.com](mailto:bart@enviroworksforyou.com), [sean@enviroworksforyou.com](mailto:sean@enviroworksforyou.com)

**EnviroWorks, LLC**

PO Box 340 21 Main Street Suite 203, Edgewood, NM 87015 Phone: (505) 286-4891 Fax: (505) 286-4965

EIN: 85-0460740 CRS: 02-397513-00-0 License: 81818  
E-mail: [lisa@enviroworksforyou.com](mailto:lisa@enviroworksforyou.com)

Gandy Corporation  
P.O. Box 2140  
Lovington, NM 88260

March 30, 2012

Kleinfelder  
Att: Bernard Bockisch  
Cell: (505)344-7373

Dear: Bernard

Gandy Corporation would like to take this opportunity to submit a quote to work on your **Hutcherson RFQs** location as follows:

We will furnish equipment and labor to push up caliche, load, and haul to site, backfill, install 40 mil liner, backfill to grade, seed and water site.

Sub total:	\$ 61,986.75
Tax:	\$ 3,409.27
Total:	\$ 65,396.02

This quote is base on hauling in caliche from rancher's pit (free of charge)  
This quote is good for 30 days from the date written.  
Can start on 4-18-12

If we can be of further service to you, please do not hesitate to call us at any time at (575)396-4948.

Sincerely,

Joel Munoz



# State of New Mexico Purchase Order

PO Number to be on all Invoices and Correspondence

**Dispatch via Print**

## Energy, Minerals & Resources

1220 South St. Francis Drive  
Santa Fe NM 87505  
United States

**Vendor:** 0000055729  
KLEINFELDER WEST INC  
9019 WASHINGTON NE BUILDING A  
ALBUQUERQUE NM 87113

<b>Purchase Order</b> 52100-0000035184	<b>Date</b> 04/23/2012	<b>Revision</b>	<b>Page</b> 1
<b>Payment Terms</b> Pay Now	<b>Freight Terms</b> FOB Destination	<b>Ship Via</b> Best Way	
<b>Buyer</b> RACHEL D. HERRERA	<b>Phone</b> 505/476-3311		

**Ship To:** 1220 South St. Francis Drive  
Room 346  
Santa Fe NM 87501  
United States

**Bill To:** 1220 South St. Francis Drive  
Room 346  
Santa Fe NM 87501  
United States

**Origin:** CON **Exc\Excl #:**

Line-Sch	Item/Description	Mfg ID	Quantity	UOM	PO Price	Extended Amt	Due Date
1- 1	Backfilling and re-seeding of the reserve pit associated with Hutcherson #1 well (API # 30-041-10021) near Milnesand, NM.		1.00	EA	118,307.33	118,307.33	04/23/2012

52100-31100-0710000000-535300- -0750- - -112-10000

**Schedule Total** 118,307.33

Contract ID: 10-805-00-07208AD

Contract Line: 0 Release: 3

**Item Total** 118,307.33

Price Agreement expires August 15, 2012  
10-805-00-07208

**Total PO Amount** 118,307.33

Agency Approval - I certify that the proposed purchase represented by this document is authorized by and is made in accordance with all State (and if applicable Federal) legislation rules and regulation. I further certify that adequate unencumbered cash and budget expenditure authority exists for this proposed purchase and all other outstanding purchase commitments and accounts payable.

**Authorized Signature**

STATE OF NEW MEXICO  
GENERAL SERVICES DEPARTMENT- PURCHASING DIVISION  
TERMS AND CONDITIONS UNLESS OTHERWISE SPECIFIED

SPD-101A (07/92)

1. GENERAL: When the State Purchasing Agent issues a purchase document in response to the Vendors bid, a binding contract is created.
2. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process, and then only to the extent, if any, specified elsewhere in this order.
3. ASSIGNMENT:
  - A: Neither the order, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in subparagraph 3B below or as expressly authorized in writing by the STATE PURCHASING AGENTS OFFICE. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.
  - B: Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.
4. STATE FURNISHED PROPERTY: State furnished property shall be returned to the state upon request in the same condition as received except for ordinary wear, tear, and modifications ordered hereunder.
5. DISCOUNTS: Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within 20 days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise or invoice, whichever is later.
6. INSPECTION: Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for non-conformance with specifications shall be removed, at the Vendors risk and expense, promptly after notice of rejection.
7. INSPECTION OF PLANT: The State Purchasing Agent may inspect, at any reasonable time, the part of the contractors, or any subcontractors plant or place of business, which is related to the performance of this contract.
8. COMMERCIAL WARRANTY: The Vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such supplies or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other cause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.
9. TAXES: The unit price shall exclude all State taxes.
10. PACKING, SHIPPING AND INVOICING:
  - A: The States purchase document number and the Vendors name, users name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipment. The users count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.
  - B: The Vendors invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices and extended totals. Separate invoices shall be rendered for each and every complete shipment.
  - C: Invoices must be submitted to the using agency and NOT THE STATE PURCHASING AGENT.
11. DEFAULT: The State reserves the right to cancel all or any part of this order without cost to the State, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendors default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, such causes include, but are not restricted to, acts of God or of the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor where obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.
12. NON-COLLUSION: In signing this bid, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this proposal submitted to the State Purchasing Agent.
13. NON-DISCRIMINATION: Vendors doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of that Act, Rev., 1979.
14. THE PROCUREMENT CODE: Sections 13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation.  
In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.
15. All bid items are to be NEW and most current production, unless otherwise specified.
16. PAYMENT FOR PURCHASES: Except as otherwise agreed to: late payment charges may be assessed against the user state agency in the amount and under the conditions set forth in section 13-14158 NMSA 1978.
17. WORKERS COMPENSATION: The Contractor agrees to comply with state laws and rules pertaining to workers compensation benefits for its employees. If the Contractor fails to comply with Workers Compensation Act and applicable rules when required to do so, this (Agreement) may be terminated by the contracting agency.
18. PAY EQUITY RECORDING: The Contractor agrees to comply with New Mexico Pay Equity reporting requirements as detailed in Executive Order 2009-049 Implementation Guidance available at <http://www.generalservices.state.nm.us/spd/guidance.pdf>



# State of New Mexico Purchase Order

PO Number to be on all Invoices and Correspondence

**Dispatch via Print**

## Energy, Minerals & Resources

1220 South St. Francis Drive  
Santa Fe NM 87505  
United States

**Vendor:** 0000055729  
KLEINFELDER WEST INC  
9019 WASHINGTON NE BUILDING A  
ALBUQUERQUE NM 87113

<b>Purchase Order</b> 52100-0000033897	<b>Date</b> 12/15/2011	<b>Revision</b>	<b>Page</b> 1
<b>Payment Terms</b> Pay Now	<b>Freight Terms</b> FOB Destination	<b>Ship Via</b> Best Way	
<b>Buyer</b> RACHEL D. HERRERA	<b>Phone</b> 505/476-3311		

**Ship To:** 1220 South St. Francis Drive  
Room 346  
Santa Fe NM 87501  
United States

**Bill To:** 1220 South St. Francis Drive  
Room 346  
Santa Fe NM 87501  
United States

Origin: CON ExclExcl #:

Line-Sch	Item/Description	Mfg ID	Quantity	UOM	PO Price	Extended Amt	Due Date
1- 1	Soil assessment at Hutcherson pit site southwest of Milnesand, NM.		1.00	EA	24,945.93	24,945.93	12/15/2011
	52100-31100-0710000000-535300- -0750- - -112-10000						
Schedule Total						<u>24,945.93</u>	
Contract ID: 10-805-00-07208AD		Contract Line: 0		Release: 2			
Item Total						24,945.93	

Price Agreement 10-805-00-07208  
Expires August 15, 2012

**Total PO Amount** 24,945.93

Agency Approval - I certify that the proposed purchase represented by this document is authorized by and is made in accordance with all State (and if applicable Federal) legislation rules and regulation. I further certify that adequate unencumbered cash and budget expenditure authority exists for this proposed purchase and all other outstanding purchase commitments and accounts payable.

**Authorized Signature**

STATE OF NEW MEXICO  
GENERAL SERVICES DEPARTMENT- PURCHASING DIVISION  
TERMS AND CONDITIONS UNLESS OTHERWISE SPECIFIED

SPD-101A (07/92)

1. GENERAL: When the State Purchasing Agent issues a purchase document in response to the Vendors bid, a binding contract is created.
2. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this order will be accepted unless such variation has been caused by conditions of loading, shipping, packing or allowances in manufacturing process, and then only to the extent, if any, specified elsewhere in this order.
3. ASSIGNMENT:
  - A: Neither the order, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in subparagraph 3B below or as expressly authorized in writing by the STATE PURCHASING AGENTS OFFICE. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this order.
  - B: Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.
4. STATE FURNISHED PROPERTY: State furnished property shall be returned to the state upon request in the same condition as received except for ordinary wear, tear, and modifications ordered hereunder.
5. DISCOUNTS: Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within 20 days will be considered after the award of the contract. Discounted time will be computed from the date of receipt of the merchandise or invoice, whichever is later.
6. INSPECTION: Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for non-conformance with specifications shall be removed, at the Vendors risk and expense, promptly after notice of rejection.
7. INSPECTION OF PLANT: The State Purchasing Agent may inspect, at any reasonable time, the part of the contractors, or any subcontractors plant or place of business, which is related to the performance of this contract.
8. COMMERCIAL WARRANTY: The Vendor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such supplies or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other cause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.
9. TAXES: The unit price shall exclude all State taxes.
10. PACKING, SHIPPING AND INVOICING:
  - A: The States purchase document number and the Vendors name, users name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipment. The users count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.
  - B: The Vendors invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices and extended totals. Separate invoices shall be rendered for each and every complete shipment.
  - C: Invoices must be submitted to the using agency and NOT THE STATE PURCHASING AGENT.
11. DEFAULT: The State reserves the right to cancel all or any part of this order without cost to the State, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendors default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, such causes include, but are not restricted to, acts of God or of the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor where obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this order.
12. NON-COLLUSION: In signing this bid, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this proposal submitted to the State Purchasing Agent.
13. NON-DISCRIMINATION: Vendors doing business with the State of New Mexico must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of that Act, Rev., 1979.
14. THE PROCUREMENT CODE: Sections 13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation.  
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17. WORKERS COMPENSATION: The Contractor agrees to comply with state laws and rules pertaining to workers compensation benefits for its employees. If the Contractor fails to comply with Workers Compensation Act and applicable rules when required to do so, this (Agreement) may be terminated by the contracting agency.
18. PAY EQUITY RECORDING: The Contractor agrees to comply with New Mexico Pay Equity reporting requirements as detailed in Executive Order 2009-049 Implementation Guidance available at <http://www.generalservices.state.nm.us/spd/guidance.pdf>

The Insurance Company of the State of Pennsylvania  
One Liberty Place  
1650 Market Street, Suite 3700  
Philadelphia, PA 19103

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That Kleinfelder West, Inc. as Principal, hereinafter called Contractor, and The Insurance Company of the State of Pennsylvania 1650 Market Street, Suite 3700, Philadelphia, PA 19103, as Surety, are held and firmly bound unto State of New Mexico, Energy Minerals and Resources as Obligor, hereinafter called Owner, in the sum of Twenty Four Thousand Nine Hundred Forty Five and 23/100 Dollars (\$ 24,945.23) for the payment of which sum, well and truly to be made, the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Contractor has entered into a written contract dated August 16, 2011 with the Owner for Price Agreement Number: 10-805-00-07208 in accordance with a contract is which by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly -

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.
3. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances: 1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practical after the amount is determined, tender payment therefor to the Owner; or 2. Deny liability in whole or in part and notify the Owner citing reasons therefor

Any suit under this bond must be instituted before the expiration of one (1) year from the date on which final payment under the Contract falls due. If this limitation is made void by any law controlling the construction hereof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by such law.

The Surety shall not be liable for damages, costs or expenses, including, but not limited to legal expenses from actual or alleged injury to person or property or for the death of any person, or under or by nature of any statutory or regulatory provisions for damages or compensation for actual or alleged injury to, or death, of any person or employee.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed, sealed and dated this 29th December 2011

Witness:

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

Principal: Kleinfelder West, Inc.

By: [Signature] 1/4/2012

Surety: The Insurance Company of the State of Pennsylvania

By: [Signature]

Bond Number: ESD021810542

Heather A. Pate Attorney-In-Fact



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

*State of California*

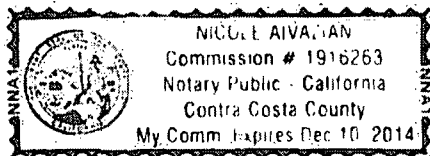
*County of Contra Costa*

On December 29, 2011 before me, Nicole Aivazian, Notary Public

personally appeared-----Heather A. Pate-----

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

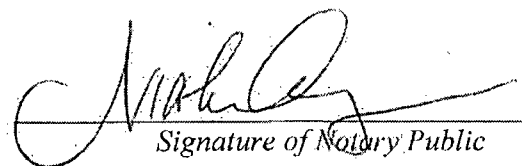
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



*Place Notary Seal Above*

WITNESS my hand and official seal.

Signature

  
Signature of Notary Public

**The Insurance Company of the State of Pennsylvania**

Principal Bond Office: 175 Water Street, New York, NY 10038

**POWER OF ATTORNEY**

No. 5

Expiration Date: November 3, 2012

**KNOW ALL MEN BY THESE PRESENTS:**

That The Insurance Company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

**---Heather A. Pate, David G. Harris, Stephanie E. Radosevich: of Walnut Creek, CA---**

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby in the maximum amount of **\$15,000,000.00** per bond, undertaking, recognizance and other contract of indemnity

This power of attorney shall remain in full force and effect until the expiration date above-referenced.

IN WITNESS WHEREOF, The Insurance Company of the State of Pennsylvania has executed these presents

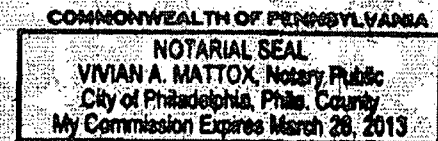
this 3<sup>rd</sup> day of November, 2011.

  
Robert E. Staples, Vice President

STATE OF PENNSYLVANIA)  
COUNTY OF PHILADELPHIA)ss.

On this 3<sup>rd</sup> day of November, 2011 before me came the above named officer of The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.

  
Notary



**CERTIFICATE**

Excerpts of Resolution adopted by the Board of Directors of The Insurance Company of the State of Pennsylvania, on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

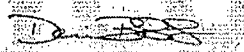
"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Denis Butkovic, Secretary of The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolution adopted by the Board of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation

this 29 day of December, 2011

  
Denis Butkovic, Secretary

## ANNUAL PERFORMANCE BOND SURETY RIDER

**Fact**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

*State of California*

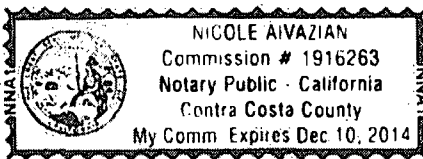
*County of Contra Costa*

On December 29, 2011 before me, Nicole Aivazian, Notary Public

personally appeared-----Heather A. Pate -----

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is~~are~~ subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

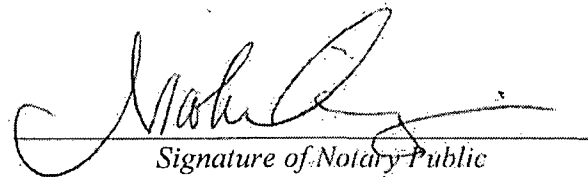
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



*Place Notary Seal Above*

WITNESS my hand and official seal.

Signature

  
*Signature of Notary Public*

The Insurance Company of the State of Pennsylvania  
Principal Bond Office: 175 Water Street, New York, NY 10038

**POWER OF ATTORNEY**

No. 6  
Expiration Date: November 3, 2012

**KNOW ALL MEN BY THESE PRESENTS:**

That The Insurance Company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

**--Heather A. Pate, David G. Harris, Stephanie E. Radosevich: of Walnut Creek, CA --**

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby in the maximum amount of \$15,000,000.00 per bond, undertaking, recognizance and other contract of indemnity.

This power of attorney shall remain in full force and effect until the expiration date above-referenced.

IN WITNESS WHEREOF, The Insurance Company of the State of Pennsylvania has executed these presents

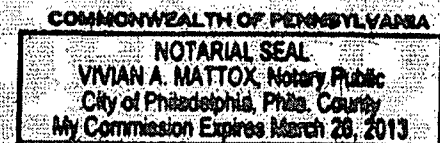
this 3<sup>rd</sup> day of November, 2011.

  
Robert E. Staples, Vice President

STATE OF PENNSYLVANIA)  
COUNTY OF PHILADELPHIA)ss.

On this 3<sup>rd</sup> day of November, 2011 before me came the above named officer of The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.

  
Notary.



**CERTIFICATE**

Excerpts of Resolution adopted by the Board of Directors of The Insurance Company of the State of Pennsylvania, on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

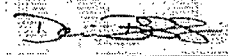
"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof.

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Denis Butkovic, Secretary of The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolution adopted by the Board of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation

this 29 day of December 2011

  
Denis Butkovic, Secretary

The Insurance Company of the State of Pennsylvania  
One Liberty Place  
1650 Market Street, Suite 3700  
Philadelphia, PA 19103

**PERFORMANCE BOND RIDER**

**Exclusions From The Scope Of The Surety's Duties, Obligations and liabilities under Bond  
Attachment A**

WHEREAS, this Rider is executed concurrently with Bond No. ESD021810542 in the amount of  
Twenty Four Thousand Nine Hundred Forty Five and 23/100 for work under the \_\_\_\_\_  
Price Agreement Number: 10-805-00-07208

contract (hereinafter "the Bond") and is intended to form a part thereof: and

WHEREAS, the parties, consisting of State of New Mexico, Energy Minerals and Resources as  
Obligee, Kleinfelder West, Inc. as  
Contractor and Principal on the Bond, and Insurance Company of the State of Pennsylvania as Surety, wish to  
amend the Bond to make certain exclusions from the scope of the Sureties duties, obligations and liabilities under  
the Bond.

NOW THEREFORE, and not withstanding anything in the contract to the contrary, the parties agree to amend the  
bond as follows:

1. The Bond is not intended by the parties to be, nor shall it be construed to be, an insurance policy, primary or excess, or in any other way be considered to satisfy the requirements for any type of insurance set forth in the contract documents between the Principal and the Obligor and /or Owner (hereinafter "the Contract"). The existence and maintenance of any and all insurance required by the Contract through the completion of any guaranty period provided therein shall be both a condition precedent and a condition subsequent to the Sureties duties, obligations and liabilities under the Bond.
2. Any rights of action under the Bond shall accrue to, and be for the exclusive use of, the Obligor. The bond is not intended by the parties to, nor shall it be construed to, create or extend any third party beneficiary rights.
3. No suit or action shall be commenced against the Principal or Surety for any default in performance or for labor performed or materials supplied after the earlier of (1) the contract duration period as set forth in the Contract at the time of execution plus any agreed extensions; or (2) one year after substantial completion of work under the Contract (3) one year after termination of the Contract in accordance with its terms and conditions. In no event shall the Surety be liable under any warranty provision in the Contract after one year from the date of substantial completion of under the Contract.
4. In the event of default, the Surety's liability under the Bond is limited to providing funds for the cost of completion of the Contract work in accordance with the plans and specifications, less the balance of funds remaining to be paid under the Contract. Under no circumstances is the Surety obligated to tender another contractor to complete the work, enter into a takeover agreement with the Owner and/or Obligor for the Completion of the work, finance completion of the work by the Principal or in any way assume responsibility, directly or indirectly, for the work required to be performed. Under no circumstances shall the liability of the Surety exceed the penal Sum of the Bond.
5. Upon Notice of default, the Surety will have a reasonable amount of time to honor it's obligations, if any under the bond.
6. The Surety shall in no event be liable to indemnify or compensate the Obligor for loss or liability arising from personal injury or property damage whether or not caused by breach of the bonded Contract. Under no circumstances shall the Surety be liable to indemnify or compensate the Obligor for any consequential damages.

7. The Surety shall in no event be liable to any person for injuries, costs, damages, expenses, or other liability which results from any release or threatened release of a hazardous substance or pollutant or contaminant, even if such release or threatened release is caused by the conduct of the Principal or Obligor which is negligent, or which constitutes intentional misconduct.

8. Notwithstanding any provision of the Contract or the Bond to the contrary, extension of the Contract completion date and modification or changes to the Contract require actual written receipt of notice by the Surety and authorization by the Surety in order for the Surety to be bound by such extensions, modifications or changes.

9. The Bond is issued subject to the above express conditions which shall survive the release and discharge of the Surety from any further liability of its Bond obligations, and those conditions are accepted by the Obligor notwithstanding any obligation to the contrary in the Contract.

Signed, Sealed and dated this 29th December 2011.

Witness:

Principal: Kleinfelder West, Inc.

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

By:  1/4/2012

Surety: Insurance Company of the State of Pennsylvania

By: 

Heather A. Pole, Attorney-in-Fact

Fact



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

*State of California*

*County of Contra Costa*

On December 29, 2011 before me, Nicole Aivazian, Notary Public

personally appeared-----Heather A. Pate -----

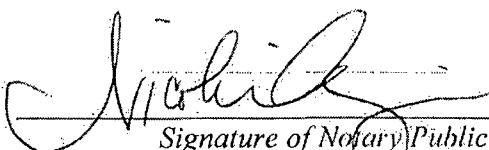
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



*Place Notary Seal Above*

WITNESS my hand and official seal.

Signature   
Signature of Notary Public

**The Insurance Company of the State of Pennsylvania**

Principal Bond Office: 175 Water Street, New York, NY 10038

**POWER OF ATTORNEY**

No. 7

Expiration Date: November 3, 2012

**KNOW ALL MEN BY THESE PRESENTS:**

That The Insurance Company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

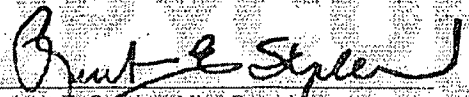
---Heather A. Pate, David G. Harris, Stephanie E. Radosevich: of Walnut Creek, CA ---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby in the maximum amount of \$15,000,000.00 per bond, undertaking, recognizance and other contract of indemnity.

This power of attorney shall remain in full force and effect until the expiration date above-referenced.

IN WITNESS WHEREOF, The Insurance Company of the State of Pennsylvania has executed these presents

this 3<sup>rd</sup> day of November, 2011.

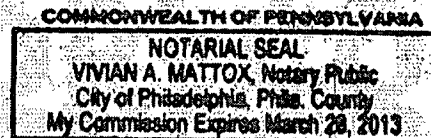


Robert E. Staples, Vice President

STATE OF PENNSYLVANIA)  
COUNTY OF PHILADELPHIA)ss.

On this 3<sup>rd</sup> day of November, 2011 before me came the above named officer of The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.

  
Notary



**CERTIFICATE**

Excerpts of Resolution adopted by the Board of Directors of The Insurance Company of the State of Pennsylvania, on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Denis Butkovic, Secretary of The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolution adopted by the Board of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation

this 29 day of December, 2011

  
Denis Butkovic, Secretary

The Insurance Company of the State of Pennsylvania  
One Liberty Place  
1650 Market Street, Suite 3700  
Philadelphia, PA 19103

**LABOR & MATERIAL PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That, Kleinfelder West, Inc., as  
Principal, and The Insurance Company of the State of Pennsylvania, One Liberty Place, 1650 Market Street, Suite 3700  
Philadelphia, PA 19103, as Surety, are held and firmly bound unto State of New Mexico, Energy Minerals and Resources  
as Obligees, in the sum of Twenty Four Thousand Nine Hundred Forty Five and 23/100  
(\$24,945.23), for the payment of which sum, well and truly to be made, the Principal and Surety bind  
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has entered into a written contract with the Obligees for Price Agreement Number: 10-805-00-07208  
in accordance with a  
contract which is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter  
defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall  
remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably  
required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone  
service or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full  
before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were  
furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final payment for such sum or sums as may be justly due  
claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the  
Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the  
materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were  
furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail,  
postage prepaid in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of  
business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not  
be made by a public officer.
  - b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any  
limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal  
to the minimum period of limitation permitted by such law.
  - c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part  
thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety  
of mechanics' liens which may be filed of record against said improvements, whether or not claim for the amount of such lien be presented under and against this  
bond.

Signed, sealed and dated this 29th December 2011

Witness:

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

Bond Number: ESD 021810542

Principal: Kleinfelder West, Inc.

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

Surety: The Insurance Company of the State of Pennsylvania

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

Heather A. Pate, Attorney-In-Fact

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

*State of California*

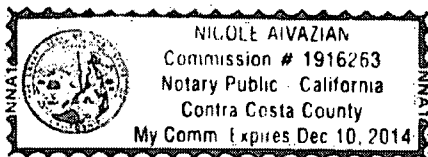
*County of Contra Costa*

On December 29, 2011 before me, Nicole Aivazian, Notary Public

personally appeared-----Heather A. Pate -----

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity~~(ies)~~, and that by his/~~her~~/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



*Place Notary Seal Above*

WITNESS my hand and official seal.

Signature

*Nicole Aivazian*  
\_\_\_\_\_  
*Signature of Notary Public*

**The Insurance Company of the State of Pennsylvania**

Principal Bond Office: 175 Water Street, New York, NY 10038

**POWER OF ATTORNEY**

No. 8

Expiration Date: November 3, 2012

**KNOW ALL MEN BY THESE PRESENTS:**

That The Insurance Company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

---Heather A. Pate, David G. Harris, Stephanie E. Radosevich: of Walnut Creek, CA ---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby in the maximum amount of \$15,000,000.00 per bond, undertaking, recognizance and other contract of indemnity.

This power of attorney shall remain in full force and effect until the expiration date above-referenced.

IN WITNESS WHEREOF, The Insurance Company of the State of Pennsylvania has executed these presents

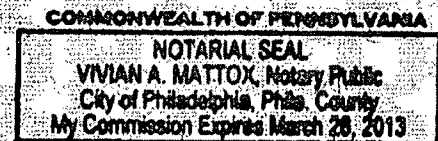
this 3<sup>rd</sup> day of November, 2011.

  
Robert E. Staples, Vice President

STATE OF PENNSYLVANIA;  
COUNTY OF PHILADELPHIA)ss.

On this 3<sup>rd</sup> day of November, 2011 before me came the above named officer of The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.

  
Notary



**CERTIFICATE**

Excerpts of Resolution adopted by the Board of Directors of The Insurance Company of the State of Pennsylvania, on May 18, 1976.

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;


"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Denis Butkovic, Secretary of The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolution adopted by the Board of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation

this 29 day of December, 2011.

  
Denis Butkovic, Secretary

**POLICYHOLDER NOTICE**

Thank you for purchasing insurance from the Chartis companies. Chartis Insurance companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by Chartis Insurance companies to brokers and independent agents in the United States by visiting our website at [www.chartisinsurance.com/producercompensation](http://www.chartisinsurance.com/producercompensation) or by calling 1-800-706-3102.

The Insurance Company of the State of Pennsylvania  
One Liberty Place  
1650 Market Street, Suite 3700  
Philadelphia, PA 19103

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That Kleinfelder West, Inc. as Principal, hereinafter called Contractor, and The Insurance Company of the State of Pennsylvania, 1650 Market Street, Suite 3700, Philadelphia, PA 19103, as Surety, are held and firmly bound unto State of New Mexico, Energy Minerals and Resources as Oblige, hereinafter called Owner, in the sum of Twenty Four Thousand Nine Hundred Forty Five and 23/100 Dollars (\$ 24,945.23) for the payment of which sum, well and truly to be made, the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Contractor has entered into a written contract dated August 16, 2011 with the Owner for Price Agreement Number: 10-805-00-07208 in accordance with a contract is which by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly -

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.
3. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances: 1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practical after the amount is determined, tender payment therefor to the Owner; or 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.

Any suit under this bond must be instituted before the expiration of one (1) year from the date on which final payment under the Contract falls due. If this limitation is made void by any law controlling the construction hereof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by such law.

The Surety shall not be liable for damages, costs or expenses, including, but not limited to legal expenses from actual or alleged injury to person or property or for the death of any person, or under or by nature of any statutory or regulatory provisions for damages or compensation for actual or alleged injury to, or death, of any person or employee.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed, sealed and dated this 29th December 2011

Witness:

Principal: Kleinfelder West, Inc.

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

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

Surety: The Insurance Company of the State of Pennsylvania

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

Bond Number: ESD021810542

Heather A. Paley, Attorney-In-Fact

**COPY**



The Insurance Company of the State of Pennsylvania  
One Liberty Place  
1650 Market Street, Suite 3700  
Philadelphia, PA 19103

**ANNUAL PERFORMANCE BOND SURETY RIDER**

To be attached to and form a part of Performance Bond Number ESD 021810542  
dated August 16, 2011 executed by Kleinfelder West, Inc.  
as Principal, and The Insurance Company of the State of  
Pennsylvania as Surety, in favor of State of New Mexico, Energy Minerals and Resources  
as Obligee.

This rider serves to amend the noted bond as follows:

1. This bond is for the term beginning August 16, 2011 and ending August 15, 2012.
2. This bond may be extended for additional term(s) of twelve (12) months at the option of the surety acting in its sole discretion by continuation certificate executed by the surety. Unless a continuation certificate indicates otherwise, any additional twelve (12) month term(s) shall begin immediately following the expiration of the previous term. At no time will the period of exposure under this bond exceed twelve (12) months. Notification of Non-Renewal shall be given by Certified Mail to the Obligee no later than thirty (30) days prior to the expiration date of the bond. Notwithstanding anything to the contrary contained in the Bond (as modified hereby), failure of the surety to issue a Continuation Certificate or otherwise extend the term or default by the Principal under the contract as a consequence of the foregoing, or the failure of the Principal to maintain surety bond coverage required by the contract shall not constitute a default under the Bond.
3. In the event of default by the Principal in performance of the contract during the term of this bond, the surety shall be liable only for the loss to the Obligee due to actual excess costs of performance of the contract up to the termination of the term of this bond. Maximum aggregate liability of the surety is limited to the penal sum of this bond.
4. Any suit under this bond must be instituted before the expiration of two (2) years from the last day of the term of this bond or any continuation thereof. If this limitation is made void by any law controlling the contract hereof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by such law.

Signed, sealed and dated this 29th December 2011

Witness:

Principal: Kleinfelder West, Inc.

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

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

Surety: The Insurance Company of the State of Pennsylvania

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

**COPY**

Heather A. Pate, Attorney-In-

Fact

The Insurance Company of the State of Pennsylvania  
One Liberty Place  
1650 Market Street, Suite 3700  
Philadelphia, PA 19103

**PERFORMANCE BOND RIDER**

**Exclusions From The Scope Of The Surety's Duties, Obligations and liabilities under Bond  
Attachment A**

WHEREAS, this Rider is executed concurrently with Bond No. ESD021810542 in the amount of  
Twenty Four Thousand Nine Hundred Forty Five and 23/100 for work under the  
Price Agreement Number: 10-805-00-07208

contract (hereinafter "the Bond") and is intended to form a part thereof; and

WHEREAS, the parties, consisting of State of New Mexico, Energy Minerals and Resources as  
Obligee, Kleinfelder West, Inc. as  
Contractor and Principal on the Bond, and Insurance Company of the State of Pennsylvania as Surety, wish to  
amend the Bond to make certain exclusions from the scope of the Sureties duties, obligations and liabilities under  
the Bond.

NOW THEREFORE, and notwithstanding anything in the contract to the contrary, the parties agree to amend the  
bond as follows:

1. The Bond is not intended by the parties to be, nor shall it be construed to be, an insurance policy, primary or excess, or in any other way be considered to satisfy the requirements for any type of insurance set forth in the contract documents between the Principal and the Obligor and/or Owner (hereinafter "the Contract"). The existence and maintenance of any and all insurance required by the Contract through the completion of any guaranty period provided therein shall be both a condition precedent and a condition subsequent to the Sureties duties, obligations and liabilities under the Bond.
2. Any rights of action under the Bond shall accrue to, and be for the exclusive use of, the Obligor. The bond is not intended by the parties to, nor shall it be construed to, create or extend any third party beneficiary rights.
3. No suit or action shall be commenced against the Principal or Surety for any default in performance or for labor performed or materials supplied after the earlier of (1) the contract duration period as set forth in the Contract at the time of execution plus any agreed extensions; or (2) one year after substantial completion of work under the Contract (3) one year after termination of the Contract in accordance with its terms and conditions. In no event shall the Surety be liable under any warranty provision in the Contract after one year from the date of substantial completion of under the Contract.
4. In the event of default, the Surety's liability under the Bond is limited to providing funds for the cost of completion of the Contract work in accordance with the plans and specifications, less the balance of funds remaining to be paid under the Contract. Under no circumstances is the Surety obligated to tender another contractor to complete the work, enter into a takeover agreement with the Owner and/or Obligor for the Completion of the work, finance completion of the work by the Principal or in any way assume responsibility, directly or indirectly, for the work required to be performed. Under no circumstances shall the liability of the Surety exceed the penal Sum of the Bond.
5. Upon Notice of default, the Surety will have a reasonable amount of time to honor it's obligations, if any under the bond.
6. The Surety shall in no event be liable to indemnify or compensate the Obligor for loss or liability arising from personal injury or property damage whether or not caused by breach of the bonded Contract. Under no circumstances shall the Surety be liable to indemnify or compensate the Obligor for any consequential damages.

7. The Surety shall in no event be liable to any person for injuries, costs, damages, expenses, or other liability which results from any release or threatened release of a hazardous substance or pollutant or contaminant, even if such release or threatened release is caused by the conduct of the Principal or Oblige which is negligent, or which constitutes intentional misconduct.

8. Notwithstanding any provision of the Contract or the Bond to the contrary, extension of the Contract completion date and modification or changes to the Contract require actual written receipt of notice by the Surety and authorization by the Surety in order for the Surety to be bound by such extensions, modifications or changes.

9. The Bond is issued subject to the above express conditions which shall survive the release and discharge of the Surety from any further liability of its Bond obligations; and those conditions are accepted by the Oblige notwithstanding any obligation to the contrary in the Contract.

Signed, Sealed and dated this 29th December 2011

Witness:

Principal: Kleinfelder West, Inc.

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

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

Surety: Insurance Company of the State of Pennsylvania

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

**COPY**

Heather A. Pate

Attorney-In-

Fact

The Insurance Company of the State of Pennsylvania  
One Liberty Place  
1650 Market Street, Suite 3700  
Philadelphia, PA 19103

**LABOR & MATERIAL PAYMENT BOND**

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as Oblige, in the sum of Twenty Four Thousand Nine Hundred Forty Five and 23/100  
(\$24,945.23), for the payment of which sum, well and truly to be made, the Principal and Surety bind  
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has entered into a written contract with the Oblige for Price Agreement Number: 10-805-00-07208  
in accordance with a  
contract which is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter  
defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall  
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1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably  
required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone  
service or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full  
before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were  
furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final payment for such sum or sums as may be justly due  
claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the  
Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the  
materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were  
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postage prepaid in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of  
business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not  
be made by a public officer.
  - b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any  
limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal  
to the minimum period of limitation permitted by such law.
  - c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part  
thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.
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of mechanics' liens which may be filed of record against said improvements, whether or not claim for the amount of such lien be presented under and against this  
bond.

Signed, sealed and dated this 29th December 2011

Witness:

Principal: Kleinfelder West, Inc.

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

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

Surety: The Insurance Company of the State of Pennsylvania

Bond Number: ESD 021810542

By: \_\_\_\_\_  
Heather A. Pate, Attorney-In-Fact

**COPY**