

**STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION**

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CONTRACT**ARTICLE I - STATEMENT OF WORK**

Contract to provide requirements as indicated in specifications

ARTICLE II - TERMThe term of this Contract will be as indicated in specifications**ARTICLE III - TERMINATION**

This Contract may be terminated by either signing party upon written notice by either party to the other at least thirty (30) days in advance of the date of termination. Termination of this contract, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of contract or default. In such instances the contract may be cancelled effective immediately.

ARTICLE IV - AMENDMENT

This Contract may be amended by mutual agreement of the NM State Purchasing Agent and the contractor upon written notice by either party to the other. An amendment to this Contract **SHALL NOT AFFECT ANY OUTSTANDING ORDERS** issued prior to the effective date of the amendment as mutually agreed upon, and as published by the NM State Purchasing Agent. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in bid and contract documents.

ARTICLE V - PRICE SCHEDULE

Price(s) as listed are firm.

ARTICLE VI - INDEMNITY CLAUSE

Contractor shall indemnify and hold harmless the State, its officers and employees, against liability, claims, damages, losses or expenses arising out of bodily injury to persons or damage to property caused by, or resulting from, contractor's and/or its employees, own negligent act(s) or omissions(s) while contractor, and/or its employees, perform(s) or fails to perform its obligations and duties under the terms and conditions of this agreement. This save harmless and indemnification clause is subject to the immunities, provisions, and limitations of the tort claims act (41-4-1, et seq., N.M.S.A. 1978 comp.) and section 57-7-1 N.M.S.A. 1978 comp. and any amendments thereto.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to the agreement to maintain a suit(s) for wrongful death(s) bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or any other claims(s) whatsoever pursuant to the provisions of this agreement.

Vendor shall provide all insurance necessary to employees on the work site, including but not limited to worker's compensation.

ARTICLE VII - CONTRACTOR AGREEMENT

Contractor agrees to:

- A. Furnish all equipment, material, labor and tools, required to perform the work specified.
- B. Provide competent supervision and skilled personnel to perform all work in progress.
- C. Comply with all local, state, and federal laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment, and take any other needed actions necessary to protect the life and health of employees on the job and the safety of the public, and to protect the property of the state of New Mexico in connection with the performance of the work covered by this contract.
- D. Provide the workers adequate insurance, including but not limited to worker's compensation.
- E. Make necessary arrangements for storage of his/her tools and/or equipment. The state agency will not be responsible for any lost or stolen property.
- F. Be responsible for all cleanup work on the project site and at the equipment storage area (s) prior to final inspection and acceptance.
- G. Comply with all applicable codes for this type of work.
- H. Be held liable for any damages which occur because of his/her negligence or that of his/her employees.

CONTRACTOR LICENSE NUMBER (IF APPLICABLE) _____ CLASSIFICATION: _____

STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

20-521-07-04091
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ITEM * QTY * UNIT * ARTICLE * UNIT * TOTAL
* * * AND DESCRIPTION * PRICE * PRICE

THE TERM OF THIS CONTRACT SHALL BE FOR ONE (1) YEAR FROM M001
DATE OF AWARD.

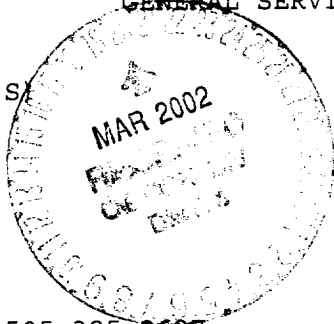
0001 - TOTAL TURNKEY

51,387.000000 (1)

**** 1 ITEM(S), 1 AWARDED

STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT

CONTRACT VENDOR(S)



* CONTRACT *

(1)-5279890 505-325-2627
A-PLUS WELL SERVICE
P.O. BOX 1979
3107 BLOOMFIELD HIGHWAY
FARMINGTON NM 87499-0000

WELL PLUGGING, SANDOVAL & MCKINLEY
COUNTIES

CONTRACT NO: 20-521-07-04091
COMMODITY 05478
CODE(S):

TAX-ID NUMBER: 850403057

BUYER: KATHY SANCHEZ *KS*
(505) 827-0487

SEALED BID OPENING * FORMAL
STATE PURCHASING AGENT'S OFFICE
DATE: 01/17/02

PAYMENT TERMS: NET 30
FOB: DESTINATION
DELIVERY: AS REQUESTED

SHIP TO:
OCD
1220 SOUTH ST. FRANCIS DRIVE

SANTA FE NM 87505-0000

THIS CONTRACT IS MADE SUBJECT
TO THE TERMS AND CONDITIONS SHOWN
ON THE REVERSE SIDE OF THIS PAGE.

INVOICE/BILL TO:
OCD STATE LAND OFFICE BLDG
1220 S. ST. FRANCIS DR., RM 2

SANTA FE NM 87505-0000

~~THE TERM OF THIS CONTRACT SHALL BE MAR 13, 2002 THRU MAR 12, 2003.~~

CONTACT PERSON FOR DELIVERY INSTRUCTIONS OF ITEM(S) ON THIS
CONTRACT: DOROTHY PHILLIPS (505) 476-3461

ACCEPTED FOR THE STATE OF NEW MEXICO

Joseph Montoya
NEW MEXICO STATE PURCHASING AGENT

DATE: 03/12/02

PURCHASING DIVISION
JOSEPH MONTOKA BLDG, RM. 2016
1100 ST. FRANCIS DR. 87505
P.O. BOX 26110
SANTA FE, NEW MEXICO 87502-0110

JS

STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

TERMS AND CONDITIONS UNLESS OTHERWISE SPECIFIED

1. **General:** When the State Purchasing Agent issues a purchase document in response to the Vendor's 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 agent's 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 Vendor's 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 contractor's, or any subcontractor's 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 clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose of merchantability.
9. **Taxes:** The unit price shall exclude all State taxes.
10. **Packing, Shipping and Invoicing:**
 - A. The State's purchase document number and the Vendor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Vendor as final and conclusive on all shipment not accompanied by a packing ticket.
 - B. The Vendor's 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. Invoice 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 Vendor's 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 the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, 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 were 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 offer 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 the Act, (Rev., 1979), and the Americans with Disabilities Act of 1990, (Public Law 101-336).
14. **The Procurement Code:** Sections 13-1-28 through 13-1-99 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 of 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 13-1-158 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 the Workers' Compensation Act and applicable rules when required to do so, this { Agreement} may be terminated by the contracting agency.
18. **ATTENTION:** Failure to complete all information on the bid envelope might necessitate the premature opening of the bid in order to identify the bid file. The bid number should be identified on the outside of the bid envelope.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

WELL PLUGGING AND SITE RESTORATION CONTRACT

THIS CONTRACT is made and entered into by and between the New Mexico Energy, Minerals and Natural Resources Department (hereinafter referred to as "EMNRD") and, A-Plus Well Service, Inc. (hereinafter referred to as "the Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES, AS FOLLOWS:

1 Scope of Work

1.1 The Contractor shall properly plug the crude oil or natural gas wells referenced in subparagraph 1.3 below and restore the associated well sites.

1.2 The work shall be performed according to the **plugging procedures** attached hereto as **Exhibit A** and the **restoration procedures** attached hereto as **Exhibit B**. All work shall comply with the Oil and Gas Act, the Water Quality Act, the Solid Waste Act, applicable Rules and Regulations of the New Mexico Oil Conservation Commission and the New Mexico Oil Conservation Division (Division), and all other applicable state, federal and local laws, regulations and ordinances.

1.3 The wells and well sites, which are to be plugged and restored pursuant to this Contract, are as follows:

OPERATOR	WELL NAME	LOCATION	COUNTY
Robert & Marjorie Wilkinson	Jaco No. 60	D-32-20N-9W	McKinley
Pitco Production Company	State 36-22-6-No. 1	M-36-22N-6W	Sandoval

1.4 Additional work required to perform the work described above and as set forth on Exhibits A and B, hereto, the total value of which shall not exceed total of ten percent (10%) of the Base Contract Sum, up to a maximum of Twenty Thousand Dollars (\$20,000.00) may be authorized to avoid a work stoppage by the EMNRD on-site representative, so long as the need for the additional work could not be reasonably foreseen prior to bidding through a diligent and thorough review of Division records and a thorough on-site inspection, and so long as Change Order is subsequently entered into pursuant to the provisions of paragraph 16, below. If work not described in the previous sentence is required, an Amendment or Change Order must be entered into pursuant to the provisions of paragraph 16, below, *before* any work is performed.

1.5 The work shall be performed under the supervision of an EMNRD representative, as designated in subparagraph 24.1. The representative may approve minor changes to the Scope of Work, approve invoices and payments hereunder, and approve the final work product.

1.6 Upon receipt of a Notice to Proceed from EMNRD, the Contractor shall move in and rig up on location and commence work. All work shall be completed no later than one year from the effective date of this Contract.

1.7 During the course of the work, the Contractor shall provide a daily summary of work performed

and plugging costs to date and shall alert the Division immediately as to unforeseen conditions encountered that may require an increase in compensation herein.

2 Compensation

2.1 EMNRD shall pay the Contractor for the performance of the work described in paragraph 1, above, subject to additions and deductions by Change Order as provided herein, the base Contract Sum of **Fifty-One Thousand Three Hundred and Eighty-Seven Dollars (\$51,387.00)**. A contingency in the amount of the sum of **Five Thousand One Hundred and Thirty-eight Dollars and Seventy Cents (\$5,138.70)**, which represents ten percent (10%) of the base Contract Sum, not to exceed Twenty Thousand Dollars (\$20,000), is included for compensation for work described in subparagraph 2.3.

COMPENSATION OVERVIEW:

Base Contract Sum	\$ 51,387.00
Contingency (10% of Base Contract Sum) (not to exceed \$20,000)	\$ 5,138.70
Gross Receipts Tax @ 6.25%	\$ 3,532.86
Total	<u>\$ 60,058.56</u>

2.2 Payment is contingent upon completion of all work described in Paragraph 1, above, and upon certification by the EMNRD representative that the work is complete and meets specifications, and upon receipt of a detailed invoice in form described in paragraph 3, below.

2.3 Payments for work described in paragraph 1.4, above, shall be made from the Contingency line item set forth in paragraph 2.1, above, so long as a Change Order is subsequently entered into pursuant to the provisions of paragraph 16, below. Payment of additional sums shall be made on a time-and-materials basis using unit prices set forth on the Supplement Bid Schedule.

2.4 The Contractor shall set forth separately on each invoice the New Mexico Gross Receipts Tax attributable to the amount billed. The Contractor shall be solely responsible for the payment of all other federal, state and local taxes on monies received pursuant to this Contract.

2 Invoicing, Payment

3.1 Invoicing. At the completion of work described in Paragraph 1, herein, the Contractor shall provide a detailed invoice which shall describe the work performed, and shall include records showing work performed by subcontractors and showing payment for same by the Contractor, with such additional documentary support as the EMNRD representative may require. The Contractor may submit invoices for progress payments on a well-by-well basis, so long as all the work to be performed on that well is complete, and so long as the work is certified as set forth in subparagraph 2.2.

3.2 Payment. The Contractor shall not be entitled to receive any payment until it has submitted an appropriate invoice and documentation of work as set forth in paragraph 3.1. Upon certification of the EMNRD representative that the work has been accepted, payment shall be tendered to the Contractor within twenty-one days (21) days after EMNRD receives an undisputed request for payment. EMNRD may make payment to the Contractor by first class mailing or by hand-delivery. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. If EMNRD fails to pay the Contractor within twenty-one (21) days after receipt of an undisputed request for payment, EMNRD shall pay interest to Contractor beginning on the twenty-second (22) day after payment is due, computed at the rate of one and one-half percent (1 1/2%) of the undisputed amount per month or fraction of a month until the payment is issued. If EMNRD receives an improperly completed invoice or an incomplete, it shall notify the sender of the deficiency within seven (7) days of receipt. EMNRD shall have no further duty to pay on the improperly completed or incomplete invoice until it is resubmitted and is complete. The Contractor shall comply with the Retainage Act, NMSA 1978, Section 57-28-5(C) (Supp. 2001, as amended) and,

accordingly, shall make prompt payment to subcontractors and suppliers for amounts owed for work performed under this contract within seven (7) days of receipt of payment from EMNRD. Payment of the Contractor under this paragraph shall not relieve the Contractor of any unperformed obligations hereunder.

4 Term

This Contract shall be for a term of one (1) year, unless terminated pursuant to paragraph 6, herein.

5 Effective Date

This Contract shall become effective on the date when the last of the following events occurs: when executed by an authorized representative of the Contractor and of EMNRD, when stamped by the Purchasing Division of the General Services Department of the State of New Mexico, or when funds are encumbered for the Contract by the Department of Finance and Administration of the State of New Mexico.

6 Termination and Breach

6.1 Termination.

6.1.1 EMNRD may terminate this Contract or any portion thereof without cause by providing thirty (30) days written notice of termination to the Contractor.

6.1.2 EMNRD may also terminate this Contract without cause by giving notice that sufficient appropriations and authorizations are not available for the Contract. In such event, the Contract shall terminate upon written notice to the Contractor. Notwithstanding any other provision of this Contract to the contrary, written notice of termination for non-appropriation shall be deemed delivered when deposited in the United States Mail and certified to the Contractor's address set forth in paragraph 24, below. EMNRD's decision as to whether sufficient appropriations are available shall be final, binding and shall be accepted as such by the Contractor.

6.1.3 Either party may terminate this Contract in the event of a breach of the other party. A breach that justifies termination is described in subparagraph 6.2, herein. In the event the Contract is terminated as a result of a breach, the non-breaching party shall have all the rights available under the laws of the State of New Mexico. In the event of breach of the Contractor, EMNRD may make demand on the Performance Bond and Labor and Material Payment Bond. No breach shall be declared until the non-breaching party has given the party in breach thirty (30) days written notice of its demand to cure the breach.

6.1.4 Upon termination, payment will be made to the Contractor for the work completed until receipt of the notice of termination. If the Contractor has not completed work on a well or wells when the Contract is terminated, reference may be made to the Supplemental Bid Rate Sheet to compute compensation, except that compensation computed in this manner shall not exceed the amount bid for the relevant well unless the EMNRD representative has approved additional work pursuant to paragraph 1.4, above, and subject to any Amendment or Change Order. In addition, upon termination, materials obtained by the Contractor for the work but not yet incorporated therein, may, at the option of EMNRD, be purchased from the Contractor at actual cost, delivered to a prescribed location, or otherwise disposed of as mutually agreed. However, if termination results from breach of the Contractor, EMNRD may deduct from any monies due or which may become due the Contractor any costs and charges incurred by EMNRD attributable to completing the work. If such expense exceeds the sum which would have been payable under this Contract, then the Contractor shall be liable and shall pay EMNRD the amount of such excess.

6.2 Breach.

An event of breach of this Contract hereunder shall include the following:

6.2.1 the Contractor fails to begin the work within a reasonable time of receipt of the Notice to Proceed;

6.2.2 the Contractor fails to properly perform the work;

6.2.3 the Contractor fails to comply with applicable federal, state and local laws, regulations and ordinances;

6.2.4 the Contractor performs the work unsuitably or neglects or refuses to remove materials or perform anew such work as may be rejected as unacceptable and unsuitable;

6.2.5 the Contractor discontinues the prosecution of the work and fails to resume work within a reasonable time after notice to do so;

6.2.6 the Contractor attempts to perform the work with insufficient workers, equipment or materials to assure its prompt, proper and safe completion;

6.2.7 the Contractor becomes insolvent, is declared bankrupt or commits any acts of bankruptcy or insolvency, or makes an assignment for the benefit of creditors;

6.2.8 a final judgment is entered against the Contractor in a suit filed in connection with this Contract which remains unsatisfied for a period of more than thirty (30) days;

6.2.9 EMNRD fails to make a payment to the Contractor which is otherwise required pursuant to this Contract; or

6.2.10 for any cause where a party fails to perform its obligations under this Contract.

7 Survival

The provisions of paragraphs 8, 11, 13, 20, 23, 25, 26 and 27 shall survive termination of this Contract.

8 Status of the Contractor

The Contractor and its officers, directors, officials, agents and employees, are independent contractors performing work for EMNRD and are not employees of the State of New Mexico. The Contractor and its officers, directors, officials, agents and employees, shall not, as a result of this Contract, accrue leave, retirement, insurance, bonding, use state vehicles, or receive any other benefits afforded to employees of the State of New Mexico. 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.

9 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.

10 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 without the prior written approval of EMNRD. Once this Contract has been executed, subcontractors identified by the Contractor in the Subcontractors List in the Bid Documents shall be deemed approved in the absence of objection by EMNRD, but only to perform the work identified on the Subcontractors List. Additional work performed by these subcontractors must be approved in writing as specified in this paragraph.

11 Records and Audit

The Contractor shall keep detailed records of work performed and the amounts charged by the Contractor and its suppliers and subcontractors on the basis of generally accepted accounting principles. These records shall be

subject to inspection by EMNRD, the Department of Finance and Administration and the New Mexico State Auditor for three (3) years after final payment has been made and all matters relating to performance under this Contract have been settled. This period may be extended where litigation of claims arising out of this Contract's performance arises and shall continue until all potential litigation, appeals, claims, or exceptions expire or are resolved. EMNRD shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of EMNRD to recover excessive, illegal, or incorrect payments disclosed as a result of any audit or inspection.

12 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 set forth herein in subparagraph 6.1.2. EMNRD's decision as to whether sufficient appropriations exist shall be final, binding and accepted by the Contractor.

13 Release

The Contractor, upon final payment of the amount due under this Contract, releases EMNRD, its officers, agents and employees, and the State of New Mexico, from and against all liabilities, claims, and obligations whatsoever arising from or under this Contract.

14 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.

15 Conflict of Interest

The 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 performance under this Contract. The Contractor certifies that the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 *et seq.* regarding contracting with a public officer or state employee have been followed.

16 Amendment and Changes Orders

This Contract shall not be altered, changed, or amended except through a written Amendment or Change Order executed by the parties hereto. Amendments become effective as of the date set forth in Paragraph 5, above.

17 Contract Documents

The Contract shall consist of the following documents: (1) this Contract; (2) any Amendment or Change Order to this written Contract; (3) the Bid Documents; (4) the Performance Bond and Labor and Material Bond, and (5) the Contractor's bid. All of the foregoing documents are incorporated herein as though fully set forth. In the event of any ambiguity or conflict between the aforementioned documents, they will be interpreted and given effect in the order listed.

18 Merger

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.

19 Severability

If any clause or provision of this Contract is found to be illegal, invalid, or unenforceable under present or future laws, the remainder of this Contract shall not be affected thereby; any such clause or provision shall be reformed consistent with the intent of this Contract and only to the limited extent necessary to render such clause or provision valid and enforceable. If the clause or provision cannot be reformed to render it valid and enforceable, the Contract shall be deemed not to include that clause or provision and the remainder of the Contract shall remain in full force and effect.

20 Civil and Criminal Liability Notice

The New Mexico Procurement Code, NMSA 1978, § 13-1-1 *et seq.* (Supp. 2001) (as amended) imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

21 Equal Opportunity Compliance

The Contractor shall abide by all federal and state laws, rules and regulations of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations issued pursuant thereto, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, age or disability, 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.

22 Applicable Law

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

23 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.

24 Notices

24.1 Unless EMNRD specifies otherwise in writing, notices and all other matters concerning the work to be performed hereunder or any other matter for which notice is required shall be addressed to EMNRD as follows:

EMNRD Representative:

Charlie Perrin
Oil Conservation Division
Aztec District Office
1000 Rio Brazos Road
Aztec, NM 87410
Telephone: (505) 334-6178-Ext. 16

Copy to:
David K. Brooks, Assistant General Counsel
Oil Conservation Division
1220 South St. Frances Drive
Santa Fe, New Mexico 87505

Contracting Division:

Oil Conservation Division

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

24.3 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 three (3) working days subsequent to mailing to the party to whom it is directed.

25 Indemnity

The Contractor agrees, as material consideration for this Contract, to indemnify and hold EMNRD, the State of New Mexico, its elected officials, officials, employees and agents, from and against any and all claims arising out of any asserted negligent act, error or omission of the Contractor, its directors, officers, employees or agents or arising in any way from this Contract or the Contractor's activities hereunder. The indemnity agreed to in this paragraph shall not extend to the preparation of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by EMNRD, or the agents or employees of EMNRD, or the giving of or the failure to give directions or instructions by EMNRD, or the agents or employees of EMNRD, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. Nothing in this Contract shall be construed to waive or limit any defense at law to which EMNRD is entitled.

26 Duty to Insure

26.1 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. Each policy 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" (except for policies of workers' compensation), "Co-insured", or "Certificate Holder."

26.2 The Contractor shall obtain the following insurance:

26.2.1 A policy of comprehensive public liability insurance 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 limits of the waiver of immunity set forth in the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27 (as amended).

26.2.2 A policy of worker's compensation insurance (or a program of approved self-insurance) complies fully with the provisions of the New Mexico Workers' Compensation Act, NMSA 1978, §§ 52-1-1 through 52-1-70 (as amended). If the Contractor fails to comply with the Workers' Compensation Act and applicable rules, the Contract may be terminated immediately and without the necessity of notice required elsewhere in this Contract. The Contractor shall notify EMNRD ten (10) days before cancellation or expiration of any required Workers' Compensation or contractual or public liability insurance coverage.

26.3 The Contractor shall furnish EMNRD with written evidence of the insurance coverage required, including copies of all policies, prior to commencing work under this Contract and shall not commence any work under this Contract until the required insurance coverage is obtained.

27 Attorney's Fees and Costs

If the Contractor is found by a court of competent jurisdiction to have breached this Contract, or to have committed any tortious act which results in a claim against EMNRD or the State of New Mexico, the State of New Mexico may recover from the Contractor its actual attorney's fees and costs in connection with litigation brought to obtain a judicial determination of breach or in which EMNRD is otherwise obliged to undertake legal action or defend itself.

28 Suspension of Work

The EMNRD representative may issue a suspension of work notice if it appears that the Contractor has violated this Contract, or if the Contractor has violated any health or safety standard. 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 a new Notice to Proceed is issued.

29 Signatures

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

FOR:

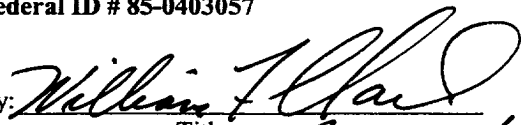
**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT**

By: _____
William B. Mackie, Administrative Services
Division Director

Date: _____

FOR:

**A-PLUS WELL SERVICE, INC.
(Contractor)
Federal ID # 85-0403057**

By: 
Title President
Date: 2/28/02

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**

A-Plus Well Service, Inc.

I.D. NO.: 02-208486-00-0

By: Julia Roca

Date: 2/27/02

BID OFFER FORM (Page 1)

NEW MEXICO OIL CONSERVATION DIVISION

Plugging//Restoring Well/Well Site

Mail sealed bid to: Purchasing Division
Rm. 2016, Joseph M. Montoya Bldg.
1100 St. Francis Drive
Santa Fe, NM 87503
Phone 505-827-0472

Bid Identification Number: 20-521-07-04091

Bid Opening Date and Time: JANUARY 3, 2002

JANUARY 17, 2002

BIDDER MUST COMPLETE AND SIGN		
<i>A-Plus Well Service</i>		
Bidder Name		
<i>3107 Bloomfield Highway</i>		
Street Address		
<i>FARMINGTON</i>	<i>NM</i>	<i>87401</i>
City	State	Zip
<i>505-325-2627</i>		
Telephone		
<i>William F. Clark</i>		<i>1-11-02</i>
Authorized Signature		Date
<i>William F. Clark</i>		<i>President</i>
Printed or Typed Name		Title
<i>02-208486-00-0</i>		
New Mexico Taxation & Revenue Dept. Identification No.		
<i>85-0403057</i>		
Federal Nine Digit Taxpayer Identification Number		

Mail =

A-PLUS WELL SERVICE, INC.
PO BOX 1979
FARMINGTON, NM 87499

Failure to fill out all applicable blanks and manually sign this bid submission will disqualify the bid.
THE BIDDER'S SIGNATURE ON THIS FORM BINDS BIDDER TO ALL TERMS AND CONDITIONS IN
THE INVITATION FOR BIDS.

Attached to this form must be the SUPPLEMENTAL BID RATE SHEET, the LIST OF SUBCONTRACTORS
AND EQUIPMENT and _____.

BID OFFER FORM (Page 1A)

NEW MEXICO OIL CONSERVATION DIVISION

Plugging/Restoring Well/Well Site

The bidder identified herein submits this bid in response to the referenced Invitation for Bids and agrees to abide by all the terms and conditions contained therein. Bidder further certifies that it is fully qualified to perform the work in accordance with those terms. The offer represented by this bid shall remain open for a period of ninety (90) days.

TOTAL BID \$ 51,387⁰⁰

BID PER WELL/WELL SITE (if more than one well/site)

BID WELL/WELL SITE

\$ See Attached Page
\$ _____
\$ _____

A-PLUS WELL SERVICE, INC.
PO BOX 1979
FARMINGTON, NM 87499

11 - A

Bid Offer Form (Page 1A)Detail

1/14/02

New Mexico Oil Conservation Division

Bid No. 20-521-07-04091

Bidder - A-Plus Well Service, Inc

Well - Pitco #1

Amount of units provided:

36 P&A Rig hours at \$185/hr
5 Perforating
5 Cement plugs
220 sxs cement
2 4-1/2' cement retainers

1 Repair road to access location (\$2500)

Well Total Bid

\$ 23,738.00

Well - Jaco #60

Amount of units provided:

48 Full Package Rig hours at \$200/hr
2 Perforating
3 Cement plugs
180 sxs cement
2 4-1/2" cement retainers

1 Repair road to access location (\$3500)

Well Total Bid

\$ 27,649.00

Bid Total without Tax (Base Contract Sum)

\$ 51,387.00

Tax at 6.0625%

\$ 3,115.34

Bid Total with Tax at 6.0625%

\$ 54,502.34

← Bid

11-B

BID OFFER FORM (Page 1)

NEW MEXICO OIL CONSERVATION DIVISION

Plugging//Restoring Well/Well Site

SUPPLEMENTAL BID RATE SHEET

(To be filled out by bidder and returned with bid)

Bid Identification Number: 20-521-07-04091

Bidder: A-Plus Well Service

The bid is not complete unless supplemental bid rates are furnished hereon.

DESCRIPTION OF SERVICE	RATE PER	UNIT
Rig equipped to perform all work set out in <i>P: H</i> Plugging/Remediation/Restoration Procedures <i>Drill out</i>	\$ 185⁰⁰ <i>200⁰⁰</i>	hour
Cement pumping	\$ <i>583⁰⁰</i>	plug
Cement to include any blending and any transportation costs	\$ <i>1138</i>	sack
Perforating to include ten holes per run and set-up charges	\$ <i>583⁰⁰</i>	run
Move-in, move-out charges <i>w/ Road Work</i>	\$ <i>5000⁰⁰</i>	well
Water truck - Capacity <i>80</i> barrels	\$ <i>65⁰⁰</i>	hour
Welder - Minimum hours if applicable: <i>4</i>	\$ <i>50⁰⁰</i>	hour
Backhoe - Minimum hours if applicable: <i>4</i>	\$ <i>70⁰⁰</i>	hour
Dozer - Minimum hours if applicable: <i>4</i>	\$ <i>90⁰⁰</i>	hour
Furnished tubular goods - Description: <i>2 3/8" tbg</i>	\$ <i>#0.15</i>	foot/day

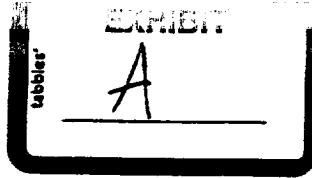
A-PLUS WELL SERVICE, INC.
PO BOX 1979
FARMINGTON, NM 87499

A

RANGE 09W

[illegible]

 OCD



API NUMBER 30-043-20386
 OPERATOR NAME PITCO Production Company WELL NUMBER #1
 PROPERTY NAME State 36-22-6
 SECTION 36 TOWNSHIP 22N RANGE 06W

FOOTAGE UL- M 810'FSL-800'FWL

	Sur Csg OD	7"	XX	XX	XX	XX
	SUR CSG TD	97	XX	XX	XX	XX
Chacra 1785'	SUR CSG WT		XX	XX	XX	XX
PC 1370'	TOP OF CMT	0	XX	XX	XX	XX
Fruitland 1120'	ACTUAL	50sx	XX	XX	XX	XX
Kirtland 700'	CACULATED		XX	XX	XX	XX
Ojo Alamo 680'	PROD CSG OD	4.5	XX	XX	XX	XX
Nacieminto surface	PROD CSG TD	1983	XX	XX	XX	XX
	PROD CSG WT		XX	XX	XX	XX
	TOP OF CMT	0	XX	XX	XX	XX
	ACTUAL	240sx		XX	XX	
	CACULATED			XX	XX	
	PERF TOP	1795		XX	XX	
	PERF BOTTOM	1831		XX	XX	
	PACKER			XX	XX	
	TYPE OF PLUG			XX	XX	
	CIBP & CMT			XX	XX	
	CMT			XX	XX	

Perforate each zone before pumping plug

****Cement Plugs are 100' +50%excess inside, 100'+100%excess outside****

PROPOSED PLUGGING OPERATION

MIRUPU, NUBOP, RIH W/Work string, clean out to 1795'

Perf, pump plug, 1785-1685 + excess, woc, tag,

Perf, pump plug, 1420-1320 + excess, woc, tag,

Perf, pump plug, 1170-1070 + excess, woc, tag,

Perf, pump plug , 750-630 + excess, woc, tag, ✓

Perf, pump plug, 147-surface

Close pits according to guidelines: Clean and level location

BEFORE EXAMINER CATAFACI
 OIL CONSERVATION DIVISION
 OCD EXHIBIT NO. 4
 CASE NO: 12720

EXHIBIT B

The contractor shall remove all production equipment, tanks, separators, flow lines, injection lines, deadmen, junk, trash and any other operational equipment associated with the particular well and dispose of all items pursuant to applicable laws, regulations and Division Guidelines.

If this is the last well on the lease, the contractor shall remove production equipment, tanks, separators, flow lines, gathering lines, injection lines, deadmen, junk, trash and any other operational equipment from the entire lease and dispose of all items pursuant to applicable laws, regulations and Division Guidelines.

Buried lines shall not be removed, except in cases approved by the contract administrator. In buried lines, all remaining product shall be removed and properly disposed of, and the lines shall be cut off approximately two (2) feet below ground level, blind flanged, plugged or sealed as approved by the contract administrator.

All tanks, separators, etc., shall be surveyed for NORM. Lines left in place shall have a NORM survey on their risers. If NORM's exceeding regulatory limits are detected, they will be disposed with under Rule 714 and other applicable regulations.

If the site shows signs of contamination from leaks or spills, the Division shall be contacted immediately; a complete investigation may be performed. Remediation of any such leaks or spills shall be conducted under time and material costs as presented in the bid.

02/05/02 08:21:41

STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

PAGE 1

20-521-07-04091

00/00/00 THRU 00/00/00 TYPE:A STAT:8 AMEND:00001

WELL PLUGGING, SANDOVAL & MCKINLEY COUNTIES

AGENCY: OCD REQUISITION DATE: 11/15/01
SPD BUYER: KS LOGGED IN DATE: 11/16/01
ACTION TAKEN: FORMAL ACTION DATE: 12/05/01
AGENCY BUYER: PGS: BID OPENING: 01/17/02
ZONES: NNNYYMNNNNNN XREF(1): XREF(2):
E1:
E2:

ENCUMBRANCE NO:

REQUESTED DELIVERY DATE: AS REQUESTED

CONTACT PERSON / PHONE: DOROTHY PHILLIPS (505) 476-3461

** SHIP TO **

NAME: OCD
ADDR1: 1220 SOUTH ST. FRANCIS DRIVE
ADDR2:
CITY: SANTA FE
STATE: NM ZIP: 87505-0000

** INVOICE **

NAME: OCD STATE LAND OFFICE BLDG
ADDR1: 1220 S. ST. FRANCIS DR., RM 2
ADDR2:
CITY: SANTA FE
STATE: NM ZIP: 87505-0000

05478 WELLS, PLUGGING

1 8 5279890
A-PLUS WELL SERVICE
P.O. BOX 1979
3107 BLOOMFIELD HIGHWAY
FARMINGTON NM 87499-0000
TELEPHONE: 505-325-2627

TERM: NET 30
FOB: DESTINATION
DELIVERY: AS REQUESTED
COMMENT 1: BID BOND ATTACHED
COMMENT 2:
TAX-ID NUMBER:

AMENDMENT DESCRIPTION

EXTEND BID OPENING DATE FROM: JANUARY 3, 2002
TO: JANUARY 17, 2002

B001 12/21/01

ALSO, SEE ATTACHED SPECIFICATIONS.

ITEM ARTICLE & DESCRIPTION UNIT QUANT PRICE ST
VEN BID INFO VN

0001 TOTAL TURNKEY - 8
1 51,387.000000 1
- ABSTRACT REQUEST COMPLETED

02 FEB -6 PM 3:26

01 OCT 1999 10:00 AM

DATE (MM/DD/YY)
01/14/02

INSURER E:

©ACORD CORPORATION 1988

New Mexico Department of Labor
Labor & Industrial Division
1596 Pacheco Street/Suite 105, Santa Fe, NM 87505
(505) 827-6837 or (505) 827-6897, jminks@state.nm.us or arodriquez@state.nm.us

Wage Decision No: SW 01-1692 H

Description of Work and Location of Work:

PLUG/ABANDON AND RESTORE 2 WELLS – ONE IN MCKINLEY COUNTY AND ONE IN SANDOVAL COUNTY – PLUG 2 ABANDONED OIL AND GAS WELLS IN MCKINLEY AND SANDOVAL COUNTIES WITH CAST IRON BRIDGE PLUGS AND PUMPED CEMENT AND/OR ANY OTHER WORK REQUIRED BY THE PLUGGING PROCEDURES PREPARED BY THE OCD TO PREVENT MIGRATION OF FLUIDS THROUGH THE WELLBORES. AND RESTORATION OF THE WELL SITE. JACO NO. 60 S-32-T20N-9W, MCKINLEY STATE 36-22-6 NO. 1 S-36, T-22W R6W, SANDOVAL COUNTY STATEWIDE (EMNRD-OIL CONSERVATION DIVISION)

NOTIFICATION OF AWARD

When this Contract is Awarded, the "Wage Rate Poster and all of the Wage Rate Packet" must be delivered to the **GENERAL/PRIME CONTRACTOR**. The **GENERAL/PRIME CONTRACTOR** must complete this Form, including the reverse side listing all of the subcontractors (including 2nd tier subcontractors) and mail to the address above. This form must also be completed by the Architect/Engineer if the project has been canceled.

General/Prime Contractor Company Name: A-Plus Well Service License#: _____

Address: PO Box 1979 - 3107 Bloomfield Highway City: Farmington State: NM Zip: 87499

Telephone: 505-325-2627 Fax: _____

Approximate Date Work to Start: 3/4/02

Estimated Completion Date: 3/4/03

Estimated Cost of Project: \$60,058.56

Bid Opening Date: January 17/02

General/Prime Contractor Signature William F. Clark
Printed Name William F. Clark
Date 2-21-02

The **NOTIFICATION OF AWARD FORM** is to be completed and signed by the **GENERAL/PRIME CONTRACTOR**. The **COMPLETED** Form **MUST** be sent to this office **IMMEDIATELY** after the **CONTRACT IS AWARDED**.

Note: The **GENERAL/PRIME CONTRACTOR** **MUST** also mail in their **STATEMENT OF INTENT TO PREVAILING WAGES ALONG WITH THE NOTIFICATION OF AWARD FORM**. Each **SUBCONTRACTOR (S)** **MUST** also mail in their **STATEMENT OF INTENT TO PREVAILING WAGES WITHOUT THE NOTIFICATION OF AWARD FORM**. The **GENERAL/PRIME CONTRACTOR** and all **SUBCONTRACTORS** **MUST** also mail in their **AFFIDAVIT OF WAGES PAID** after their work on the project is completed to this division within ten (10) working days.

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

A-PLUS WELL SERVICE, INC.
3107 BLOOMFIELD HWY
FARMINGTON, N.M. 87401

SURETY (Name and Principal Place of Business):

NATIONAL GUARANTY INSURANCE COMPANY
21 FAIRLY ROAD
SANTA FE, N.M. 87505

OWNER (Name and Address):

STATE OF NEW MEXICO
OIL & GAS CONSERVATION DIVISION
2040 S. PACHECO STREET
SANTA FE, N.M. 87505

CONSTRUCTION CONTRACT WELL PLUGGING BID #20-521-07-04091

Date:

Amount: **\$60,060.00**

Description (Name and Location): **WELL PLUGGING BID#20-521-07-04091**

BOND NGH300212287

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

☒ None

☐ See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

A-PLUS WELL SERVICE, INC.

Signature: 

Name and Title: **WILLIAM F. CLARK**
PRESIDENT

(Any additional signatures appear on page 3)

SURETY

Company: (Corporate Seal)

NATIONAL GUARANTY INSURANCE COMPANY

Signature: 

Name and Title: **KENNETH R. GEHRKE**
ATTORNEY-IN-FACT

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

SCHREIBER INSURANCE

P.O. BOX 10

FARMINGTON, N.M. 87499

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 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 practicable 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.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

A-PLUS WELL SERVICE, INC.
3107 BLOOMFIELD HWY
FARMINGTON, N.M. 87401

SURETY (Name and Principal Place of Business):

NATIONAL GUARANTY INSURANCE COMPANY
21 FAIRLY ROAD
SANTA FE, N.M. 87505

OWNER (Name and Address):

STATE OF NEW MEXICO
OIL & GAS CONSERVATION DIVISION
2040 S. PACHECO STREET
SANTA FE, N.M. 87505

CONSTRUCTION CONTRACT WELL PLUGGING BID #20-521-07-04091

Date:

Amount: \$60,060.00

Description (Name and Location): WELL PLUGGING BID #20-521-07-04091

BOND NGH300212287

Date (Not earlier than Construction Contract Date):

Amount: \$60,060.00

Modifications to this Bond:

☒ None

☐ See Page 6

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

A-PLUS WELL SERVICE, INC.

Signature: 
Name and Title: **WILLIAM F. CLARK**

PRESIDENT

(Any additional signatures appear on page 6)

SURETY

Company: (Corporate Seal)

NATIONAL GUARANTY INSURANCE COMPANY

Signature: 
Name and Title: **KENNETH R. GEHRKE**

ATTORNEY-IN-FACT

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

SCHREIBER INSURANCE AGENCY

P.O. BOX 10

FARMINGTON, N.M. 87499

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

- 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
- 2 With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
- 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
- 4 The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 - 1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 - 2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 - 3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
- 5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
- 6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
- 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
- 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
- 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Signature: _____
Name and Title: _____
Address: _____

POWER OF ATTORNEY

Know All Men By These Presents, that NATIONAL GUARANTY INSURANCE COMPANY; a corporation duly organized under the laws of the State of Arizona; does hereby make, constitute, and appoint:

----- Kenneth R. Gehrke, Dennis Mathis, Mildred J. Howle, -----
Diana G. Hobbs and/or Catherine Beilman-Harris

as it's true and lawful Attorney(s) - in - Fact, with full power and authority, for and on behalf of the Company as Surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizes, consents of surety or other written obligations in the nature thereof, AN AMOUNT NOT TO EXCEED ONE MILLION DOLLARS AND NO/100 (1,000,000.00) to bind NATIONAL GUARANTY INSURANCE COMPANY thereby and all of the acts of said Attorney(s) - in Fact, pursuant to these presents, are hereby ratified and confirmed.

The Power of Attorney is granted and is signed and sealed by facsimile under and by authority of the following resolution adopted by the Board of Directors of NATIONAL GUARANTY INSURANCE COMPANY by "record or memorandum" on September 14, 1988 which said resolution has not been rescinded and of the following is a true and complete copy.

"RESOLVED, that the President, Secretary, or any Vice President may, from time to time, appoint Attorney(s) - in - Fact to represent and act for and on behalf of the Company, and either the President, Secretary, any Vice President, or the Board of Directors may at any time remove such Attorney(s) - in - Fact and revoke the Power of Attorney given him or her; and be it further

RESOLVED, that the Attorney(s) - in - Fact may be given full power to execute for and in the name of and on behalf of the Company any and all bonds and undertakings as the business of the Company may require, and such bonds or undertakings executed by any such Attorney(s) - in - Fact shall be binding upon the Company as if signed by the President and sealed and attested by the Secretary."

In Witness Whereof, NATIONAL GUARANTY INSURANCE COMPANY has caused these presents to be signed by its duly authorized officers and its corporate seal to be hereto affixed, this 23rd day of October A.D., 2001.

NATIONAL GUARANTY INSURANCE COMPANY

Attest: Carole C. Carroll
Carole C. Carroll, Vice President

BY Frederick G. Carroll
Frederick G. Carroll, President

STATE OF NEW MEXICO
COUNTY OF SANTA FE

On This 23rd day of October A.D., 2001, before me appeared Whitney L. Carroll and Frederick G. Carroll, to me personally known, who being duly sworn did say that they are Secretary and President respectively of NATIONAL GUARANTY INSURANCE COMPANY, the corporation described in the foregoing instrument, and that the seal affixed to the said instrument is the Corporate Seal of the said corporation and the said instrument was signed by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at the City of Santa Fe, New Mexico the day and year first above written.

Anna Marie Madrid My Commission Expires 10/22/2005
Anna Marie Madrid, Notary Public.

Whitney L. Carroll, Secretary of National Guaranty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the POWER OF ATTORNEY executed by said NATIONAL GUARANTY INSURANCE COMPANY, which shall be in force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Company, on this 19th day of February, 2002.