



CONTRACT ASSIGNMENT AGREEMENT

Broadway Circle Construction Contract

This Assignment Agreement (Agreement), is entered into by and between the City of Minot (City/Assignee), a municipal corporation and political subdivision of the State of North Dakota, Project BEE (Project BEE/Assignor), and Mattson Construction Company (Mattson Construction), collectively referred to herein as the Parties, to assign Project BEE's interest in the following construction contract to the City of Minot:

1. AIA Document A101-2017, A Standard Form of Agreement between Owner and Contractor where the basis of payment is a stipulated sum entered into on April 26, 2022 by and between Project BEE, and Mattson Construction Company (Contractor) to construct the Broadway Circle Project BEE located at 1901 S. Broadway, Minot, ND 58701 (EAPC Project # 20204441). This document is attached hereto as Exhibit A, is referred to throughout this Agreement as the "Broadway Circle Construction Contract."

WHEREAS, Project BEE/Assignor entered into three subrecipient agreements with the City/Assignee to construct seventeen affordable rental units for LMI households and to develop a Family Homeless Shelter with six emergency shelter units for LMI households, hereinafter referred to as the "Broadway Circle Project"; and

WHEREAS, Project BEE/Assignor entered into the Broadway Circle Construction Contract with Mattson Construction for the purpose of constructing the Broadway Circle Project; and

WHEREAS, Project BEE/Assignor advised the City that it cannot complete its remaining obligations under its subrecipient agreements with the City/Assignee; and

WHEREAS, Project BEE/Assignor wishes to assign their rights and obligations under the Broadway Circle Construction Contract to the City/Assignee; and

WHEREAS, City/Assignee wishes to assume the majority of Project BEE/Assignor's rights and obligations under the Broadway Circle Construction Contract in order to ensure completion of the Broadway Circle Project; and

WHEREAS, Mattson Construction consents to Project BEE/Assignor assigning most of their rights and obligations under the Broadway Circle Construction Contract to the City/Assignee; and

WHEREAS, assignment of this Agreement will allow the City/Assignee and Mattson Construction Company to continue the Broadway Circle Project under the terms and conditions negotiated in the Broadway Circle Construction Contract and this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and promises recorded herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals Incorporated. The recitals set forth above are true and correct, and considered a part of this Agreement.
2. Assignment of Broadway Circle Construction Contract. Project BEE/Assignor and the City/Assignee hereby agree that Project BEE/Assignor shall assign, and City/Assignee shall assume, all of Project BEE/Assignor's rights, titles, and interests, obligations, responsibilities, and duties under the Broadway Circle Construction Contract unless stated otherwise in this Agreement on February 6, 2024 at 8:00 a.m. (Assignment Date).
3. Mutual Agreements and Modifications to Broadway Circle Construction Contract.
 - a. City/Assignee and Mattson Construction mutually agree that that portion of the Broadway Circle Project consisting of buildings A, B, and C are above the 50% mark, and upon execution of this Agreement, the retainage will be paid directly from City/Assignee to Mattson Construction on building A, and the retainage will be reduced to 5% on the remainder of the Broadway Circle Project; and
 - b. City/Assignee will put a 10% contingency in place to ensure any approved future change orders are covered; and
 - c. Building B will not be occupied until construction has been completed on building C. The 5% remaining retainage will not be released until both buildings are complete and receive a certificate of occupancy.
4. Assignment Agreement Contingent upon Execution of Mutual Termination Agreement. Project BEE/Assignor and City/Assignee have also executed a Mutual Termination Agreement dated [REDACTED] (Mutual Termination Agreement). The Parties acknowledge, understand, and agree that this Agreement shall be terminable at the City/Assignee's option should Project BEE/Assignor fail to comply with any of the terms and conditions of the Mutual Termination Agreement.
5. Indemnification by Project BEE/Assignor. Notwithstanding the foregoing, Project BEE/Assignor agrees to defend and indemnify City/Assignee and Mattson Construction from any and all claims, actions, judgments, liabilities, proceedings, and costs, including reasonable attorney's fees and other costs of defense and damages resulting from Project BEE/Assignor's performance before and after their assignment of the Broadway Circle Construction Contract to the City/Assignee.
6. Parties Responsible for Costs. The Parties shall be responsible for their own direct and indirect costs associated with this Agreement.
7. Project BEE's Representations and Warranties. Project BEE represents and warrants the following as a material inducement for the City to enter into this Agreement:
 - a. Project BEE is a non-profit organization, validly existing and in good standing under the laws of the State of North Dakota; it has the power and authority necessary to enter into this Agreement and carry out the transactions contemplated herein, and that the execution and delivery of this Agreement to the City will not violate or constitute a default under

the terms and provisions of any agreement, law, or court order to which Project BEE is a party or by which Project BEE is bound.

- b. All actions required to authorize Project BEE to enter into this Agreement have been taken, and that this Agreement is a valid and binding obligation of Project BEE, enforceable in accordance with its terms.
- c. The person executing this Agreement on behalf of Project BEE has the full power and authority to bind Project BEE to the terms hereof.

8. **Non-Litigation Covenant.** The release in this Agreement may be plead as a full and complete defense to, and may be used as the basis for an injunction against any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the release contained herein, and the Parties shall not in any manner challenge this Agreement. Notwithstanding the mutual releases contained in this Agreement, nothing in this Agreement is, nor shall be deemed to be, a release of the obligations, terms, and conditions of this Agreement, and nothing herein shall in any manner limit or otherwise preclude the Parties from commencing an action solely for the purpose of enforcing any obligation, term, or condition of this Agreement.

9. **Binding Effect.** The terms of this Agreement, including the recitals above, are considered binding and effective promises, agreements, and covenants, fully enforceable by the Parties. This Agreement shall inure to the benefit of the Parties and any of their heirs, successors, personal representatives, officers, and assigns of each.

10. **City's Representations and Warranties.** The City represents and warrants the following as a material inducement for the City to enter into this Agreement:

- a. The City is a municipal corporation with a home rule charter, existing and in good standing under the laws of the State of North Dakota; that it has all the necessary power and authority to enter into this Agreement and carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by the City of its obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, law or court order to which the City is a party or by which the City is bound.
- b. All actions required to authorize the City to enter into this Agreement have been taken, and that this Agreement is a valid and binding obligation of Project BEE, enforceable in accordance with its terms.
- c. The person executing this Agreement on behalf of the City has the full power and authority to bind the City to the terms hereof.

11. **Notices.** Notices, statements, and other communications to be given under the terms of this Agreement shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Agreement) and shall be in writing and delivered by hand or sent by U.S. Mail (return receipt requested), and addressed as follows:

- a. To City/Assignee: City of Minot

Attn: City Clerk
P.O. Box 5006
Minot, ND 58702-5006

b. To Project BEE/
Assignor: Project BEE
205 – 3rd St. SE
Minot, ND 58701

c. Mattson
Construction: 4321 East Burdick Expy.
Minot, ND 58701

12. Records Maintenance. The Parties agree that this Agreement and all documents relative to this Agreement are subject to North Dakota's open records laws and shall remain accessible to the City upon written request by the City.
13. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by either Party, unless such waiver is in writing signed by the Party against whom such waiver is asserted.
14. Successors and Assigns. All of the rights, benefits, duties, liabilities, and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and assigns.
 - a. Transfers and Assignments. The Parties shall not sell, convey, assign, transfer, pledge, or otherwise dispose of all or any part of its interest, if any, in this Agreement, or any of the contractual rights or obligations related to this Agreement without first obtaining the prior written consent of the City.
15. Applicable Law/Venue. This Agreement and all provisions herein shall be construed and enforced in accordance with the laws of the State of North Dakota. Venue for any action arising out of this Agreement shall be in Ward County District Court.
16. Representation by Counsel/Voluntary Nature of Agreement. The Parties acknowledge and represent that they have been, or have waived the opportunity to consult and be, represented by legal counsel in connection with the consideration and execution of this Agreement. The Parties represent and declare that in executing this Agreement, they relied solely upon their own judgment, belief, and knowledge, and after consultation with their legal counsel concerning the nature, extent, and duration of their rights and claims, and that they were not induced into executing this Agreement by any representations not expressly contained or referred to herein. By entering into this Agreement, the Parties acknowledge and expressly warrant and represent to each other that, as a part of the consideration for the promises contained herein, that before executing this Agreement they have fully and completely read its terms and that the terms of this Agreement are fully understood and voluntarily accepted by each Party, without duress or coercion of any kind.

17. Severability. If any provisions of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder or substantially increase the burden on any party hereto, shall be found invalid or unenforceable to any extent, the same shall be considered severed, and shall not adversely affect the validity or enforceability of the remainder of this Agreement.

18. Further Assurances. The Parties hereby agree to execute and deliver any and all instruments, agreements, documents, and take any other such action as may be necessary and appropriate to carry out the transactions described in this Agreement.

19. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or intent of this Agreement or any of its terms. Reference to section numbers are to sections in this Agreement unless expressly stated otherwise.

20. Entire Agreement. This Agreement sets forth all the covenants, promises, agreements, conditions, and understandings between the Parties, oral or written, relating to the subject matter of this Agreement. Neither Party has made any representations or promises not expressly contained herein. No subsequent alterations, amendments, changes, or additions to this Agreement shall be binding upon a Party unless reduced to writing and signed by a Party's authorized representative.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their undersigned officials as duly authorized,

ASSIGNEE: CITY OF MINOT

Mayor

Date

Attest:

City Clerk

Date

Attest:

Finance Director, City of Minot

ASSIGNOR: PROJECT BEE

Title:

Date

Attest:

Title:

Date

Date

By signing below, Mattson Construction Corporation hereby consents to the assignment of the Broadway Circle Contract from Project BEE/Assignor to the City of Minot/Assignee as described in this Agreement, to include the modifications described in paragraph 3.



Title: VP

Date Feb 5, 2024

Title:

Date