

**AGREEMENT**

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## AGREEMENT

THIS AGREEMENT is between

City of Minot, North Dakota  
515 2<sup>nd</sup> Avenue Southwest  
Minot, North Dakota 58701

hereafter called "Owner" and

Wagner Construction, Inc.  
3151 Highway 53 Suite 1  
International Falls, MN 56649

hereafter called "Contractor."

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

### ARTICLE 1 - WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents.

Generally, the Work covered by the Plans and Specifications for the 55<sup>th</sup> Crossing West Street & Utility Improvements is the material, labor, tools and equipment required for the construction of infrastructure within publicly dedicated Right-of-Ways as part of the 55<sup>th</sup> Crossing West Development. Work will be completed in two Phases; **Phase I** to consist of earthwork, water, sewer, storm sewer, street- fabric & gravel; ~~**Phase II** to consist of street completion and lighting improvements and any other items incidental to the completion of required improvements.~~ Right-of-Ways to include: 15<sup>th</sup> Avenue SE (1,210± lf); 16<sup>th</sup> Avenue SE (4,000± lf) 47<sup>th</sup> Loop SE (1,400± lf); 52<sup>nd</sup> Street SE (470± lf); 53<sup>rd</sup> Street SE (220± lf); 54<sup>th</sup> Street SE (220± lf); Sage Drive (1,450± lf). All public right-of-ways support the development of residential construction. Details of the construction are included in the Drawings and Project Manual.

### ARTICLE 2 - THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

City of Minot, North Dakota  
55<sup>th</sup> Crossing West Street & Utility Improvements

### ARTICLE 3 – ENGINEER

**3.01** The Project has been designed by:

Ackerman-Estvold  
1907 17<sup>th</sup> Street Southeast  
Minot, North Dakota 58701  
Ph: (701) 837-8737

(Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

### ARTICLE 4 - CONTRACT TIMES

**4.01** Time of the Essence

- A. All time limits for Milestones, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

**4.02** Dates for Substantial Completion and Final Payment

- A. All Phase I Work shall be substantially completed on or before December 1<sup>st</sup>, 2014. ~~All Phase II work shall be substantially completed on or before November 1<sup>st</sup>, 2015.~~ All Work shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before ~~November 15, 2015.~~ December 15, 2014.

**4.03** Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$1,000.00 for each day that expires after the times specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$1,000.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.



## **ARTICLE 5 - CONTRACT PRICE**

**5.01** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A below:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## **ARTICLE 6 - PAYMENT PROCEDURES**

### **6.01 Submittal and Processing of Payments**

- A. Engineer will process Applications for Payment in accordance with Article 14 of the General Conditions.

### **6.02 Progress Payments; Retainage**

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15<sup>th</sup> day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

- 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

- a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and
- b. 80 percent of cost of materials and equipment not incorporated in the Work, but stored in a location completely accessible to the Owner (with the balance being retainage); and
- c. For each progress payment, an additional \$1,000 will be retained by the Owner until it has been determined by the State Commissioner of Labor that no action or fines are pending against the Contractor in accordance with NDCC 43-07-20.

- 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 97 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### **6.03 Final Payment**

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## **ARTICLE 7 - INTEREST**

**7.01** All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 12 percent per annum.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.



## ARTICLE 9 - CONTRACT DOCUMENTS

### 9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 8, inclusive).
2. Performance bond (pages 1 to 2, inclusive).
3. Payment bond (pages 1 to 2, inclusive).
4. General Conditions (pages 1 to 44, inclusive).
5. Supplementary Conditions (pages 1 to 3, inclusive).
6. Specifications as listed in the table of contents of the Project Manual.
7. Drawings consisting of 67 sheets with each sheet bearing the following general title: City of Minot, North Dakota 55<sup>th</sup> Crossing West Street & Utility Improvements.
8. Addenda (numbers \_\_ to \_\_, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (pages 1 to 11, inclusive).
  - b. Contractor's North Dakota Contractor's License Renewal (pages 1 to 1, inclusive).
  - ✓c. Exhibit L CDBG-DR Clauses (pages 1 to 4, inclusive).
  - d. Section 00810 Funding Agency Requirements (abridged pages 1, C.1 to C.3 (p. 19-21), C.7-C.8 (p 25-26), C.13-C.23 (p. 31-41) and , p. 42-55).
  - e. CDBG-DR Certification and Section 3 (pages 1 to 28, inclusive).
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed (pages 1 to 1, inclusive).
  - b. Work Change Directives.
  - c. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 - MISCELLANEOUS**

### **10.01 Terms**

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### **10.02 Assignment of Contract**

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### **10.03 Successors and Assigns**

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on July 14<sup>th</sup>, 2014 (which is the Effective Date of the Agreement).

OWNER:

City of Minot, North Dakota

By: [Signature]

Title: Mayor

[CORPORATE SEAL]

Attest: \_\_\_\_\_

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

Address for giving notices:

515 2<sup>nd</sup> Avenue Southwest

Minot, North Dakota 58701

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

CONTRACTOR:

Wagner Construction, Inc.

By: [Signature]

Title: TREASURER

[CORPORATE SEAL]

Attest: [Signature]

Title: Admin Assistant

Address for giving notices:

5131 Highway 53 Suite 1

International Falls, MN 56649

License No.: 26283

Agent for service or process: \_\_\_\_\_

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)