

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Minot, North Dakota ("Owner") and
Tom's Backhoe Service, Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Installation of approximately 15,000 LF of 30" PVC Sanitary Sewer, Manholes, and associated appurtenances.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: North Minot Sanitary Sewer Improvements: Gravity Sewer – 30th Ave. NE/55th St. NE

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Apex Engineering Group.
- 3.02 The Owner has retained Apex Engineering Group ("Engineer") 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, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

- A. The Work will be substantially completed on or before September 5, 2015, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 3, 2015.

1. Substantial completion is defined in Section 01015 – Sequence and Constraints of Construction.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. 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):

1. Substantial Completion: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- 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. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in 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 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.
 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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. Ninety (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, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. Ninety (90) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to ninety-five (95) percent of the Work completed, less such

amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less one hundred (100) percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the maximum rate allowed by law in the location of the project.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
 - 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 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.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

- 1. This Agreement (pages 1 to 7, inclusive).
- 2. Performance bond (pages 1 to 2, inclusive).
- 3. Payment bond (pages 1 to 2, inclusive).
- 4. Other bonds.

None

- 5. General Conditions (pages 1 to 65, inclusive).
- 6. Supplementary Conditions (pages 1 to 10, inclusive).
- 7. Specifications as listed in the table of contents of the Project Manual.
- 8. Drawings (not attached but incorporated by reference) consisting of 25 sheets with each sheet bearing the following general title: North Minot Sanitary Sewer Improvements – Gravity Sewer - 30th Ave. NE/55th St. NE
- 9. Addenda (numbers 1 to 1, inclusive).
- 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 14, inclusive).
- 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

- 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 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. Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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 successors, assigns, and legal representatives to the other party hereto, its 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.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract,

published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on July 7, 2014 (which is the Effective Date of the Contract).

OWNER:

City of Minot, North Dakota

By: 

Title: Mayor

Attest: 

Title: City Manager

Address for giving notices:

515 2nd Avenue SW

Minot, ND 58702

(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 this Agreement.)

CONTRACTOR:

Tom's Backhoe Service, Inc.

By: 

Title: President

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

Attest: 

Title: V. P.

Address for giving notices:

323 Woodland Hills Lane

Brainerd, MN 56401

License No.: 37395

(where applicable)

**North Minot Sanitary Sewer Improvements
Gravity Sewer – 30th Avenue NE/55th Street NE
City of Minot, North Dakota
Apex Project #12.106.0080
City of Minot Project #3490.2**

Section 00300 - BID FORM

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

*City of Minot, ND
515 2nd Avenue SW
Minot, ND 58702*

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents and to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.	Addendum Date	Addendum No.	Addendum Date
# 1	6-16-14		

- B. Bidder 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. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder 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 relating to existing surface

or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."

- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at

artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

SCHEDULE OF PRICES

Bid Item No.	Description	Estimated Quantity	Unit	Unit Bid Price	Bid Price
1	General Conditions	1	LS	350,000.00	350,000.00
2	Traffic Control	1	LS	10,000.00	10,000.00
3	Erosion Control	1	LS	200,000.00	200,000.00
4	Aggregate Surface Demolition	830	SY	5.00	4,150.00
5	Aggregate Surface Class 5	830	SY	10.00	8,300.00
6	Seed Mixture	13	Acre	4,500.00	58,500.00
7	8" PVC – San. Sewer	80	LF	200.00	16,000.00
8	12" PVC – San. Sewer	480	LF	235.00	112,800.00
9	24" PVC – San. Sewer FM	20	LF	255.00	5,100.00
10	30" PVC – San. Sewer	14,900	LF	275.00	4,097,500.00
11	60" Sanitary Manhole	42	EACH	18,000.00	756,000.00
				Total Bid Price = \$5,618,350.00	

5.02 Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

5.03 Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete on or before September 5, 2015 and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before October 3, 2015.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

Items A and B Listed Below are Required in Separate Bid Security Envelope (Bid Envelope will not be opened without these documents):

- A. Required Bid security (5%)
- B. North Dakota Contractor's License valid 10 days before bid opening

Items C and D Listed Below are Required in Bid Envelope with Bid Form (Section 00300):

- C. Bidder's Subcontractor/Supplier List (Section 00410)
- D. Bidder's Qualification Statement (Section 00420)

Acknowledgement of Addenda on Bid Envelope

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: [Indicate correct name of bidding entity]

Tom's Backhoe Service, Inc

By:

[Signature]

Kathy Thompson

[Printed name]

Kathy Thompson / President

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature]

Tom Thompson

[Printed name]

Thomas Lee Thompson

Title:

Vice President

Submittal Date:

6/23/14

Address for giving notices:

323 Woodland Hills LN

Brainerd MN 56401

Telephone Number:

218-828-4232

Fax Number:

218-829-3746

Contact Name and e-mail address:

Tom Thompson

+612@brainerd.net

Bidder's License No.:

37395

(where applicable)

*Evidence of Authority
to sign*

**ARTICLES OF INCORPORATION
OF
TOM'S BACKHOE SERVICE, INC.**

The undersigned natural person of full age, for the purpose of forming a corporation under and pursuant to the provisions of Minnesota Statutes, Chapter 302A, and laws amendatory thereof and supplementary thereto, adopts the following Articles of Incorporation:

ARTICLE I

The name of the Corporation is Tom's Backhoe Service, Inc.

ARTICLE II

The location of the registered office is 323 Woodland Hills Lane, Brainerd, Minnesota 56401.

ARTICLE III

The total authorized number of shares is 100,000. No shareholder of the Corporation shall have any preemptive rights, and no shareholder shall be entitled to any cumulative voting rights.

ARTICLE IV

Any action taken by shareholders shall be by an affirmative vote of the holders of not less than fifty-one percent (51%) of the voting power of all shares, except where a larger proportion is required by law or by these articles.

ARTICLE V

Any action required or permitted to be taken by the Board of Directors of the Corporation may be by written action signed by not less than that number of Directors which would be required to take the same action at a meeting of the Board of Directors at which all Directors are present, except as to those matters requiring shareholder approval, in which case the written action shall be signed by all members of the Board of Directors then in office.

CLIENT COPY
B. Johnson & Assoc. Ltd.
Certified Public Accountants

ARTICLE VI

The name and address of the incorporator is:


Thomas Thompson
323 Woodland Hills Lane
Brainerd, Minnesota 56401.

ARTICLE VII

The names and addresses of the first Board of Directors is as follows:

<u>Name</u>	<u>Address</u>
Thomas L. Thompson	323 Woodland Hills Lane, Brainerd, MN 56401.
Katherine A. Thompson	323 Woodland Hills Lane, Brainerd, MN 56401.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of June, 2003.


Thomas L. Thompson

North Minot Sanitary Sewer Improvements
Gravity Sewer – 30th Avenue NE/55th Street NE
City of Minot, North Dakota
Apex Project #12.106.0080
City of Minot Project #3490.2

Section 00410 - BIDDER'S SUBCONTRACTOR/SUPPLIER LIST

The undersigned hereby submits, as part of this Bid, this list of all subcontractors and the nature of Work or products to be supplied by each. This list is only inclusive of the Subcontractors/Suppliers that will be completing Work or supplying materials totaling 1% or more of the total Bid.

Subcontractor/Supplier	Address Phone Number	Nature of Work/Supply	Amount (\$)
3 D Signage	Minot	Signage	10,000.00
American Logistics	Fargo	Restoration	200,000.00

Tom's Backhoe Service, Inc.
Company Name


Authorized Signature

North Minot Sanitary Sewer Improvements
Gravity Sewer – 30th Avenue NE/55th Street NE
City of Minot, North Dakota
Apex Project #12.106.0080
City of Minot Project #3490.2

Section 00420 - BIDDER'S QUALIFICATION STATEMENT

The undersigned hereby certifies, as a part of this Bid, that we or the subcontractor named below maintain a permanent place of business; have experience with projects of similar size and type; and have the financial resources to properly execute this Contract.

As evidence of this experience, the following projects are submitted for review.

1. Five (5) projects completed within the last five (5) years that are similar in size and type.
2. Final construction costs of the five (5) referenced projects.
3. Contract dates of the five (5) referenced projects.
4. Project references, including Owner contact information and project details.

No.	Owner Information	Construction Cost	Contract Start and Completion Dates	Reference Phone Number	Detailed Project Information
1	City of Minot	3.4 Million	4/13 - 7/14	Puppy Dog	Sewer & water
2	City of Minot	2.9 million	5/12 - 9/13	30 th Ave	Sewer & water
3	City of Minot	2.1 million	9/12 - 8/13	3 rd St.	Sewer & water
4	City of Minot	900,000	6/13 - 9/13	Storm # 118	Sewer & water
5	Northridge Villas	700,000	7/13 - 6/14	Northridge Villas	Sewer & water

Tom's Backhoe Service, Inc.
Company Name


Authorized Signature

State of North Dakota

SECRETARY OF STATE



CONTRACTORS LICENSE RENEWAL

NO: 37395 CLASS A

I, Alvin A. Jaeger, Secretary of State of the State of North Dakota, and as Registrar of Contractors, certify that **TOM'S BACKHOE SERVICE, INC.** whose address is Brainerd, MN has filed in this office proper application for Renewal of Class A Contractor's License valid to March 1, 2015, and has paid the required fee, and has complied with all requirements of Chapter 43-07, North Dakota Century Code.

TOM'S BACKHOE SERVICE, INC. therefore, is entitled to bid on and accept contracts as authorized by law, under this license, without limit as to value of any single contract.

Dated February 13, 2014.

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

BID BOND

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

BIDDER (Name and Address):

Tom's Backhoe Service, Inc.
323 Woodland Hills Lane
Brainerd, MN 56401

SURETY (Name, and Address of Principal Place of Business):

Granite Re, Inc.
14001 Quailbrook Drive
Oklahoma City, OK 73134

OWNER (Name and Address):

City of Minot
515 - 2nd Avenue SW
Minot, ND 58701

BID

Bid Due Date: June 23, 2014

Description (Project Name— Include Location):

Project No. 3490.2 - North Minot Sanitary Sewer Improvements 30th Avenue NE/55th Street NE

BOND

Bond Number: RB0057183

Date: June 10, 2014

Penal sum Five Percent of Bid Amount

\$ 5% of Bid Amount

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

Tom's Backhoe Service, Inc.

(Seal)

SURETY

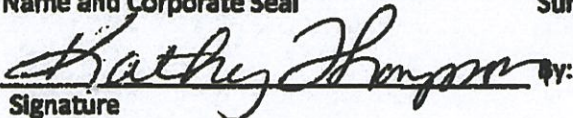
Granite Re, Inc.

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By:


Signature


Signature (Attach Power of Attorney)

Kathy Thompson
Print Name

Jonathan Pate

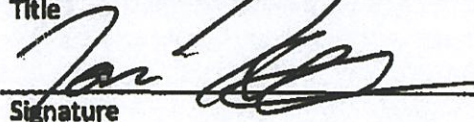
Print Name

President
Title

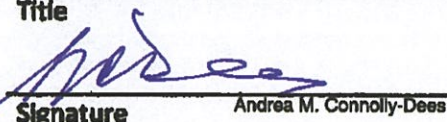
Attorney-in-Fact

Title

Attest:


Signature

Attest:


Signature

Vice President
Title

Title Witness

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

PENAL SUM FORM

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

State of _____)
County of _____)

On this _____ day of _____, in the year _____, before me personally come(s) _____, to me known and known to me to be the person(s) who (is) (are) described in and executed the foregoing instrument and acknowledge(s) to me that ___ he ___ executed the same.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

State of _____)
County of _____)

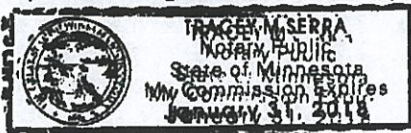
On this _____ day of _____, in the year _____, before me personally come(s) _____, a member of the co-partnership of _____, to me known and known to me to be the person who is described in and executed the foregoing instrument and acknowledges to me that he executed the same as for the act and deed of the said co-partnership.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

State of Minnesota)
County of Crow Wing)

On this 19th day of June, in the year 2014, before me personally come(s) Kathryn Simpson, to me known, who, being duly sworn, deposes and says that he is the President of the Tom's Backhoe Service the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

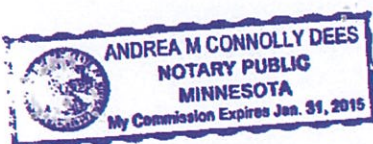


Notary Public

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
County of Dakota)

On this 10th day of June, in the year 2014, before me personally come(s) Jonathan Pate, Attorney(s)-in-Fact of Granite Re, Inc. with whom I am personally acquainted, and who, being by me duly sworn, says that he is (are) the Attorney(s)-in-Fact of Granite Re, Inc. company described in and which executed the within instrument; that he know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Notary Public

GRANITE RE, INC.
GENERAL POWER OF ATTORNEY

Know all Men by these Presents:

That GRANITE RE, INC., a corporation organized and existing under the laws of the State of OKLAHOMA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

JONATHAN PATE; WANDA FRANZ; TOM LAHL; LISA M. FRANCOUR; JENNIFER BOYLES its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

JONATHAN PATE; WANDA FRANZ; TOM LAHL; LISA M. FRANCOUR; JENNIFER BOYLES may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said GRANITE RE, INC. has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Secretary/Treasurer, this 3rd day of July, 2013.

STATE OF OKLAHOMA)
) SS:

COUNTY OF OKLAHOMA)





Kenneth D. Whittington, President

Kyle P. McDonald, Treasurer

On this 3rd day of July, 2013, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. Company and Kyle P. McDonald, Secretary/Treasurer of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Kyle P. McDonald were respectively the President and the Secretary/Treasurer of GRANITE RE, INC., the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Secretary/Treasurer, respectively, of the Company.

My Commission Expires:

August 8, 2017

Commission #: 01013257





Notary Public

GRANITE RE, INC.

Certificate

THE UNDERSIGNED, being the duly elected and acting Secretary/Treasurer of Granite Re, Inc., an Oklahoma Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of Granite Re, Inc. and that said Power of Attorney has not been revoked and is now in full force and effect.

"RESOLVED, that the President, any Vice President, the Secretary, and any Assistant Vice President shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this 10th day of June 2014.





Kyle P. McDonald, Secretary/Treasurer