

**SECTION 105  
CONSTRUCTION AGREEMENT**

THIS AGREEMENT, Made this 18<sup>th</sup> day of April, 2013, at Minot, State of North Dakota by and between the City of Minot, North Dakota, hereinafter called the "OWNER", and Wagner Construction, Inc., hereinafter called the "Contractor" to complete the following work: **39<sup>TH</sup> STREET SE STREET AND UTILITY IMPROVEMENTS, CITY OF MINOT, NORTH DAKOTA.**

**WITNESSETH THAT:**

In consideration of the mutual covenants and conditions hereinafter set forth, the OWNER and Contractor hereby agree as follows:

**105-1 SCOPE OF WORK:** The Contractor shall furnish and pay the cost, including sales tax and all other applicable taxes and fees, of all the necessary materials not furnished by the OWNER and shall furnish and pay for all the superintendence, labor, tools, equipment and transportation, and perform all the work required for the construction of all structures listed and itemized under the bid schedule of the Bidder's Proposal attached hereto in strict accordance with the General Conditions; Special Conditions, Governmental Requirements, the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory matter therein; the Specifications and Contract Documents as prepared by Interstate Engineering, Inc., herein called "Engineer", and any amendments thereto and such supplemental Plans and Specifications as may hereafter be approved.

All addendums 1 through 1 are hereby made part of this Contract.

**105-2 COMPLETION OF WORK:** The Contractor shall commence the work covered by this Agreement within N/A calendar days after the date of the Notice to Proceed and shall complete the same by September 13, 2012 unless the period for completion is extended as hereinafter provided.

**105-3 CONTRACT SUM:** The OWNER shall pay the Contractor for the performance of said work as set forth by Section 105-1 above, three hundred eight thousand one hundred sixty-three and 25/100 DOLLARS (\$380,163.25).

Breakdown of above mentioned contract amount is as follows:

**105-4 MAINTENANCE:** The Contractor shall guarantee the repair of all damages or defects due to faulty materials or workmanship done by the Contractor or subcontractors. This guarantee shall remain in effect for a period of two years after acceptance of the project by the OWNER according to the General Conditions.

**105-5 PAYMENT:** Payment shall be made to the Contractor for work performed under this Agreement for the quantities of work as determined in accordance with the General Conditions.

**105-6 SUB-CONTRACTORS:** The Contractor agrees to bind every sub-contractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relation between any sub-contractor and the OWNER.

**105-7 SUCCESSORS AND ASSIGNS:** This Agreement and all of the covenants hereof shall insure to the benefit of and be binding upon the OWNER and the Contractor, respectively, and his partners, successors, assigns and legal representatives. Neither the OWNER nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

**105-8 SOURCE AND MANNER OF PAYMENT:** All payments shall be made in warrants drawn on the construction account of the funds of the Community Development Block Grant funding from the City of Minot and said warrants shall bear no interest and shall be payable immediately on issuance.

**105-9 OWNER'S RIGHT TO SUSPEND WORK:** The OWNER, by resolution duly adopted by the governing body, shall have the right to suspend the work at any time for improper construction, and to relet the contract therefore, or to order the reconstruction of the work as to any part thereof improperly done. This right shall be additional to the rights, powers, and privileges reserved to the OWNER in the several provisions of the plans and specifications.

**105-10 OWNER ASSUMES NO GENERAL LIABILITY:** It is expressly agreed and understood that the OWNER assumes and incurs no general liability under the contract for the payment of any compensation to the Contractor, or any other person; the OWNER's obligation hereunder being limited solely to the administration and application of the funds of said Community Development Block Grant funding from the City of Minot, in accordance with the law, and the provisions of this Agreement.

**105-11 ENGINEER'S FAILURE TO REJECT WORK:** Failure of the Engineer to reject work and materials which are not up to specifications and acceptance of the job by the Engineer shall not release the Contractor from liability for any failure on his part to perform work or furnish materials in accordance with the plans and specifications.

**105-12 INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including, but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expenses attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**105-13 SERVICE OF NOTICE:** All notices required to be given hereunder shall be mailed or delivered in the case of the OWNER to City of Minot Engineering Department, 1025 31<sup>st</sup> Street SE, Minot, ND 58701-5253 and in the case of the Contractor to Wagner Construction, 3151 Hwy 53, Suite 1, International Falls, MN 56649.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed  
the day and year first above written.

(SEAL)

OWNER: City of Minot

ATTEST: L. J. Jandt

BY: [Signature]

TITLE: City Clerk

TITLE: Mayor

(SEAL)

CONTRACTOR: Wagner Construction, Inc.

ATTEST: L. J. Jandt

BY: [Signature]

TITLE: Admin Asst

TITLE: President

**Certificate from Contractor Appointing  
Officer or Employee to Supervise  
Payment of Employees**

Project Name 39th St. SE St. & Utility Imp. Date (mm/dd/yyyy) 4-29-13

Location Minot, ND Project No. B11-04-280

(I) (We) hereby certify that (I am) (we are) (the prime contractor) (a subcontractor) for Utility Imp. Const.  
(specify "General Construction," "Plumbing," "Roofing," etc.) in connection with construction of the abovementioned  
project, and that (I) (we) have appointed Ashley Waller, whose signature  
appears below, to supervised the payment of (my) (our) employees beginning (date: mm/dd/yyyy) 4-29-2013 ;  
that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement  
of compliance required by the so-called Kick-Back Statute which he/she is to execute with (my) (our) full authority and  
approval until such time as (I) (we) submit to the City of Minot a new certificate appointing some other person for the  
purposes hereinabove stated.

Ashley Waller  
(Identifying Signature of Appointee)

Attest (if required)

G. Obrowski  
(Signature)

adm n asst  
(Title)

4-29-13  
(Date: mm/dd/yyyy)

Wagner Construction, Inc. dba Wagner Place  
(Name of Firm or Corporation)

By Dem Uy  
(Signature)

President  
(Title)

April 29, 2013  
(Date: mm/dd/yyyy)

Note: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Kick-Back Statute.

RECEIVED FEB 23 2013

2013



**North Dakota  
Workforce Safety  
& Insurance**  
*Putting Safety to Work*

**CERTIFICATE OF  
PREMIUM PAYMENT**  
WORKFORCE SAFETY & INSURANCE  
EMPLOYER SERVICES  
SFN 4920 (04/2007)

1600 EAST CENTURY AVENUE, SUITE 1  
PO BOX 5585  
BISMARCK ND 58506-5585  
Telephone 1-800-777-5033  
Toll Free Fax 1-888-786-8695  
TTY (hearing impaired) 1-800-366-6888  
Fraud and Safety Hotline 1-800-243-3331  
[www.WorkforceSafety.com](http://www.WorkforceSafety.com)

WAGNER CONSTRUCTION INC  
DBA WAGNER PLACE  
PO BOX B  
SOUTH INTERNATIONAL FALLS MN 56679-0850

Employer Account Number: 1252741

Issued Date: 02/19/2013

Expiration Date: 03/16/2014

## CERTIFICATE OF PREMIUM PAYMENT

This is to certify that North Dakota Workers Compensation coverage is effective for the employer named on this certificate. Employees of the named employer are entitled to apply for the rights and benefits of Workforce Safety and Insurance(WSI).

Coverage under this certificate extends to North Dakota based employers for their North Dakota exposure. Limited coverage extends beyond the physical boundaries of North Dakota. Contact the Policyholder Services Department of WSI at 1-800-777-5033 for further information on coverage issues or to inquire into the status of the holder of this certificate.

North Dakota Century Code § 65-04-04 requires that each employer post this Certificate of Premium Payment in a conspicuous manner at the workplace. A penalty of \$250 may apply for failure to comply with this requirement.

A Certificate of Premium Payment may be revoked for failure to make required premium payments.

*Barry Schumacher*

Barry Schumacher  
Chief of Employer Services

Class	Classification Description
6042A = 0217N 6301 = 0319N 8747	Street-Road-Hwy Construction Sewer-Water-Gas-Pipeline Const Professional/Business Reps



STATE OF NORTH DAKOTA  
**OFFICE OF STATE TAX COMMISSIONER**  
Cory Fong, Commissioner

RECEIVED NOV 13 2012

November 7, 2012

Ref: L0881925632  
Acct: 0036217-CCT-005

WAGNER CONSTRUCTION INC  
WAGNER DENNIS C  
PO BOX B  
SOUTH INTERNATIONAL FALLS MN 56679-0850

**RE: Statement Of The North Dakota Tax Commissioner Relating To Income  
Tax And Sales/Use Tax Clearance**

***This Income, Sales and Use Tax Clearance Expires December 31, 2013.***

A search of the records in the office of the North Dakota Tax Commissioner does not show probable cause to believe that any income taxes, sales use, or gross receipts taxes are owing and unpaid by the above named taxpayer to the State of North Dakota. You are advised that insofar as North Dakota Century Code § 43-07-11.1 is concerned, a contract may be executed. This does not release any further income, sales use, or gross receipts tax liability found to be due after audit or examination.

A copy of the Statement of Income, Sales/Use/Gross Receipts Tax Clearance must be submitted to the governmental institution or political subdivision with whom the contract is to be executed and the governmental institution or political subdivision must make a record of the tax clearance number. ***This is the only copy of the notice of clearance to be issued and should be kept in your files.*** Copies should be made for issuance to governmental institutions or political subdivisions with whom contracts are executed.

/s/ Myles S. Vosberg  
Myles S. Vosberg  
Director, Tax Administration

**SECTION 106  
PERFORMANCE - PAYMENT BOND**

THE STATE OF NORTH DAKOTA

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That we (1) Wagner Construction, Inc., dba Wagner Place  
(2) a corporation of PO Box B, S International Falls, MN 56679  
hereinafter called Principal and (3) Travelers Casualty and Surety Company of America of  
One Tower Square 28th, Hartford, CT 06183-6014 State of CT,  
hereinafter called the Surety, are held and firmly bound unto  
(4) City of Minot, ND, Hereinafter called OWNER, and unto all persons,  
firms, and corporations who may furnish materials for, or perform labor upon, the building or  
improvements hereinafter referred to in the penal sum  
Three Hundred Eighty Thousand One Hundred Sixty Three & 25/100 DOLLARS (\$ 380,163.25)  
in lawful money of the United States to be paid in (5) Ward County,  
North Dakota, for the payment of which sum well and truly to be made, we bind ourselves,  
our heirs, executors, administrators and successors, jointly and severally, firmly by these  
presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal  
entered into a certain contract with (6) City of Minot, ND which is  
dated 18th day of April A.D. 20 13, a copy of which is hereto attached  
and made a part hereof for the construction of 39th Street SE Street and Utility  
Improvements, Minot, ND

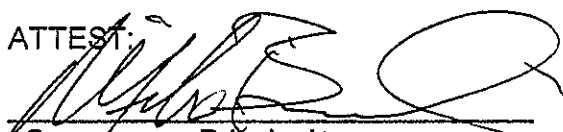
NOW THEREFORE, if the Principal shall (1) well and truly perform and fulfill  
all the undertakings, covenants, terms, conditions, and agreements of said Contract during  
the original term of said contract and any extension thereof that may be granted by the  
OWNER with or without notice to the surety, and during the life of the one year guaranty  
required under the contract, and; (2) promptly make payment to all persons supplying labor  
and materials, including supplies used for machinery and equipment, performed, furnished  
and used in and about the performance of the Contract to the Principal or to any  
subcontractor of the Principal in the prosecution of the work provided for in said contract  
(failing which such persons shall have a direct right of action against the Principal and surety  
under this obligation), also such payment shall include interest in the amount authorized  
under Section 13-01-14 of the North Dakota Century Code on all bills and claims not paid  
within ninety (90) days and; (3) well and truly perform and fulfill all the undertakings,  
covenants, terms, conditions, and agreements of any and all duly authorized modifications  
of said contract that may hereafter be made and promptly make payment to all persons  
supplying labor and materials including supplies used for machinery and equipment,  
performed, furnished and used in and about the performance of the contract to the Principal  
or to any subcontractor to the Principal in the prosecution of the work provided for in such  
modifications (failing which such persons shall have a direct right of action against the  
Principal and surety under this obligation), notice to the surety of all duly authorized  
modifications being hereby waived, and; (4) make, prior to the commencement of any work  
by himself or any subcontractor under the contract, full and true report to the Workmen's

Compensation Bureau of the payroll expenditures for the employees to be engaged in such work and pay the premium thereon prior to the commencement of such work, and; (5) the Contractor will pay or cause to be paid all sales and use taxes payable as a result of the performance of the contract for which the bond is given, as well as the payment of gasoline and special motor fuels taxes used in the performance of the contract, and all motor vehicle fees required for commercial motor vehicles used in connection with the performance of such contract then this obligation to be void; otherwise to remain in full force and effect.

In case of a default on the part of the Principal herein in the performance of the work as provided in the above contract, the sum of this bond as set out above shall be taken and held to be fixed and liquidated damages in favor of the OWNER, and said full amount may be recovered from the principal and surety in an action against them on this bond.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the 26th day of April, 2013.

ATTEST:

  
Secretary or Principal

(CORPORATE SEAL)

Wagner Construction, Inc., dba  
(7) Wagner Place  
Principal

By Dennis Wayne  
Pres

Title

PO Box B  
S International Falls, MN 56679

Address

Travelers Casualty and Surety  
Company of America

Surety

By John C. Klein  
Attorney-in-Fact John C. Klein

ATTEST:

  
Secretary of Surety

(CORPORATE SEAL)

Full Name of Surety Company Travelers Casualty and Surety Company of America

Home Office Address One Tower Square 2SHS, Hartford, CT 06183-6014

Name of Attorney-in-Fact John C. Klein

Name of Local Agency Klein Agency, Inc.

Address of Local Agency 3570 N Lexington Ave, Suite 206, St. Paul, MN 55126

A copy of the Power of Attorney of the Attorney-in-fact showing that it remains in force as of the date of the Bond must be attached to the Bond.

NOTE: Date of Bond must not be prior to date of Contract.

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership or an Individual as case may be.
- (3) Correct Name of Surety
- (4) Correct Name of OWNER
- (5) County
- (6) OWNER
- (7) If Contractor is Partnership, all partners should execute Bond.

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

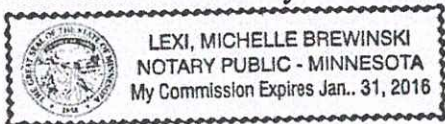
On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_ to me known to be the person \_\_\_\_\_ described in and who executed the forgoing bond, and acknowledged that \_\_\_\_\_ he \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
Notary Public

CORPORATION ACKNOWLEDGMENT

STATE OF MN  
COUNTY OF Koochiching

On this 30<sup>th</sup> day of April, 2013, before me personally came Dennis Wagner to me known, who being by me duly sworn, did depose and say; that he is the President of Wagner Construction, Inc., dba Wagner Place, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.



Lexi Brewinski Notary Public

SURETY ACKNOWLEDGMENT

STATE OF MINNESOTA  
COUNTY OF RAMSEY

On this 26<sup>th</sup> day of April, 2013, before me appeared John C. Klein to me personally known, who, being duly sworn, did say that he is the Attorney-in-Fact of Travelers Casualty & Surety Company of America of Hartford, CT that the seal affixed to the foregoing instrument is the corporation seal of said corporation; that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he did also acknowledge that he executed the said instrument as the free act and deed of said Company.



Rita M Carlson Notary Public

**TRAVELERS****POWER OF ATTORNEY**

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 223887

Certificate No. 004966140

**KNOW ALL MEN BY THESE PRESENTS:** That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

John C. Klein, John D. Klein, Stephen M. Klein, Kristin M. Bakos, and Clint Rodningen, Jr.

of the City of St. Paul, State of Minnesota, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 17th day of July, 2012.

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company



State of Connecticut  
 City of Hartford ss.

By: George W. Thompson  
 George W. Thompson, Senior Vice President

On this the 17th day of July, 2012, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
 My Commission expires the 30th day of June, 2016.



Marie C. Tetreault  
 Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 26th day of April, 2013.

  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.