

Notice of Award

Dated: 03-19-2015

Project: 16 th Ave, 46 th St and 14 th Ave SE Rebuild	Owner: City of Minot	Owner's File No.: 3873.1
Contract:		Engineer's Project No.: R14090
Bidder: Wagner Construction, Inc.		
Bidder's Address: 3151 Highway 53		
International Falls, MN 56649		

You are notified that your Bid dated March 17th, 2015, for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for construction of improvements related to 16th Ave, 46th St and 14th Ave SE Rebuild.

The Contract Price of your Contract is estimated to be \$2,103,067.00, subject to the provisions in the General Conditions regarding unit prices.

3 copies of each of the proposed Contract Documents accompany this Notice of Award.

2 copies of the Drawings and Project Manual also accompany this Notice of Award.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award.

1. Deliver to the Owner 3 fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the required Performance and Payment Bonds as specified in the Instructions to Bidders.
3. Deliver with the executed Contract Documents the required certificates of insurance as specified in the Instructions to Bidders and Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

City of Minot
By: 
Title: Mayor
Date: 4-9-15

AGREEMENT

TABLE OF ARTICLES

<u>Article</u>	<u>Article No.</u>
Work	1
The Project.....	2
Engineer.....	3
Contract Times.....	4
Contract Price	5
Payment Procedures.....	6
Interest	7
Contractor's Representations	8
Contract Documents.....	9
Miscellaneous	10

AGREEMENT

THIS AGREEMENT is between

City of Minot
515 Second Avenue SW
Minot, North Dakota 58702

hereafter called "Owner" and

Wagner Construction, Inc.
3151 Highway 53
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

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

the materials, labor, tools and equipment required for the construction of hot bituminous paving, curb and gutter, sidewalks, and water main along with incidentals as shown on the plans. The types and estimated quantities of proposed improvement items are identified on the Bid Form, attached hereto as an Exhibit.

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
16th Ave, 46th St and 14th Ave SE Rebuild
CDBG – Disaster Recovery Project

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by:

Ackerman-Estvold
1907 17th Street SE
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, 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 Dates for Final Completion and Payment

- A. The Work will be substantially complete on or before October 16th, 2015 for all work, and will be completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions on or before November 2nd, 2015, subject to revisions in the Contract Time in accordance with the General Conditions. If the work is not completed by the times listed above, liquidated damages will start and continue until the work is completed.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence of the Agreement and that the Owner will suffer financial loss if the Work is not completed within the times specified 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 preceding 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 \$2,500.00 for each day that expires after the time specified above 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 Exhibit A.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 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 1st 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. 95 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. 95 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).
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 6 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 4, inclusive).
 6. Specifications as listed in the table of contents of the Project Manual.
 7. Drawings consisting of 57 sheets with each sheet bearing the following general title: 16th Ave, 46th St and 14th Ave SE Rebuild.
 8. Addenda (numbers 1 to 1, inclusive).
 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 7, 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).
 11. Other documents described as follows:
 - a. Exhibit A
 - b. _____
 - c. _____
 - d. _____
- 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 April 16, 2015 (which is the Effective Date of the Agreement).

OWNER:

City of Minot

By:

Title:

Attest:

Title:

Address for giving notices:

515 Second Avenue SW

PO Box 5006

Minot, North Dakota 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 Owner-Contractor Agreement.)

CONTRACTOR:

Wagner Construction, Inc.

By:

Title:

Attest:

Title:

Address for giving notices:

3151 Highway 53

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.)

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

This is an exhibit attached to and made a part of; and incorporated by reference into the Agreement dated April 16, 2015, between City of Minot, ND, (CITY) and Wagner Construction, Inc. (CONTRACTOR) for construction services.

1. Civil Rights

The CONTRACTOR agrees to comply with Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 109 of Title 1 of the Housing and Community Development Act of 1974; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; Executive Order 11246, as amended by Executive Orders 11375 and 12086; and all other applicable requirements of 24 C.F.R. Part 570, Subpart K.

The CONTRACTOR agrees to comply with any Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in any federally assisted program. The CITY will provide the CONTRACTOR with any guidelines necessary for compliance with that portion of the regulations during the term of this Agreement.

2. Nondiscrimination

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance.

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

The CONTRACTOR shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this nondiscrimination clause. The CONTRACTOR shall

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

also abide by Title IX of the Education Amendments of 1972 (20 U.S.C.A. 1681 *et seq.*) which prohibits sex discrimination in federally assisted education programs.

3. Affirmative Action

A. Approved Plan (applicable for contractors with 50 or more employees and contracts over \$50,000)
The CONTRACTOR agrees that it shall be committed to carry out, pursuant to the CITY's specifications, an Affirmative Action Program in keeping with the principles as provided in Presidential Executive Order 11246 of September 24, 1965. The CITY will provide Affirmative Action guidelines to the CONTRACTOR to assist in the formulation of such program, upon request.

B. Women/Minority Business Enterprise

The CONTRACTOR shall use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and women business enterprise" means a business that is at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians. The CONTRACTOR may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.

C. Notifications

The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the CONTRACTOR's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. EEO/AA Statement

The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CITY, state that it is an Equal Opportunity or Affirmative Action Employer, as applicable.

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

The CONTRACTOR agrees to comply with Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 109 of Title 1 of the Housing and Community Development Act of 1974; Section 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; Executive Order 11246, as amended by Executive Orders 11375 and 12086; and all other applicable requirements of 24 C.F.R. Part 570, Subpart K.

The CONTRACTOR agrees to comply with any Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in any federally assisted program. The CITY will provide the Program Administrator with any guidelines necessary for compliance with that portion of the regulations during the term of this Agreement.

4. Section 109 of the Housing and Community Development Act of 1974

The CONTRACTOR shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

5. Section 503 of the Rehabilitation Act of 1973 (29 USC 793) (applicable to contracts and subcontracts over \$10,000)

A. The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

- B. The CONTRACTOR agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the CONTRACTOR's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the CONTRACTOR's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The CONTRACTOR will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The CONTRACTOR will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each CONTRACTOR or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

6. Section 504 OF THE Rehabilitation Act of 1973, As Amended

The CONTRACTOR agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program, or activity that receives the benefits from the federal financial assistance.

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

7. Age Discrimination Act of 1975

The CONTRACTOR shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

8. Certification of Nonsegregated Facilities (applicable to contracts and subcontracts over \$10,000)

The CONTRACTOR certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this AGREEMENT.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

9. Section 3 of the Housing and Urban Development Act of 1968 – Compliance in the Provision of Training, Employment and Business Opportunities

A. Compliance

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

The CONTRACTOR agrees to comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders. The CONTRACTOR understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the CITY and the CONTRACTOR. Failure to comply with these requirements shall subject the CITY and the CONTRACTOR, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided, and as set out in 24 C.F.R. Part 135, Subpart D. The CONTRACTOR agrees that no contractual or other disability exists which would prevent compliance with these requirements. The CONTRACTOR shall include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this AGREEMENT is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C.A. 1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the areas of the project."

B. Notifications

The CONTRACTOR shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

C. Subcontracts

The CONTRACTOR shall include this Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the CONTRACTOR is in violation of regulations issued by the CITY. The CONTRACTOR will not subcontract with any contractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not let any subcontract unless the CONTRACTOR has first provided it with preliminary statement of ability to comply with the requirements of these regulations.

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

10. Environmental Conditions

A. Air and Water

The CONTRACTOR agrees to comply with the following regulations insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C.A. 7401 *et seq.*
- Clean Water Act, 33 U.S.C.A. 1368
- Executive Order 11738
- Federal Water Pollution Control Act, as amended, 33 U.S.C.A. 1251, *et seq.*, 1321 and 1318, relating to inspection, monitoring, entry, reports, and information, and all regulations guidelines issued there under
- Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 50, as amended.
- National Environmental Policy Act of 1969 (42 U.S.C.A. 4321 *et seq.*, as amended)
- HUD Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

B. Flood Disaster Protection

The CONTRACTOR shall comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L.-2234) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

C. Lead-Based Paint

The CONTRACTOR agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 C.F.R. § 570.608 and 24 C.F.R. Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning, and of the advisability and availability of blood-level screening for children less than 7 years of age.

D. Historic Preservation

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

The CONTRACTOR shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C.A. 470) and the procedures set forth in 36 C.F.R. Part 800, "Protection of Historic Properties," insofar as they apply to the performance of this Agreement. In general this requires approval from the North Dakota Historical Commission and Antiquities Committee for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, state, or local historic property list.

E. Wildlife Protection

The CONTRACTOR agrees to comply with the requirements of the Endangered Species Act of 1973, as listed in 50 C.F.R. § 17.11 and 50 C.F.R. Part 402; the Lacey Act (16 U.S.C.A. 3371-3378 *et seq.*, as amended); the Migratory Bird Treaty Act (16 U.S.C.A. 703-12); the Fish and Wildlife Coordination Act (16 U.S.C.A. 661 *et seq.*); Section 4(f) of the Department of Transportation Act (49 U.S.C.A. 1653(f)); the Federal Water Pollution Control Act (33 U.S.C.A. 1251 *et seq.*); the Coastal Zone Management Act of 1972, as amended (16 U.S.C.A. 1451); and the Safe Drinking Water Act of 1974 (42 U.S.C.A. 300f *et seq.*, as amended), insofar as they apply to the performance of this Agreement.

11. Energy Efficiency

The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

12. Financial Management

The CONTRACTOR shall adhere to standard, Generally Accepted Accounting Principles (GAAP) and Governmental Accounting Standards and maintain necessary source documentation for all costs incurred under this Agreement.

The CONTRACTOR will provide adequate support documentation to receive payment of CDBG-DR funds in sufficient detail for the CITY and/or the OWNER to determine cost eligibility and allowability.

13. Record-Keeping, Reports, and Audits

A. Records to be maintained

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

The CONTRACTOR shall maintain all records required by this Agreement, records required by 24 C.F.R. § 570.506 and records that are pertinent to the activities to be funded under this Agreement, including but not be limited to:

1. Records providing a full description of each activity undertaken
2. Records demonstrating that each activity undertaken meet one of the National Objectives of the CDBG program
3. Records required determining the eligibility of activities
4. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance
5. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program
6. Financial standards, as required by 24 C.F.R. § 570.502; and
7. Other records necessary to document compliance with Subpart K of 24 C.F.R. Part 570.

B. Property Records

The CONTRACTOR shall maintain real property inventory records, which clearly identify property purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the restrictions specified in 24 C.F.R. § 570.606. The CONTRACTOR shall ensure that any independent audit required hereunder includes a report on real property inventory as a supplemental schedule in the audit.

C. Retention

The CONTRACTOR shall retain all records pertinent to expenditures incurred under this Agreement per the State of North Dakota general Records Retention Schedule after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later.

D. Access to Records

The CITY, the PROGRAM MANAGER, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this specific AGREEMENT, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this AGREEMENT will be maintained in a central location by the unit of local government

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

and will be maintained for a period of five (5) years from the official date of the CITY's final closeout of the grant.

E. Inspection

The authorized representative and agents of the CITY, the PROGRAM MANAGER and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, and payrolls, records of personnel, invoices of materials, and other relevant data and records.

F. Reports

The CONTRACTOR shall complete and submit all reports, in such form and according to such schedule, as may be required by the CITY, pertaining to the work or services undertaken pursuant to this Agreement.

14. Conflict of Interest

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the CONTRACTOR shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this AGREEMENT or to any benefit that may arise there from, but this provision shall not be construed to extend to this AGREEMENT if made with a corporation for its general benefit.

15. Activities and Contracts Not Subject To Executive Order – 11246, as Amended (applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this AGREEMENT, the CONTRACTOR agrees as follows:

1. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2. The CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The CONTRACTOR shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The CONTRACTOR shall incorporate foregoing requirements in all subcontracts.

16. Patents

The CONTRACTOR shall hold and save the CITY and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the AGREEMENT including its use by the CITY, unless otherwise specifically stipulated in the Contract Document.

License or Royalty Fees: License and/or Royalty Fees for the use of a process which is mandated or specifically requested by the CITY of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the CITY and not by or through the CONTRACTOR.

If the CONTRACTOR uses any design device or materials covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the CITY of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The CONTRACTOR and/or his Sureties shall indemnify and save harmless the CITY of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this AGREEMENT, and shall indemnify the CITY for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

17. Copyright

All formal documents and data (not including drafts), produced under this Agreement are the property of the CITY. If this Agreement results in any copyrightable material, the CITY reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use the work. In addition, the CITY may authorize others to use the material.

18. Subcontracts

- A. The CONTRACTOR shall not enter into any subcontract with any CONTRACTOR who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of North Dakota.
- B. The CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of the CONTRACTOR's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the CONTRACTOR.
- C. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the CONTRACTOR by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the CONTRACTOR the same power as regards terminating any subcontract that the CITY may exercise over the CONTRACTOR under any provision of the contract documents.
- D. Nothing contained in this AGREEMENT shall create any contractual relation between any subcontractor and the CITY.

19. Debarment, Suspension, and Ineligibility

The CONTRACTOR represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

20. Breach of Contract Terms

Any violation or breach of terms of this AGREEMENT on the part of the CONTRACTOR may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this AGREEMENT. The duties and obligations imposed by the AGREEMENT documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

21. Provisions Required by Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this AGREEMENT shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the AGREEMENT shall forthwith be physically amended to make such insertion or correction.

22. Changes

The CITY may, from time to time, request changes in the scope of the services of the CONTRACTOR to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONTRACTOR's compensation which are mutually agreed upon by and between the CITY and the CONTRACTOR, shall be incorporated in written and executed amendments to this Contract.

23. Personnel

The CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this CONTRACTOR. Such personnel shall not be employees of or have any contractual relationship with the CITY or PROGRAM MANAGER.

All the services required hereunder will be performed by the CONTRACTOR or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

24. Drug Free Workplace

All profit or non-profit agencies or organizations receiving state or Federal grant funds under the official sponsorship of the CITY must certify, on an annual basis, their compliance with the requirements of the

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

"Drug Free-Workplace Act of 1988". Employees are specifically prohibited from manufacturing, distributing, possessing, purchasing, and using illegal drugs or controlled substances in the workplace or in any other facility, location, or transport in which the employee is required to be present in order to perform his or her job function.

25. Anti-Kickback Rules

Salaries of personnel performing work under this AGREEMENT shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The CONTRACTOR shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this AGREEMENT to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

26. Interest of CONTRACTOR

The CONTRACTOR covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder.

27. Political Activity

The CONTRACTOR will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

28. Compliance with the Office of Management and Budget

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-87, A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this AGREEMENT.

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

29. Confidential Findings

All of the reports, information, data, etc., prepared or assembled by the CONTRACTOR under this Contract are confidential, and the CONTRACTOR agrees that they shall not be made available to any individual or organization without prior written approval of the CITY and PROGRAM MANAGER.

30. Lobbying

The CONTRACTOR certifies, to the best of his or her knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

31. Reversion of Assets

The agreement shall specify that upon its expiration the CONTRACTOR shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the CONTRACTOR's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subcontractor in the form of a loan) in excess of \$25,000 is either:

- a. Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
- b. Not used in accordance with paragraph (b)(7)(i) of this section, in which event the CONTRACTOR shall pay to the recipient an amount equal to the current market value of the property less any

**EXHIBIT A TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND WAGNER CONSTRUCTION, INC.
FOR
CONSTRUCTION SERVICES**

CDBG Program Requirements

portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

32. Payment for Eligible Expenses

The CONTRACTOR understands and agrees that the CITY shall reimburse the CONTRACTOR for only those costs associated with work that has been authorized by CITY and costs that are eligible under applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement with HUD grant funds. No reimbursement shall be made for goods and services received by the CONTRACTOR as in-kind contributions from third parties for assistance to the Program.

32. Repayment of Ineligible Payments

In the event HUD or the CITY determines through investigations and/or monitoring that any payment or reimbursement to CONTRACTOR is ineligible or disallowed, the CONTRACTOR shall immediately and without delay fully reimburse CITY. If the CITY is required to refund moneys previously awarded or drawn down from the U.S. Treasury in reference to this agreement, as a result of CONTRACTOR's sole negligence, willful misconduct, or intentional fraud, the CONTRACTOR agrees to pay an equal amount to CITY, prior to the demand date of payback.

33. CITY May Terminate for Convenience

Upon seven days written notice to CONTRACTOR, CITY may without cause and without prejudice to any other right or remedy of CITY, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

- i. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of terminations, including fair and reasonable sums for overhead and profit on such Work;
- ii. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted work, plus fair and reasonable sums for overhead and profit on such expenses; and
- iii. other reasonable expenses directly attributed to termination, including costs incurred to prepare a termination for convenience cost proposal
- iv. Contractor shall not be paid on account of loss of anticipated overhead, profits or revenue, or other economic loss arising out of or resulting from such termination.

State of North Dakota

SECRETARY OF STATE



CONTRACTORS LICENSE RENEWAL

NO: 26283 CLASS A

I, Alvin A. Jaeger, Secretary of State of the State of North Dakota, and as Registrar of Contractors, certify that **WAGNER PLACE** whose address is International Falls, MN has filed in this office proper application for Renewal of Class A Contractor's License valid to March 1, 2016, and has paid the required fee, and has complied with all requirements of Chapter 43-07, North Dakota Century Code.

WAGNER PLACE 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 January 21, 2015.

A handwritten signature in cursive script that reads "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):

Wagner Construction, Inc. dba Wagner Place
3151 Hwy 53, Suite 1
International Falls, MN 56649

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

Travelers Casualty and Surety Company of America
One Tower Square 2SHS
Hartford, CT 06183-6014

OWNER (Name and Address):

**City of Minot
515 Second Avenue SW
Minot, North Dakota 58702**

BID

Bid Due Date: **March 17, 2015**

Project:

**City of Minot, North Dakota
16th Ave, 46th St and 14th Ave SE Rebuild**

BOND

Bond Number:

Date (Not later than Bid due date): March 9, 2015

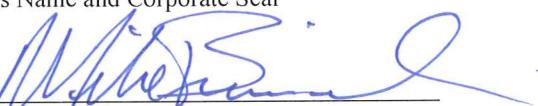
Penal sum	Five Percent of Amount Bid (Words)	5% of Amount Bid (Figures)
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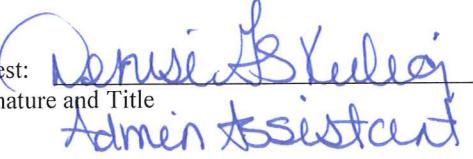
Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

Wagner Construction, Inc. dba Wagner Place (Seal)

Bidder's Name and Corporate Seal

By: 
Signature and Title

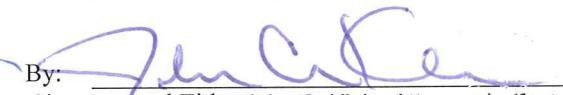
Attest: 
Signature and Title

Note: Above addresses are to be used for giving required notice.

SURETY

Travelers Casualty and Surety Company of America (Seal)

Surety's Name and Corporate Seal

By: 
Signature and Title John C. Klein, Attorney-in-Fact
(Attach Power of Attorney)

Attest: 
Signature and Title Rita M. Carlson, Notary Public

**KLEIN AGENCY, INC.
3570 No. Lexington Ave. Ste. 206
St. Paul, MN 55126
(651) 484-6461**

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 Surety's liability.
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 by 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 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 Bid due date.

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF
COUNTY OF

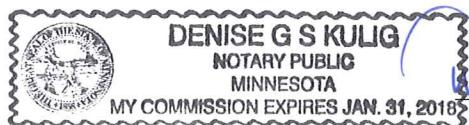
On this _____ day of _____, _____, before me personally appeared _____ to me known to be the person _____ described in and who executed the forgoing bond, and acknowledged that _____ he _____ executed the same as _____ free act and deed.

Notary Public

CORPORATION ACKNOWLEDGMENT

STATE OF MINNESOTA
COUNTY OF Koochiching

On this 12th day of March, 2015, before me personally came Mike Breidenstie to me known, who being by me duly sworn, did depose and say; that he is the Treasurer 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.



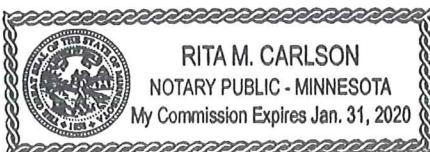
Denise G S Kulig

Notary Public

SURETY ACKNOWLEDGMENT

STATE OF MINNESOTA
COUNTY OF RAMSEY

On this 9th day of March, 2015, 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



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. 005976965

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, 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 are corporations duly organized under the laws of the State of Connecticut, 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.

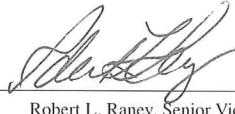
WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 9th day of July, 2014.

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: 
 Robert L. Raney, Senior Vice President

On this the 9th day of July, 2014, before me personally appeared Robert L. Raney, 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

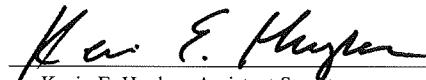
FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing 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 9th day of March, 20 15



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. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

BID FORM

TABLE OF ARTICLES

<u>Article</u>	<u>Article No.</u>
Bid Recipient	1
Bidder's Acknowledgements	2
Bidder's Representations	3
Further Representations	4
Basis of Bid	5
Times of Completion	6
Attachments to this Bid	7
Defined Terms	8
Bid Submittal	9

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

City of Minot, City Clerk
515 Second Avenue SW (Second Floor)
Minot, North Dakota 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 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 30 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

2.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of its failure to complete the Work in accordance with the schedule set forth in the Agreement.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

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

<u>Addendum No.</u>	<u>Addendum Date</u>
<u>j</u>	<u>3/13/2015</u>
_____	_____
_____	_____
_____	_____
_____	_____

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 federal, state and local 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 in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02, and (2) reports and drawings of Hazardous Environmental Conditions that have been identified in SC-4.06.

E. Bidder has obtained and carefully studied (or accepts the consequences for not 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 Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required

by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

- F. Bidder does not consider that any 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 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 correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. 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.
- J. 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.
- K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 – FURTHER REPRESENTATIONS

4.01 Bidder further represents 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 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 sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 – BASIS OF BID

5.01 Base Bid.

Bidder will complete the Work in accordance with the Contract Documents for the following prices:

Spec. No.	Item No.	Description	Quantity	Unit	Unit Price	Subtotal (Quantity x Unit Price)
1.		Contract Bond	1	LS	\$15,000.00	\$15,000.00
2.		Mobilization	1	LS	\$66,500.00	\$66,500.00
3.		Traffic Control	1	LS	\$7,500.00	\$7,500.00
4.		Erosion Control	1	LS	\$1,500.00	\$1,500.00
5.		Material Testing	1	LS	\$10,000.00	\$10,000.00
6.		Saw Cut – All Pavement Types	682	LF	\$2.00	\$1,364.00
7.		Removal of Hot Bituminous Pavement	10,600	SY	\$3.00	\$31,800.00
8.		Removal of Aggregate Surface	5,920	SY	\$1.50	\$8,880.00
9.		Removal of Concrete Pavement	393	SY	\$10.00	\$3,930.00
10.		Subgrade Preparation	43	STA	\$650.00	\$27,950.00
11.		Common Excavation	1,446	CY	\$8.00	\$11,568.00
12.		Common Excavation/Waste	5,246	CY	\$8.00	\$41,968.00
13.		Type R-1 Geotextile Fabric	17,630	SY	\$2.25	\$39,667.50
14.		Cl. 5 Aggregate Base	10,320	Ton	\$21.00	\$216,730.00
15.		Cl. 29 Hot Bituminous Pavement	3,250	Ton	\$66.00	\$214,500.00
16.		PG 58-28 Asphalt Cement	189	Ton	\$570.00	\$107,730.00
17.		Type 1 Curb & Gutter	4,036	LF	\$20.00	\$80,720.00
18.		Type 2 Curb & Gutter	3,484	LF	\$20.00	\$69,680.00
19.		Concrete Valley Gutter	191	SY	\$72.00	\$13,752.00
20.		4" Concrete Sidewalk	1,689	SY	\$50.00	\$84,450.00
21.		Truncated Dome Panel	80	SF	\$50.00	\$4,000.00
22.		6" Concrete Driveway	1,498	SY	\$65.00	\$97,370.00
23.		Topsoil	1,124	CY	\$5.00	\$5,620.00
24.		Seeding	2.1	AC	\$5,250.00	\$11,025.00
25.		Remove & Reset Sign	9	EA	\$100.00	\$900.00
26.		Remove & Reset Mailbox	18	EA	\$200.00	\$3,600.00
27.		Hand Rail	79	LF	\$30.00	\$2,370.00
<u>Storm Sewer Items</u>						
28.		Remove Culverts – All Types/All Sizes	917	LF	\$3.00	\$2,751.00
29.		Catch Basin	6	EA	\$2,500.00	\$15,000.00
30.		Double Catch Basin – 48" Manhole	2	EA	\$3,500.00	\$7,000.00
31.		48" Catch Basin Manhole	4	EA	\$4,000.00	\$16,000.00
32.		48" Storm Sewer Manhole	3	EA	\$4,000.00	\$12,000.00
33.		60" Storm Sewer Manhole	4	EA	\$5,000.00	\$20,000.00
						SUBTOTAL \$1,252,815.50

Spec. No.	Item No.	Description	Quantity	Unit	Unit Price	Subtotal (Quantity x Unit Price)
34.	72"	Storm Sewer Manhole	2	EA	\$6,000.00	\$12,000.00
35.	30"	Round Inlet	2	EA	\$2,000.00	\$4,000.00
36.	48"	Round Inlet	10	EA	\$3,000.00	\$30,000.00
37.	60"	Round Inlet	3	EA	\$5,000.00	\$15,000.00
38.	18"	RCP Cl. III Storm Drain	1,732	LF	\$85.00	\$147,220.00
39.	24"	RCP Cl. III Storm Drain	1,026	LF	\$92.00	\$94,392.00
40.	30"	RCP Cl. III Storm Drain	1,016	LF	\$105.00	\$106,680.00
41.	End Section – Conc. Reinf 18"		1	EA	\$1,250.00	\$1,250.00
42.	End Section – Conc. Reinf 30"		1	EA	\$1,750.00	\$1,750.00
43.	Polystyrene Insulation Board		704	BD FT	\$2.00	\$1,408.00
44.	Rip Rap		28	TON	\$75.00	\$2,100.00
	<u>Sanitary Sewer Items</u>					
45.	Adjust Manhole – Type 1		7	EA	\$650.00	\$4,550.00
46.	Adjust Manhole – Type 2		3	EA	\$650.00	\$1,950.00
47.	4" Sanitary Sewer Service, Complete w/ Cleanout		1	EA	\$2,500.00	\$2,500.00
	<u>Water Items</u>					
48.	Connect to Existing Water Main		9	EA	\$3,500.00	\$31,500.00
49.	6" PVC Water Main		36	LF	\$70.00	\$2,520.00
50.	8" PVC Water Main		117	LF	\$70.00	\$8,190.00
51.	12" PVC Water Main		2,033	LF	\$73.00	\$148,409.00
52.	6" Gate Valve & Box		5	EA	\$1,300.00	\$6,500.00
53.	8" Gate Valve & Box		1	EA	\$1,800.00	\$1,800.00
54.	12" Gate Valve & Box		7	EA	\$3,500.00	\$24,500.00
55.	8" DI Bend		1	EA	\$350.00	\$350.00
56.	12" DI Bend		1	EA	\$650.00	\$650.00
57.	8" DI Tee		2	EA	\$500.00	\$1,000.00
58.	12"x6" DI Tee		4	EA	\$700.00	\$2,800.00
59.	12"x8" DI Tee		1	EA	\$750.00	\$750.00
60.	12" DI Tee		2	EA	\$850.00	\$1,700.00
61.	12"x6" DI Reducer		2	EA	\$350.00	\$700.00
62.	12"x8" DI Reducer		1	EA	\$400.00	\$400.00
63.	1" Water Service, Complete w/ Curb Stop		5	EA	\$2,500.00	\$12,500.00
64.	18" Steel Casing Pipe		200	LF	\$295.00	\$59,000.00
65.	Remove Hydrant		3	EA	\$250.00	\$750.00
66.	Remove Gate Valve and/or Box		5	EA	\$100.00	\$500.00
67.	Remove DI Tee		1	EA	\$100.00	\$100.00
68.	Remove DI Cross		1	EA	\$100.00	\$100.00
					SUBTOTAL	\$729,519.00

Spec. No.	Item No.	Description	Quantity	Unit	Unit Price	Subtotal (Quantity x Unit Price)
	69.	Remove DI Reducer	1	EA	\$100.00	\$100.00
	70.	5" Hydrant	4	EA	\$5,500.00	\$22,000.00
	71.	Adjust Gate Valve Box	14	EA	\$500.00	\$7,000.00
		<u>Lighting Items</u>				
	72.	Type A Poles / Fixtures	8	EA	\$2,800.00	\$22,400.00
	73.	Type C Poles / Fixtures	9	EA	\$3,500.00	\$31,500.00
	74.	120/240+EGC Circuitry	1,195	LF	\$3.50	\$4,182.50
	75.	240+EGC Circuitry	2,345	LF	\$3.00	\$7,035.00
	76.	2" Conduit	160	LF	\$15.00	\$2,400.00
	77.	Trenching	3,290	LF	\$3.50	\$11,515.00
	78.	New Type III Feedpoint	1	EA	\$7,000.00	\$7,000.00
	79.	Spare Type A Pole	1	EA	\$1,500.00	\$1,500.00
	80.	Spare Type C Pole	1	EA	\$2,500.00	\$2,500.00
	81.	Spare Type A Luminaire	1	EA	\$800.00	\$800.00
	82.	Spare Type C Luminaire	1	EA	\$800.00	\$800.00
					SUBTOTAL	\$120,732.50
					TOTAL	\$2,103,067.00

- 5.02** Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.
- 5.03** Bidder acknowledges that 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.
- 5.04** Bidder acknowledges that the Owner may accept the base Bid or the alternate bid deemed in the best interests of the Owner, regardless of price.
- 5.05** Bidder acknowledges that any alternate, if accepted by the Owner, will be made a part of the Agreement. If the project is substantially complete or ready for final payment before the dates specified in the Agreement, the Contractor will not be entitled to additional compensation.

ARTICLE 6 – TIMES OF COMPLETION

- 6.01** The Work will be substantially complete on or before October 16th, 2015 and all work will be completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions on or before November 2nd, 2015, subject to revisions in the Contract Time in accordance with the General Conditions. If the work is not completed by the times listed above, liquidated damages will start and continue until the work is completed.
- 6.02** Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times specified in Paragraphs 6.01 for both completion deadlines.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are attached to and made a condition of this Bid:

- A. None

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

9.01 This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

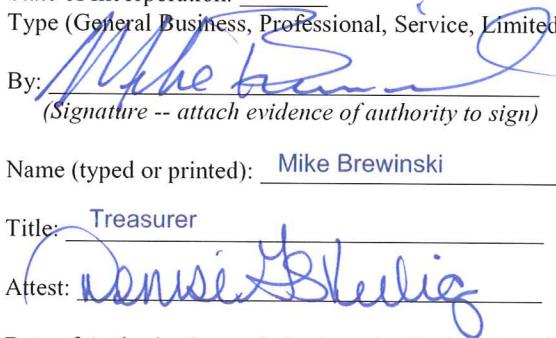
By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

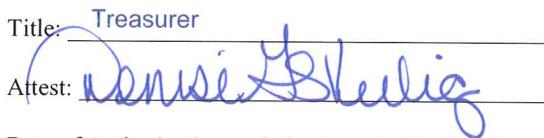
Corporation Name: Wagner Construction, Inc. dba Wagner Place (SEAL)

State of Incorporation: MN
Type (General Business, Professional, Service, Limited Liability): General Business

By: 
(Signature -- attach evidence of authority to sign)

Name (typed or printed): Mike Brewinski

Title: Treasurer (CORPORATE SEAL)

Attest: 
(Signature)

Date of Authorization to do business in North Dakota is 10 / 23 /1998.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____

(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____

(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Third Joint Venturer Name: _____ (SEAL)

By: _____

(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address: 3151 Hwy 53

International Falls, MN 56649

Phone Number: (218) 283-3700 Fax Number: (218) 283-1043

SUBMITTED on March 17, 2015.

North Dakota Contractor License No. 26283.

PERFORMANCE BOND

CONTRACTOR (name and address):

Wagner Construction, Inc. dba Wagner Place
3151 Hwy 53, Suite 1
International Falls, MN 56649

SURETY (name and address of principal place of business):

Travelers Casualty and Surety Company of America
One Tower Square 2SHS
Hartford, CT 06183-6014

OWNER (name and address):

City of Minot, 515 Second Avenue SW, Minot, ND 58702

CONSTRUCTION CONTRACT

Effective Date of the Agreement: April 16, 2015

Amount: \$2,103,067.00

Description (name and location): City of Minot, ND, 16th Ave, 46th St and 14th Ave SE Rebuild
CDBG - Disaster Recovery Project

BOND

Bond Number: 106251672

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): April 16, 2015

Amount: \$2,103,067.00

Modifications to this Bond Form: None See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

Wagner Construction, Inc. dba Wagner Place

(seal)

Contractor's Name and Corporate Seal

By:

Signature

Mike Brewinski

Print Name

Treasurer

Title

Attest:

Signature

Denise Belleg
Admin Assistant

Title

SURETY

Travelers Casualty and Surety Company of America (seal)

Surety's Name and Corporate Seal

By:

Signature (attach power of attorney)

John C. Klein

Print Name

Attorney-in-Fact

Title

Attest:

Signature

Lita Carlson

Title

KLEIN AGENCY, INC.
3570 No. Lexington Ave, Ste. 206
St. Paul, MN 55126
(651) 484-6461

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

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

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

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

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

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

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

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

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the

Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

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

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

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

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

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

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

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR (*name and address*):

Wagner Construction, Inc. dba Wagner Place
3151 Hwy 53, Suite 1
International Falls, MN 56649

SURETY (*name and address of principal place of business*):

Travelers Casualty and Surety Company of America
One Tower Square 2SHS
Hartford, CT 06183-6014

OWNER (*name and address*): City of Minot, 515 Second Avenue SW, Minot, ND 58702

CONSTRUCTION CONTRACT

Effective Date of the Agreement: April 16, 2015

Amount: \$2,103,067.00

Description (*name and location*): City of Minot, ND, 16th Ave, 46th St and 14th Ave SE Rebuild
CDBG - Disaster Recovery Project

BOND

Bond Number: 106251672

Date (*not earlier than the Effective Date of the Agreement of the Construction Contract*): April 16, 2015

Amount: \$2,103,067.00

Modifications to this Bond Form: None See Paragraph 18

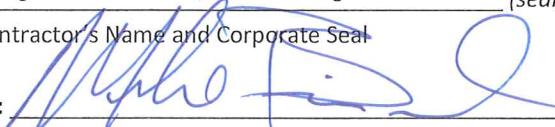
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Wagner Construction, Inc. dba Wagner Place *(seal)*

Contractor's Name and Corporate Seal

By:


Signature

Mike Brewinski

Print Name

Title

Treasurer

Attest:


Signature

Title

Denise Belling

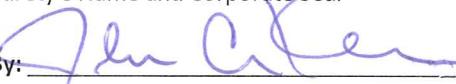
Administrative Assistant

SURETY

Travelers Casualty and Surety Company of America *(seal)*

Surety's Name and Corporate Seal

By:


Signature (attach power of attorney)

John C. Klein

Print Name

Attorney-in-Fact

Title

Attest:


Signature

Notary Public

KLEIN AGENCY, INC.
3570 No. Lexington Ave. Ste. 206
St. Paul, MN 55126
(651) 484-6461

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

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

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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.

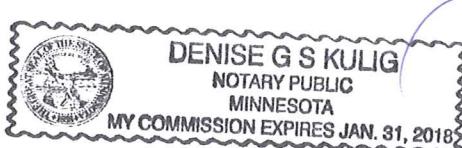
Notary Public

CORPORATION ACKNOWLEDGMENT

STATE OF MINNESOTA

COUNTY OF Koochiching

On this 17th day of April, 2015, before me personally came Denise Bielecki to me known, who being by me duly sworn, did depose and say; that he is the Treasurer 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.



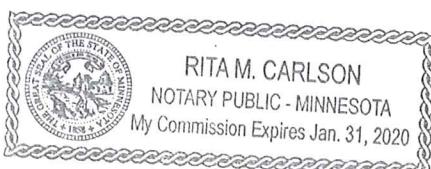
Denise G Bielecki

Notary Public

SURETY ACKNOWLEDGMENT

STATE OF MINNESOTA
COUNTY OF RAMSEY

On this 16th day of April, 2015, 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



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. 006271922

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, 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 are corporations duly organized under the laws of the State of Connecticut, 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 Rodninen, 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 10th day of February 2015.

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: 
 Robert L. Raney, Senior Vice President

On this the 10th day of February, 2015, before me personally appeared Robert L. Raney, 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, 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, recognition, 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, recognition, contract of indemnity, or writing obligatory in the nature of a bond, recognition, 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 16th day of April, 20 15



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. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

Notice to Proceed

Dated: _____

Project: 16 th Ave, 46 th St and 14 th Ave SE Rebuild	Owner: City of Minot	Owner's Contract No.: 3873.1
Contract:		Engineer's Project No.: R14090

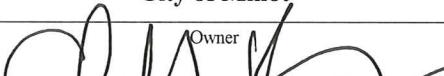
Contractor: Wagner Construction, Inc.

Contractor's Address: 3151 Highway 53

International Falls, MN 56649

You are notified that the Contract Times under the above contract will commence to run on _____. On or before that date if the site is graded, you are to start performing your obligations under the Contract Documents.

Before you may start any construction at the Site, you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

City of Minot	
Given by:	 Oliver K. Karp Owner
Authorized Signature	
 Mayor	
Title	
4/27/18	
Date	