



CDM Smith Disaster Recovery Services Office

SECTION 00 53 00

AGREEMENT

THIS AGREEMENT, made and entered into this 24th day of April, 2017, by and between the City of Minot, a municipal corporation in the County of Ward and the State of North Dakota, hereinafter referred to as the CITY; and, Berger Enterprises, LLC hereinafter referred to as the CONTRACTOR, WITNESSETH:

THAT WHEREAS, the City Council of the City of Minot called for bids for:

**2017 CITY OF MINOT STRUCTURE DEMOLITION AND SITE RESTORATION PROJECT
#3755-4**

WHEREAS, the City of Minot purchased properties that were inundated during the 2011 Souris River Flood, and such properties were purchased with State of North Dakota funds and Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) funds.

WHEREAS, the City of Minot intends to demolish and dispose of the structures on these properties, and restore the sites in accordance with HUD regulatory requirements.

WHEREAS, the City of Minot has conducted a competitive sealed bids process to select a contractor to conduct the demolition and site restoration work.

WHEREAS, on the 3rd day of April, the City Council, being in session, did determine that Berger Enterprises, LLC was the lowest responsible bidder for the work herein specified and the City Council authorized and directed the Mayor and the City Clerk of the City of Minot to enter into a contract with the CONTRACTOR for the completion of such work.

NOW, THEREFORE, the CONTRACTOR, in consideration of the premises and the agreements of the CITY, hereinafter set forth, does hereby agree to complete the work herein specified in accordance with the Contract Documents duly approved by the City Council and on file in the office of the City Clerk of the City of Minot, a copy of which the CONTRACTOR acknowledges to having received, and to complete such work herein provided in accordance also with its Bid and offer, which is as follows, to wit:

The CONTRACTOR further agrees to complete said work under the direction and supervision and subject to the approval of the City Program Administrator, or Program Administrator in charge of the project if consulting Program Administrators have been retained for this project.



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The CONTRACTOR further agrees that the City Council of the City of Minot does hereby reserve the right, in case of improper work under this contract, to suspend work thereon at any time, and to re-let said Contract or to order rework of said work or any part thereof improperly done, and that any additional cost occasioned thereby shall be deducted from the amount that would otherwise have been due to the CONTRACTOR under his said Contract herein, and shall be charged against him. The CONTRACTOR further agrees that the work shall be completed no later than October 15, 2017 or any time extensions granted. This Contract shall be subject to liquidated damages of \$250.00 per day, per Part 26 of the General Conditions, charged against the contractor for each day past the completion date stated in the Contract or as amended by change order.

It is further understood and agreed by and between the CITY and the CONTRACTOR that the said Contract Documents herein referred to on file in the office of the City Clerk of the City of Minot, shall be considered to be and are hereby made a part of the Contract as fully and completely as though written herein at length and the CONTRACTOR acknowledges that he is fully informed as to the contents of the said Contract Documents herein referred to.

Final acceptance shall be deemed to be the date on which the City Council approves final payment.

It is further understood and agreed that upon the CONTRACTOR performing the work designated in this Contract, within the time therein provided, that the City Council of the City of Minot will from time to time, at its discretion, as the work progresses, pay to the CONTRACTOR upon the estimates made by the City Program Administrator of the amount already earned under this Contract on the said work, ninety percent (90%) of the amount shown by such estimate to have been earned in current funds from the \$1,225,435.00 (amount of bid) and upon the full completion, and the approval of the same by the City Program Administrator of the City of Minot, and the City Manager, the CITY will pay the balance due therefore at the prices set forth in the Bid Schedule, hereinbefore recited in the manner hereinbefore set forth.

It is further understood and agreed that all of the work under this Contract shall be paid for only in current funds from the funds above mentioned, and the CITY shall in no case be liable on this or any other Contract for the completion of such work for any sum whatsoever to be paid by money raised by general taxation and that the CITY assumes and incurs no general liability under this contract.

The CONTRACTOR further undertakes and agrees that he will protect, indemnify and save harmless the CITY from any and all damages and liability whatsoever, on account of any accident or injury which may occur or be caused directly or indirectly to any one on account of the completion of said work by CONTRACTOR or by any excavations or obstructions which may be placed in the project area by the CONTRACTOR in connection with the work or otherwise. The CONTRACTOR further agrees to pay all taxes applicable to this work hereunder, keep all employees fully covered by Workers' Compensation Insurance, and pay all premiums promptly when due.



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IN WITNESS WHEREOF, the CITY has caused this Contract to be executed by the Mayor in its name and countersigned and attested to by its City Clerk, and its corporate seal to be hereunto affixed, and the CONTRACTOR has hereunto caused this Contract to be executed by its officers thereunto duly authorized.

CITY OF MINOT

(Corporate Seal)

ATTEST:

Kelly Matalka
Kelly Matalka, City Clerk

Chuck Barney
Chuck Barney, Mayor

(Corporate Seal)

ATTEST:

James H

CONTRACTOR

