

AGREEMENT

THIS AGREEMENT (the Agreement), made on the \_\_\_\_\_ day of \_\_\_\_\_, between the City of Bismarck, a corporation, hereinafter called the CITY, and

\_\_\_\_\_, hereinafter called the DEVELOPER, and \_\_\_\_\_, hereinafter called the CONTRACTOR. WHEREAS, the DEVELOPER wishes to enter upon the public streets and Rights-of-way to construct under private contract the following improvements:

- \_\_\_\_\_ Water Main Imp. Proj. No. \_\_\_\_\_
- \_\_\_\_\_ Sanitary Sewer Main Imp. Proj. No. \_\_\_\_\_
- \_\_\_\_\_ Street Improvement Proj. No. \_\_\_\_\_
- \_\_\_\_\_ Others: \_\_\_\_\_

for property to be developed and offered for sale by the DEVELOPER, and

WHEREAS, the CITY wishes to safeguard the public interest in attempting to ensure that said construction work will be in accordance with plans, specifications and requirements of the CITY and will be completed in a proper and safe manner in accordance with said CITY plans and specifications for said type of work. The CONTRACTOR and the DEVELOPER through the CONTRACTOR, represent and agree that they shall have sole and exclusive responsibility to ensure that said work is completed in accordance with all plans and specifications and pursuant to any requirements of the CITY. The CONTRACTOR warrants that the work will be conducted in a proper and safe manner, and

WHEREAS, the DEVELOPER has filed a Petition to the Board of City Commissioners to permit the DEVELOPER to contract directly for said improvements;

NOW THEREFORE, it is agreed between the parties for the considerations herein named, as follows:

(1) LICENSE TO CONSTRUCT.

The CITY grants to the DEVELOPER the right, privilege, and license to enter upon and construct the above improvements in the following public easements and rights of way:

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which license shall continue so long as the DEVELOPER performs the agreements assumed by it herein.

(2) SCOPE OF WORK.

The DEVELOPER will, through a CONTRACTOR licensed under the laws of North Dakota, furnish all materials, equipment and labor, necessary to perform all of the work shown on the Plans and Specifications approved by the City Engineer, which are hereby referred to and made a part of this Agreement. Construction staking as required by the CITY shall be done by the DEVELOPER'S representative at the expense of the DEVELOPER. The CONTRACTOR shall complete all stub-outs to the property line on utilities to be constructed under this Agreement except where noted on the plans. Compaction testing shall be performed by the CONTRACTOR incidental to the other bid items.

All costs of work incidental to the project, such as restoring grades, watermain pressure testing, taps to the watermain, chlorine and any other usual charges as determined by the City Engineer shall be borne by the CONTRACTOR. In no event shall the CITY be responsible for any costs whatsoever, including costs for additional work or costs occasioned by unforeseen or changed conditions encountered during the work.

This Agreement shall include the following documents:

1. The Agreement
2. The General Provisions and any Special Provisions
3. The Plans and Specifications
4. The Performance Bond and Payment Bond
5. The Letter of Credit or Certificate of Deposit
6. The Insurance Certificate
7. All provisions required by law to be inserted whether inserted or not

(3) TIME OF COMPLETION.

The CONTRACTOR shall have \_\_\_\_\_ to complete the work of this Agreement after the work is commenced. In any event, all work shall be completed no later than \_\_\_\_\_.

(4) INSPECTION AND OBSERVATION OF WORK.

The CITY and the City Engineering Department shall at all times have access to the work, during its preparation and progress. The City Engineer and his authorized representatives will establish and provide all grades and locations for the site where the work is to be performed. No construction work, depending upon such grades or locations, shall be commenced by CONTRACTOR or DEVELOPER until the same have been established by CITY. This work to be performed (establishing and provision of grades) by CITY shall be done at DEVELOPER'S cost, as discussed in Section 16 of this agreement. All work performed by the CITY is for the benefit of the citizens of Bismarck and for the protection of CITY property and not for the benefit of the DEVELOPER or CONTRACTOR.

The CONTRACTOR shall supervise and direct the work, using the CONTRACTOR'S best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Agreement, unless the Agreement gives specific instructions otherwise.

(5) CITY ENGINEER'S DECISIONS.

The City Engineer shall have general authority to ensure that the work complies with the plans and specifications. He has authority to stop the work when such stoppage may in his opinion be necessary to ensure proper execution of the Agreement and conformance with the plans and specifications. He shall also have the authority to reject all work and materials which do not conform to the plans and specifications and to decide all questions which arise in the execution of the work as to whether or not the work complies with the plans and specifications. The City Engineer shall not be obligated to approve or give opinions as to construction method or means and the CONTRACTOR and its consultants shall be responsible for

the choice of the means, methods, or materials that will result in a product that is in conformance with the plans and specifications.

(6) PAYMENT.

The DEVELOPER shall provide an irrevocable letter of credit or a certificate of deposit from a bona fide financial institution in the amount of the project cost including engineering services provided by the CITY. The irrevocable letter of credit expiration date shall be a minimum of 60 days past the time of completion or any extensions of this agreement. The project cost is \$\_\_\_\_\_. Final payment will be for actual quantities used. A copy of the accepted proposal is attached to the back of and made a part of this Agreement.

The DEVELOPER will be responsible to pay the CONTRACTOR for all of the Agreement work in accordance with the plans, specifications, and proposal prepared by the DEVELOPER'S representative and made a part of this Agreement. The CONTRACTOR shall measure the work completed and submit to the CITY. The CITY will submit approved progress payments to the DEVELOPER. The CITY shall have no obligations, liability or responsibility for any payment due to any party under this Agreement or otherwise arising from the work under this Agreement. In no event shall the CITY be responsible for any payments whatsoever, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.

(7) CONTENTS OF DEVELOPER'S CONTRACTS.

All contracts made by the DEVELOPER and/or the CONTRACTOR with any person, firm, or corporation in connection with or in carrying out the Agreement work shall provide: "This contract is subject to all the terms and conditions of an Agreement dated \_\_\_\_\_, between the DEVELOPER, the CONTRACTOR, and the CITY."

(8) OWNERSHIP OF WORK LINES.

All Agreement work furnished or placed in the public streets, alleys, easements, or rights-of-way shall become the property of the CITY upon acceptance by the CITY. The CITY does not own utility stub-outs, except the CITY will

be responsible for repairs to water service lines serving residential properties of four (4) living units or less. Repairs will be limited to the portions of those service lines located in the public right-of-way. The placing and furnishing of all Agreement work by the DEVELOPER, its CONTRACTOR, its subcontractors, if any, and by any person, firm or corporation, as labor or material or otherwise, shall be under the provisions of this Agreement and with the express waiver of any right to claim against the CITY, or to make any claims or lien against the Agreement works.

(9) WARRANTY.

The CONTRACTOR shall guarantee all work against faulty materials and workmanship for a period of one year from the date of final payment and the bond of the CONTRACTOR and its surety shall remain in full force and effect for one year following the date of final payment. The fact that the CITY has granted final acceptance shall in no way relieve the CONTRACTOR'S obligation under this warranty.

(10) VERBAL AGREEMENTS.

No verbal agreements, representations, or conversation with any officer, agent, or employee of the CITY before or after the execution of this Agreement shall affect or modify any of the terms or obligations contained in the documents comprising the Agreement.

(11) PROTECTION OF PUBLIC AND WORK.

The CONTRACTOR shall provide and maintain all necessary watchmen, barricades, lights, and warning signs and take all necessary precautions for protection of the public, and shall further maintain at all times adequate protection of the work from damage. The CONTRACTOR shall also obtain and furnish general liability insurance covering itself; and naming the CITY and the DEVELOPER as additional insureds with an insurer licensed to do business in North Dakota; with policy limits of not less than \$1,000,000 for property damage; and not less than \$1,000,000 for personal injuries including accidental death to any person; and not less than \$2,000,000 for one accident, against and from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property on account of any

negligent act or fault of the DEVELOPER, its CONTRACTOR, the CITY or it's officers, agents or employees in the execution of the Agreement, or on account of CONTRACTOR'S failure to provide necessary barricades, warning lights, or signs, and as will protect the CITY and the DEVELOPER from any contingent liability or any other liability under this Agreement and based on any other legal grounds. The CONTRACTOR shall provide the CITY with an insurance certificate naming both the CITY and the DEVELOPER as additional insureds. In no case shall the liability insurance be less than that specified in Section 128 of the City of Bismarck Construction Specifications for Municipal Improvements.

CONTRACTOR and DEVELOPER shall indemnify and hold harmless the CITY for all of the CONTRACTOR'S and DEVELOPER'S acts, including negligent acts or wrongful conduct.

The CONTRACTOR shall also carry an insurance policy of builder's risk of at least double the Agreement amount that shall name the CITY and the DEVELOPER as additional insureds. If the work is limited to underground, sidewalk, streets or curb and gutter, the CONTRACTOR may instead provide an installation floater for the contract amount that names the CITY and DEVELOPER as additional insureds. During the performance and up to the date of final acceptance, the CONTRACTOR shall be under an absolute obligation to protect against any damage, loss, or injury and in the event of such damage, loss or injury the CONTRACTOR shall promptly repair, or replace such work, whichever the City Engineer shall deem preferable. The obligation to deliver finished work in strict accordance with the Agreement prior to final acceptance shall be absolute and shall not be affected by the City Engineer's approval or failure to prohibit the methods of construction used by the CONTRACTOR.

The CONTRACTOR shall be responsible for maintenance and operation of all constructed facilities until final acceptance unless otherwise noted in specifications, notes, or special provisions. This includes locating of CONTRACTOR constructed underground facilities.

(12) UTILITIES.

It shall be the responsibility of the CONTRACTOR to familiarize itself with the location of all existing sewer

mains, water mains, sewer and water service lines, gas mains, gas service lines, telephone, telecommunication, cable TV, or power lines, light and telephone poles and guys, steam lines, valve boxes, and stop boxes or any and all other utilities installations that might be affected or potentially damaged in the performance of the work. The CONTRACTOR shall notify all underground facility operators at least 48 hours in advance excluding Saturdays, Sundays, holidays and in accordance with N. D. Century Code Chapter 49-23 North Dakota One Call of any construction affecting said facilities and shall resolve with said utility operators any conflicts, changes or accommodations.

(13) CHANGES.

The Board of City Commissioners reserves the right to make any necessary changes in the alignment, grade, or design of the proposed work deemed advisable by them.

(14) CLEAN UP.

Extra materials, tools and temporary structures shall be removed by the CONTRACTOR and all dirt, rubbish, and excess earth from excavations shall be disposed of and the construction area left clean to the satisfaction of the City Engineer. The cost for this work shall be borne by CONTRACTOR. The CONTRACTOR shall maintain for a period of three months after completion of the work the surface of unpaved trenches, adjacent curbs and gutters, sidewalks, driveways, shrubbery, fences, sod or other surfaces disturbed. The CONTRACTOR shall conduct its operations in such manner as to cause minimum inconvenience to adjoining property owners and the public.

Street surfacing in unpaved areas shall be restored to as good as or better than prior to construction by the CONTRACTOR. The CONTRACTOR will be required to replace and/or repair paving or gravel surface removed or damaged in the construction work, to the satisfaction of and subject to the approval of the CITY.

(15) ASSURANCE OF PERFORMANCE AND PAYMENT OF BILLS.

The CONTRACTOR shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the total Agreement amount as security for the faithful

performance of the Agreement and also a payment bond in an amount of not less than one hundred percent (100%) of the total Agreement amount as security for the payment of all persons performing labor on the project under the Agreement, and for those persons furnishing materials in connection with the Agreement.

(16) OBSERVATION AND INSPECTION CHARGES.

The DEVELOPER shall pay to the CITY when billed as the work progresses, a fee for the services as provided in this Agreement. Fees for these services shall be actual expenses plus 75% plus reimbursable expenses. The services rendered by the CITY under this Agreement are for the benefit of the public to guarantee a project which complies with CITY Specifications. Observation and Inspection by the CITY, including plan review, does not in any way relieve the DEVELOPER or the CONTRACTOR of their obligation to provide a project in compliance with CITY specifications.

IN WITNESS WHEREOF, the parties have executed the within and forever contract.

CITY OF BISMARCK

\_\_\_\_\_ (DEVELOPER)

\_\_\_\_\_  
Mel J. Bullinger, P. E.  
City Engineer

By \_\_\_\_\_  
It's

\_\_\_\_\_  
President  
Board of City Commissioners

\_\_\_\_\_ (CONTRACTOR)

ATTEST:

By \_\_\_\_\_  
It's

\_\_\_\_\_  
City Administrator