

## AMENDMENT TO CONTRACT

This Amendment to Contract ("Amendment") is effective as of ~~March 4<sup>th</sup>~~ <sup>April</sup>, 2022, by and between the City of Minot ("the City") and Berger Enterprises, LLC ("Berger"). The above-mentioned entity and individuals may also be known as "Party" or "Parties".

WHEREAS, on or about December 12, 2018, the City and Berger entered into an Agreement ("Agreement") wherein Berger agreed to perform certain work known more specifically as the "614 and 701 4<sup>th</sup> Avenue NE Structure Demolition and Site Restoration, #3755.10 (the "Project"). In consideration for the work to be performed by Berger, the City agreed to pay Berger \$171,421;

WHEREAS, as required under the Agreement, Berger also provided Bond No. GRND42296A naming Granite Re, Inc. as Surety (the "Surety"), Berger as bond principal and the City as obligee;

WHEREAS, Berger has completed the demolition component of the Project, however certain restoration work remains unfinished;

WHEREAS, the City is withholding \$17,034.63 in retention (the "Retention Amount");

WHEREAS, the Parties have reached an agreement wherein the City has agreed to release the Surety from any further obligations under the Agreement in exchange for Berger agreeing to complete the unfinished re-seeding portion of the Project, and Berger consenting to the City retaining possession of the Retention Amount for the Warranty Period as defined in the Agreement.

NOW THEREFORE, in consideration of the foregoing and mutual promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties each intending to be legally bound hereby, agree as follows:

- (1) Release of Surety. The City agrees to release the Surety from any and all future obligations and/or warranties under the Agreement. To the extent the Surety requires any additional waivers or documents to be executed, the City agrees to cooperate.
- (2) Withholding of Retention Amount. Berger acknowledges in consideration of the City agreeing to release the Surety from any further obligations and/or warranties under the Agreement, Berger agrees to complete the unfinished re-seeding portion of the Project pursuant to the terms of the Agreement. In consideration of same, Berger acknowledges that the City will retain the Retention Amount for the twenty-four (24) month Warranty Period.
- (3) No Admissions. Nothing contained herein shall be construed as an admission of liability or an acknowledgment of wrongful conduct on the part of any Party hereto.
- (4) Voluntary and Knowing Execution. Each Party hereby certifies and warrants that it has read and understands and is in full concurrence with the provisions contained within this

Agreement, and that it has entered into and executed this Agreement voluntarily and with full knowledge of its significance, meaning and binding effect.

(5) Entire Understanding. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter contained herein and supersedes any prior understandings and agreements between them respecting such subject matter. Modifications of the Agreement shall be made only in writing executed by the Parties.

(6) Governing Law. The Agreement shall be construed under and governed by the laws of the state of North Dakota.

(7) Binding Effect. This Agreement is binding upon and inures to the benefit of each Party's successors and assigns.

(8) Counterparts / Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes but all of which together shall constitute one and the same instrument. Signatures on this Agreement transmitted by facsimile or electronic mail shall be deemed to be an original for all purposes.

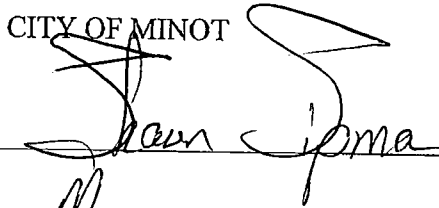
IN WITNESS WHEREOF, the undersigned Parties, intending to be legally bound hereby, have caused this Agreement to be executed as of the date first above written.

BERGER ENTERPRISES, LLC

By:  \_\_\_\_\_

Its: President \_\_\_\_\_

THE CITY OF MINOT

By:  \_\_\_\_\_

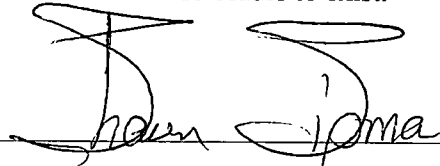
Its: Mayor \_\_\_\_\_

**RELEASE AND WAIVER OF ALL BOND RIGHTS**

The undersigned party represents that they are a legal authorized agent for City of Minot - CDM Smith Disaster Recovery Services Office, 1600 - 2nd Ave. SW, Suite 27, Minot, ND 58701 and in their capacity do have full authority to bind for City of Minot - CDM Smith Disaster Recovery Services Office by executing this document relating to Berger Enterprises LLC, 1826 25th Street NE, Emerado, ND 58228 and their contract dated 12/12/2018 for CDM Smith PN 117508-114629; #3755.10: 614 & 701 4th Ave. NE Structure Demolition and Site Restoration, Minot, North Dakota. In executing this Release, it is agreed for City of Minot - CDM Smith Disaster Recovery Services Office does expressly jointly severally and individually as well as on behalf of all of its representatives, successors, assigns, agents or their representatives, successors, assigns, agents, and assignees, do hereby forever, finally, and fully release, acquit, and discharge Granite Re, Inc., their agents, representatives, successors, and assigns, from any and all claims, demands, causes of action, and complaints of whatsoever nature, whether known or unknown, contingent or non-contingent, which the undersigned has asserted, may assert or could have asserted, against Granite Re, Inc. occasioned by the execution and issuance of bond GRND42296A naming Granite Re, Inc. as surety, Berger Enterprises LLC as bond principal, and City of Minot - CDM Smith Disaster Recovery Services Office, as bond obligee involving work generally known as CDM Smith PN 117508-114629; #3755.10: 614 & 701 4th Ave. NE Structure Demolition and Site Restoration, Minot, North Dakota.

By executing this document, it is agreed and understood that any bond rights or claims for City of Minot - CDM Smith Disaster Recovery Services Office may have against the aforementioned bond(s) are expressly waived in full without any reservation whatsoever. It is understood and agreed for City of Minot - CDM Smith Disaster Recovery Services Office voluntarily agrees to waive any and all rights and claims whether known or unknown which may have existed previously, presently or in the future against the aforementioned bonds forever.

The agreed purpose and intent by all parties identified herein is for this document to acknowledge the aforementioned bond guarantee, if any, was and is now hereby waived and discharged with all terms, conditions, rights or guarantees implied, intended or assumed in any capacity by for City of Minot - CDM Smith Disaster Recovery Services Office under bond GRND42296A do ceases to exist.

By   
Name Shawn Sipma  
Title Mayor

IN WITNESS WHERE OF, the undersigned has executed this Waiver of all Bond Rights this 5<sup>th</sup> day of April, 2020.

Notary Public Mikayla McWilliams

My Commission Expires March 17, 2026  
Commission No. \_\_\_\_\_

