

City of Minot

CDM Smith Disaster Recovery Services Office

SECTION 00-53-00

AGREEMENT

THIS AGREEMENT, made and entered into this 7th day of April, 2015, 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, Dig It Up Backhoe Services, Inc. hereinafter referred to as the CONTRACTOR, WITNESSETH:

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

ROUND 2 STRUCTURE DEMOLITION AND SITE RESTORATION

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 6th day of April, 2015, the City Council, being in session, did determine that Dig It Up Backhoe Services, Inc. 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.

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 6, 2015 or any time extensions



City of Minot

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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 \$1,300,150.00 (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.



City of Minot

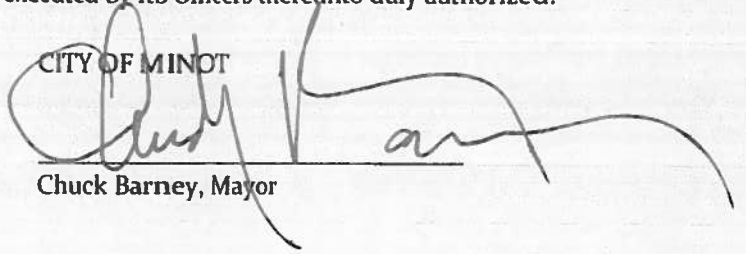
CDM Smith Disaster Recovery Services Office

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.

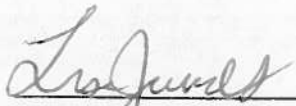
(Corporate Seal)

ATTEST:

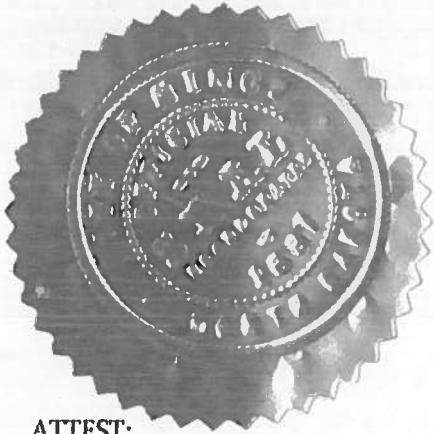
CITY OF MINOT



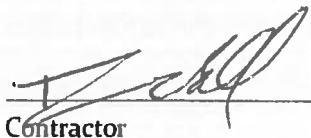
Chuck Barney, Mayor



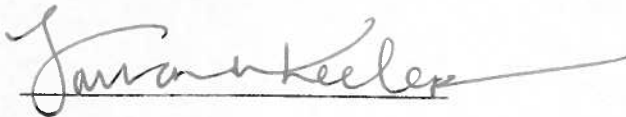
Lisa Jundt, City Clerk



ATTEST:



Contractor







Employers Mutual
Casualty Company

717 Mulberry St., Des Moines, IA 50309-3872

Bond No. S424519

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That We, Dig It Up Backhoe Service, Inc.

800 163rd Avenue SE Minot, North Dakota 58701

(hereinafter called "Principal"), as Principal, and the EMPLOYERS MUTUAL CASUALTY COMPANY, a corporation organized and existing under the laws of the State of Iowa with its principal office in the CITY OF DES MOINES, IOWA,

and authorized to transact business in the State of North Dakota as Surety, are held and firmly bound unto City of Minot, North Dakota 515 2nd Avenue SW Minot, North Dakota 58701

(hereinafter called "Obligee"), in the penal sum of One Million Three Hundred Ninety Thousand One Hundred Fifty Dollars and no/00

DOLLARS (\$ 1,390,150.00), good and lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally firmly by these presents.

SEALED, with our seals and dated 13th day of April, 20 15.

WHEREAS, the above bounden Principal has entered into a certain written contract with the above named Obligee, dated the 7th day of April, 20 15, providing for the construction or supply of, Structure Demolition and Site Restoration Project - Round 2. Minot, North Dakota

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein for the purpose of explaining but not of varying or enlarging the obligation.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bounden Principal shall well and truly keep, do and perform, each and every, all and singular, the matters and things in said contract set forth and specified to be by the said Principal kept, done and performed at the time and in the manner in said contract specified, and shall pay over, make good and reimburse to the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on the part of said Principal, then this obligation shall be void; otherwise, to be and remain in full force and effect.

PROVIDED, HOWEVER, this bond is executed by the Surety, upon the express condition that no right of action shall accrue upon or by reason hereof, to or for the use or benefit of any one other than the Obligee named herein; and the obligation of the Surety is and shall be construed strictly as one of suretyship only.

WITNESS:

Rebecca Jo Cook
(If Individual or Firm)

ATTEST:

(If Corporation)

Dig It Up Backhoe Service, Inc.

By: [Signature] Principal [Seal]

Travis Bohl President
Employers Mutual Casualty Company

By: [Signature] Surety [Seal]

Brenda Vollmer
Attorney-in-Fact
Brenda Vollmer

Questions regarding this bond should be directed to the EMC H.O. Bond Department at 515-345-2689



Employers Mutual
Casualty Company

717 Mulberry St., Des Moines, IA 50309-3872

Bond No. S424519

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That We, Dig It Up Backhoe Service, Inc.

800 163rd Avenue SE Minot, North Dakota 58701

(hereinafter called "Principal"), as Principal, and the EMPLOYERS MUTUAL CASUALTY COMPANY, a corporation organized and existing under the laws of the State of Iowa and authorized to transact business in the State of

North Dakota (hereinafter called "Surety"), as Surety, are held and firmly bound unto the City of Minot, North Dakota 515 2nd Avenue SW Minot, North Dakota 58701

(hereinafter called "Obligee"), in the penal sum of One Million Three Hundred Ninety Thousand One Hundred Fifty

Dollars and no/00 DOLLARS, (\$ 1,390,150.00), good and lawful money of the United

States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a certain written contract with the above named

Obligee, dated the 7th day of April, 20 15, providing for the construction or supply of, Structure Demolition and Site Restoration Project - Round 2. Minot, North Dakota

Which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, IF the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, then this obligation to be void; otherwise to remain in full force and virtue.

SIGNED and sealed this 13th day of April, 20 15.

WITNESS:

Rebecca Jo Cook
(If Individual or Firm)

ATTEST:

(If Corporation)

Dig It Up Backhoe Service, Inc.

By: [Signature] Principal [Seal]

Travis Bohl President
Employers Mutual Casualty Company

By: [Signature] Surety
Brenda Vollmer Attorney-in-Fact

Questions regarding this bond should be directed to the EMC H.O. Bond Department at 515-345-2689.



P.O. Box 712 • Des Moines, IA 50306-0712

No. B11521

CERTIFICATE OF AUTHORITY INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation
- 7. Hamilton Mutual Insurance Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint: RYON BOEN, CASEY L. TOMPKINS, BRENDA VOLLMER, LUALAN HANSON, ROBYN JONES

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute its lawful bonds, undertakings, and other obligatory instruments of a similar nature as follows:

In an amount not exceeding Five Million Dollars.....\$5,000,000.00

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire APRIL 1, 2018 unless sooner revoked.

AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at a regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 3rd day of FEBRUARY, 2015.

Seals



Bruce G. Kelley
Bruce G. Kelley, Chairman
of Companies 2, 3, 4, 5 & 6; President
of Company 1; Vice Chairman and
CEO of Company 7

Michael Freel
Michael Freel
Assistant Vice President

On this 3rd day of FEBRUARY AD 2015 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Michael Freel, who, being by me duly sworn, did say that they are, and are known to me to be the Chairman, President, Vice Chairman and CEO, and/or Assistant Vice President/Assistant Secretary, respectively, of each of The Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Michael Freel, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of each of the Companies. My Commission Expires October 10, 2016.

Kathy Lynn Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on FEBRUARY 3, 2015 on behalf of: RYON BOEN, CASEY L. TOMPKINS, BRENDA VOLLMER, LUALAN HANSON, ROBYN JONES

are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 13th day of April, 2015

[Signature] Vice President

CORPORATION ACKNOWLEDGMENT

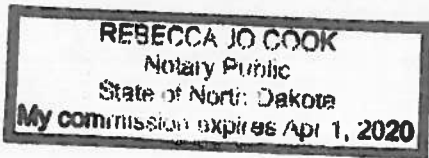
STATE OF ND)

)ss

COUNTY OF Ward)

On this 13th day of April in the year 2015 before me,
Rebecca Jo Cook a Notary Public, personally appeared Travis Bohl

Known to me (or proved to me on the oath of _____) to be the
President (or other office or person) of the corporation that is described in and that executed
The within instrument, and acknowledged to me that such corporation executed the same.



Rebecca Jo Cook

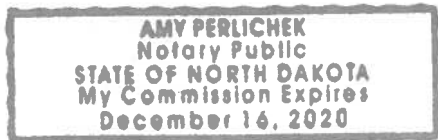
ACKNOWLEDGEMENT OF SURETY

STATE OF North Dakota)

)ss

COUNTY OF Ward)

On this 13th day of April in the year 2015 before me, Amy Perlichek a Notary Public, personally
appeared Brenda Vollmer Known to me (or proved to me on the oath of _____) to be the
Person who is described in and whose name is subscribed to the within instrument as the attorney-in-
fact of Employers Mutual Casualty Company and acknowledged to me that they subscribed the name of
Employers Mutual Casualty Company thereto as surety and their own name as attorney in fact.



Amy Perlichek

