

SECTION 00500 - AGREEMENT

THIS AGREEMENT is dated as of the 5th day of March in the year 2021 by and between City of Minot (hereinafter called OWNER) and Blue Stone Construction, Inc. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Cargo Apron Reconstruction (Phase 2) – Schedule 1 and 2 – Base Bid – Division 2 only (No Alternate 1 and No Division 1)

Article 2. ENGINEER.

The Project has been designed by Ulteig Engineers, Inc. who is hereinafter called ENGINEER and 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 completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

- 3.1 The Work will be substantially complete within the following working days: Phase 2-30 working days from the issuance of the Notice to Proceed. The work will be completed and ready for final payment in accordance with paragraph 50-15 of the General Provisions within 60 calendar days following substantial completion.
- 3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 80-07 of the General Provisions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding 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 One Thousand dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER One Hundred Fifty dollars (\$150.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

See attached Contractor's Bid Proposal.

Schedule 1 – Base Bid – Division 2 - \$998,230.70

Schedule 2 – Base Bid – Division 2 - \$177,320.21

Total - \$1,175,550.91

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with 90-6 of the General Provisions. Applications for Payment will be processed by ENGINEER as provided in the General Provisions.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 90-6 of the General Provisions (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.

- A. 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 shall determine, or OWNER may withhold, in accordance with paragraph 90-6 of the General Provisions.

90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 90-7 of the General Provisions).

- B. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 97.5% of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 90-6 of the General Provisions.

- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 90-9 of the General Provisions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 90-9.

Article 6. INTEREST.

All moneys not paid when due as provided in Section 90 of the General Provisions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Provisions as provided in paragraph 20-6 of the General Provisions, and accepts the determination set forth in said paragraph of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 20-6 of the General Provisions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages 1 to 5, inclusive).
- 8.2 Federal Provisions Construction Contract Appendix (attached pages 1 to 25, inclusive).
- 8.3 Exhibits to this Agreement (none).
- 8.4 Performance and other Bonds, identified in project Specifications.
- 8.5 Notice of Award.

- 8.6 General Provisions (included in Project Specifications).
- 8.7 Supplementary Provisions (included in Project Specifications).
- 8.8 Specifications, not attached, bearing the title *Cargo Apron Reconstruction* and consisting of 14 divisions and 443 pages, as listed in table of contents thereof.
- 8.9 Drawings not attached, consisting of a cover sheet and sheets numbered 1 through 30, inclusive with each sheet bearing the following general title: *Cargo Apron Reconstruction*.
- 8.10 Addenda numbers 1 and 2, not included.
- 8.11 CONTRACTOR's Bid Package (pages 1 to 30, inclusive).
- 8.12 Other documentation submitted by CONTRACTOR prior to Notice of Award (none).
- 8.13 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 40-1 and 40-4 of the General Provisions.
- 8.14 The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 40-1 through 40-2 of the General Provisions.

Article 9. MISCELLANEOUS.

- 9.1 Terms used in this Agreement which are defined in Section 10 of the General Provisions will have the meanings indicated in the General Provisions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents 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.
- 9.3 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 of all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. The parties agree that any lawsuit filed to enforce, terminate, or interpret this Agreement will be filed in a District Court located in Ward County, North Dakota.
- 9.5 If any paragraph of this Agreement shall, for any reason and to any extent, be found invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision shall be deemed severed from the remainder of the Agreement, and the remaining paragraphs shall remain in full force and effect to the fullest extent of the law.

Article 10. OTHER PROVISIONS. None

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in quadruplicate. 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 by ENGINEER on their behalf.

This Agreement will be effective on _____, 20_____.

OWNER

CONTRACTOR

By _____

- Leif Anderson, President



(CORPORATE SEAL)

(CORPORATE SEAL)

Attest _____

Attest _____

Address for giving notices

Address for giving notices
PO Box 2129
Minot, ND
58702

If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.

License No. 36294

Agent for service of process

If CONTRACTOR is a corporation, attach evidence of authority to sign.