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**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)  
Buena Vista Water and Roadway Surface Improvements**

Prepared by



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**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Lander (“Owner”) and  
Wilson Bros. Construction Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents.  
The Work is generally described as follows:

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally  
described as follows: Buena Vista Water and Roadway Surface Improvements

**ARTICLE 3 – ENGINEER**

3.01 The part of the Project that pertains to the Work has been designed by HDR Engineering  
Inc.  
3.02 The Owner has retained HDR Engineering, Inc. (“Engineer”) 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 the completion of  
the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and  
readiness for final payment as stated in the Contract Documents are of the essence  
of the Contract.

4.02 *Contract Times: Dates*

A. Base Bid and Bid Alternate A – 2027 Completion: The Work will be substantially  
complete on or before October 15<sup>th</sup>, 2027, and completed and ready for final  
payment in accordance with Paragraph 15.06 of the General Conditions within  
Fourteen (14) calendar days after the date when the project is considered to be  
substantially completed.

- B. Substantial completion will require that all work with the exception of final cleanup, fencing and seeding be completed, and all installed transmission mains are tested and back in service.

4.03 *Contract Times: Milestones*

4.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties 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):

- 1) Substantial Completion: Contractor shall pay Owner \$ 1,900.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
- 2) Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$ 950.00 for each day that expires after such time until the Work is completed and ready for final payment.
- 3) Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

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4.05 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

**ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 6.01.A. and 6.01.B. below:
- B. As provided in Paragraph 13.03.B. of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in Paragraph 10.06 of the General Conditions. Unit prices have been computed as provided in Paragraph 13.03.B. of the General Conditions.
- C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

**ARTICLE 6 – PAYMENT PROCEDURES**

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by the Engineer, during performance of the Work as provided in Paragraph 6.02.A.1. and 6.02.A.2. below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (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 elsewhere in the Contract. Retainage on contract will be per W.S. 16-6-702.

- 1) CONTRACTOR shall submit invoices to ENGINEER for approval on a monthly basis (by 25<sup>th</sup> of the month). The pay request shall be accompanied by supporting billing documentation.

**Note:** Any and all invoicing shall include an invoice number, the dates covered by the invoice, the hours expended and a summary of the work performed. The Owner shall pay Contractor's fee within a reasonable time after receiving the invoice.

Contractor shall be responsible for all expenses incurred while performing services under this Agreement including but not limited to: license fees, memberships and dues; auto and other travel expenses; meals and entertainment; insurance premiums; all salary, expenses and other compensation paid to employees or contract personnel Contractor hires to complete the work under this Agreement

- 2) If the ENGINEER approves the invoice it will be submitted to the OWNER and the Funding Agency/Agencies with the recommendation

for payment. Within 10 days of receipt of payment from the Funding Agency/Agencies, the Owner will pay the Contractor an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

- i) 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
  - ii) 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Owner shall withhold 5% of the project payment as retainage pursuant to W.S. §16-6-702. The Contractor may designate an interest-bearing retainage account to be withheld on progress payments as pursuant to W.S. §16-6-702, -704, -705.
- C. Upon issuance of a Substantial Completion certificate, the 41 Day Advertisement Period will begin in accordance with W.S. 16-6-116 indicating that the OWNER has accepted the substantially complete work and that the CONTRACTOR is entitled to any payment retained as outlined in section 6.02.A. above, together with any other amount due under the contract, less any amount withheld for the portion of the public work that is incomplete or not completed in accordance with the contract and associated documents upon the 41st day after the first day the 41 Day Advertisement was published.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.
- B. Final payment cannot be made until after the 41<sup>st</sup> day of advertising for acceptance of final completion and final payment in accordance with W.S. 16-6-116, 16-6-117, and 15-1-113.

## **ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due, as provided in Article 15 of the General Conditions, shall bear interest at the maximum rate allowed by law at the place of the project.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
- 1) This Agreement (pages **1** to **12**, inclusive).
  - 2) Performance bond.
  - 3) Payment bond.
  - 4) Reimbursement Agreement Provisions.
  - 5) Insurance Certificates, Worker's Compensation Certification, Unemployment Insurance Certification.
  - 6) SRF special conditions.
  - 7) General Conditions (pages **1** to **65**, inclusive).
  - 8) Supplementary Conditions (pages **1** to **36**, inclusive).
  - 9) Specifications as listed in the table of contents of the Project Manual.
  - 10) The Construction Drawings attached under a separate cover with a sheet index listed on the cover sheet with the following title: *Buena Vista Water and Roadway Surface Improvements*.
  - 11) Addenda (numbers **1** to     **2**    , inclusive).
  - 12) Exhibits to this Agreement (enumerated as follows):
    - i) Contractor's Bid (pages **1** to     **15**    , inclusive).
  - 13) The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - i) Notice to Proceed.
    - ii) Contractor's Application for Payment.
    - iii) Work Change Directives.
    - iv) Change Orders.
    - v) Field Orders.
    - vi) Certificate of Final Completion
    - vii) Release and Waiver of Liens
    - viii) Affidavit on Behalf of Contractor
    - ix) Warranty Statement

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 *Terms***

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### **10.02 *Assignment of Contract***

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

### **10.03 *Successors and Assigns***

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **10.04 *Severability***

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **10.05 *Contractor's Certifications***

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1) "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

- 2) “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
- 3) “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- 4) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

### **ARTICLE 11 – STATE REVOLVING FUND (SRF) SPECIAL CONSIDERATIONS**

#### 11.01 *Contractor shall be subject to the SRF Special Conditions guidelines as specified herein. These include*

- A. Prohibition Against Listed Violating Facilities
- B. William-Steiger Occupational Safety and Health Act of 1970
- C. Human Trafficking
- D. Limitations on Lobbying Activities
- E. Nondiscrimination
- F. Anti-Kickbacks
- G. Discovery of Archaeological and Other Historical Items
- H. Access
- I. Site Erosion and Sediment Control Measures
- J. WYPDES Construction Related Discharge Permits
- K. Equipment Staging
- L. Aquatic Invasive Species

- M. Air Quality Protection Measures
- N. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects
- O. Required Wyoming Statute Language
- P. Davis Bacon Prevailing Wage Requirements
- Q. Prohibition on Certain telecommunication and Video Surveillance Services or Equipment
- R. Use of American Iron and Steel (AIS) Requirements

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on: \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

City of Lander

Wilson Bros. Construction Inc.

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

240 Lincoln Street

980 Road 7

Lander, WY 82520

Cowley, WY 82420

License No.: \_\_\_\_\_

*(where applicable)*

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

*NOTE TO USER: Use in those states or other jurisdictions where applicable or required.*