

**SECTION 00500
AGREEMENT FORM**

THIS AGREEMENT is dated as of the 20th day of August in the year 2024
(effective date), by and between The City of Sidney (hereinafter called OWNER)
and Strata Corporation (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, 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 in the Invitation to Bid and is described in detail in the Contract Documents and the technical construction drawings.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Anderson Subdivision Drainage Improvements Project for City of Sidney, ARPA Grant Project Number AC-22-0158.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

Morrison-Maierle, Inc.
1055 Mount Ave,
Missoula, Montana, 59801

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 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.

B. The CONTRACTOR agrees to complete the work within the time(s) specified herein.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially complete on or before October 11, 2024 and will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before October 25, 2024.

4.03 *Liquidated Damages and Damages for Additional Engineering Services*

A. CONTRACTOR and OWNER 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 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The Contractor acknowledges and agrees that the actual loss and damages suffered by OWNER is impracticable or extremely difficult to fix, determine and prove if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that a liquidated damage provision is both appropriate and necessary and that the liquidated damage amounts specified herein are reasonable and good faith estimates of the anticipated and probable damages the OWNER will incur should CONTRACTOR fail to complete the Work within the times specified herein. Therefore, as liquidated damages for delay, CONTRACTOR agrees to pay OWNER \$500 for each calendar day that expires after the time specified in paragraph 4.02 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 agrees to pay OWNER as liquidated damages for delay \$500 for each calendar day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

B. Damages for unscheduled employment of the ENGINEER shall be paid by the CONTRACTOR to the OWNER as specified in Article 6 of the Bid Form.

ARTICLE 5 - CONTRACT PRICE

5.01 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 Five Hundred Eleven Thousand Three Hundred Seventy dollars (\$ 511,370.00), based on the prices stipulated in the Bid Form and subject to adjustment as provided in the Contract Documents.

A. As provided in paragraph 11.01 of the General Conditions, CONTRACTOR agrees that lump sum amount(s) constitute full payment for the work and that these lump sum amount(s) represent a true measure of the labor and materials required to perform the work, including all allowances for overhead, profit, taxes, bonds, insurance, and all other costs for each type and unit of work called for in these Contract Documents.

B. As provided in paragraph 11.03 of the General Conditions, estimated unit price quantities used for bidding purposes are not guaranteed, and determinations of

actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions or other portions of the Contract Documents.

6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments in accordance with Article 14 of the General Conditions on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by the ENGINEER once each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such progress payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions or in the case of Unit Price Work based on the number of units of each bid item completed times the bid unit price in the Unit Price Schedule of the Bid Form for each bid item, or, in the event there is no schedule of values, as provided in the General Conditions:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of work completed but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, including but not limited to liquidated damages and damages for additional engineering services, in accordance with paragraph 14.02 of the General Conditions:

a. The OWNER shall retain 5% of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents.

2. Upon Substantial Completion and at the OWNER's discretion, the amount of retainage may be further reduced if requested by the CONTRACTOR. Reduction of retainage is at the sole discretion of the OWNER. OWNER is not obligated to reduce retainage. Amount of substantial completion payment will be reduced by such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and by 100% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 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 Agreement, CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents (including all Addenda listed in Article 9) and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance or furnishing of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if any, which have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data", and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which has been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data". CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

E. Contractor has considered the information known to Contractor; 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, including any specific means,

methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in Paragraph 8.01.E above, CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

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 correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. 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.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 9 , inclusive);
2. Performance Bond (pages 1 to 3 inclusive);
3. Payment Bond (pages 1 to 3 inclusive);
4. General Conditions (pages 1 to 72, inclusive);
5. Supplementary Conditions (pages 1 to 18, inclusive);
6. Specifications as listed in the Table of Contents of the Project Manual;
8. Drawings consisting of a cover sheet and sheets numbered 1 through 7, inclusive,

9. Addenda (numbers 1 to 1 , inclusive);
10. Exhibits to this Agreement (enumerated as follows):
 - a. Notice of Award (pages 1 to 1 , inclusive);
 - b. CONTRACTOR's Bid Form (pages 1 to 12 , inclusive);
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages 1 to 13 , inclusive);
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to _____, inclusive);
 - b. Written Amendments;
 - c. Work Change Directives;
 - d. Change Orders.

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 paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

A. 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, moneys that may come 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.

10.03 *Successors and Assigns*

A. 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 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 any thing 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.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed Five copies of this Agreement. Two counterpart(s) has been delivered to OWNER, two to CONTRACTOR, and one to 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 the date shown on page 1 (which is the Effective Date of the Agreement).

OWNER:

By: _____
(Signature)

Attest _____
(Signature)

Address for giving notices:

Phone: _____

Facsimile: _____

[CORPORATE SEAL]

CONTRACTOR:

Strata Corporation

By: _____
Steve Griffin, Vice President

Witness: _____
Attest Nicole L Stennes
Nicole L Stennes, Contract Administrator

Address for giving notices:
Strata Corporation
PO Box 13500
Grand Forks, ND 58208-3500

Phone: (701) 775-4205

Facsimile: (701) 775-5584

[CORPORATE SEAL]

Montana Contractors' Registration No.
224479

Agent for service of process:

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

Owner's Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Contractor's Designated Representative:

Name: Kelly Perlichek

Title: Western Area Manager

Address: 1225 S Broadway
Minot, ND 58703

Phone: (701) 852-4560

Facsimile: _____

Cell:

Facsimile: (701) 500-0844

Email : _____

Email: kelly.perlichek@stratacorporation.com

The foregoing Contract, including all Contract Documents which are a part thereof, is in due form according to the law, and is hereby approved.

By: _____

(Signature)

Attorney of the City of Sidney

END OF SECTION 00500