

RESOLUTION NO. 3580

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION AGREEMENT WITH WESTERN MUNICIPAL CONSTRUCTION, INC., A MONTANA CORPORATION, FOR CONSTRUCTION OF STREVELL AREA STREET AND WATER IMPROVEMENTS.

WHEREAS, the City has advertised for and accepted bids for Strevell Area Street and Water Improvements;

AND WHEREAS Western Municipal Construction, Inc., a Montana corporation, of 5855 Elysian Road, Billings, Montana 59101 was the lowest responsible bidder for such project;

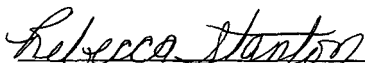
NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Construction Agreement, attached hereto, between the City of Miles City, Montana and Western Municipal Construction, Inc., a Montana corporation, attached hereto as Exhibit "A", and incorporated herein by reference, is hereby approved and adopted by this Council subject to final written approval of the City Attorney.
2. The Mayor of the City of Miles City, upon written approval of the City Attorney, is hereby empowered and authorized to execute said Construction Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Construction Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 12TH DAY OF MARCH, 2013.


C.A. Grenz, Mayor

ATTEST:


Rebecca Stanton, City Clerk

DIVISION 0 – BIDDING & CONTRACT REQUIREMENTS
SECTION 00500 – AGREEMENT

THIS AGREEMENT is dated as of the 14th day of March in the year 2013 by and between the City of Miles City, hereinafter called "OWNER" and Western Municipal Construction, Inc. 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 project generally consists of: water line and street improvements on Strevell from Stower to Wilson (5½ blocks); water line improvements on Merriam (6 blocks), Jordan and Custer (5 blocks each), storm sewer on Merriam (4 blocks), as well as related work. The above assumes all Schedules are awarded. (The above will be modified as necessary)

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: The Strevell Area Street and Water Improvments.

Article 3. ENGINEER

- 3.01 The project Engineer is:
DOWL HKM
713 Pleasant
Miles City, MT 59301

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 4. CONTRACT TIME

- 4.01 Time of the Essence.

A. All the 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 Days to achieve substantial completion.

A. The Work will be substantially completed within the number of calendar days shown below after the date when the Contract Time commences to run as stipulated in the General

Conditions. Final payment will be withheld until final completion and acceptance of the Work as stipulated in these Contract Documents. Construction calendar days allowed to reach Substantial Completion are as follows:

- * Work on Strevell: 95 days
- * Work on Merriam: 60 days
- * Work on Jordan and Custer: 45 days each.

Based on the Schedules awarded, the number of calendar days to be included in the Contract will be calculated, so there will be one overall Contract Time and one date of Substantial Completion for the Project.

Final Completion, including all project cleanup and correction of punchlist items, completion of all closeout paperwork and other closeout requirements of these Contract Documents, shall be reached within 60 days of Substantial Completion.

4.03 Liquidated Damages.

A. 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 complete within the time specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), CONTRACTOR shall pay OWNER One Thousand dollars (\$1,000.00) for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the work is substantially completed. Liquidated Damages of \$300 per day will be paid for each day that Final Completion is delayed beyond the timeframe stated above.

Article 5. CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the quantity of that item that is constructed and accepted. Unit Prices are those listed in the Unit Price Schedule of the Bid Form attached as Exhibit A to this Agreement. Estimated quantities used for bidding purposes are not guaranteed. Payment will be for actual quantities as determined by ENGINEER in accordance with paragraph 9.07 of the General Conditions. Unit Prices have been completed as provided in paragraph 11.03 of the General Conditions. The Contract Price for the work as awarded is \$ Two million, four-hundred five thousand, four-hundred sixty-five dollars and no cents. (\$2,405,465.00).

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 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 ENGINEER, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the number of units of each bid item completed or on a schedule of values, based on percent complete, determined by the ENGINEER in the case of lump sum contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the sum of the unit price items less the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amount as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

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

- b. Retainage will be five percent (5%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02 of the General Conditions).

- c. The OWNER may retain a portion of the amount due the CONTRACTOR in accordance with the General Conditions and outlined herein. When the work is substantially complete, the amount withheld shall be further reduced below five percent (5%) to an amount determined by the ENGINEER necessary to assure completion. Retainage may be withheld until all closeout documents have been satisfactorily provided to the Engineer, and claims or liens have been satisfactorily addressed, and all punch list or warranty items noted, have been satisfactorily addressed.

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 the 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 simple rate of 1.0% per month.

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, 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) which have been identified in the Special Provisions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Special Provisions as provided in paragraph 4.06 of the General Conditions. 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 obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relates to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by the CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any additional 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, exploration 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 A. Contract Documents consist of the following:

1. This Agreement;
2. Exhibits to this Agreement (if any);
3. Performance Bond and Payment Bond;
4. Funding Agency Special Provisions and required forms (where applicable) ;
5. Notice to Proceed;
6. Certificate of Substantial Completion;
7. Change Order;
8. Contractors applications for Payment;
9. General Conditions;
10. Wage Rates (if required);
11. Technical Specifications, as listed in Table of Contents thereof;
12. Drawings;
13. Addenda listed on the bid forms
14. CONTRACTOR's Bid Form;
15. Liquidated Damage Acknowledgment;
16. Documents submitted by CONTRACTOR prior to Notice of Award;
17. Any Modification, including Change Orders, duly delivered after execution of Agreement;
20. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Orders

B. The documents listed in paragraph 9.01A 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 paragraphs 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 indicated in the General Conditions.

10.02 Assignment of Contract.

A. 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 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 representative 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.

10.04 Severability.

A. Any provision of part of the Contract Documents held to be void or unenforceable under and 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.

IN WITNESS WHEREOF, Owner and Contractor have signed 6 copies of Agreement. Three counterparts have 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 March 14th, 2013 (which is the effective date of the Agreement).

Owner C.A. Grenz

City of Miles City

By C.A. Grenz
(Signature)

Attest Rebecca Stanton
(Signature)

Address for giving notices:

Phone No. _____

Fax No. _____

(Corporate Seal)

(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: ALLEN KELM

Title: Public Utilities Director

Address: P.O. Drawer 910

Miles City MT 59301

Phone No: 406-234-3493

FAX No: 406-234-6392

END OF SECTION 00500

Contractor Western Municipal Construction, Inc.

By J. Clause President
(Signature) Jock Clause

Attest Jeremy K Bishop Vice President
(Signature) Jeremy Bishop

Address for giving notices:

5855 Elysian Road

Billings, MT 59101

Phone No. 406-254-2106

Fax No. 406-245-9736

(Seal)

Contractor Registration No. 13329
Agent for service of process:

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

Contractor's Designated Representative:

Name: Kyle Kastelitz

Title: Project Manager

Address: 5855 Elysian Road

Billings, MT 59101

Phone No: 406-254-2106

FAX No: 406-245-9736

PERFORMANCE BOND

CONTRACTOR (name and address):

Western Municipal Construction, Inc.
5855 Elysian Road.
Billings, MT 59101-6320

OWNER (name and address):

City of Miles City
17 South 8th Street, Miles City, MT 59301

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount: \$2,405,465.00

Two Million Four Hundred Five Thousand Four Hundred Sixty Five Dollars and 00/100

Description (name and location):

Strevell Area Street and Water Improvements, Miles City, MT

BOND

Bond Number: 2166861

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount: \$2,405,465.00

Two Million Four Hundred Five Thousand Four Hundred Sixty Five Dollars and 00/100

Modifications to this Bond Form:

☒ None

☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Western Municipal Construction, Inc. (seal)

Contractor's Name and Corporate Seal

By: 

Signature

Jock Clause

Print Name

President

Title

Attest: 

Signature

Jeremy Bishop

Vice President

Title

SURETY

North American Specialty Insurance Company (seal)

Surety's Name and Corporate Seal

By: 

Signature (attach power of attorney)

Naomi Gerber

Print Name

Attorney-in-Fact

Title

Attest: 

Signature Allan Hultgren

Witness

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of

the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within

two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR (name and address):

Western Municipal Construction, Inc.
5855 Elysian Road
Billings, MT 59101-6320

SURETY (name and address of principal place of business):

North American Specialty Insurance Company
475 North Martingale Road, Suite 850
Schaumburg, IL 60173

OWNER (name and address): City of Miles City
17 South 8th Street, Miles City, MT 59301
CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount: \$2,405,465.00

Two Million Four Hundred Five Thousand Four Hundred Sixty Five Dollars and 00/100

Description (name and location):

Strevell Area Street and Water Improvements, Miles City, MT

BOND

Bond Number: 2166861

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount: \$2,405,465.00

Two Million Four Hundred Five Thousand Four Hundred Sixty Five Dollars and 00/100

Modifications to this Bond Form:



None



See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Western Municipal Construction, Inc. (seal)

Contractor's Name and Corporate Seal

By:

Signature

Jack Clause

Print Name

President

Title

Attest:

Signature

Jeremy Bishop

Vice President

Title

SURETY

North American Specialty Insurance Company

Surety's Name and Corporate Seal

By:

Signature (attach power of attorney)

Naomi Gerber

Print Name

Attorney-in-Fact

Title

Attest:

Signature

Allan Hultgren

Witness

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or

(2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim: A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond

shall be to include without limitation "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

NAS SURETY GROUP

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Manchester, New Hampshire, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Schaumburg, Illinois each does hereby make, constitute and appoint: Naomi Gerber

Its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, the following surety bond:

Principal: Western Municipal Construction, Inc.

Bond Number: 2166861

Obligee: City of Miles City

Bond Amount: See Bond Form

Bond Description: Strevell Area Street and Water Improvements, Miles City, MT

Provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By [Signature]
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company

By [Signature]
David M. Layman, Vice President of Washington International Insurance Company
& Vice President of North American Specialty Insurance Company



IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 25th day of May 20 12.

North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Cook ss:

On this 25th day of May 20 12, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and David M. Layman, Vice President of Washington International Insurance Company and Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



[Signature]
Donna D. Sklens, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this _____ day of _____, 20 ____.

[Signature]
Jeffrey Goldberg, Vice President & Assistant Secretary of Washington International Insurance Company &
Assistant Secretary of North American Specialty Insurance Company