



January 28th, 2022

Mr. Peyton Brookshire, Assistant Manager
County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105

RE: Bid Evaluation – Recommendation of Award
Water System Improvements Project: Water Storage Tank Mixers and Ox
Bow Water Storage Tank Chlorine Sampler/Analyzer/Injector
i.e. #Y21-00-018.01

Mr. Brookshire:

Bids for the above referenced project were opened at 3:00 PM Mountain Time at the office of the County Water District of Billings Heights on Wednesday, January 19th, 2022. Two bids were submitted for the project. Both bids met the submission requirements and both bids were opened and read aloud. The bids were in the amounts of \$423,180.00 from Western Municipal Construction, Billings, MT and \$567,537.00 from JR Civil, Billings, MT. The Engineer's Estimate was \$299,729.41. The apparent low bidder for the project is Western Municipal Construction, Inc., 5855 Elysian Road, Billings, MT 59101. The bids were checked for accuracy and no errors were noted on either of the bids.

Although the bid submitted by Western Municipal is over \$100,000 more than the Engineer's estimate, it is approximately \$100,000 less than the sole bid received in September 2021 for the same project. As of late, bids have tended to be on the order of 25% - 30% above the Engineer's Estimates. The funding agencies such as Montana's SRF program and USDA's Rural Development have noticed the same upward trend in the bids that were received for projects bid during the last year or so. The higher bid prices recently observed appears to reflect the combination of materials price volatility, materials shortages, and worker shortages.

The need for the project is well documented by the District. I am of the opinion that the project should be awarded to enable the District to maintain adequate disinfection residuals as required by the Montana DEQ for Public Water Systems.

Based on Interstate's prior experience with Western Municipal Construction, and most recently with Western's work on the District's Rawhide Transmission Main project, it is Interstate Engineering's recommendation that the County Water District

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of Billings Heights award the construction contract to Western Municipal Construction, Inc. in the amount of \$423,180.00 for the project.

Enclosed are: the bid summary; the bid tabulation; and the *Notice of Award*. Please review the attached at your board meeting on Wednesday, February 16th, 2022. Should the board decide to award the contract to Western Municipal Construction, please sign the attached *Notice of Award* and I will forward it to Western Municipal Construction along with the contract documents for Western Municipal Construction's signature.

If you have any questions or require additional information, please feel free to contact me at 406-489-1920 or lowell.cutshaw@interstateeng.com.

Respectfully submitted,
INTERSTATE ENGINEERING, INC.

A handwritten signature in blue ink, appearing to read 'Lowell Cutshaw', is written over a light blue horizontal line.

Lowell J. Cutshaw, PE
Sr. Project Engineer

Enclosures

c: Project File

https://interstateengineering.sharepoint.com/sites/Y21-00-018CWDBHChlorination/Shared Documents/General/80_BIDDING/_17_Post-bid/Recommendation to Award - Chlorination Project 2022 01 28.docx

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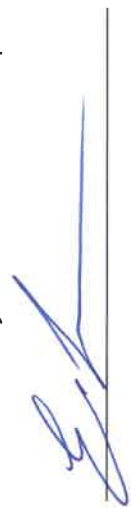
**County Water District of Billings Heights Water System Improvements
BILLINGS, MONTANA**

I.E. #Y21-00-018

BID OPENING: January 19th, 2022 @ 3:00 PM

CONTRACTOR	<input checked="" type="checkbox"/> Bid Bond <input checked="" type="checkbox"/> Registration <input type="checkbox"/> Agenda <input checked="" type="checkbox"/> Acknowledgement of Liquidated Damages	Base Bid	TOTAL
WESTERN MUNICIPAL CONSTRUCTION	<input checked="" type="checkbox"/> Bid Bond <input checked="" type="checkbox"/> Registration <input type="checkbox"/> Agenda <input checked="" type="checkbox"/> Acknowledgement of Liquidated Damages	423,180.00	423,180.00
JR CIVIL	<input checked="" type="checkbox"/> Bid Bond <input checked="" type="checkbox"/> Registration <input type="checkbox"/> Agenda <input checked="" type="checkbox"/> Acknowledgement of Liquidated Damages	567,537.00	567,537.00
Engineer's Estimate		\$299,729.41	\$299,729.41

I hereby Certify that the Bid Opening Result(s) shown above represent the actual bid(s) received for the County Water District of Billings Heights Water System Improvements Project, received and opened by the County Water District of Billings Heights on January 19th, 2022 at 3:00 pm.

Engineer's Signature  Date January 19th, 2022

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CWDBH Chlorination Water System Improvements

Billings Montana

I.E. # Y21-00-018

Bid Opening: January 19th, 2022 at 3:00 PM

General Requirement Item No.	Item	Unit	Quantity	Engineer's Estimate		JR Civil		Western Municipal Construction	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
101	General Requirements	LS	1	\$14,986.47	\$14,986.47	\$8,138.00	\$8,138.00	\$15,000.00	\$15,000.00
102	Mobilization & Demobilization	LS	1	\$14,986.47	\$14,986.47	\$8,960.00	\$8,960.00	\$19,000.00	\$19,000.00
103	Taxes, Bonds & Insurance	LS	1	\$14,986.47	\$14,986.47	\$27,923.00	\$27,923.00	\$10,000.00	\$10,000.00
104	Hilltop Reservoir Site Improvements	LS	1	\$4,750.00	\$4,750.00	\$53,990.00	\$53,990.00	\$11,000.00	\$11,000.00
105	Lanier Reservoir Site Improvements	LS	1	\$6,250.00	\$6,250.00	\$55,458.00	\$55,458.00	\$11,000.00	\$11,000.00
106	Ox Bow Reservoir Site Improvements	LS	1	\$222,270.00	\$222,270.00	\$389,996.00	\$389,996.00	\$336,420.00	\$336,420.00
107	Exploratory Excavation	HR	4	\$375.00	\$1,500.00	\$768.00	\$3,072.00	\$190.00	\$760.00
108	Materials Testing	EA	5,000	\$1.00	\$5,000.00	\$1.00	\$5,000.00	\$1.00	\$5,000.00
109	Miscellaneous Work	UNIT	15,000	\$1.00	\$15,000.00	\$1.00	\$15,000.00	\$1.00	\$15,000.00
				TOTAL BASE BID \$299,729.41		\$567,537.00		\$423,180.00	
				(GR)	\$299,729.41		\$567,537.00		\$423,180.00
				(1)	\$0.00		\$0.00		\$0.00
				(2)	\$0.00		\$0.00		\$0.00
				(3)	\$0.00		\$0.00		\$0.00
				(4)	\$0.00		\$0.00		\$0.00
				TOTAL BID	(GR+1+2+3+4)	\$299,729.41	\$567,537.00		\$423,180.00

I hereby Certify that the Tabulation of Bids represents the actual bids received for the CWDBH Water System Improvements, received and opened by County Water District of Billings Heights, on January 19th 2022.


 Eric Ler, PE
 Interstate Engineering

1/26/2022

Date



February 3rd, 2022

Corinna German, Contract Administrator
Western Municipal Construction Inc.
5855 Elysian Road
Billings, MT 59101

RE: Water System Improvements Project
Yellowstone County, MT
IEI #Y2100018

Dear Ms. German:

Enclosed please find three (3) copies of the Notice of Award and Construction Agreement in the amount of \$423,180.00 regarding the above reference project.

1. Sign all copies of the Construction Agreement and have your signature attested.
2. Have the enclosed Performance Bond completed by your Surety Company. The bond also requires your signature, and your signature must be attested by the Corporate Secretary and witnessed.
3. Have the enclosed Payment Bond completed by your Surety Company. The bond also requires your signature, and your signature must be attested by the Corporate Secretary and witnessed.
4. Attach copies of the following:
 - a. Acknowledgement of Principal
 - b. Power of Attorney
 - c. Current Workmen's Compensation Certificate of Premium Paid
 - d. Certificate of Contractor's Liability Insurance Coverage as per the Specifications.

Should you have any questions or comments, please contact me at 406-489-3410 (cell) or lowell.cutshaw@interstateeng.com.

Sincerely,
INTERSTATE ENGINEERING, INC.

A handwritten signature in blue ink, appearing to read 'Lowell J. Cutshaw', is written over a light blue circular stamp.

Lowell J. Cutshaw, PE
Sr. Project Engineer

Enclosures

c: Larry Brewster, Interim General Manager, CWDBH; Peyton Brookshire, Assistant Manager, CWDBH; (w/o attachments)
Y21-00-018/90_CONST_ADMN/01_Agreement/1. Agreement Packet Letter.docx

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CONSTRUCTION AGREEMENT

Western Municipal Construction Inc.
County Water District of Billings Heights
Water System Improvements Project
Billings, Yellowstone County, Montana
Y21-00-018

PREPARED BY:
INTERSTATE ENGINEERING, INC.



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NOTICE OF AWARD

Date of Issuance: _____
Owner: County Water District of Billings Heights Owner's Contract No.: _____
Engineer: Interstate Engineering, Inc. Engineer's Project No.: Y21-00-018
Project: Water System Improvements Project Contract Name: _____
Bidder: Western Municipal Construction, Inc. _____
Bidder's Address: 5855 Elysian Road, Billings, MT 59101 _____

TO BIDDER:

You are notified that Owner has accepted your Bid dated January 19th, 2022, for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is: \$ 423,180.00

[3] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. *[revise if multiple copies accompany the Notice of Award]*

a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [3] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security *[e.g., performance and payment bonds]* and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within fifteen days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: _____

Authorized Signature
By: _____
Title: _____

Copy: Engineer

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THIS AGREEMENT is dated as of the _____ day of _____ in the year 2022 by and between:

County Water District of Billings Heights, Billings, MT , hereinafter called OWNER

&

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 Work is generally described as follows:

Project Information:

The County Water District of Billings Heights (District) will be procuring and installing in-tank mixers in three potable water storage reservoirs. These reservoirs are the Hilltop reservoir (1 mixer), Lanier reservoir (1 mixer), and Ox Bow reservoir (2 mixers). In addition to the mixers, a skid-mounted chlorine sampler/analyzer/booster system will be installed at the Ox Bow reservoir site. The work associated with the installation and start-up of the mixers and chlorination skid will be provided by the equipment supplier. The work pursuant to this Advertisement for Bids will be providing necessary electrical, controls, and fluid connections for the Ox Bow in-tank mixers; providing necessary electrical, controls, and fluid connections for the chlorination skid; providing electrical connections from the existing Hilltop & Lanier pumping stations to the Owner-installed mixers; construction of a building at the Ox Bow site to house the skid and appurtenant equipment; and providing other installations as summarized in the "Base Bid" below as directly related to the installation of the aforementioned equipment.

The work generally consists of:

A. Base Bid:

1. The Ox Bow work generally consists of site improvements, building construction, plumbing, electrical, controls, and mechanical installations at the Ox Bow potable water storage site owned by the County Water District of Billings Heights in support of the equipment installations provided By Others (in-tank mixers and chlorination skid). All locations require the installation of an Owner-Furnished/Contractor-Installed mixer controller and electrical connections from the existing breaker panel to the controller & from the controller to the Owner-installed conduit entrance at the rooftop hatches. All three sites will also require running signal wiring from the mixer controllers inside the buildings to the Owner's existing SCADA panel at all three locations. The work associated with the chlorination booster skid at the Ox Bow site generally consists of constructing a 12' by 20' wood-framed building and concrete foundation; installation of sodium hypochlorite chemical storage totes and secondary containment (procured by others, installed by Contractor); deluge-type combination safety shower and eye wash station; 119 gallon electric hot water heater; water pressure booster pump; interior and exterior lighting; exhaust fan and ducting; building heaters; 50' steel light pole and concrete foundation; installation of a boulder pit and related underground drainage piping; related electrical and plumbing work inside the building; and related electrical and plumbing work on the Ox Bow reservoir.

B. Work By Others:

1. Owner-Furnished-and-Installed items include the in-tank mixers and the chlorination skid.
2. Owner-Furnished/Contractor-Installed items include the mixer control panels, sodium hypochlorite totes and secondary containment structure.
 - a. Contractor to include provisions to coordinate delivery of the mixer control panels with Equipment Supplier (IXOM Watercare).
 - b. Contractor to include provisions for retrieval, drayage, unloading, and installation of the totes and secondary containment structure.

3. The following will be provided by the Owner-Contracted SCADA integration contractor:
 - a. Two (2) Endress+Hauser Radar Level Instruments, building temperature transmitters, and door entry alarm switches, for the Ox Bow location.
 - b. Internal panel modifications to the existing SCADA panels.
 - c. Required software program changes and SCADA view CSX software modifications.
 - d. Twenty-five feet (25') of RS485 cable.
4. Equipment supplier of chlorination skid and mixers will perform start-up, testing, and initial monitoring of the system.

ARTICLE 2 THE PROJECT

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

Project Name: County Water District of Billings Heights Water System Improvements Project

ARTICLE 3 ENGINEER

- 3.01 The Project has been designed by:

Interstate Engineering, Inc.
1211 Grand Avenue, Ste. 6
PO Box 20953
Billings, Montana 59104-0953

who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have all 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 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 Dates to Achieve Substantial Completion and Final Payment

- A. Work described in Article 1 shall be substantially complete as follows:

1. Base Bid:

- a. All construction schedules shall be substantially complete and ready for OWNER's use and pre-final inspection within 120 calendar days from the Notice to Proceed, or by September 30th, 2022, whichever is sooner.
- b. All construction schedules shall be finally complete and ready for final payment within (30) calendar days of Substantial Completion.

- B. Work shall begin when the Contract Time commences to run as provided in Paragraph 4.01 of the General Conditions.

ARTICLE 5 LIQUIDATED DAMAGES

- 5.01 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 11 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 \$ 250.00 for each day or part of a day that expires after the time

specified in Paragraph 4.02 for Substantial Completion of any construction schedule until the Work is substantially complete.

ARTICLE 6 CONTRACT PRICE

6.01 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 10.06 of the General Conditions. Unit prices have been computed as provided in Paragraph 13.03 of the General Conditions.

ARTICLE 7 PAYMENT PROCEDURES

7.01 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 or other portions of the Contract Documents.

7.02 Progress Payments; Retainage

A. OWNER shall make progress payments in accordance with Article 15 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 construction as provided below. All progress payments will be on the basis of progress of Work Measured by the number of units of each bid item completed times the bid unit price in the Unit Price Schedule of the Bid Form for that item.

1. Prior to Substantial Completion, progress payments will be made 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 amounts as ENGINEER may determine or OWNER may withhold, in accordance with Paragraph 15.01 of the General Conditions:

- a. The OWNER shall retain 5% of the amount of each progress payment until final completion and acceptance of the Work per the Contract Document requirements. At any time however, after the Work has been fifty percent (50%) completed, as determined by the Engineer, and if the character and progress of the Work have been satisfactory to the OWNER and ENGINEER, the OWNER on recommendation of the ENGINEER, may determine that there will be no additional retainage on account of Work completed, unless unsatisfactory progress or performance is documented. Reduction of retainage is at the sole discretion of the OWNER. The OWNER is not obligated to reduce retainage.
- b. Retainage will be 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 15.01 of the General Conditions).

2. Upon Substantial Completion and at the OWNER's discretion, the amount of retainage may be further reduced if requested by the CONTRACTOR.

7.03 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.

ARTICLE 8 INTEREST

8.01 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 9 CONTRACTORS REPRESENTATIONS

- 9.01 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 the Supplementary Conditions as provided in Paragraph 5.03 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 5.06 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 additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of 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 to be employed by the CONTRACTOR, and safety precautions and programs incident thereto.
 - F. 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.
 - K. **Technical Provisions**

1. None

ARTICLE 10 CONTRACT DOCUMENTS

10.01 Contents

- A. The Contract Documents consist of the following:

1. This Agreement.
2. Performance Bond;
3. Payment Bond;
4. Other Bonds;
5. General Conditions;
6. Supplementary Conditions;
7. Funding Agency Special Provisions;
8. Specifications as listed in the Table of Contents of the Project Manual;
9. Drawings consisting of a cover sheet and sheets numbered:

370 through 407

inclusive, with each sheet bearing the following general title:

County Water District of Billings Heights Water System Improvements Project

Note: Drawings are not attached hereto);

10. Addenda (numbers 1 to 2, inclusive);
11. Exhibits to this Agreement (enumerated as follows):
 - a. Notice of Award;
 - b. CONTRACTOR's Bid Form;
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award;
12. 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 10.01.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 10.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 11.01 of the General Conditions.

ARTICLE 11 MISCELLANEOUS

11.01 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.

11.02 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.

11.03 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.

11.04 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.

11.05 Errors and Omissions

- A. The Contract Documents listed in Article 9 of this Agreement are intended to be complementary and to describe and provide a complete work. The CONTRACTOR will not take advantage of an apparent error or omission in the plans and specifications. If the CONTRACTOR discovers such an error or omission, he will immediately notify the ENGINEER. The ENGINEER will then make such corrections and interpretation as may be deemed necessary for fulfilling the intent of the Contract Documents.

CONTINUED

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed _____ copies of this Agreement. _____ counterpart(s) has been delivered to OWNER, one to CONTRACTOR, and two

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 _____, 20____. (Which is the effective Date of the Agreement).

OWNER:

County Water District of Billings Heights
Peyton Brookshire, Assistant Manager

By: _____
(Signature)

Attest: _____
(Signature)

Addresses: (For Giving Notices)
1540 Popelka Drive
Billings, MT 59105

Phone: 406-252-0539

Facsimile: _____
[Corporate Seal]

CONTRACTOR:

Western Municipal Construction, Inc.

By: _____
(Signature)

Attest: _____
(Signature)

Addresses: (For Giving Notices)
5855 Elysian Road
Billings, MT 59101

Phone: 406-254-2106

Facsimile: _____
[Corporate Seal]

Contractor's Federal Tax ID Number (FEIN):
84 - 1388819

Montana Contractor's Registration No:
13329

Agent of 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: INTERSTATE ENGINEERING, INC.
Title: ENGINEER / RPR
PO Box 20953
Address: 1211 Grand Ave., Ste. 6
Billings, MT 59104-0953
Phone: (406) 256-1920
Facsimile: _____

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

CONTRACTOR's Designated Representative:

Name: _____
Title: _____
Address: _____
Phone: _____
Facsimile: _____

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PART 1 GENERAL

00.1.01 PROJECT IDENTIFICATION

County Water District of Billings Heights Water System Improvements Project

(Name of Project)

Billings, MT

(Location)

CONTRACT IDENTIFICATION AND NUMBER:

IEI# Y21 00 018

THIS BID SUBMITTED TO:

County Water District of Billings Heights

(Organization)

1540 Popelka Drive

(Street; P.O. Box)

Billings

(Town)

Montana

(State)

59105

(Zip Code)

00.1.02 PROJECT

- A. This project consists of a capital improvement to upgrade the District's water storage reservoirs as provided in **SECTION 00 11 13 ADVERTISEMENT FOR BIDS** of these Specifications.

00.1.03 PROPOSAL

- A. The undersigned Bidder, proposes and agrees if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents, to perform and furnish all Work as specified or indicated in the Bidding Documents for the process and within the times indicated in the Bid and in accordance with the other terms and conditions of the Bidding Documents.
- B. The undersigned Bidder is required to affix the Bidder's Montana Contractor's Registration Number and Employers Tax ID Number to their Bid.
- C. With these units as the basis, the bidder will extend such item, using the cost they insert in the unit column.
1. Any total cost found inconsistent with the unit cost when the bids are examined will be deemed in error and corrected to agree with the unit cost, which shall be considered correct.

00.1.04 EXAMINATION OF DOCUMENTS AND SITE VISIT

- A. The undersigned has examined the location of the proposed work, the Drawings, Specifications, and other Contract Documents, and is familiar with the local conditions and limitations at the place where the work is to be performed.
- B. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and

procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

- C. Bidder does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- D. Bidder is aware of the general nature of the Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- E. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents.
- F. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- G. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

00.1.05 **ADDENDA**

- A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
1	1/17/22
2	1/18/22

00.1.06 **BASIS OF PROPOSAL**

- A. All various phases of work enumerated in the Detailed Specifications with their individual jobs and overhead, whether specifically mentioned, included by implication or appurtenant thereto, are to be performed by the Contractor under one of the items listed in the bid schedule, irrespective of whether it is named in said list, and that the Owner may specify any number or combination of units that the Engineer may deem necessary for the construction of the Project.
- B. The undersigned bidder does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same work, and that it is made in pursuance of and subject to all the terms and conditions of **SECTION 00 21 00 INSTRUCTIONS TO BIDDERS**, the Construction Agreement, the Detailed Specifications, and the Plans pertaining to the work to be done, all of which have been examined by the undersigned.

00.1.07 CONTRACT TIME

- A. Base Bid:
 - 1. All construction schedules shall be shall be substantially complete and ready for OWNER's use and pre-final inspection within 120 calendar days from the Notice to Proceed, or by September 30th, 2022, whichever is sooner.
 - 2. All construction schedules shall be finally complete and ready for final payment within (30) calendar days of Substantial Completion.

00.1.08 LIQUIDATED DAMAGES

- A. Bidder further agrees to pay as liquidated damages the sum of \$250.00 for each calendar day or part of a day that the Contractor shall be in default of the time specified for any construction schedule.
- B. This is as provided in Paragraph 15.06.D of **SECTION 00 72 00 GENERAL CONDITIONS** of these Specifications.

00.1.09 BIDDER'S PROPOSAL

- A. Estimated quantities shown in this section are approximate quantities based on calculations performed by the Engineer. The Contractor is responsible for satisfying him or herself as to the accuracy of these quantities. The quantities shown in the Unit Price Schedule are for the purpose of comparing bids. Payment will be made at the unit price bid for each item multiplied by the quantity of that item furnished and/or installed, and accepted.

- B. Schedule of Rates

L&M = Labor and Materials	LS = Lump Sum
SY = Square Yard	SF = Square Foot
CY = Cubic Yard	LF = Lineal Foot
VF = Vertical Foot	HR = Hour
EA = Each	

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BASE BID County Water District of Billings Heights					
Item No.	Description	Unit	Quantity	Unit Price	Extended Unit Price
101	General Requirements (Not to Exceed 5% of Total Bid Price)	LS	1	15,000. ⁰⁰	15,000. ⁰⁰
102	Mobilization and Demobilization (Not to Exceed 5% of Total Bid Price)	LS	1	19,000. ⁰⁰	19,000. ⁰⁰
103	Taxes, Bonds, and Insurance (Not to Exceed 5% of Total Bid Price)	LS	1	10,000. ⁰⁰	10,000. ⁰⁰
104	Hilltop Reservoir Site Improvements	LS	1	11,000. ⁰⁰	11,000. ⁰⁰
105	Lanier Reservoir Site Improvements	LS	1	11,000. ⁰⁰	11,000. ⁰⁰
106	Ox Bow Reservoir Site Improvements	LS	1	336,420. ⁰⁰	336,420. ⁰⁰
107	Exploratory Excavation	HR	4	190. ⁰⁰	760. ⁰⁰
108	Materials Testing	EA	5,000	\$1.00	\$5,000.00
109	Miscellaneous Work	UNIT	15,000	\$1.00	\$15,000.00

\$ 423,180.⁰⁰
 (Figures)

BID: Four Hundred Twenty Three Thousand One Hundred Eighty Dollars + Zero Cents
 (Words)

00.1.10 BASIS OF BID, EVALUATION OF BID

- A. The undersigned understands that the OWNER reserves the right to reject any or all Proposals or to waive any formality or technicality in any Proposal in the interest of the OWNER.
- B. Bidders shall submit a Bid on a unit price and/or lump sum basis for each Schedule of Work listed in the Bid Schedule as provided in the Bid Form. The Bid will not be considered unless the Bid Form contains prices for all unit price and/or lump sum items, and alternates, as shown on the Bid Form. Owner will award the Contract to the responsible bidder whose Bid, conforming with all material terms and conditions of the Bidding Documents, is lowest price, is in the best interest of the Project and may include any combination and/or all Schedules and Additive Alternatives selected by the Owner, and other factors considered.
- C. Unit Price Work will be computed in accordance with Paragraph 13.03 of the General Conditions.

- D. Bidder acknowledges that estimated quantities are not guaranteed, are solely for the purpose of comparison of bids, and final payment for all Unit Price Bid Items will be based on actual quantities provided, determined as provided in the Contract Documents.
- E. The undersigned agrees that the unit prices shall govern in checking the bid, and should a discrepancy exist in the Total Bid Amount and Total Amount of Unit Prices Bid as listed above after extensions are checked and corrections made, if any, the total Amount of Unit Prices Bid as corrected shall be used in awarding this Contract.
- F. Bidder agrees that the Work will be substantially completed and ready for final payment in accordance with 15.03 and 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- G. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.
- H. The following documents are attached to and made a condition of the Bid:
 - 1. Accompanying this Proposal is a Bidder's Bond payable to the OWNER in the amount of ten percent (10%) of this bid, in accordance with the provisions of **SECTION 00 21 13 INSTRUCTIONS TO BIDDERS** of these Specifications.
- I. The terms used in this Bid with the initial capital letters have meanings indicated in the Instructions to Bidders, General Conditions, and the Supplementary Conditions.
- J. If requested, the apparent successful bidder, and any other bidder as requested, shall submit to the Engineer a list of all such subcontractors, suppliers, individuals or entities proposed for the work within five (5) working days of the request and after the bid opening. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each subcontractor, suppliers, individual or entity.

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Contractor and Subcontractor Information	
ITEM:	DESCRIPTION / ITEM MET:
Contractor	Western Municipal Construction, Inc. 5855 Elysian Rd. Billings, MT 59101
Project Reference	Makoshika State Park Water Supply Watermain installation with ductile iron pipe
Project Reference	Billings Heights Rawhide Transmission Main Watermain installation via open cut
Project Reference	Oxbow Transmission Main, Water System Improvements
Subcontractor	Canyon Electric 5445 Hesper Rd. Billings, MT 59106
Project Reference	Hysham Lift Station Improvements/Electrical
Project Reference	Absarokee Waste Water Improvement/Electrical
Project Reference	Laurel Intake Improvements/Electrical

CONTINUED



WESTERN MUNICIPAL CONSTRUCTION, INC.

5855 Elysian Road Billings, MT 59101

Phone (406) 254-2106 Fax (406) 245-9736

SUBCONTRACTORS

Bishop Construction, LLC/Concrete Foundation
P.O. Box 50027
Billings, MT 59105
(406)670-0656

Bearthooth Holding and Construction/Building Contractor
2108 Broadwater Ave., Ste 100
Billings, MT 59102
(406)414-0701



SOME OF OUR PROJECTS



LOTS AVAILABLE!

[MORE INFO](#)



LOTS AVAILABLE!

[MORE INFO](#)

- Laramie River Station Warehouse, Wheatland WY
- Wolf Point Multi-Use Facility, Wolf Point MT
- Colstrip Maintenance Facility, Colstrip MT
- A&S Diversified Industrial Complex Renovation, Poplar MT
- Little Dell Dam, SLC UT
- Sulphur Creek Dam, Evanston WY
- Coeur d'Alene Waste Water Treatment Plant- Phase II and III, Coeur d'Alene ID
- SLC Airport Skywest Hanger Facility, Salt Lake City UT
- South Town Mall, Sandy UT
- Western Sky Subdivision, Billings MT
- Mont Vista Subdivision, Billings MT
- Highland Properties, Billings MT
- Brookwood Subdivision, Billings MT
- Pheasant Brook Subdivision, Billings MT
- North Hill Estates, Billings MT
- Collingwood Estates, Billings MT
- L&L Investments, Billings MT
- Metro Property Management, Billings MT
- INL NRF Cask Shipping & Receiving Facility, Arco ID
- IM Flash B40 Expansion, Lehi UT
- Teton Radiology, Rexburg ID
- Madison Memorial Hospital, Rexburg ID
- BYU-Idaho Manwaring Center Remodel and Addition, Rexburg ID
- BYU-Idaho Central Plant Project, Rexburg ID
- BYU-Idaho Auditorium, Rexburg ID

00.1.11 TAXES

- A. The undersigned agrees that the prices in this Contractor's Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment to be incorporated in the Project.
- B. The Bidder agrees to pay all such taxes and to furnish to the appropriate taxing authorities all required information and reports pertaining thereto.

00.1.12 GOVERNMENTAL REQUIREMENTS

- A. The CONTRACTOR agrees to conform to the Governmental Requirements in **SECTION 00 73 73 STATUTORY REQUIREMENTS** of these Specifications.

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00.1.13 PERFORMANCE AND PAYMENT BOND

- A. As shown in Contract Security and Signing of Agreement, as specified in **SECTION 00 21 13 INSTRUCTIONS TO BIDDERS** of these Specifications, the undersigned bidder agrees to execute the Agreement and a Performance and Payment Bond for the amount of the total of this bid within fifteen (15) calendar days from the date when the written notice of the award of the Contract is delivered to them at the address given on this proposal.
- B. The name and address of the corporate surety with which the Bidder proposes to furnish the specified Performance and Payment Bond is as follows:

Corporate Surety: Fidelity and Deposit Company of Maryland
Business Address: 1299 Zurich Way, 5th Floor
Schaumburg, IL 60196

00.1.14 THE ABOVE PROPOSAL IS HEREBY RESPECTFULLY SUBMITTED BY:

Submitted On 1/19/22
(Date)
Montana Contractor's Registration # 13329
Employer's Tax ID No. 84-1388819

If BIDDER is:

An Individual: _____
(Name typed or printed)

By: _____
(Individual's Signature)

Doing business as: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

A Partnership:

(Partnership Name typed or printed)

By:

(Signature)

(Name typed or printed)

Business Address:

Phone No.:

Fax No.:

A Corporation:

Western Municipal Construction, Inc.

(Corporation Name typed or printed)

State of
Incorporation:

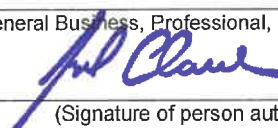
Montana

Type:

General Business

(General Business, Professional, Service, Limited Liability)

By:

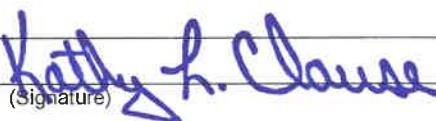

(Signature of person authorized to sign)

Title:

President

Attest:

Kathy Clause, Secretary


(Signature)

Business Address:

5855 Elysian Rd., Billings, MT 59101

Phone No.:

(406)254-2106

Fax No.:

(409)245-9736

Date of Qualification to do Business is:

3/3/97

(Corporate Seal)

A Joint Venture: Each Joint Venture Must Sign

Joint Venture Name:

_____ (Name typed or printed)

By:

_____ (Signature of Joint Venture Partner)

Title:

Business Address:

Phone No.:

Fax No.:

Joint Venture Name:

_____ (Name typed or printed)

By:

_____ (Signature of Joint Venture Partner)

Title:

Business Address:

Phone No.:

Fax No.:

Address of Joint Venture for Receipt of Official Communication:

Business Address:

Phone No.:

Fax No.:

(Each Joint Venture must sign. The manner of signing for each individual, partnership and corporation that is party to the joint venture should be in the manner indicated above.)

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BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (Name and Address): Western Municipal Construction, Inc.
5855 Elysian Road, Billings, MT 59101

SURETY (Name, and Address of Principal Place of Business):
Fidelity and Deposit Company of Maryland
1299 Zurich Way, 5th Floor
Schaumburg, IL 60196

OWNER (Name and Address): County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105

BID

Bid Due Date: January 19, 2022

Description (Project Name— Include Location): Water System Improvements Project, Billings, MT

BOND

Bond Number: Bid Bond

Date: January 18, 2022

Penal sum Ten Percent of Amount Bid \$ 10%
(Words) (Figures)

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

BIDDER Western Municipal Construction, Inc. (Seal) **SURETY** Fidelity and Deposit Company of Maryland (Seal)
Bidder's Name and Corporate Seal Surety's Name and Corporate Seal

By: Jock Clause
Signature
Jock Clause
Print Name
President
Title

By: Naomi Gerber
Signature (Attach Power of Attorney)
Naomi Gerber
Print Name
Attorney in Fact
Title

Attest: Kathy H. Clause
Signature
Kathy Clause
Title
Secretary

Attest: Allan Hultgren
Signature
Allan Hultgren
Title
Witness

Note: Addresses are to be used for giving any required notice.
Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

Bond No. Bid Bond
Obligee County Water District of Billings Heights

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Naomi Gerber, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 31st day of December, A.D. 2019.



ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: *Robert D. Murray*
Vice President

By: *Dawn E. Brown*
Secretary

State of Maryland
County of Baltimore

On this 31st day of December, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn, Notary Public My
Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Secretary of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 18 day of January, 2022.

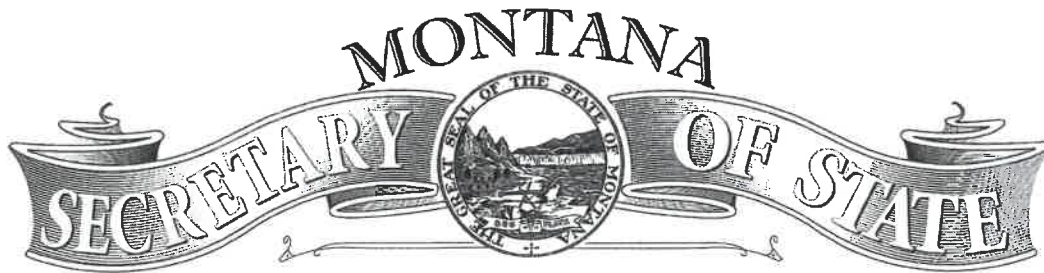


Brian M. Hodges

By: Brian M. Hodges
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577



CERTIFICATE OF EXISTENCE

I, **CHRISTI JACOBSEN**, Secretary of State for the State of Montana, do hereby certify that:

WESTERN MUNICIPAL CONSTRUCTION, INC.

duly filed its **Domestic Profit Corporation** in this office on **March 3, 1997**, and on that date was authorized to transact business in this state **for a term of perpetual duration**.

Payment is reflected in the records of the Secretary of State for all fees owed to the Secretary of State.

The most recent annual report has been filed with this office.

No articles of dissolution have been placed on the record in this office by said corporation and the records indicate the corporation is in good standing under the laws of the State of Montana.

The Secretary of State cannot certify that tax and penalties owed to this state on record with the Department of Revenue are current. Please contact the Department of Revenue at (406) 444-6900 to obtain information on the tax status.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this 15th day of February, 2021.

Christi Jacobsen

Christi Jacobsen
Montana Secretary of State

Certificate Number: 8158527



Montana Department of
LABOR & INDUSTRY

CERTIFICATE OF CONTRACTOR REGISTRATION

WESTERN MUNICIPAL CONSTRUCTION INC
5855 ELYSIAN RD
BILLINGS, MT 59101

STATUS
Employer

REGISTRATION NO.
13329

EFFECTIVE DATE
03/04/2020

EXPIRATION DATE
03/03/2022

Visit our website at www.mtcontractor.com or call the
Registration Section at 406-444-7734 for more information
or to verify the validity of this certificate.

ADDENDUM NO. 1

COUNTY WATER DISTRICT OF BILLINGS HEIGHTS
YELLOWSTONE COUNTY, MONTANA
I.E. #Y21-00-018

- DATE ISSUED:** January 17th, 2022
- PREBID MEETING:** Wednesday January 12th, 2022 (Local Time)
Ox Bow Reservoir Site
3500 Hawthorne Lane
Billings, MT 59105
- BIDS DUE:** Wednesday January 19th, 2022 at 3:00PM (Local Time)
County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105
- BID OPENING:** Wednesday January 19th, 2022 at 3:00PM (Local Time)
County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105

THE FOLLOWING ADDITIONS, CORRECTIONS, AND/OR CLARIFICATIONS SHALL BE MADE TO THE SPECIFICATIONS, DRAWINGS, AND/OR CONTRACT DOCUMENTS:

- Item 1: Plans: Addendum #1 noted on Cover Sheet. Added siding width/reveal, added finish for the concrete slab, added control joint to concrete slab, added door coverings/finishes, added perforated aluminum soffit, on plan sheets S-1, S-2, and S-3.

The following questions were asked at the pre-bid walk through or other communications between the Engineer, Subconsultant, Prime Bidder, or Subcontractor:

Q: Is there welding on the project? If so, are welders required to be AWS certified?

A: No welding is anticipated. If required, all welders must be AWS certified.

Q: Plans say to use Robroy PVC coated conduit for inside the building but what type of conduit gets used for underground and exterior installations? The contractors would like a clarification regarding why type of conduit goes in each location: GRC, RMC, Robroy, or PVC (Schedule 40 or 80)?

A: All conduit shall be Schedule 40 PVC suitable for indoor, outdoor, and direct burial uses. Conduit shall meet the sunlight resistance test as found in UL Standard UL651. Conduit bodies (pull boxes) and covers, flush-device boxes and covers, and outlet boxes and covers that are constructed of rigid PVC or another nonmetallic material and are for use with the rigid PVC conduit and fittings covered in these requirements shall meet UL 514C, Standard for Nonmetallic Outlet Boxes, Surface-Mount Boxes, Flush-Device Boxes, and Covers.

Q: Conduit size is not always stated (1/2", 5/8" 3/4", 1" etc.) such as inside bldg. for convenience outlets, lighting, etc.

A (IMEG Response): Minimum interior conduit size shall be 1/2 inch as noted in spec section above. Minimum exterior conduit size shall be 3/4 inch.

Q: What is the required interval for fastening conduit?

A (IMEG Response): Support conduit a minimum of every 10 feet unless otherwise stated on plans or specifications.

Q: Can a lattice-type structure be used in lieu of the specified pole at the Ox Bow location?

A: "Substitutes" and "Or Equal" products will be considered only after a contract is awarded.

Q: What is the wall construction of the Hilltop and Lanier pumping stations?

A: Hardie plank exterior siding, plywood exterior sheathing, 2" x 6" wood-framed, insulated walls, plywood interior sheathing, and 0.09" FRP interior wall covering.

Q: Sheets E-1 and E-2, Keynote 2202 states that a pin adapter is required.

A: It is not known if the terminal block for the IXOM mixer controller will accommodate the specified #8 AWG wire. Therefore, an adapter may need to be provided to connect the #8 wire to the terminal block.

MISCELLANEOUS

1. Belzona 1212 epoxy shall be used to mount Unistrut or other electrical conduit fasteners to the shotcrete sidewalls of the Hilltop and Lanier tanks. Surfaces to receive epoxy adhesive shall be prepared by grinding metal surfaces and power washing shotcrete surfaces. Electrical conduit shall be secured to tank sidewalls at top, bottom, and a minimum of 10' intervals. For mid-wall attachments, spacing shall be approximately equal between attachment points. The Belzona rep for the Billings area is Mike Dana, 406-544-9179 (cell).
2. The Scope of Work for the IXOM Watercare products and services is attached.
3. The Scope of Work for the MicroComm SCADA products and services is attached.

.....
THIS ADDENDUM CONSISTS OF THE ABOVE PLUS:
.....

NOTE: THE CONTRACTOR IS REQUIRED TO ACKNOWLEDGE THE RECEIPT OF EACH ADDENDUM IN THE PROPOSAL AND ON THE OUTSIDE OF THE BID ENVELOPE.

Issued by:

Interstate Engineering, Inc.

Lowell J. Cutshaw, PE

lowell.cutshaw@interstateeng.com


406-489-3410 (cell)

Attachments:

1. Pre-Bid Meeting Attendance Contact Information.
2. Scope of Work for the IXOM Watercare products and services.
3. Scope of Work for the MicroComm SCADA products and services.

END OF ADDENDUM NO. 1

**BIDDER ACKNOWLEDGES THE RECEIPT OF THIS ADDENDUM NO. 1
(THIS SHEET SHALL BE SUBMITTED WITH THE PROPOSAL)**

Received	Date:	1/19/22
	By:	
		Jock Clause
	Title:	President

ADDENDUM NO. 2

**COUNTY WATER DISTRICT OF BILLINGS HEIGHTS
YELLOWSTONE COUNTY, MONTANA
I.E. #Y21-00-018**

- DATE ISSUED:** January 18th, 2022
- PREBID MEETING:** Wednesday January 12th, 2022 (Local Time)
Ox Bow Reservoir Site
3500 Hawthorne Lane
Billings, MT 59105
- BIDS DUE:** Wednesday January 19th, 2022 at 3:00PM (Local Time)
County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105
- BID OPENING:** Wednesday January 19th, 2022 at 3:00PM (Local Time)
County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105

THE FOLLOWING ADDITIONS, CORRECTIONS, AND/OR CLARIFICATIONS SHALL BE MADE TO THE SPECIFICATIONS, DRAWINGS, AND/OR CONTRACT DOCUMENTS:

Addendum #1 erroneously stated that all conduits were to be Schedule 40 PVC. **All conduits shall be Schedule 80 PVC** suitable for indoor, outdoor, and direct burial uses. Conduit shall meet the sunlight resistance test as found in UL Standard UL651. Conduit bodies (pull boxes) and covers, surface mount boxes and covers, flush-device boxes and covers, and outlet boxes and covers that are constructed of rigid PVC or another nonmetallic material and are for use with the rigid PVC conduit and fittings covered in these requirements shall meet UL 514C, Standard for Nonmetallic Outlet Boxes, Surface-Mount Boxes and Covers, Flush-Device Boxes and Covers.

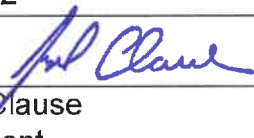
.....
THIS ADDENDUM CONSISTS OF THE ABOVE PLUS: NONE
.....

NOTE: THE CONTRACTOR IS REQUIRED TO ACKNOWLEDGE THE RECEIPT OF EACH ADDENDUM IN THE PROPOSAL AND ON THE OUTSIDE OF THE BID ENVELOPE.

Issued by:
Interstate Engineering, Inc.
Lowell J. Cutshaw, PE
lowell.cutshaw@interstateeng.com
406-489-3410 (cell)

END OF ADDENDUM NO. 2

**BIDDER ACKNOWLEDGES THE RECEIPT OF THIS ADDENDUM NO. 2
(THIS SHEET SHALL BE SUBMITTED WITH THE PROPOSAL)**

Received	Date:	1/19/22
	By:	
	Title:	Jock Clause President

PART 1 GENERAL

- A. The successful bidder shall furnish a performance and payment bond equal to the contract amount in conformance with Part 2 of Title 18 of the Montana Code Annotated.
- B. The surety and form of the bonds shall be subject to the approval of the contracting authority.
- C. The performance and payment bonds shall remain in effect until the expiration of the warranty period defined in the Bid Documents.
- D. Performance Bond shall be provided on EJCDC C-610 Performance Bond Form as included herein (3 pages).
- E. Payment Bond shall be provided on EJCDC C-615 Payment Bond Form as included herein (3 pages).

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

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PERFORMANCE BOND

CONTRACTOR *(name and address)*:
Western Municipal Construction, Inc.
5855 Elysian Road
Billings, MT 59101

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

OWNER:
County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
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

SURETY

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

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:

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PAYMENT BOND

CONTRACTOR *(name and address)*:

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

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

OWNER:

County Water District of Billings Heights
1540 Popelka Drive
Billings, MT 59105

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description:

BOND

Bond Number:

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

Amount:

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

SURETY

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

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 in the terms of "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:

END OF SECTION

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