



## SECTION 00 52 10 AGREEMENT<sup>1</sup>

This Agreement is by and between Vernal City (Owner) and Stearns Construction, Inc. (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

### Article 1 – **WORK**

1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents.

### Article 2 – **THE PROJECT**

2.1 The Project is generally described as follows:

Installation of sidewalk, curb, and gutter on both sides of 100 East Street from 200 South to 400 South.

2.2 ENGINEER

2.3 The Project has been designed by CRS Engineers (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

### Article 3 – **CONTRACT TIMES**

3.1 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.

3.2 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 60 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.3 of the General Conditions and completed and ready for final payment in accordance with Paragraph 14.7 of the General Conditions within 75 calendar days after the date when the Contract Times commence to run.

3.3 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 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 \$800 for each day that expires after the time specified in Paragraph 4.2 for Substantial Completion until the Work is substantially complete and usable or functional. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.2 for completion and readiness for final payment until the Work is completed and ready for final payment.

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<sup>1</sup> Adapted from EJDC C-520 Suggest Form of Agreement Between Owner and Contractor for Construction Contract.

**Article 4 – CONTRACT PRICE**

- 4.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, at the prices stated in Contractor's Bid, attached hereto as an exhibit.
- A. In the event of any change order, or any change that would act to increase the Contract Price the Contractor must provide, in a form acceptable to Owner, an amendment to the Performance Bond and Payment Bond to cover the increased Contract Price within ten business days after the change or change order. In the alternative Contractor may provide an additional bond or surety to cover the increased Contract Price in a form acceptable to owner.

**Article 5 – PAYMENT PROCEDURES**

- 5.1 Submittal and Processing of Payments
- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 5.2 Progress Payments; Retainage
- A. The progress payment period will end on the 20th of each month. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment for Work that has been completed during the progress payment period as provided in Paragraphs 6.2.A.1 and 6.2.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.7.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.2 of the General Conditions:
    - a. 95 percent (95%) of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and
    - b. 90 percent (90%) of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent (95%) of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.2.B.5 of the General Conditions and less 100 percent (100%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- 5.3 Final Payment
- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.7 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.7.

**Article 6 – INTEREST**

- 6.1 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 3 percent (3%) per annum.



## Article 7 – **CONTRACTOR'S REPRESENTATIONS**

- 7.1 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 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 all general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or 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) as provided in Paragraph 4.2 of the General Conditions, and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site as provided in Paragraph 4.6 of the General Conditions.
  - E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all 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 to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, 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 of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
  - I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## Article 8 – **CONTRACT DOCUMENTS**

### 8.1 Contents

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 00 52 10 - 1 to 00 52 10 - 5, inclusive).
  - 2. Performance Bond (pages 00 61 00 - 1 to 00 61 00 - 3, inclusive).
  - 3. Payment Bond (pages 00 61 50 - 1 to 00 61 50 - 3, inclusive).
  - 4. General Conditions (pages 00 72 00 - 1 to 00 72 00 - 42, inclusive).
  - 5. Specifications as listed in the table of contents of the Project Manual.



6. Supplemental Utah Labor Conditions (page 00 73 05 - 1)
7. Drawings as listed in on the Drawings Title Sheet and bearing the following general title: Pavement Management
8. Addendum (1 and 2, inclusive)
9. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid Form (pages 00 41 00).
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed (page 00 55 00 - 1).
  - b. Work Change Directives.
  - c. Change Order(s).
- B. The documents listed in Paragraph 9.1.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.4 of the General Conditions.

Article 9 – **MISCELLANEOUS**

9.1 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions. Those not defined in the Contract Documents shall have the meaning generally accepted as defined in a dictionary of general use.

9.2 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 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.

9.4 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.

In Witness Whereof, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on June 1, 2022 (which is the Effective Date of the Agreement).



Owner:

Vernal City

Contractor:

Stearns Construction, Inc.

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

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

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

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

[CITY SEAL]

[ENTITY SEAL]

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

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

Address for giving notices:

Vernal City  
374 East Main Street  
Vernal, Utah 84078

Address for giving notices:

Dennis Stearns Construction, Inc.  
2746 E Pebble Acres Dr.  
Vernal, UT

License No: 273449-5501

Agent for service or process: \_\_\_\_\_

\_\_\_\_\_  
(If Contractor is an entity, attach evidence of authority to sign.)

**END OF DOCUMENT**



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