

AGREEMENT  
BETWEEN CITY OF MINOT, ND AND ACKERMAN-ESTVOLD  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of June 12, 2019 ("Effective Date") between City of Minot ("Grantee") and Ackerman-Estvold ("Engineer"). Grantee's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Determining site locations for Wayfinding Signs for Downtown District and connected areas ("Project"). Engineer's services under this Agreement are generally identified as physical identification of Wayfinding sign site locations in the Downtown District and connected areas as well as locations elsewhere in city limits directing to the Downtown District. See Exhibit A for detailed scope of services.

Grantee and Engineer further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide, or cause to be provided, the services set forth in Exhibit A, which is attached to and incorporated by reference into this Agreement. If authorized by Grantee, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Grantee shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02 and Exhibit A.
- B. The scope of services governed by this agreement are to study and report phase work as described more specifically in Exhibit A. Engineer shall complete its services within a reasonable time, but no later than 120 days from date of Notice to Proceed issued by the city.

2.01 Payment Procedures

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Grantee on a monthly basis. Invoices are due and payable within 30 days of receipt. If Grantee fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.75% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven day's written notice to Grantee, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Grantee waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal. All payments under this Agreement shall be in United States Dollars.
- B. Obligation to Pay: Grantee's obligation to pay for Engineer's services under this Agreement is contingent on work being performed by the Engineer being consistent with the requirements of this agreement to assure the Grantee's ability to remain in compliance with HUD requirements for eligible use of the CDBG-NDR grant funds.

### 3.01 Termination

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 day's written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

b. By Engineer:

1) upon seven day's written notice if Grantee demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven day's written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Grantee on account of a termination by Engineer under Paragraph 3.01, A. 1. b.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1 -a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Grantee effective upon Engineer's receipt of written notice from Grantee.

B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. All work partially or fully completed as of the termination for which payment is made shall be provided to the Grantee electronically or hard copy as determined by the Grantee.

C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Grantee and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination provided that documentation set forth in Exhibit B. is provided to the Grantee.

#### 4.01 Successors, Assigns, and Beneficiaries

- A. Grantee and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Grantee and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Grantee and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Grantee nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. 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 this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Grantee or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Grantee and Engineer and not for the benefit of any other party.

#### 5.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards,
- B. Engineer understands that, the City must disclose to the public upon request any records relating to public business. Engineer understands that any records obtained or generated by Engineer under this Agreement may, under certain circumstances, be open to the public upon request under North Dakota public records law. Engineer agrees to contact Grantee promptly upon receiving a request for information under the public records law and to comply with Grantee's instructions on how to respond to the request. Further, upon request and at no additional cost to Grantee, Engineer agrees to provide copies of all documents obtained or generated by Engineer for the Project. All documents prepared or furnished by Engineer are instruments of service, and Engineer agrees that the document will become property of the Grantee once the project is completed, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Grantee acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Grantee or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the document, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Grantee's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, planners, agents employees, and consultants; (3) To the fullest extent permitted by North Dakota law and subject to terms of Grantee's liability insurance and limits of such insurance,

Grantee shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptations by Engineer, and (4) such limited license to Grantee shall not create any rights in third parties.

- C. To the fullest extent permitted by North Dakota law, Grantee and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) the total liability shall be up to the maximum professional liability insurance proceeds.
- D. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Grantee: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. Grantee and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute, after which, if such negotiations are unsuccessful, the parties may exercise their rights at law.
- F. This Agreement is to be governed by the law of the State of North Dakota, without regard to its conflicts of laws principles. Any action to enforce this Agreement must be adjudicated exclusively in the State District Court of Ward County, North Dakota.
- G. This Agreement is to follow CDBG-DR and CDBG-NDR regulations per attached Exhibit B.

#### 6.01 Miscellaneous

A. Compliance with Laws. Grantee agrees that it and any agents shall comply with all applicable federal, state, and local laws, regulations, and rules, including, but not necessarily limited to those specifically outlined in Exhibit B, which is attached and incorporated by reference into this Agreement.

B. Total Agreement. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Grantee and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument signed by both parties.

C. Severability. If a Court finds any part of this Agreement to be invalid, the remainder of this Agreement shall not be invalidated. Any part of any section found to be invalid shall not invalidate the remaining part of said section, and the invalid section may be reformed to be valid and enforceable to the extent allowed by law.

D. Notice. All notices required or permitted hereunder shall be in writing and sent via mail or electronic

means as provide below. Any such notice will be effective upon receipt. Any party may change its responsible officer or its address by written notice to the other party.

Engineer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantee:

City of Minot  
c/o Finance Director  
PO Box 5006  
Minot, ND 58702  
Email: [finance@minotnd.org](mailto:finance@minotnd.org)

E. Authority. Both parties represent and warrant that it has the authority to enter into this Agreement and to perform its obligations hereunder. Both parties also represent and warrant that the person who executes this Agreement on its behalf has the necessary authority to bind the individual part.

7.01 Basis of Payment—I-Hourly Rates to the maximum of \$30,000.

A. Using the procedures set forth in Paragraph 2.01, Grantee shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project.
2. Engineer's Standard Hourly Rates are attached as part of Exhibit A.
3. The total compensation for services shall not exceed \$30,000.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page I.

GRANTEE:

  
\_\_\_\_\_

ENGINEER:

  
\_\_\_\_\_

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Handwritten text, possibly a signature or name, written in cursive.

**EXHIBIT A  
TO AGREEMENT BETWEEN  
GRANTEE AND ENGINEER  
Scope of Work**

This is an exhibit attached to and made a part of the Agreement dated June 12, 2019, between City of Minot (GRANTEE) and Ackerman-Estvold (ENGINEER) for professional services.

**A. ENGINEER'S SERVICES**

Within the City of Minot Downtown District and along the associated Souris River Greenways, identify recommended locations for wayfinding signs for both vehicle and pedestrian use which will serve to identify business, professional, cultural, religious, social and other uses in buildings within defined area (i.e. blocks, end to end streets) in the downtown, and passive recreational uses along the greenways.

Concurrently, identify recommended locations for wayfinding signs which highlight historical locations, buildings, and areas within the downtown and all the associated Souris River Greenways.

Outside the downtown district and along the Souris River Greenway, identify recommended site locations for wayfinding signs to be strategically located as directional signs for vehicles and pedestrians leading to the downtown district and the associated Souris River Greenway.

Consult with applicable city/county/state agencies which have jurisdiction of right of ways and streets where locations will be recommended to determine suitability of such locations and processes required for obtaining approvals for such locations

Provide a narrative basis explaining the reasoning for site locations of signs as well as an accompanying map visually identifying all locations.

Provide a sample of wayfinding signs now in use in other downtowns which would be consistent with the character of Minot downtown including signs with capacity for use of wayfinding app technology and estimated prices for the sample signs.

Provide 20 copies of the final report to the city.

**B. TIME PERIOD FOR PERFORMANCE**

The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

Services are to be completed no later than 120 days from date of Notice to Proceed issued by the city.

**C. METHOD OF PAYMENT**

The method of payment for Services rendered by ENGINEER shall be as set forth below:

ENGINEER shall be compensated an amount not to exceed THIRTY THOUSAND DOLLARS (\$30,000). The ENGINEER shall invoice the GRANTEE on a monthly basis based upon actual hours worked by each individual using the following hourly rates:

<u>Category</u>	<u>Hourly Rate</u>
Principle in Charge/Project Manager	\$210
Lead Architect	\$170
Creative Director	\$140
Traffic Engineer	\$210
Cultural/Historic	\$170
Environmental	\$160
Communication/Marketing	\$140

The agreed upon hourly rates are inclusive of all costs such as direct labor, benefits, incidentals, travel and other direct costs for production including supplies, printing, binding, and postage. Timesheets shall be submitted as documentation with the invoices. The ENGINEER agrees that any work performed found to be deficient, shall be corrected at no cost to the GRANTEE.

#### D. PERFORMANCE MONITORING AND PERFORMANCE PENALTY CLAUSES

The ENGINEER shall be cooperative with Program and financial monitoring visits and/or investigations performed by the GRANTEE's staff, the City Auditor's staff, and/or the U.S. Department of Housing and Urban Development (HUD) and OIG.

If the ENGINEER fails to meet milestones specifically relating to funds disbursed within the agreed upon deliverable time frame set forth in this agreement or associated approved amendments, the following penalties will be placed on the ENGINEER in sequential order.

1. A performance plan must be created within 7 days to demonstrate how the ENGINEER will regain performance and set an agreed upon timeline. If performance is not regained within the time agreed upon then;
2. The ENGINEER may receive a monetary penalty of up to \$250 per day for each business day that performance is not regained, up to a maximum penalty period of thirty (30) business days.
3. The penalty will stop upon written acceptance by the GRANTEE of ENGINEER's corrective action.

The penalty terms must be invoked in writing at the sole discretion of the GRANTEE. At any point after the invocation of the penalty terms, the ENGINEER may request forbearance. This request shall be in writing and should provide a detailed explanation of why forbearance is warranted. It shall be at the sole discretion of the GRANTEE to grant forbearance.

As such is warranted, the GRANTEE will notify the ENGINEER in writing of the default specified herein, and of the penalty assessment. Such penalty will be paid by ENGINEER within 30 calendar days of GRANTEE's written notice.



**EXHIBIT B TO AGREEMENT  
BETWEEN  
GRANTEE AND ENGINEER  
FOR  
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**CDBG Program Requirements**

This is an exhibit attached to and made a part of; and incorporated by reference into the Agreement dated \_\_\_\_\_, between City of Minot (GRANTEE) and Ackerman-Estvold (ENGINEER) for professional services.

**1. Civil Rights**

The ENGINEER agrees to comply with Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 109 of Title 1 of the Housing and Community Development Act of 1974; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; Executive Order 11246, as amended by Executive Orders 11375 and 12086; and all other applicable requirements of 24 C.F.R. Part 570, Subpart K.

The ENGINEER agrees to comply with any Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in any federally assisted program. The GRANTEE will provide the ENGINEER with any guidelines necessary for compliance with that portion of the regulations during the term of this Agreement.

**2. Nondiscrimination**

The ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance.

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

The ENGINEER shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The ENGINEER agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the GRANTEE setting forth the provisions of this nondiscrimination clause. The ENGINEER

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shall also abide by Title IX of the Education Amendments of 1972 (20 U.S.C.A. 1681 *et seq.*) which prohibits sex discrimination in federally assisted education programs.

**3. Affirmative Action**

A. Approved Plan (applicable for contractors with 50 or more employees and contracts over \$50,000)  
The ENGINEER agrees that it shall be committed to carry out, pursuant to the GRANTEE's specifications, an Affirmative Action Program in keeping with the principles as provided in Presidential Executive Order 11246 of September 24, 1965. The GRANTEE will provide Affirmative Action guidelines to the ENGINEER to assist in the formulation of such program, upon request.

B. Women/Minority Business Enterprise

The ENGINEER shall use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and women business enterprise" means a business that is at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans, and American Indians. The ENGINEER may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.

C. Notifications

The ENGINEER shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the ENGINEER's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. EEO/AA Statement

The ENGINEER shall, in all solicitations or advertisements for employees placed by or on behalf of the GRANTEE, state that it is an Equal Opportunity or Affirmative Action Employer, as applicable.

The ENGINEER agrees to comply with Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 109 of Title 1 of the Housing and Community Development

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Act of 1974; Section 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; Executive Order 11246, as amended by Executive Orders 11375 and 12086; and all other applicable requirements of 24 C.F.R. Part 570, Subpart K.

The ENGINEER agrees to comply with any Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in any federally assisted program. The GRANTEE will provide the Program Administrator with any guidelines necessary for compliance with that portion of the regulations during the term of this Agreement.

**4. Section 109 of the Housing and Community Development Act of 1974**

The Contractor/ENGINEER shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

**5. Section 503 of the Rehabilitation Act of 1973 (29 USC 793) (applicable to contracts and subcontracts over \$10,000)**

- A. The ENGINEER will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The ENGINEER agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The ENGINEER agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

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- C. In the event of the ENGINEER's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
  
- D. The ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the ENGINEER's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
  
- E. The ENGINEER will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the ENGINEER is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
  
- F. The ENGINEER will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The ENGINEER will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**6. Section 504 OF THE Rehabilitation Act of 1973, As Amended**

The ENGINEER agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program, or activity that receives the benefits from the federal financial assistance.

**7. Age Discrimination Act of 1975**

The ENGINEER shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

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**8. Certification of Nonsegregated Facilities (applicable to contracts and subcontracts over \$10,000)**

The ENGINEER certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this AGREEMENT.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

**9. Section 3 of the Housing and Urban Development Act of 1968 – Compliance in the Provision of Training, Employment and Business Opportunities**

**A. Compliance**

The ENGINEER agrees to comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders. The ENGINEER understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the GRANTEE, the PROGRAM MANAGER and the ENGINEER. Failure to comply with these requirements shall subject the GRANTEE, the PROGRAM MANAGER and the ENGINEER, their successors and assigns, to those sanctions specified by the Agreement through which federal

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assistance is provided, and as set out in 24 C.F.R. Part 135, Subpart D. The ENGINEER agrees that no contractual or other disability exists which would prevent compliance with these requirements. The ENGINEER shall include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this AGREEMENT is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C.A. 1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the areas of the project."

**B. Notifications**

The ENGINEER shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**C. Subcontracts**

The ENGINEER shall include this Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the GRANTEE. The ENGINEER will not subcontract with any contractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not let any subcontract unless the subcontractor has first provided it with preliminary statement of ability to comply with the requirements of these regulations.

**10. Environmental Conditions**

**A. Air and Water**

The ENGINEER agrees to comply with the following regulations insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C.A. 7401 *et seq.*

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- Clean Water Act, 33 U.S.C.A. 1368
- Executive Order 11738
- Federal Water Pollution Control Act, as amended, 33 U.S.C.A. 1251, *et seq.*, 1321 and 1318, relating to inspection, monitoring, entry, reports, and information, and all regulations guidelines issued there under
- Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 50, as amended.
- National Environmental Policy Act of 1969 (42 U.S.C.A. 4321 *et seq.*, as amended)
- HUD Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58)

**B. Flood Disaster Protection**

The ENGINEER shall comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L.-2234) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

**C. Lead-Based Paint**

The ENGINEER agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 C.F.R. § 570.608 and 24 C.F.R. Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all Grantees, prospective Grantees, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning, and of the advisability and availability of blood-level screening for children less than 7 years of age.

**D. Historic Preservation**

The ENGINEER shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C.A. 470) and the procedures set forth in 36 C.F.R. Part 800, "Protection of Historic Properties," insofar as they apply to the performance of this Agreement. In general this requires approval from the North Dakota Historical Commission and Antiquities Committee for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, state, or local historic property list.

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**E. Wildlife Protection**

The ENGINEER agrees to comply with the requirements of the Endangered Species Act of 1973, as listed in 50 C.F.R. § 17.11 and 50 C.F.R. Part 402; the Lacey Act (16 U.S.C.A. 3371-3378 *et seq.*, as amended); the Migratory Bird Treaty Act (16 U.S.C.A. 703-12); the Fish and Wildlife Coordination Act (16 U.S.C.A. 661 *et seq.*); Section 4(f) of the Department of Transportation Act (49 U.S.C.A. 1653(f)); the Federal Water Pollution Control Act (33 U.S.C.A. 1251 *et seq.*); the Coastal Zone Management Act of 1972, as amended (16 U.S.C.A. 1451); and the Safe Drinking Water Act of 1974 (42 U.S.C.A. 300f *et seq.*, as amended), insofar as they apply to the performance of this Agreement.

**F. Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. (§200.322)

**11. Energy Efficiency**

The ENGINEER shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

**12. Financial Management**

The ENGINEER shall adhere to standard, Generally Accepted Accounting Principles (GAAP) and Governmental Accounting Standards and maintain necessary source documentation for all costs incurred under this Agreement.

The ENGINEER will provide adequate support documentation to receive payment of CDBG-DR funds in sufficient detail for the PROGRAM MANAGER and/or the GRANTEE to determine cost eligibility and allowability.



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**13. Record-Keeping, Reports, and Audits**

**A. Records to be maintained**

The ENGINEER shall maintain all records required by this Agreement, records required by 24 C.F.R. § 570.506 and records that are pertinent to the activities to be funded under this Agreement, including but not be limited to:

1. Records providing a full description of each activity undertaken
2. Records demonstrating that each activity undertaken meet one of the National Objectives of the CDBG program
3. Records required determining the eligibility of activities
4. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance
5. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program
6. Financial standards, as required by 24 C.F.R. § 570.502; and
7. Other records necessary to document compliance with Subpart K of 24 C.F.R. Part 570.

**B. Property Records**

The ENGINEER shall maintain real property inventory records, which clearly identify property purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the restrictions specified in 24 C.F.R. § 570.606. The ENGINEER shall ensure that any independent audit required hereunder includes a report on real property inventory as a supplemental schedule in the audit.

**C. Retention**

The ENGINEER shall retain all records pertinent to expenditures incurred under this Agreement per the State of North Dakota general Records Retention Schedule after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later.

**D. Access to Records**

The GRANTEE, the PROGRAM MANAGER, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the ENGINEER which are directly pertinent to this specific AGREEMENT, for the purpose of audits, examinations, and making excerpts and transcriptions.

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All records connected with this AGREEMENT will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the GRANTEE's final closeout of the grant.

**E. Inspection**

The authorized representative and agents of the GRANTEE, the PROGRAM MANAGER and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, and payrolls, records of personnel, invoices of materials, and other relevant data and records.

**F. Reports**

The ENGINEER shall complete and submit all reports, in such form and according to such schedule, as may be required by the GRANTEE, pertaining to the work or services undertaken pursuant to this Agreement.

**14. Conflict of Interest**

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the ENGINEER shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this AGREEMENT or to any benefit that may arise there from, but this provision shall not be construed to extend to this AGREEMENT if made with a corporation for its general benefit.

**15. Activities and Contracts Not Subject To Executive Order – 11246, as Amended (applicable to contracts and subcontracts of \$10,000 and under)**

During the performance of this AGREEMENT, the ENGINEER agrees as follows:

- 1. The ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The ENGINEER shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or

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transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2. The ENGINEER shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The ENGINEER shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  
3. The ENGINEER shall incorporate foregoing requirements in all subcontracts.

**16. Patents**

The ENGINEER shall hold and save the GRANTEE and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the AGREEMENT including its use by the GRANTEE, unless otherwise specifically stipulated in the Contract Document.

License or Royalty Fees: License and/or Royalty Fees for the use of a process which is mandated or specifically requested by the GRANTEE of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the GRANTEE and not by or through the ENGINEER.

If the ENGINEER uses any design device or materials covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the Grantee of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The ENGINEER and/or his Sureties shall indemnify and save harmless the GRANTEE of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this AGREEMENT, and shall indemnify the GRANTEE for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

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**17. Copyright**

All formal documents and data (not including drafts), produced under this Agreement are the property of the GRANTEE. If this Agreement results in any copyrightable material, the GRANTEE reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use the work. In addition, the GRANTEE may authorize others to use the material.

**18. Subcontracts**

- A. The ENGINEER shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of North Dakota.
- B. The ENGINEER shall be as fully responsible to the GRANTEE for the acts and omissions of the ENGINEER's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the ENGINEER.
- C. The ENGINEER shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the ENGINEER by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the ENGINEER the same power as regards terminating any subcontract that the GRANTEE may exercise over the ENGINEER under any provision of the contract documents.
- D. Nothing contained in this AGREEMENT shall create any contractual relation between any subcontractor and the GRANTEE.

**19. Debarment, Suspension, and Ineligibility**

The ENGINEER represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

**20. Breach of Contract Terms**

Any violation or breach of terms of this AGREEMENT on the part of the ENGINEER may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this AGREEMENT. The duties and obligations imposed by the AGREEMENT documents

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and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**21. Provisions Required by Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this AGREEMENT shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the AGREEMENT shall forthwith be physically amended to make such insertion or correction.

**22. Changes**

The GRANTEE may, from time to time, request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of the ENGINEER's compensation which are mutually agreed upon by and between the GRANTEE and the ENGINEER, shall be incorporated in written and executed amendments to this Contract.

**23. Personnel**

The ENGINEER represents that it has, or will secure at its own expense, all personnel required in performing the services under this ENGINEER. Such personnel shall not be employees of or have any contractual relationship with the GRANTEE or PROGRAM MANAGER.

All the services required hereunder will be performed by the ENGINEER or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

**24. Drug Free Workplace**

All profit or non-profit agencies or organizations receiving state or Federal grant funds under the official sponsorship of the GRANTEE must certify, on an annual basis, their compliance with the requirements of the "Drug Free-Workplace Act of 1988". Employees are specifically prohibited from manufacturing, distributing, possessing, purchasing, and using illegal drugs or controlled substances in the workplace or in any other facility, location, or transport in which the employee is required to be present in order to perform his or her job function.

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**25. Anti-Kickback Rules**

Salaries of personnel performing work under this AGREEMENT shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The ENGINEER shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this AGREEMENT to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**26. Interest of ENGINEER**

The ENGINEER covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder.

**27. Political Activity**

The ENGINEER will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**28. Compliance with the Office of Management and Budget**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-87, A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this AGREEMENT.

**29. Confidential Findings**

All of the reports, information, data, etc., prepared or assembled by the ENGINEER under this Contract are confidential, and the ENGINEER agrees that they shall not be made available to any individual or organization without prior written approval of the GRANTEE and PROGRAM MANAGER.

**30. Lobbying**

The ENGINEER certifies, to the best of his or her knowledge and belief that:

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- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the ENGINEER, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the ENGINEER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**31. Reversion of Assets**

The agreement shall specify that upon its expiration the ENGINEER shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the ENGINEER's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subcontractor in the form of a loan) in excess of \$25,000 is either:

- a. Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
- b. Not used in accordance with paragraph (b)(7)(i) of this section, in which event the ENGINEER shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

**32. Payment for Eligible Expenses**

The ENGINEER understands and agrees that the GRANTEE shall reimburse the ENGINEER for only those costs associated with work that has been authorized by GRANTEE and costs that are eligible under applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement

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with HUD grant funds. No reimbursement shall be made for goods and services received by the ENGINEER as in-kind contributions from third parties for assistance to the Program.

**32. Repayment of Ineligible Payments**

In the event HUD or the GRANTEE determines through investigations and/or monitoring that any payment or reimbursement to ENGINEER is ineligible or disallowed, the ENGINEER shall immediately and without delay fully reimburse GRANTEE. If HUD informs GRANTEE that it is required to refund moneys previously awarded or drawn down from the U.S. Treasury in reference to this agreement, as a result of ENGINEER's sole negligence, willful misconduct, or intentional fraud, the ENGINEER agrees to pay an equal amount to GRANTEE prior to the demand date of payback.