

**AGREEMENT BETWEEN CITY OF MINOT AND CDM SMITH  
FOR NATIONAL DISASTER RESILIENCY COMPETITION (NDRC) PRE-AGREEMENT  
SERVICES FOR MINOT, ND**

THIS AGREEMENT Is made and entered into by and between the City of Minot (City), North Dakota, hereinafter referred to as "City", and CDM Smith Inc., hereinafter referred to as "Program Administrator."

**RECITALS:**

WHEREAS, the City of Minot has received NDRC Community Development Block Grant Disaster (CDBG-DR) funds from the United States Department of Housing and Urban Development (HUD) under the NDRC Notice Of Funding Availability (NOFA) reissued by HUD on June 22, 2015 to start Phase 2, hereinafter called the "Program" and

WHEREAS, CDM Smith was a named partner in the City's NDRC Phase II application; and

WHEREAS, the City desires that the Program Administrator perform certain professional management and pre-agreement operational services in connection with the Program; and

WHEREAS, the City will allow the Program Administrator to incur pre-agreement costs associated with administrative, planning, and project delivery activities covered by this Agreement, as provided for in the NOFA; and

WHEREAS, the Program Administrator represents that it is qualified and desires to perform such services;

NOW, THEREFORE, the City and the Program Administrator, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**TERMS:**

**I SCOPE OF AGREEMENT**

The Program Administrator agrees to perform pre-agreement professional management services in connection with the Program as stated herein, and for having rendered such services, the City agrees to pay the Program Administrator compensation as stated in sections to follow.

**II. SCOPE OF SERVICES**

**A. Goals and Objectives**

The City is administering the NDRC Community Development Block Grant Disaster Recovery (CDBG-DR) funds for resiliency activities described in the City's NDRC Phase II application. The City is retaining the services of Program Administrator to assist with management of CDBG-DR funds effectively and expeditiously as part of the implementation of the NDRC Program for the City of Minot. As outlined below, the Program Administrator will perform certain tasks (services) for the City, including, but not limited to, assisting the City in pre-agreement activities.

## **B. Statement of Work**

The scope of services to be performed under this agreement is summarized in Exhibit A. The Program Administrator shall assist the City in pre-agreement activities in accordance with HUD regulations. The Program Administrator shall perform program management, delivery and operation services.

## **C. City's Other Contractors and Consultants**

Notwithstanding any provision herein to the contrary, the Program Administrator shall have no responsibility nor liability for the performance of the City's other contractors and consultants, and the Program Administrator shall have no authority to dictate or control the means and methods of those other contractors and consultants, including compliance with any applicable building codes, health and safety laws, regulations or policies, and environmental laws or regulations.

In all contracts between the City and the City's other contractors and consultants performing work or providing services on the Program, the City shall require that those other contractors and consultants indemnify The Program Administrator for all claims, costs, losses or damages (including attorneys' fees and defense costs) attributable to bodily injury, sickness, disease, or death or injury to or destruction of tangible property, to the extent arising out of or relating to the negligent act or omission of those other contractors and consultants after the date this agreement is executed

## **D. Performance Monitoring and Performance Penalty Clauses**

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

If the Program Administrator fails to meet milestones specifically relating to funds disbursed within the agreed upon deliverable time frame, as established in the Minot NDRC Action Plan or associated amendments, the following penalties will be placed on the Program Administrator in sequential order.

1. A performance plan must be created within 7 days to demonstrate how the Program Administrator will regain performance and set an agreed upon timeline. If performance is not regained within the time agreed upon then;
2. The Program Administrator 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 City of Program Administrator's corrective action.

The penalty terms must be invoked in writing at the sole discretion of the City. At any point after the invocation of the penalty terms, the Program Administrator 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 City to grant forbearance.

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

### **III. TIME OF PERFORMANCE**

Services of the Program Administrator shall start upon February 1, 2016 and shall terminate when the full Program contract is completed on April 4, 2016, unless mutually agreed by both parties.

If the specific periods of time for rendering services or specific dates, by which services are to be completed are changed through no fault of the Program Administrator, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If the City has requested changes in the scope, extent, or character of the Project, the time of performance and compensation for Program Administrators services shall be adjusted equitably.

### **IV. CITY FURNISHED RESOURCES**

Notwithstanding the Program Administrator's responsibility for management during performance under this Agreement, the City will provide the Program Administrator with reasonable access to facilities (to the extent available) and timely access to data, information and personnel of the City.

### **V. EXPENSES AND PAYMENT**

#### **A. Agreement Amount and Rate Schedule**

The Program Administrator shall perform the Program Services within the monetary limits defined by the agreement amount and the hourly rates contained in **Exhibit B**, Rate Schedule. The Program Administrator understands that the program budget has been prepared based upon information submitted by the Program Administrator to the City during the NDRC process, and that any changes to the agreement amount or the rate schedule will require the Program Administrator to submit a modified program budget to the City for review and approval. Program Administrator is authorized to incur pre-agreement costs.

#### **B. Program Administrator's Compensation**

For and in consideration of the Services rendered by the Program Administrator, and subject to the agreement amount and rate schedule provisions of **Exhibit B**, the City shall pay the Program Administrator for the services completed in the scope in Exhibit A up to a maximum agreement amount of \$157,125, which may only be increased by written amendment to this Agreement signed by both parties and approved by the City. Compensation for Program Administrator's Services shall be based on the Hourly Rates, as described in **Exhibit B**.

Program Administrator invoices shall be organized such that claimed compensation for services rendered is cross referenced to specific program work phases and tasks and shall be clearly identified in separate detailed listings of charges.

Program Administrator invoices shall be submitted to the City on a monthly basis. Invoices are due and payable upon receipt and approval of the City Council the first Monday of each month after receipt of the invoice by the City. If the City fails to make any payment for services and expenses due Program Administrator within thirty days after submission to the City of Program Administrator's invoice the amounts due will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day after submission to the City Council; and, in addition, Program Administrator may, after giving seven days' written notice to City, suspend services under this Agreement until Program Administrator has been paid in full all amounts due. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

The City agrees to pay Program Administrator all costs of collection, including, but not limited to, reasonable attorneys' fees, collection fees and court costs incurred by Program Administrator to collect properly due payments.

#### **C. Payment Procedure**

The City will reimburse the Program Administrator based upon information submitted by the Program Administrator and in compliance with the approved program budget and City policy concerning payments.

#### **D. Payment for Eligible Expenses**

The Program Administrator understands and agrees that the City shall reimburse the Program Administrator for only those costs associated with services that have been authorized by the City and costs that are eligible under applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement of HUD grant funds. No reimbursement shall be made for goods and services received by the Program Administrator as in-kind contributions from third parties for assistance to the Program. If indirect costs are charged, the Program Administrator shall develop an indirect cost allocation plan determining the appropriate Program Administrator share of administrative costs and shall submit such plan to the City for approval.

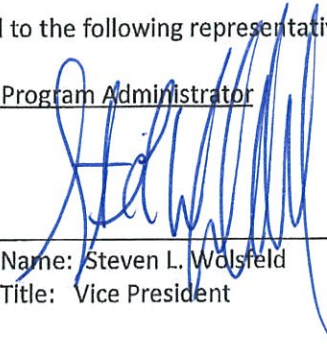
#### **E. Repayment of Ineligible Payments**

In the event the City or HUD determines through investigations and/or monitoring that any payment or reimbursement to Program Administrator is ineligible or disallowed as a result of Program Administrator's negligence, willful misconduct, or intentional fraud, and after all appeals have been exhausted to correct the deficiency, Program Administrator shall, immediately and without delay, fully reimburse the City, and City will reimburse HUD for disallowed or ineligible costs.

## VI. NOTICES AND COORDINATION

Any communication concerning this Agreement shall be directed to the following representatives:

City  
By:   
Name: Cindy Hemphill  
Title: Finance Director

Program Administrator  
By:   
Name: Steven L. Wolsfeld  
Title: Vice President

The Program Administrator shall coordinate with the City for all meetings and conference calls with HUD and any other local, state or federal agency or department concerning Implementation of the Program. Additionally, the Program Administrator shall coordinate with the City on any correspondence including electronic mail with HUD, or any other local, state or federal agency or department concerning the implementation of the Program. As the grant recipient, the City should either initiate all correspondence with the funding and regulatory agencies or have signatory approval of all correspondence that the Program Administrator will forward to the various agencies on behalf of the City.

## VII. SPECIAL CONDITIONS

The Program Administrator agrees to comply with the requirements of 24 C.F.R. Part 570 and all federal regulations and policies issued concerning the NDRC CDBG Disaster Recovery Program.

## VIII. GENERAL CONDITIONS

### A. Compliance

The Program Administrator shall comply with all applicable Federal, state and local laws and regulations governing the use of funds provided under this Agreement and governing the review and coordination of federally assisted programs and projects. Failure to adhere to these conditions or with any provision of this Agreement may result in the City taking one of the following actions: (1) declaring the Program Administrator ineligible to participate in future awards; (2) withholding funds; or (3) termination of this Agreement.

### B. Indemnity

The Program Administrator covenants and agrees to indemnify, hold harmless the City and its officers, agents, servants and employees from and against any and all claims or suits for property loss or damage and/or personal injury, including death, to any and all persons, of whatsoever kind of character, whether real or asserted, to the extent arising out of or in connection with the negligent execution, performance, attempted performance or nonperformance of this Agreement, and the Program Administrator hereby

assumes all liability and responsibility of the City and its officers, agents, servants, and employees for any and all claims or suits for property loss or damage and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, to the extent arising out of or in connection with the negligent execution, performance, attempted performance or nonperformance of this Agreement.

**C. Insurance**

**1. Public Liability Insurance**

The Program Administrator shall furnish a Certificate of Insurance as proof that It has secured and paid for policies of public liability and automobile insurance covering all risks incident to or in connection with the execution, performance, attempted performance or nonperformance of this Agreement. The amounts of such insurance shall not be less than the maximum liability that can be imposed on the City under the laws of the State of North Dakota. At present, such amounts are as follows:

Bodily injury or death, per person	\$250,000
Bodily injury or death, per single occurrence (3 or more persons)	\$500,000
Property damage, per single occurrence	\$250,000

The Program Administrator understands that such insurance amounts shall be revised upward at the City's option and that the Program Administrator shall revise such amounts within thirty (30) days following notice to the Program Administrator of such requirements.

**2. Worker's Compensation Insurance**

The Program Administrator also covenants and agrees to furnish the City with a Certificate of Insurance as proof that it has obtained and paid for a policy of Workers' Compensation Insurance in the amounts required by state law, covering any and all employees of the Program Administrator active in the Program funded under this Agreement, and the Program Administrator shall require any sub-Program Administrators to carry adequate Workers' Compensation Insurance in the amounts required by state law.

If the Program Administrator has obtained worker's compensation insurance coverage through self-insurance, such documentation of self-insurance shall be provided to the City prior to, or with the submission of, the first reimbursement request.

**3. Documentation of Insurance Coverage**

The Program Administrator shall submit to the City documentation that it has obtained insurance coverage as required by this Agreement within thirty (30) days of the execution of this Agreement and prior to payment of any monies hereunder.

**D. Relocation, Acquisition and Displacement**

The Program Administrator agrees to comply with 24 C.F.R. § 570.606 relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, non-profit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The Program Administrator shall comply with applicable City procedures and policies concerning displacement of individuals from their residences, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

**E. Ownership of Documents, Copyright**

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

**IX. ADMINISTRATIVE REQUIREMENTS**

**A. Financial Management**

The Program Administrator 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.

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

**1. Records to be maintained**

The Program Administrator 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:

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

**2. Property Records**

The Program Administrator 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 Program

Administrator shall ensure that any independent audit required hereunder includes a report on real property inventory as a supplemental schedule in the audit.

**3. Retention**

The Program Administrator 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.

**4. Reports**

The Program Administrator, at such times and in such forms as the City may require, shall furnish the City with such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

**X. GENERAL REQUIREMENTS**

**A. Civil Rights**

**1. Compliance**

The Program Administrator 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; Section 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 Program Administrator 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 City will provide the Program Administrator with any guidelines necessary for compliance with that portion of the regulations during the term of this Agreement.

**2. Nondiscrimination**

The Program Administrator 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. The Program Administrator 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 Program Administrator agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the Program Administrator setting forth the provisions of this nondiscrimination clause. The Program Administrator 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.

**B. Affirmative Action**

**1. Approved Plan**

The Program Administrator agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program in keeping with the principles as provided in Presidential Executive Order 11246 of September 24, 1965. The City will provide Affirmative Action guidelines to the Program Administrator to assist in the formulation of such program, upon request. The Program Administrator shall submit a plan for an Affirmative Action Program for approval prior to the award of funds, if applicable.

**2. Women/Minority Business Enterprise**

The Program Administrator 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 Program Administrator may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.

**3. Notifications**

The Program Administrator 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 Program Administrator's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**4. EEO/AA Statement**

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

## 5. Grievance

The Program Administrator shall establish and maintain written procedures to address grievances or complaints of employees or Program participants under this Agreement. The Program Administrator's written procedures should provide for employees or participants to contact Minot only after the complainant has exhausted the Program Administrator's internal procedures. The Program Administrator shall notify all employees and Program participants of its grievance procedure. Such notification must include the telephone number to reach Minot. The Program Administrator shall immediately notify Minot of all grievances or complaints received by the Program Administrator.

## C. Labor Standards

### 1. Wages

The Program Administrator agrees to comply with the requirements of the Secretary of Labor issued in accordance with the provisions of Contract Work Hours and Safety Standards Act [40 U.S.C.A. 3701 *et seq.*, as amended], as supplemented by Department of Labor regulations; the Copeland "Anti-Kickback" Act [18 U.S.C.A. 874]; the Davis-Bacon Act [40 U.S.C.A. 3141 *et seq.*, as amended]; and all other applicable Federal, state and local laws and regulations pertaining to labor standards, insofar as those acts apply to the performance of this Agreement. The Program Administrator shall maintain documentation that demonstrates compliance with hour and wage requirements of this section. Such documentation shall be made available to the City for review upon request. The Program Administrator shall also abide by Chapter 11 of Title 18 of the U.S. Code [18 U.S.C.A. 201 *et seq.*], which prohibits a number of criminal activities, including bribery, graft and conflict of interest.

### 2. OSHA

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety.

### 3. Drug Free Workplace

All profit or non-profit agencies or organizations receiving state or Federal grant funds under the official sponsorship of the City 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.

## D. Prohibited Activity

The Program Administrator is prohibited from using CDBG funds or personnel employed in the administration of the Program for political activities, sectarian/religious activities, lobbying, political patronage, and/or nepotism activities.

1. Hatch Act

The Program Administrator agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

2. Religious Organization

The Program Administrator agrees that funds provided under this Agreement shall not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization, in accordance with the Federal regulations specified in 24 C.F.R. § 570.200.

**E. False Claims**

The Program Administrator shall abide by 18 U.S.C.A. 286, which provides for conspiracy to defraud the Federal Government with Respect to Claims. In addition, the Program Administrator shall also abide by the False Claims Act (31 U.S.C.A. 3729 *et seq.*); 18 U.S.C.A. 287 relating to False, Fictitious and Fraudulent Claims; 18 U.S.C.A. 245, as amended, relating to Federally Protected Activities; 18 U.S.C.A. 1001, as amended, regarding General Statements or Entries; the Program Fraud Civil Remedies Act (31 U.S.C.A. 3801 *et seq.*); the Federal Claims Collection Act of 1966 (31 U.S.C.A. 3701, 3711, 3716 to 3718), as amended by the Derby Collection Act of 1982; the Meritorious Claims Act (31 U.S.C.A. 3702); the Tucker Act (28 U.S.C.A. 1346, 1491 and 2501 *et seq.*); the Wunderlich Act (41 U.S.C.A. 321-322); the Anti-Deficiency Act (31 U.S.C.A. 1341 *et seq.*); and Section 208(a) of the Intergovernmental Personnel Act of 1970, as amended.

**F. "Section 3" Clause**

1. Compliance

The Program Administrator 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 Program Administrator understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the City, the Program Administrator and any sub-Program Administrators. Failure to comply with these requirements shall subject the City, the Program Administrator and any sub-Program Administrators, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided, and as set out in 24 C.F.R. Part 135, Subpart D. The Program Administrator agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Program Administrator shall include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this contract 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."

2. Notifications

The Program Administrator 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.

3. Subcontracts

The Program Administrator shall include this Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the sub-Program Administrator is in violation of regulations issued by the City. The Program Administrator will not subcontract with any sub-Program Administrator 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 sub-Program Administrator has first provided it with preliminary statement of ability to comply with the requirements of these regulations.

G. Subcontracts

1. Approvals

The Program Administrator may not subcontract any of its duties or obligations under this Agreement without the express written consent of the City, unless such subcontracts were expressly disclosed and included as a part of the Program Administrator's original Proposal. Any request for the right to use a subcontractor that was not disclosed in the Program Administrator's Proposal shall include the name and address of the subcontractor and a copy of the proposed subcontract. The City shall have the right to require changes or additions to the subcontract as a condition of granting permission to use a subcontractor.

2. Monitoring

The Program Administrator shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

3. Content

The Program Administrator shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

H. Patents

The Contractor/Subcontract shall hold and save the Owner 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 contract including its use by the City of Minot, 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 required by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor/Subcontractor.

If the Contractor/Subcontractor uses any design device or materials covered by letters, patent or copyright, he shall provide for sue use by suitable agreement with the owner of such patented or copyrighted 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 anyway involved in the work. The Contractor/Subcontractor and/or his Sureties shall indemnify and save harmless the Owner 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 contract, and shall indemnify the Owner 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.

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

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract 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 contract shall forthwith be physically amended to make such insertion or correction.

**J. Personnel**

The Contractor/Subcontract represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract/Subcontract. Such personnel shall not be employees of or having any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor/Subcontractor 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.

**K. Interest of Contractor/Subcontractor**

The Contractor/Subcontractor 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.

**L. Compliance with the Office of Manage and Budget**

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

**XI. ENVIRONMENTAL CONDITIONS**

**A. Air and Water**

The Program Administrator 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.*
- 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 Program Administrator 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 Program Administrator 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 owners, prospective owners, 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 Program Administrator 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.

#### **E. Wildlife Protection**

The Program Administrator 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.

### **XII. SUCCESSORS, ASSIGNMENTS AND AMENDMENTS**

#### **A. Successors and Assignments**

The City and the Project Administrator bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor the Program Administrator shall assign, sublet or transfer its or his interest in this Agreement without prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

#### **B. Amendments**

The City or the Program Administrator may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or the Program Administrator from its obligations under this Agreement.

Additionally, the City may, at its discretion, amend this Agreement to conform with federal, state or local government guidelines, policies and available funding amounts, or for other reasons. If such amendment results in a change in the funding, the scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be affected only by written Amendment signed by both the City and the Program Administrator.

#### **C. PUBLIC CONTACT**



Contact with the news media, citizens of the City or governmental agencies shall be the responsibility of the City. The City may engage the Program Administrator in Program outreach efforts to facilitate the development and implementation of the Program.

### **XIII. TERMINATION OR SUSPENSION OF CONTRACT**

#### **A. Automatic Termination**

This Agreement automatically terminates at the end of the time of performance as specified in Section III., "Time of Performance," of this Agreement.

#### **B. Termination Without Cause**

The City may terminate this Agreement at any time by giving at least sixty (60) days prior written notice to the Program Administrator. The Program Administrator shall be entitled to payment for Services performed up to the date of termination contained within the notice, to the extent that the Services have been satisfactorily performed and are otherwise reimbursable under this Agreement. In the event of termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Program Administrator under this Agreement shall become the property of the City, and the Program Administrator shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination, unless HUD has determined through monitoring and/or investigative practices, that the Program Administrator is not entitled to such compensation.

#### **C. Termination With Cause**

The City may terminate this Agreement for cause, in whole or in part, if the Program Administrator fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the City may declare the Program Administrator ineligible for any further participation in City CDBG Disaster Agreements, in addition to other remedies as provided by law, provided that the City gives the Program Administrator written notice specifying the Program Administrator's failure and an opportunity to correct such failure. If within thirty (30) days after receipt of such notice the Program Administrator has not corrected such failure or, in the case of failure which cannot be corrected within thirty (30) days, begun in good faith to correct failure and thereafter proceeds diligently to complete such corrections, then the City may, at its option, place the Program Administrator in default and the Agreement shall terminate on the date specified in such notice. Failure to perform within the time specified in the solicitation will constitute a default and may cause cancellation of the Agreement. However, the Program Administrator shall be paid for all authorized Services properly performed prior to cancellation. Further, if the City has cause to believe that the Program Administrator is in noncompliance with this Agreement or any applicable rules and regulations, the City may withhold up to five (5) percent of said Agreement funds until such time as the Program Administrator is found to be in compliance by the City, or is otherwise adjudicated to be in compliance.

#### **D. Partial Terminations**



Partial terminations of the Scope of Services described in Exhibit A may only be undertaken with the prior approval of the City.

#### **E. Breach of the Agreement**

Termination of this Agreement shall not relieve the Program Administrator of liability for any breach of this Agreement that occurs prior to such termination or expiration.

#### **F. Close-out**

The Program Administrator's obligation to the City shall not end until all closeout requirements are completed to the satisfaction of City (Unless the time period in section IV has concluded and no extension has been granted). Activities during this close-out period shall include, but are not limited to, making final payments, disposing of Program assets, including the return to the City of all unused materials, equipment, unspent cash advances, Program income balances, and accounts receivable, and determining the custodianship of records.

#### **XIV. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

#### **XV. NO THIRD PARTY BENEFICIARIES**

It is specifically agreed and understood that this is an agreement between the City and the Program Administrator and that there are no third party beneficiaries who may assert any rights against either City or Program Administrator under this Agreement.

#### **XVI. AGREEMENT REQUIREMENTS**

Notwithstanding any provision of this Agreement, the Program Administrator is required to comply with only the Federal, state, and local regulations applicable to the specific federally assisted program associated with this Agreement.

#### **XVII. INCORPORATION OF EXHIBITS**

The following documents are a part of this Agreement:

- Exhibit A Scope of Services
- Exhibit B Rate Schedule

CITY OF MINOT

By: 

Name: Chuck Barney  
Title: Mayor

Date Signed: February 1, 2016

CDM SMITH INC.

By: 

Name: Steven Wolsfeld  
Title: Vice President

Date Signed: February 1, 2016

EXHIBIT A  
AGREEMENT BETWEEN CITY OF MINOT AND CDM SMITH  
NATIONAL DISASTER RESILIENCE PRE-AGREEMENT SERVICES

SCOPE OF SERVICES

This scope of services is intended to cover NDRC award pre-agreement services that are necessary to be provided between the notice of funding award and execution of the overall program management contract. Program Administrator shall assist the City in developing the mechanisms necessary for implementation of the City's NDRC CDBG-DR Program, including but not limited to the following:

NDRC Pre-Agreement Services

1. Complete the City's DRGR Action Plan for the NDRC program, based on Phase I and Phase II NDRC applications, in accordance with the established HUD Disaster Regulations. Initiate development of required program Policies and Procedures for implementation of the programs and projects as described in the Action Plan.
2. Setting up the City's NDRC Program: Initiate information system reporting and tracking, contract, budgeting, staffing, project scoping, project management plan, deliverables, quality control time frame, scheduling.
3. Initiate work on required waivers, including potentially a public facility waiver and an LMI modification waiver.
4. Refine NDR projects, budget, and leverage to align with HUD grant award amount
5. Revise HAZUS modeling to reflect scaling of projects included in grant award, revise model narrative and success factors
6. Revise BCA sections as appropriate to reflect scaled projects and inputs included in grant award. Run BCA model and write model narrative reflecting revised data input
7. Revise performance metrics for projects included in grant award
8. Develop initial approach for updating Minot Affordable Workforce Housing study to provide City of Minot with initial messaging for affordable housing need in the city
9. Initiate project descriptions for environmental review of NDRC projects.
10. Assist City with NDRC partner meetings and other partner related needs as they arise

EXHIBIT A  
AGREEMENT BETWEEN CITY OF MINOT AND CDM SMITH  
NATIONAL DISASTER RESILIENCE PRE-AGREEMENT SERVICES

SCOPE OF SERVICES

11. Participate in follow-up HUD NDRC program calls with HUD staff, prepare meeting minutes and complete any required follow up work tasks that arise from each meeting
12. Initiate City's NDRC program document control and management policy and procedures
13. Initiate City's NDRC program policy development and review
14. Initiate City's NDRC program and financial compliance requirements
15. Initiate development of City's NDRC Program communication strategy
16. Initiate development of City's NDRC Program monitoring plans and execution
17. Provide on-going support of City's NDRC Program operations as required

EXHIBIT B  
AGREEMENT BETWEEN CITY OF MINOT AND CDM SMITH  
NATIONAL DISASTER RESILIENCE PRE-AGREEMENT SERVICES

ESTIMATED PROJECT FEES

**Estimated Project Fees**

Refer to Attachment #1 on the following page for the estimated project fees.

City of Minot  
NDRC Program  
Pre-Agreement Services (February 1, 2016-April 4, 2016)

[illegible]

## **Exhibit C**

### **CDBG Program Requirements**

#### **1. Civil Rights**

The CONTRACTOR 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 I 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 CONTRACTOR 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 CITY will provide the CONTRACTOR with any guidelines necessary for compliance with that portion of the regulations during the term of this Agreement.

#### **2. Nondiscrimination**

The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this nondiscrimination clause

#### **3. Affirmative Action**

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

##### **B. Women/Minority Business Enterprise**

The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's

**Exhibit C**  
**CDBG Program Requirements**

commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**D. BEO/AA Statement**

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

The CONTRACTOR agrees to comply with the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; 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.

**4. Age Discrimination Act of 1975**

The CONTRACTOR 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.

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

The CONTRACTOR 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 CONTRACTOR 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).

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

**A. Compliance**

The CONTRACTOR 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 CONTRACTOR understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the CITY and the CONTRACTOR. Failure to comply with these requirements shall subject the CITY and the CONTRACTOR, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided, and as set out in 24 C.F.R. Part 135, Subpart D. The CONTRACTOR agrees that no contractual or other disability exists which



**Exhibit C**  
**CDBG Program Requirements**

would prevent compliance with these requirements. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall include this Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the CONTRACTOR is in violation of regulations issued by the CITY. The CONTRACTOR 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 CONTRACTOR has first provided it with preliminary statement of ability to comply with the requirements of these regulations.

**7. Environmental Conditions APPENDIX II PART 200 (G)**

**A. Air and Water**

The CONTRACTOR 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- 7671 *et seq.*
- 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).

**8. Energy Efficiency**

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

**9. Financial Management**

The CONTRACTOR 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 CONTRACTOR will provide adequate support documentation to receive payment of CDBG-DR funds in sufficient detail for the CITY to determine cost eligibility and allowability.

**Exhibit C**  
**CDBG Program Requirements**

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

**A. Retention**

The CONTRACTOR shall retain all records pertinent to expenditures incurred under this Agreement per the State of North Dakota general Records Retention Schedule or at least 5 years after the final closeout of the City's Disaster Recovery grant with HUD, , or after the resolution of all Federal audit findings, whichever occurs later.

**B. Access to Records**

The CITY, the CITY, 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 CONTRACTOR which are directly pertinent to this specific AGREEMENT, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this AGREEMENT will be maintained in a central location by the CONTRACTOR and will be maintained for a period of four (4) years from the official date of the CITY's final closeout of the grant.

**C. Audit and Inspection**

The authorized representative and agents of the CITY 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.

**D. Reports**

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

**C. Property Records (Applicable if property is purchased with CDBG-DR funds under this agreement.)**

The CONTRACTOR 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 CONTRACTOR shall ensure that any independent audit required hereunder includes a report on real property inventory as a supplemental schedule in the audit.

**11. 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 CONTRACTOR 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.

**12. Patents**

The CONTRACTOR shall hold and save the CITY 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

**Exhibit C**  
**CDBG Program Requirements**

AGREEMENT including its use by the CITY, 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 CITY of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the CITY and not by or through the CONTRACTOR.

If the CONTRACTOR uses any design device or materials covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the City 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 CONTRACTOR and/or his Sureties shall indemnify and save harmless the CITY 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 CITY 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.

**13. Copyright**

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

**14. Subcontracts**

- A. The CONTRACTOR shall not enter into any subcontract with any sub-contractor 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 CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of the CONTRACTOR'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 CONTRACTOR.
- C. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the CONTRACTOR by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the CONTRACTOR the same power as regards terminating any subcontract that the CITY may exercise over the CONTRACTOR under any provision of the contract documents.
- D. Nothing contained in this AGREEMENT shall create any contractual relation between any subcontractor and the CITY.
- E. CONTRACTOR will ensure SUBCONTRACTOR will take affirmative steps listed in 2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

**15. Debarment, Suspension, and Ineligibility (APPENDIX II PART 200)**

The CONTRACTOR 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).

**Exhibit C**  
**CDBG Program Requirements**

**16. Breach of Contract Terms**

Any violation or breach of terms of this AGREEMENT on the part of the CONTRACTOR 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 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. 24 CFR 85.36(i)(1).

**17. Termination for Convenience and Default (All contracts >\$10,000) APPENDIX II TO PART 200 (A)**

1. The City may terminate this contract in whole, or from time to time in part, for the City's convenience or the failure of the Contractor to fulfill the contract obligations (default). The City shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall;
  - a. immediately discontinue all services affected (unless the notice directs otherwise); and
  - b. deliver to the City all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
2. If the termination is for the convenience of the City, the City shall be liable only for payment for services rendered before the effective date of the termination.
3. If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the City may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the City, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the City; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the City by the Contractor.
4. If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the City, and the Contractor shall be entitled to payment as described in paragraph (b) above.
5. Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

**18. 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.

**19. Changes**

The CITY may, from time to time, request changes in the scope of the services of the CONTRACTOR to be performed hereunder. Such changes, including any increase or decrease in the not-to-exceed amount of the CONTRACTOR's compensation which are mutually agreed upon by and between the CITY and the CONTRACTOR, shall be incorporated in written and executed amendments to this Contract.

**20. Personnel**

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

**Exhibit C**  
**CDBG Program Requirements**

All the services required hereunder will be performed by the CONTRACTOR 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.

**21. Drug Free Workplace (contracts over \$10,000)**

All profit or non-profit agencies or organizations receiving state or Federal grant funds under the official sponsorship of the CITY 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.

**22. Interest of CONTRACTOR**

The CONTRACTOR 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.

**23. Political Activity**

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

**24. 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.

**25. Confidential Findings**

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

**26. Lobbying**

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

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, 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 CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City of Minot.

**Exhibit C**  
**CDBG Program Requirements**

**27. Payment for Eligible Expenses**

The CONTRACTOR understands and agrees that the CITY shall reimburse the CONTRACTOR for only those costs associated with work that has been authorized by CITY and costs that are eligible under applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement with HUD grant funds. No reimbursement shall be made for goods and services received by the CONTRACTOR as in-kind contributions from third parties for assistance to the Program.

**28. Repayment of Ineligible Payments**

In the event HUD or the CITY determines through investigations and/or monitoring that any payment or reimbursement to CONTRACTOR is ineligible or disallowed, the CONTRACTOR shall immediately and without delay fully reimburse CITY. If HUD informs CITY 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 CONTRACTOR's sole negligence, willful misconduct, or intentional fraud, the CONTRACTOR agrees to pay an equal amount to CITY, through CITY, prior to the demand date of payback.

**28. Procurement of recovered materials (APPENDIX II PART 200 (K))**

The CONTRACTOR 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 maintain a satisfactory level of competition where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by 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.