



June 17, 2014

City of Minot  
PO Box 5006  
Minot, ND 58702-5006

Attn: Lance Meyer

**RE: City Project No. 3878**

Mr. Meyer:

Advanced Engineering and Environmental Services, Inc. (AE2S) proposes to render professional engineering and surveying services (Assignment) for the City of Minot (CLIENT) for the following project:

Prepare construction drawings in accordance with the requirements of the City of Minot and as outlined in the Request for Qualifications, for the 1<sup>st</sup> Street SE 18<sup>th</sup> Ave to 19<sup>th</sup> Ave Street Improvements, City Project No. 3878.

This Agreement, effective April 28, 2014, sets forth the terms and conditions under which the CLIENT and AE2S shall be governed regarding the Assignment.

#### **Scope of Services**

AE2S will perform the following tasks:

1. Preliminary Design Engineering
  - a. Obtain as-built information from City records.
  - b. Perform preliminary surveys of above ground and below ground infrastructure.
  - c. Coordinate geotechnical exploration by geo-technical consultant of the design area to determine utility constructability and pavement design.
2. Underground Infrastructure Design
  - a. Design storm sewer system to tie into the City's trunk storm line on 1<sup>st</sup> St SE. Coordinate storm sewer tie in locations for undeveloped property on both sides of 1<sup>st</sup> St SE.
  - b. Coordinate the installation of water and sewer service laterals to undeveloped property along 1<sup>st</sup> St SE.
3. Street Design
  - a. Design street section to City of Minot urban section requirement.
  - b. Design street lighting system to City of Minot requirements.
  - c. Confer with geo-technical consultant if City minimum street section will be adequate or if a stronger section needs to be installed.
4. Construction Engineering, Surveying, and Record Drawings
  - a. Engineer shall provide a resident project representative (RPR) when construction is taking place. RPR shall document construction activities, witness testing, document quantities and prepare pay estimates, process change orders, participate in meetings, and other typical duties.
  - b. Engineer shall provide project surveying needs which include preliminary, construction, and as-built surveying.

- c. Engineer shall submit survey quality as-builts consistent with the City of Minot record plan policy. All as-builts must be CAD drafted and submitted electronically in dwg, pdf, and one 11x17 paper copy.
  - d. Record Drawing utility information shall be submitted in GIS format to be incorporated into the City's GIS.
5. Project Management
  - a. Engineer shall designate a project manager for management duties throughout the contract period. Manager shall oversee the design, plan production QA/QC, bidding and award, shop drawing approval, construction administration, and project closeout.
6. Project Submittals
  - a. Engineer shall submit 50% plans for review and comment.
  - b. Engineer will address the comments from the 50% review and produce 90% plan, specification, and estimate sets for review by the City. A final set of plans and specifications will be sent to the City's disaster recovery consultant for their review and their comments will be addressed.
  - c. Engineer will produce final bid documents for advertising.
  - d. Engineer will produce final records and documents for this project and submit any requested information to the applicable funding agencies.

#### **Additional Services**

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the general Scope of Services. If authorized in writing by the CLIENT, AE2S will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit A.

#### **CLIENT'S Responsibility**

CLIENT shall do the following in a timely manner, so as not to delay the services of AE2S:

1. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define CLIENT's policies and decisions with respect to services for the Assignment.
2. Provide all criteria and full information as to CLIENT's requirements for the Assignment.

AE2S shall be entitled to use and rely upon all information provided by CLIENT or others in performing AE2S's services under this Agreement.

CLIENT shall bear all costs incident to compliance with its responsibilities pursuant to this paragraph.

#### **Fees**

AE2S proposes to render professional services under this Agreement for a fee based on percentage of construction not to exceed the relevant amount stated in the adopted "Consulting Engineering Hiring Policy – Federal Aid Projects", incorporated by reference as Exhibit C.

The Fee includes compensation for AE2S services and services of Consultants, if any. Appropriate amounts have been incorporated in the Fee to account for labor, overhead, profit, and Reimbursable Expenses. Notwithstanding anything contrary in this Agreement, AE2S shall not use a cost plus

percentage of cost or percentage of construction cost methods of contract in the calculation of the AE2S fee.

Fees are due and payable monthly.

**Standard Terms and Conditions**

Standard terms and conditions of this Agreement between CLIENT and AE2S are specified in Exhibit B.

**Performance Schedule**

AE2S expects to begin the work immediately upon authorization to proceed. AE2S will use reasonable efforts to complete the Civil Construction drawings by July 14, 2014. In the event of adverse unforeseen conditions, AE2S reserves the right to extend the completion date by a reasonable amount of time.

**Contract Documents**

The Contract Documents consist of the following:

1. This Agreement;
2. The attached Terms and Conditions;
3. All other attached Exhibits;
4. Any drawings or specifications provided by the CLIENT; and
5. Any duly executed amendments.

There are no Contract Documents other than those listed above.

**Acceptance**

If this Agreement sets forth your understanding of our agreement, including the scope of work desired, fees, terms, and conditions, please sign the enclosed copy in the space provided and return a copy to AE2S.

Sincerely,

**AE2S**



By: Roger Grimsley, PLS

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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

City of Minot



## 2014 HOURLY FEE AND EXPENSE SCHEDULE

### Labor Rates\*

Engineer I	\$96.00		
Engineer II	\$112.00		
Engineer III	\$136.00	Operations Specialist I	\$76.00
Engineer IV	\$155.00	Operations Specialist II	\$87.00
Engineer V	\$171.00	Operations Specialist III	\$109.00
Engineer VI	\$195.00	Operations Specialist IV	\$124.00
Engineer VII	\$205.00	Operations Specialist V	\$143.00
Engineer VIII	\$213.00		
		Project Coordinator I	\$93.00
Program Coordinator I	\$155.00	Project Coordinator II	\$108.00
Program Coordinator II	\$164.00	Project Coordinator III	\$122.00
Project Manager I	\$162.00	Project Coordinator IV	\$134.00
Project Manager II	\$187.00		
Senior Consultant	\$185.00	Marketing Consultant I	\$74.00
Technical Expert I	\$220.00	Marketing Consultant II	\$93.00
Technical Expert II	\$235.00	Marketing Consultant III	\$111.00
Technical Expert III	Negotiable	Marketing Consultant IV	\$128.00
		Marketing Consultant V	\$145.00
I&C Technician I	\$89.00		
I&C Technician II	\$99.00	Communications Specialist I	\$78.00
I&C Technician III	\$113.00	Communications Specialist II	\$90.00
I&C Technician IV	\$123.00	Communications Specialist III	\$103.00
I&C Technician V	\$136.00	Communications Specialist IV	\$124.00
I&C Technician VI	\$144.00	Communications Specialist V	\$136.00
I&C Technician VII	\$152.00		
		IT I	\$88.00
Land Surveyor I	\$86.00	IT II	\$108.00
Land Surveyor II	\$105.00	IT III	\$124.00
Land Surveyor III	\$112.00	IT IV	\$140.00
Land Surveyor IV	\$128.00	IT V	\$148.00
Land Surveyor V	\$140.00	IT Manager	\$160.00
Land Surveyor VI	\$154.00		
		Financial Analyst I	\$77.00
Engineering Technician I	\$58.00	Financial Analyst II	\$92.00
Engineering Technician II	\$75.00	Financial Analyst III	\$108.00
Engineering Technician III	\$89.00	Financial Analyst IV	\$121.00
Engineering Technician IV	\$104.00	Financial Analyst V	\$137.00
Engineering Technician V	\$119.00	Financial Analyst VI	\$156.00
Engineering Technician VI	\$133.00	Financial Analyst VII	\$171.00
Engineering Technician VII	\$145.00	Financial Analyst VIII	\$187.00
GIS Specialist I	\$74.00	Administrative I	\$52.00
GIS Specialist II	\$93.00	Administrative II	\$64.00
GIS Specialist III	\$109.00	Administrative III	\$75.00
GIS Specialist IV	\$124.00	Administrative IV	\$87.00
GIS Specialist V	\$142.00	Administrative V	\$96.00
GIS Specialist VI	\$160.00	Administrative VI	\$105.00
Land Title Agent I	\$72.00	Intern I	\$44.00
Land Title Agent II	\$90.00	Intern II	\$50.00
Land Title Agent III	\$106.00	Intern III	\$54.00
Land Title Agent IV	\$120.00	Intern IV	\$60.00
		Intern V	\$71.00



**Reimbursable Expense Rates**

Transportation	\$0.65/mile
Survey Vehicle	\$0.70/mile
Service Vehicle - 1 Ton	\$1.00/mile
Air Transportation	\$1,600/hour
Photocopies 8½" x11"	\$0.10/copy
Plots – Color Bond	\$1.25/s.f.
Plots – Monochrome Bond/Vellum	\$0.75/s.f.
Plots – Film/Photo High Gloss	\$2.00/s.f.
Digital Imaging	\$10.00/day
Laser Printouts 8½" x11"	\$0.20/page
Color Laser Printouts/Copies 8½" x11"	\$0.68/page
Fax	\$0.40/page
Projector	\$25.00/hour
Total Station – Robotic	\$35.00/hour
Pro-XR GPS	\$15.00/hour
Fast Static/RTK GPS	\$50.00/hour
3D Laser Scanner	\$100.00/hour
Sonar Mite	\$50.00/day
Survey Monument	\$5.00/each
Fence Posts	\$8.00/each
Survey Lath	\$22.00/bundle
Survey Stakes/Hubs	\$13.00/bundle
All Terrain Vehicle/Boat	\$100.00/day
Hydrant Pressure Recorders	\$10.00/day
Telemetry Radio	\$10.00/day
Pressure Recorder	\$5.00/day
Pump Station Monitor	\$24.00/day
Area Velocity Module	\$30.00/day
Rain Gauge	\$12.00/day
I&C Supplies	\$10.00/unit
Lab Testing Equipment	\$500.00/day
Thermal Imaging Camera	\$300.00/day
Power Quality Analyzer	\$500.00/week
Process Calibration Instrument	\$200.00/day
Portable Oscilloscope	\$125.00/day
Antenna Watt-Meter	\$50.00/day
Radio Equipment Rental	\$50.00/day
Stylus Tool	\$17.50/unit
ArcFlash Hazard Label	\$3.00/label
Odor Logger	\$25.00/day
Web Hosting	\$19.95/month
In-house Lodging	\$150.00/day
Legal Services Reimbursement	\$190.00/hour
Outside Services**	cost *1.15
Out of Pocket Expenses***	cost*1.15
Rental Car	cost*1.20

\* Position titles are for labor rate grade purposes only.

\*\* Includes laboratory testing, architectural and engineering consultants, surveying, etc.

\*\*\* Includes toll telephone, shipping, postage, subsistence, technical literature, equipment rental, etc.

*These rates are subject to adjustment each year on January 1.*

## Standard Terms and Conditions

The proposal is supplemented to include the following agreement of the parties:

### **Standard Terms and Conditions**

1. **Standard of Care**
  - a. The standard of care for all professional services performed or furnished by AE2S under this Agreement will be the care and skill ordinarily used by members of AE2S's profession practicing under similar circumstances at the same time and in the same locality. AE2S makes no warranties, express or implied, under this Agreement or otherwise, in connection with AE2S's services.
  - b. CLIENT shall be responsible for, and AE2S may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to AE2S pursuant to this Agreement. AE2S may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
2. **Independent Contractor**

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and AE2S and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or AE2S. AE2S's services under this Agreement are being performed solely for CLIENT's benefit, and no other entity shall have any claim against AE2S because of this Agreement or the performance or nonperformance of services hereunder.
3. **Payments to AE2S**

Invoices will be prepared in accordance with AE2S's standard invoicing practices and will be submitted to CLIENT by AE2S monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If CLIENT fails to make any payment due AE2S for services and expenses within 30 days after receipt of AE2S's invoice therefore, the amounts due AE2S 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. In addition, AE2S may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S has been paid in full all amounts due for services, expenses, and other related charges.
4. **Insurance**

AE2S will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to CLIENT upon request.
5. **Indemnification and Allocation of Risk**
  - a. To the fullest extent permitted by law, AE2S shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of AE2S or AE2S's officers, directors, partners, employees, and consultants in the performance of AE2S's services under this Agreement.
  - b. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless AE2S, AE2S's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys,
- and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and consultants with respect to this Agreement.
- c. In addition to the indemnity provided under paragraph 5.b. of this Exhibit, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless AE2S and AE2S's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph 5.c. shall obligate CLIENT to indemnify any individual or entity to the extent of that individual or entity's own negligence or willful misconduct.
- d. To the fullest extent permitted by law, AE2S's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of AE2S and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that AE2S's negligence bears to the total negligence of CLIENT, AE2S, and all other negligent entities and individuals.
- e. The indemnification provision of Paragraph 5.a. is subject to and limited by the provisions agreed to by CLIENT and AE2S in Paragraph 7, "Limit of Liability," of this Agreement.
6. **Exclusion of Special, Incidental, Indirect, and Consequential Damages**

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S and AE2S's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Task Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them.
7. **Limit of Liability**

To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S and AE2S's officers, directors, partners, employees, agents, and AE2S's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them, shall not exceed the total compensation received by AE2S under this Agreement.



8. **Termination for Convenience**  
Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to AE2S all amounts owing to AE2S under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.
9. **Access**  
CLIENT shall arrange for safe access to and make all provisions for AE2S and AE2S's Consultants to enter upon public and private property as required for AE2S to perform services under this Agreement.
10. **Hazardous Environmental Conditions**  
It is acknowledged by both parties that AE2S's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event AE2S or any other party encounters a Hazardous Environmental Condition, AE2S may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. CLIENT acknowledges that AE2S is performing professional services for CLIENT and that AE2S is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with AE2S's activities under this Agreement.
11. **RESERVED**
12. **Client Ownership and Reuse of Documents**  
All documents prepared or furnished by AE2S pursuant to this Agreement shall be the property of CLIENT. CLIENT grants to AE2S a non-exclusive, royalty-free license to use such documents. Reuse of any such documents by CLIENT shall be at CLIENT's sole risk; and CLIENT agrees to indemnify, and hold AE2S harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by CLIENT or by others acting through CLIENT.
13. **Use of Electronic Media**  
a. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the AE2S. Files in electronic media format of text, data, graphics, or of other types that are furnished by AE2S to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.  
  
b. When transferring documents in electronic media format, AE2S makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by AE2S at the beginning of this Assignment.  
  
c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.  
  
d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. AE2S shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.
14. **Force Majeure**  
AE2S shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond AE2S's reasonable control.
15. **Assignment**  
Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.
16. **Binding Effect**  
This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.
17. **Severability and Waiver of Provisions**  
Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and AE2S, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
18. **Survival**  
All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
19. **Headings**  
The headings used in this Agreement are for general reference only and do not have special significance.
20. **Controlling Law**  
This Agreement is to be governed by the law of the State of North Dakota.
21. **Notices**  
Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
22. **Executed in Counterparts**  
This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each Party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each Party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the Parties to the same extent that an original signature could be used.



**EXHIBIT D TO AGREEMENT  
BETWEEN  
CITY OF MINOT, ND, AND AE2S, INC.  
FOR  
PROFESSIONAL SERVICES**

**CDBG Program Requirements**

This is an exhibit attached to and made a part of; and incorporated by reference into the Agreement dated April 23, 2014, between City of Minot, ND, (OWNER) and Advanced Engineering and Environmental Services, Inc (SUBCONTRACTOR) for professional services

**1. Civil Rights**

The SUBCONTRACTOR 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 SUBCONTRACTOR 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 OWNER will provide the SUBCONTRACTOR with any guidelines necessary for compliance with that portion of the regulations during the term of this Agreement.

**2. Nondiscrimination**

The SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the OWNER setting forth the provisions of this non-

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BETWEEN  
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FOR  
PROFESSIONAL SERVICES**

**CDBG Program Requirements**

discrimination clause. The SUBCONTRACTOR 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 SUBCONTRACTOR agrees that it shall be committed to carry out, pursuant to the OWNER's specifications, an Affirmative Action Program in keeping with the principles as provided in Presidential Executive Order 11246 of September 24, 1965. The OWNER will provide Affirmative Action guidelines to the SUBCONTRACTOR to assist in the formulation of such program, upon request.

B. Women/Minority Business Enterprise

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

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BETWEEN  
CITY OF MINOT, ND, AND AE2S, INC.  
FOR  
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**CDBG Program Requirements**

The SUBCONTRACTOR 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 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 SUBCONTRACTOR 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 OWNER 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/SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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.



**EXHIBIT D TO AGREEMENT  
BETWEEN  
CITY OF MINOT, ND, AND AE2S, INC.  
FOR  
PROFESSIONAL SERVICES**

**CDBG Program Requirements**

- B. The SUBCONTRACTOR agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the SUBCONTRACTOR'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 SUBCONTRACTOR 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 SUBCONTRACTOR'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 SUBCONTRACTOR will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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.

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**7. Age Discrimination Act of 1975**

The SUBCONTRACTOR 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.

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

The SUBCONTRACTOR 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**

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The SUBCONTRACTOR 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 SUBCONTRACTOR understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the OWNER and the SUBCONTRACTOR. Failure to comply with these requirements shall subject the OWNER and the SUBCONTRACTOR, 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 SUBCONTRACTOR agrees that no contractual or other disability exists which would prevent compliance with these requirements. The SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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 OWNER. The SUBCONTRACTOR 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.



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**10. Environmental Conditions**

**A. Air and Water**

The SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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**

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The SUBCONTRACTOR 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 SUBCONTRACTOR 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.

**11. Energy Efficiency**

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

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

A. Records to be maintained

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The SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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 OWNER, 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 SUBCONTRACTOR which are directly pertinent to this specific AGREEMENT, for the purpose of audits, examinations, and making excerpts and transcriptions. All



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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 OWNER's final closeout of the grant.

**E. Inspection**

The authorized representative and agents of the OWNER 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 SUBCONTRACTOR shall complete and submit all reports, in such form and according to such schedule, as may be required by the OWNER, 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 SUBCONTRACTOR 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 SUBCONTRACTOR agrees as follows:

- 1. The SUBCONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The SUBCONTRACTOR shall take affirmative action to ensure that applicants for employment are employed, and that

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

2. The SUBCONTRACTOR 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 SUBCONTRACTOR shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The SUBCONTRACTOR shall incorporate foregoing requirements in all subcontracts.

**16. Patents**

The SUBCONTRACTOR 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 AGREEMENT including its use by the OWNER, 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 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 SUBCONTRACTOR.

If the SUBCONTRACTOR uses any design device or materials covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the owner 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 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

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work agreed to be performed under this AGREEMENT, 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.

**17. Copyright**

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

**18. Subcontracts**

- A. The SUBCONTRACTOR 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 SUBCONTRACTOR shall be as fully responsible to the OWNER for the acts and omissions of the SUBCONTRACTOR'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 SUBCONTRACTOR.
- C. The SUBCONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the SUBCONTRACTOR by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the SUBCONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the SUBCONTRACTOR under any provision of the contract documents.
- D. Nothing contained in this AGREEMENT shall create any contractual relation between any subcontractor and the OWNER.

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

The SUBCONTRACTOR 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).



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**20. Breach of Contract Terms**

Any violation or breach of terms of this AGREEMENT on the part of the SUBCONTRACTOR 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.

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

**23. Personnel**

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

All the services required hereunder will be performed by the 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.

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**24. Drug Free Workplace**

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

**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 SUBCONTRACTOR 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 SUBCONTRACTOR**

The 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.

**27. Political Activity**

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

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**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 SUBCONTRACTOR under this Contract are confidential, and the SUBCONTRACTOR agrees that they shall not be made available to any individual or organization without prior written approval of OWNER.

**30. Lobbying**

The SUBCONTRACTOR 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 SUBCONTRACTOR, 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 SUBCONTRACTOR 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 SUBCONTRACTOR 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 SUBCONTRACTOR'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:



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- 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 SUBCONTRACTOR 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 SUBCONTRACTOR understands and agrees that the OWNER shall reimburse the SUBCONTRACTOR for only those costs associated with work that has been authorized by the OWNER 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 SUBCONTRACTOR as in-kind contributions from third parties for assistance to the Program.

**33. Repayment of Ineligible Payments**

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