

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of May 5, 2014 ("Effective Date") between City of Minot ("Owner") whose address is PO Box 5006, Minot, ND 58702 and Kadrmas, Lee & Jackson, Inc., ("Engineer") whose address is 4585 Coleman Street, Bismarck, ND 58503. The Engineer agrees to provide the services described below to Owner for **5th Street Sanitary Sewer Construction** ("Project"). The services Engineer shall provide, or cause to be provided, are further defined in attached Exhibit A – Engineer's Services and are generally described as follows: **Assist Bidding and Award of Construction Contract, Construction Survey and Construction Observation**. Owner shall provide, or cause to be provided, the payment for these services as set forth in attached Exhibit B – Payment for Services.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 10.01.

2.01 Payment Procedures

- A. *Preparation of Invoices*. Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.
- B. *Payment of Invoices*. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer 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, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal

3.01 Additional Services

- A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

- B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) Upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a provider of professional services; or
 - 2) Upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement

and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its engineers may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.
- E. ~~The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2007 Edition).~~
- F. All project documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- G. To the fullest extent permitted by law, Owner and Engineer agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist engineers or contractors 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.

8.01 KL&J Additions to EJCDC E-520

- A. The Owner and Engineer each agree to assume its own liability for claims of any nature including all costs, expenses and reasonable attorney's fees, which may in any manner result from or arise out of this agreement. Neither the Owner nor the Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- B. The Owner shall not reuse or make any modification to the project documents without Engineer's prior written authorization. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer's officers, directors, employees and sub-engineers (collectively) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the project documents by the Owner or any person or entity that acquires or obtains the project documents from or through the Owner without Engineer's written authorization.
- C. In the event of a dispute arising out of or relating to the agreement or the services to be rendered hereunder, both parties hereby agree to (1) attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party, (2) if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by both parties, and (3) if the dispute or any issues remain unresolved after the first two steps, either party may seek to have the dispute resolved by a court of competent jurisdiction.
- D. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Engineer, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Owner and the Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- E. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents. Each Party may change its designated individual(s) at any time by written notice to the other Party.

9.01 Total Agreement

- A. This Agreement (together with any expressly incorporated exhibits and appendices), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

10.01 Payment and Schedules

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. In accordance with Exhibit B – Payment of Services.

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 5, 2014.

Engineer's Services

The Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase – Not Applicable*

A1.02 *Preliminary Design Phase – Not Applicable*

A1.03 *Pre-Bidding Phase – Not Applicable*

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Pre-Bidding Phase, and upon written authorization by Owner to proceed, Engineer shall:
 1. Issue addenda as appropriate to clarify, correct, or change the bidding documents.
 2. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
 4. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
 5. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
- ~~2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.~~
- ~~3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services~~
4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Construction surveys and staking:* as appropriate to assist contractor in constructing the project. Survey stakes will be set one (1) time. Should stakes be moved, damaged, or otherwise deemed unusable, additional services will be required to re-stake.
8. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in

progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
- 9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 - 10. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
 - 11. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: [Signature]
(signature)

By: Curt Zumbelmann
(printed or typed name)

Title: Mayor

Date Signed: 6/29/14

Witnessed By: [Signature]
(signature)

Witnessed By: Lisa Jandt
(printed or typed name)

Title: City Clerk

Address for giving notices:

Designated Representative:

Attn: Lance E. Meyer, PE

Title: City Engineer

Phone Number: 701-857-4100

Facsimile Number: _____

E-Mail Address: lance.meyer@minotnd.org

ENGINEER: Kadrnas, Lee & Jackson, Inc.

By: [Signature]
(signature)

By: Brant Malsam, PE William Buxton, PE
(printed or typed name)

Title: Division Leader PRACTICE AREA LEADER

Date Signed: 7/17/14

Witnessed By: [Signature]
(signature)

Witnessed By: Lisa Schlepp
Mark D. Sweeney, PE
(printed or typed name)

Title: Project Assistant
Municipal Group Manager

Address for giving notices:

2900 10th St. NW

Minot, ND 58701

Designated Representative:

Attn: Mark D. Sweeney, PE

Title: Municipal Group Manager

Phone Number: 701 839 3383

Facsimile Number: _____

E-Mail Address: Mark.sweeney@kljeng.com

12. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
13. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
14. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
15. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
16. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the

recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
17. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
 18. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete; Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
 19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the

recommendation for final payment, Engineer shall also provide a notice using KLJ's 00630 Final Review and Acceptance form that the Work is acceptable to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
 2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and

constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
15. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
16. Preparation of operation and maintenance manuals.
17. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
18. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
19. Assistance in connection with the adjusting of Project equipment and systems.
20. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
21. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
22. Overtime work requiring higher than regular rates.
25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
26. Prepare record drawings.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from

Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

1. Services in connection with work change directives and change orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites

This is **EXHIBIT B**, consisting of three (3) pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 5, 2014.

Payments to Engineer for Services and Reimbursable Expenses
Direct Labor Costs Times a Factor

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

B1.01 Compensation for Basic Services – Direct Labor Costs Times a Factor Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:
1. An amount equal to Engineer's Direct Labor Costs times a factor of 3.40 for the services of Engineer's personnel engaged on the Project, plus Reimbursable Expenses.
 2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit B as Appendix 1.
 3. The total compensation for services under Paragraph B1.01 is to be a not to exceed fee of \$15,000 unless authorized by the Owner, based on the following services:
 - a. Bidding or Negotiating Phase
 - b. Construction Phase
 - c. Post-Construction Phase
 4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
 5. The total estimated compensation for Engineer's services incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultant charges.
 6. The portion of the amounts billed for Engineer's services which are related to services rendered on a Direct Labor Costs times a Factor basis will be billed based on the applicable Direct Labor Costs for the cumulative hours charged to the Project by Engineer's principals and employees multiplied by the above-designated factor,

plus Reimbursable Expenses and Engineer's Consultant charges incurred during the billing period.

7. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits.
8. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of the date of this agreement) to reflect equitable changes to the compensation payable to Engineer.

B1.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses associated with Lodging and Meals, if necessary.

B1.03 Other Provisions Concerning Payment

A. Estimated Compensation Amounts:

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

B1.04 Compensation for Additional Services – Direct Labor Costs Times a Factor Method of Payment

A. Owner shall pay Engineer for Additional Services as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 – ITEMS NOT INCLUDED IN SCOPE OF SERVICES under Exhibit A, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each Engineer's personnel times the Engineer's applicable Direct Labor Costs times a factor of 3.40, plus related Reimbursable Expenses and Engineer's Consultant charges, if any.

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This is an exhibit attached to and made a part of; and incorporated by reference into the Agreement dated May 5, 2014, between City of Minot, ND, (OWNER) and Kadrmas, Lee and Jackson, 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-discrimination

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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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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.

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- 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 records connected with this

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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 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,

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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 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.

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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 contracting 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.

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

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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.

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.

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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:

- 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

**EXHIBIT C TO AGREEMENT
BETWEEN
CITY OF MINOT, ND, AND KADRMAS, LEE & JACKSON, INC.
FOR
PROFESSIONAL SERVICES**

CDBG Program Requirements

- 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.