

City of Minot

AGREEMENT

THIS AGREEMENT, made and entered into this 14TH day of OCTOBER, 2021, by and between the City of Minot, a municipal corporation in the County of Ward and the State of North Dakota, hereinafter referred to as the CITY; and, Material Testing Services LLC hereinafter referred to as the CONTRACTOR, WITNESSETH:

WHEREAS, the CITY purchased the former Wells Fargo Building in order to rehabilitation the structure for a new city hall using Department of Housing and Urban Development Community Development Block Grant National Disaster Resilience (CDBG-NDR) funds;

WHEREAS, the CITY intends to contract separately with a contractor to provide geotechnical exploration services and building special inspections per the scope of work in the request for proposals;

NOW, THEREFORE, the CONTRACTOR, in consideration of the premises and the agreements of the CITY, hereinafter set forth, does hereby agree to complete the work herein specified in accordance of the submittal proposal, and to complete such work herein provided in accordance also with the proposal, which is as follows, to wit: Attached Material Testing Services Proposal

The CONTRACTOR further agrees to complete said work under the direction and supervision and subject to the approval of the City representative, or Program Administrator in charge of the project if consulting Program Administrators have been retained for this project.

The CONTRACTOR agrees that it is an independent entity under this Agreement and is not an employee of CITY for any purpose.

The CONTRACTOR further agrees that the CITY does hereby reserve the right, in case of improper work under this contract, to suspend work thereon at any time, and to re-let said Contract or to order rework of said work or any part thereof improperly done, and that any additional cost occasioned thereby shall be deducted from the amount that would otherwise have been due to the CONTRACTOR under his said Contract herein, and shall be charged against him.

Final acceptance shall be deemed to be the date on which the final report and completion of inspections data is submitted to the CITY.

It is further understood and agreed that upon the CONTRACTOR performing the work designated in this Contract, the CITY agrees to pay to the CONTRACTOR for the actual work performed in accordance with the proposal, not to exceed a lump sum of \$4,700 for Scope 1: Geotechnical Exploration & Recommendations Report and, Scope 2: Code-Required Special Inspections at the unit prices and hourly rates as submitted in the proposal \$11,055.62 upon full completion of the work and upon submission of proof of work in sufficient detail to conform to



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HUD requirements, documented by the City representative or Program Administrator of the CITY.

It is further understood and agreed that all of the work under this Contract shall be paid for only in current funds from the funds above mentioned, and the CITY shall in no case be liable on this or any other Contract for the completion of such work for any sum whatsoever to be paid by money raised by general taxation and that the CITY assumes and incurs no general liability under this contract.

The CONTRACTOR further undertakes and agrees that he will defend, indemnify and save harmless the CITY from any and all damages and liability whatsoever, on account of any accident or injury which may occur or be caused directly or indirectly to any one on account of the completion of said work by CONTRACTOR or by any excavations or obstructions which may be placed in the project area by the CONTRACTOR in connection with the work or otherwise. The CONTRACTOR further agrees to pay all taxes applicable to this work hereunder, keep all employees fully covered by Workers' Compensation Insurance, and pay all premiums promptly when due.

CONTRACTOR and CITY agree that this Agreement may be terminated by mutual consent of both parties executed in writing. In addition, CITY may terminate this Agreement effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice, if CONTRACTOR fails to perform the work in accordance with the submitted proposal (Exhibit A: Material Testing Services Proposal); or if CONTRACTOR fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

CONTRACTOR and CITY agree that all notices and/or other communications required under this Agreement must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

CITY OF MINOT:

City Engineer

PO Box 5006

Minot, ND 58702-5006

CONTRACTOR:

Material Testing Services LLC

Steven Wald, PE

B



City of Minot

PO Box 634

Minot, ND 58702

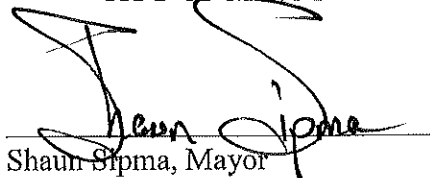
CONTRACTOR and CITY agree that this Agreement shall be construed and interpreted both as to the validity and performance of the Parties in accordance with the laws of the State of North Dakota. In the event of any dispute hereunder the forum shall be in District Court, Ward County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens. CONTRACTOR and CITY agree that this Agreement, including the Attachments, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified in this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both Parties.

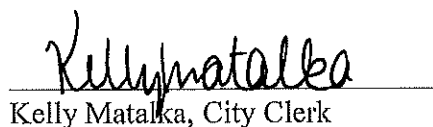
IN WITNESS WHEREOF, the CITY has caused this Contract to be executed by the Mayor in its name and countersigned and attested to by its City Clerk, and its corporate seal to be hereunto affixed, and the CONTRACTOR has hereunto caused this Contract to be executed by its officers thereunto duly authorized.

(Corporate Seal)

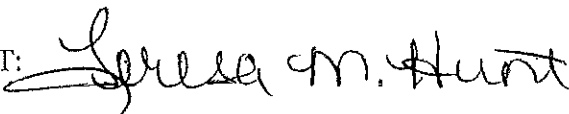
ATTEST:

CITY OF MINOT


Shaun Sipma, Mayor


Kelly Matalka, City Clerk

ATTEST:




CONTRACTOR



City of Minot

SUPPLEMENTARY GENERAL CONDITIONS

PART 1 RULES AND REGULATIONS SPECIFIC TO CDBG FUNDED PROJECTS

1.01 CDBG Compliance Provisions – The City Hall Rehabilitation Geotechnical Exploration and Special Inspections Agreement will be subject to the following liens, rules, and regulations, as the same may be amended from time to time.

- A. Provisions Required by Law Deemed Inserted – Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
- B. Flood Disaster Protection – This is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this Contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201 (d) of said Act; and the use of any assistance provided under this Contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

- C. Section 503 of the Rehabilitation Act of 1973 (29 USC 793) – Contractor 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 Contractor 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.

Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

In the event of Contractor'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.



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Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the City of Minot, provided by or through the Program Administrator. Such notices shall state the Contractor'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.

Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor 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.

Contractor 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. Contractor 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.

- D. Age Discrimination Act of 1975 – Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.
- E. Discrimination Due to Beliefs – 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.
- F. Certification of Non-Segregated Facilities – By the submission of this Proposal, the Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. Contractor certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this Contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, 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 customs or any other reason.

Contractor further agrees that (except where he has obtained identical certifications from proposed Subcontractors and material Suppliers for specific time periods), he will obtain identical certifications from proposed Subcontractors or material Suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.



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- G. Housing and Urban Development Section 3 Workforce and Business Concerns – The work to be performed under this Contract is on a project assisted basis under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. 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 area of the project.

The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements. A Contractor/Subcontractor Section 3 Plan format is attached (Attachment E) and must be completed for all contracts and subcontracts expected to exceed \$100,000.

The Contractor will send to each labor organization or representative of workers with which he has a collective bargain-agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his 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.

A Section 3 Business:

1. Is at least 51 percent or more owned by Section 3 residents; or,
2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three (3) years of the date of first employment with the business concern were Section 3 residents; or,
3. That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

Section 3 Residents are:

4. Public housing residents; or,
 5. Low and very-low income persons who live in the metropolitan area or Non-Metropolitan County where a HUD-assisted project for housing or community development is located.
- H. Drug Free Workplace – Contractor hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR Part 21.
- I. Protection of Lives and Health – Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards,



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Department of Labor, Part 1518) Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 7, 1971, Title 29 – LABOR, shall be observed and Contractor shall take or cause to be taken, such additional safety and health measures as the City may determine to be reasonably necessary.

- J. Danger Signals and Safety Devices – Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case Contractor fails or neglects to take such precautions, the City may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the City does not relieve the Contractor of any liability incurred under these specifications or contract.
- K. Lead Based Paint Hazards – The reconstruction and rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and its Subcontractors shall comply with the provisions for the elimination and reduction of lead-based paint hazards under Subpart B of said regulations.
- L. Asbestos – Contractor shall be aware of the possibility that asbestos containing materials (ACM) may be present in existing structures and will be responsible to take appropriate measure to ensure worker safety and adhere to any state, local, or federal requirements.
- M. Use of Explosives – When the use of explosives is necessary for the prosecution of the work, Contractor shall observe all local, state and federal laws in purchasing and handling explosives. Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel or rope mats.

Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the City or Program Administrator or their delegates does not in any way reduce the responsibility of Contractor or his Surety for damages that may be caused by such use.

- N. Compliance with Air and Water Acts – Contractor and all of its Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the City, the following:

1. A stipulation by Contractor or its Subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
2. Agreement by Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution



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Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
 4. Agreement by Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.
- O. Energy Efficiency – Contractor 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).
- P. Access to Records, Maintenance of Records – The City of Minot and the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

All records required by 24 CFR 570.506 that are pertinent to the activities funded under this Contract shall be maintained in a central location by Contractor and will be maintained for a period of five (5) years from closeout of the grant from which this Contract is funded.

- Q. Copyright – No materials, to include but not limited to reports, maps, or documents produced as a result of this Contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this Contract that might be subject to copyright shall be the property of the City and all such rights shall belong to the City.
- R. Confidential Findings – All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the City.
- S. Conflict of Interest – No member, officer, or employee of the City or the local jurisdiction of this Contract, or agent, consultant, or member of the governing body of the City or the local jurisdiction of this Contract, or other public official who exercises or has exercised any functions or responsibilities with respect to this Contract during his or 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 in connection with the Contract or in any activity or benefit with regard to the Contract.

Contractor shall cause to be incorporated in all contracts and/or subcontracts the foregoing provision regarding conflicts of interest.



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No member of or delegate to Congress, or City employee, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation.

If a person receiving assistance under this Program does in fact have a conflict of interest as discussed herein, such conflict will be fully disclosed in writing to the City and addressed under applicable law.

Pursuant to the City of Minot's Conflict of Interest Policy and the Department of Housing and Urban Development (HUD) regulations, any individual or entity seeking CDBG funds for any activity in which they or related individuals or organizations have an interest must disclose that interest when applying for CDBG funding. Once the conflict of interest has been disclosed, HUD is authorized to determine whether an exception may be granted. 24 CFR 570.489 (h) (5). Additionally, once the conflict of interest has been disclosed, the individual must recuse themselves from any municipal governmental actions or decisions to be taken that would further that individual's interest, or interest of related individuals or organizations, in gaining benefit from the CDBG funds.

- T. Interest of Contractor – Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance or services hereunder. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.
- U. Political Activity – Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.
- V. Lobbying – Contractor certified, to the best of its knowledge and belief that:
1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- W. Personnel – Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.



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

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

- X. Hiring of Illegal Aliens – The hiring of illegal aliens is prohibited under Federal Labor Laws.
- Y. Anti-Kickback Rules – Salaries of personnel performing work under this Contract 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. 2760). Contractor shall comply with all applicable “Anti-Kickback” regulations and shall insert appropriate provisions in all subcontracts covering work under this Contract to ensure compliance by the Subcontractors with such regulations and shall be responsible for the submission of affidavits required of Subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.
- Z. Patents – Contractor shall hold and save the City and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract including its use by the City, unless otherwise specifically stipulated in the Contract.

License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the City must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the City and not by or through the Contractor.

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

- AA. Debarment, Suspension, and Ineligibility – Contractor represents and warrants that it and its Subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).
- BB. Subcontracts: Contractor 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.



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Contractor shall be as fully responsible to the City for the acts and omissions of the Contractor's Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.

Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractor to the Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provision of the Contract Documents.

Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the City.

CC. Assignability – Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the City provided that claims for money due or to become due the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

DD. Termination for Unavailable Funding – The continuation of this Contract is contingent upon the appropriation and release of sufficient funds to the City of Minot to fulfill the requirements of this Contract. Failure of the appropriate authorities to approve and provide an adequate budget to the City of Minot for fulfillment of the Contract terms shall constitute reason for termination of the Contract by either Party. Contractor shall be paid for all authorized services properly performed prior to termination.

EE. Breach of Contract Terms – Any violation or breach of any of the terms of this Contract on the part of Contractor or the Contractor's Subcontractors 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 Contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

FF. Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations at 29 CFR part 5 (construction contracts awarded by Recipients and subrecipients in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

PART 2 NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY REGULATIONS

2.01 NDDEQ Regulations – It is the Contractors' responsibility to know and follow all Local, State, and Federal laws and regulations pertaining to this project. The attachments herein are highlighted as important examples of the many regulatory requirements the Contractor must know and adhere to throughout the duration of this project to be in full regulatory and contractual compliance.



City of Minot

ATTACHMENT A - EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

Equal Employment Opportunity Certification Excerpt From 41 CFR §60-1.4(b)

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Department of Veterans Affairs
OMB Control No. 2502-0029
(exp. 7/31/2009)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions will be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

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upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph (a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by referenced to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

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