

**AGREEMENT BETWEEN CITY OF MINOT AND CDM SMITH
FOR COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY
MANAGEMENT SERVICES**

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

RECITALS:

WHEREAS, the City of Minot has received Community Development Block Grant Disaster (CDBG-DR) funds from the United States Government Office of Housing and Urban Development (HUD) under Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011). These funds are to address housing and non-housing damages as a result of the 2011 flooding, hereinafter called the "Program" and

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

WHEREAS, the City will allow the Program Administrator to incur pre-agreement costs associated with administrative, planning, and project delivery activities covered by this Agreement, as provided for through the Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011); and

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

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

TERMS:

I SCOPE OF AGREEMENT

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

II. SCOPE OF SERVICES

A. Goals and Objectives

The City is administering the Community Development Block Grant Disaster Recovery (CDBG-DR) funds for disaster-related expenses necessary for disaster relief, long-term recovery, restoration of infrastructure and housing, and economic development in distressed areas due to the 2011 flooding. The City is retaining the services of Program Administrator to administer CDBG-DR funds effectively and expeditiously as part of the implementation of the Disaster Recovery Program for the City of Minot. As

outlined below, the Program Administrator will perform certain tasks (services) for the City, including, but not limited to, assisting the City in program design, the pre-application process, the application process, project development and implementation, bidding, pre-construction, construction, repair and rehabilitation and closeout.

B. Statement of Work

The Program Administrator shall administer the CDBG-DR funds for the Program which is generally comprised of Housing, Infrastructure and Economic Development where authorized by HUD. The scope of services to be performed under this agreement is summarized in Exhibit A. The Program Administrator shall assist the City in determining eligible activities and expending the CDBG-DR funds in accordance with HUD regulations. The Program Administrator shall perform program management, delivery and operation services.

C. City's Other Contractors and Consultants

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

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

D. Performance Monitoring

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

III. TIME OF PERFORMANCE

Services of the Program Administrator shall start upon May 7, 2012 and shall terminate when the Program is completed, but not later than May 7, 2014, unless mutually agreed by both parties.

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

If Program Administrator services are delayed or suspended in whole or in part by the City for more than three months through no fault of Program Administrator, Program Administrator shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by Program Administrator in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

IV. CITY FURNISHED RESOURCES

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

V. EXPENSES AND PAYMENT

A. Agreement Amount and Rate Schedule

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

B. Program Administrator's Compensation

For and in consideration of the Services rendered by the Program Administrator, and subject to the agreement amount and rate schedule provisions of **Exhibit B**, the City shall pay the Program Administrator for the services completed in the scope of the RFP up to a maximum agreement amount of \$5,124,416, which may only be increased by written amendment to this Agreement signed by both parties and approved by the City. Compensation for Program Administrator's Services shall be based on the all-inclusive Blended Hourly Rate of \$135.00 per hour, as further described in **Exhibit B**.

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

Program Administrator invoices shall be submitted to the City on a monthly basis. Invoices are due and payable upon receipt and approval of the City Council the first Monday of each month after receipt of the invoice by the City. If the City fails to make any payment for services and expenses due Program Administrator within thirty days after submission to the City Council of Program Administrator's invoice' the amounts due will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day after submission to the City council; and, in addition,

Program Administrator may, after giving seven days' written notice to City, suspend services under this Agreement until Program Administrator has been paid in full all amounts due. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

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

C. Payment Procedure

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

D. Payment for Eligible Expenses

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

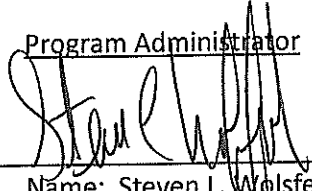
E. Repayment of Ineligible Payments

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

VI. NOTICES AND COORDINATION

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

City
By: 
Name: Cindy Hemphill
Title: Finance Director

Program Administrator
By: 
Name: Steven L. Wolsfeld
Title: Associate

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

VII. SPECIAL CONDITIONS

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

VIII. GENERAL CONDITIONS

A. Compliance

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

B. Indemnity

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

C. Insurance

1. Public Liability Insurance

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

Bodily injury or death, per person	\$100,000
Bodily injury or death, per occurrence	\$300,000
Property damage, per occurrence	\$100,000

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

2. Worker's Compensation Insurance

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

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

3. Documentation of Insurance Coverage

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

D. Relocation, Acquisition and Displacement

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

E. Ownership of Documents, Copyright

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

IX. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

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

B. Record-Keeping, Reports, and Audits

1. Records to be maintained

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

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

2. Property Records

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

3. Retention

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

4. Reports

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

X. GENERAL REQUIREMENTS

A. Civil Rights

1. Compliance

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

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

2. Nondiscrimination

The Program Administrator shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Program Administrator shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Program Administrator agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the Program Administrator setting forth the provisions of this nondiscrimination clause. The Program Administrator shall also abide by Title IX of the Education Amendments of 1972 (20 U.S.C.A. 1681 *et seq.*) which prohibits sex discrimination in federally assisted education programs.

B. Affirmative Action

1. Approved Plan

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

2. Women/Minority Business Enterprise

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

3. Notifications

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

4. EEO/AA Statement

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

5. Grievance

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

C. Labor Standards

1. Wages

The Program Administrator agrees to comply with the requirements of the Secretary of Labor issued in accordance with the provisions of Contract Work Hours and Safety Standards Act [40 U.S.C.A. 3701 *et seq.*, as amended], as supplemented by Department of Labor regulations; the Copeland "Anti-Kickback" Act [18 U.S.C.A. 874]; the Davis-Bacon Act [40 U.S.C.A. 3141 *et seq.*, as amended]; and all other applicable Federal, state and local laws and regulations pertaining to labor standards, insofar as those acts apply to the performance of this Agreement. The Program Administrator shall maintain documentation that demonstrates compliance with hour and wage

requirements of this section. Such documentation shall be made available to the City for review upon request. The Program Administrator shall also abide by Chapter 11 of Title 18 of the U.S. Code [18 U.S.C.A. 201 *et seq.*], which prohibits a number of criminal activities, including bribery, graft and conflict of interest.

2. OSHA

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

3. Drug Free Workplace

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

D. Prohibited Activity

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

1. Hatch Act

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

2. Religious Organization

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

E. False Claims

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

Deficiency Act (31 U.S.C.A. 1341 *et seq.*); and Section 208(a) of the Intergovernmental Personnel Act of 1970, as amended.

F. "Section 3" Clause

1. Compliance

The Program Administrator agrees to comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders. The Program Administrator understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the City, the Program Administrator and any sub-Program Administrators. Failure to comply with these requirements shall subject the City, the Program Administrator and any sub-Program Administrators, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided, and as set out in 24 C.F.R. Part 135, Subpart D. The Program Administrator agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Program Administrator shall include the following language in all subcontracts executed under this Agreement:

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

2. Notifications

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

3. Subcontracts

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

G. Subcontracts

1. Approvals

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

2. Monitoring

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

3. Content

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

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

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

- Clean Air Act, 42 U.S.C.A. 7401 *et seq.*
- Clean Water Act, 33 U.S.C.A. 1368
- Executive Order 11738
- Federal Water Pollution Control Act, as amended, 33 U.S.C.A. 1251, *et seq.*, 1321 and 1318, relating to inspection, monitoring, entry, reports, and information, and all regulations guidelines issued there under
- Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 50, as amended.
- National Environmental Policy Act of 1969 (42 U.S.C.A. 4321 *et seq.*, as amended)
- HUD Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

B. Flood Disaster Protection

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

C. Lead-Based Paint

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

D. Historic Preservation

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

E. Wildlife Protection

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

XII. SUCCESSORS, ASSIGNMENTS AND AMENDMENTS

A. Successors and Assignments

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

B. Amendments

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

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

C. PUBLIC CONTACT

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

XIII. TERMINATION OR SUSPENSION OF CONTRACT

A. Automatic Termination

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

B. Termination Without Cause

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

C. Termination With Cause

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

to cancellation. Further, if the City has cause to believe that the Program Administrator is in noncompliance with this Agreement or any applicable rules and regulations, the City may withhold up to five (5) percent of said Agreement funds until such time as the Program Administrator is found to be in compliance by the City, or is otherwise adjudicated to be in compliance.

D. Partial Terminations

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

E. Breach of the Agreement

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

F. Close-out

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

XIV. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

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

XV. NO THIRD PARTY BENEFICIARIES

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

XVI. AGREEMENT REQUIREMENTS

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

XVII. INCORPORATION OF EXHIBITS

The following documents are a part of this Agreement:

Exhibit A	Scope of Services
Exhibit B	Rate Schedule

CITY OF MINOT

By: 

Name: Curt Zimbelman

Title: Mayor

Date Signed: May 7, 2012

CDM SMITH INC.

By: 

Name: Steven Wolsfeld

Title: Associate

Date Signed: May 7, 2012

EXHIBIT A
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

SCOPE OF SERVICES

Phase 1: Start up and Program Design Assistance (Months 1-4)

Program Administrator shall assist the City in developing the mechanisms necessary for implementation of a CDBG Disaster Program, including but not limited to the following:

- a. Complete the City's Action Plan for Disaster Recovery in accordance with the established HUD Disaster Regulations. Design and develop required program Policies and Procedures for implementation of the programs and projects as described in the Action Plan.
- b. Establish a data management system (DMS) based on requirements of the proposed programs.
- c. Secure building leases and equipment for all front-office and back-office operations including identification and opening of Disaster Program Center.
- d. Secure necessary personnel, equipment, and telecommunications services to be able to take applications by mail, in-person and over the phone.
- e. Make ready all paper forms and paper filing capacity for physical recordkeeping, including the development of necessary procedures and forms for obtaining privacy releases, both in person and from applicants who live in remote locations.
- f. Enter into contracts which with all subcontractors required to operate the program and to ensure that subcontractors are in compliance with Section XI of the Agreement.
- g. Develop presentation materials and conduct technical assistance meetings in different locations throughout the City to educate potential applicants, contractors, subcontractors and other critical target groups on the details of the eligible programs.
- h. Develop and initiate outreach and public education campaign which will begin within 30 days after the start of the program and will continue for no less than six months after start up.
- i. Make available senior managers of the Program Administrator's firm for media interviews, meetings with state and/or federal officials, and other necessary external meetings, each instance of which must be approved by the City.
- j. As necessary, assist the City in signing memorandums of understanding in coordination with the City and all relevant partners (FEMA, SBA, BND, and other similar state and federal agencies) to facilitate the transmission of necessary data required for program implementation.

EXHIBIT A
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

SCOPE OF SERVICES

Phase 2: Full-scale operations (Months 3-22)

The scope of services includes grant administration services and project delivery services for Minot's CDBG-Disaster Recovery Program, as described below. Services shall include: compliance with all required reporting, tracking overall grant progress in compliance with CDBG program guidelines, providing technical assistance when necessary, preparation of amendments, coordination with City committees, financial management, and other grant-required administration tasks requested by the City and/or funding agency. Areas included:

1. Public Infrastructure – Public Infrastructure Program
2. Housing – Housing Rehabilitation and/or Reconstruction Program
3. Housing – Housing Acquisition/Buy-Out Program
4. Economic Development

Project Delivery Services shall include, but not be limited to: conducting environmental review based on selected activities, preparing and reviewing program policies and procedures, determining eligibility of requested City of Minot Disaster Relief Projects, homeowner applications, housing work write-ups, contractor verification, assisting in development of bid packages, overseeing bidding process, conducting weekly CDBG related progress inspections, compliance with Davis-Bacon requirements, working with project engineers, if required, and other activity related tasks required to complete the Program.

Specifically, the City requests the following services to be provided:

- Program Management processes and tools for organizing and managing CDBG-DR programs and funds. Establishment and training on best practices related to Program Management
- Establishment of Program charters, timelines, goals, metrics and deliverables
- Document control and management
- Action Plan and program development and support
- Policy development and review
- Support of program and financial compliance requirements
- Support on communication strategy
- Support of monitoring plans and execution
- Support of program operations as required
- Assist City public relations firm with City,, Congressional, and State Government office reporting

All programs listed below will be designed to meet the City's Program Policies.

Infrastructure Program

CDM Smith will assist the City in the planning and setting up of the City's selected infrastructure projects for up to 5 projects. CDM Smith will gather the necessary data and information to determine CDBG-DR eligibility and conformance to one of the three national objectives. For infrastructure projects that were

EXHIBIT A
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

SCOPE OF SERVICES

not directly impacted or damaged by the floods, CDM Smith will work with the City and HUD to allow the project as an eligible disaster project under "economic revitalization." Once projects are approved by Minot and approved in the HUD Action Plan, CDM Smith will:

- Complete the required environmental review
- Set up the projects into HUD's DRGR system. Eligibility, national objective, beneficiary, ethnic characteristics, income levels of beneficiaries, financial information, etc., will be put entered the system.
- Coordinate and assist the City in Developing RFQ's for engineering services
- Coordinate with selected engineer(s) to assure appropriate CDBG clauses are incorporated into construction bids and construction award documents
- Conduct a preconstruction conference for each selected contractor
- Verify that the construction of the projects is in compliance with CDBG-DR Program requirements and assure that the projects are the same as awarded
- Oversee compliance with Davis Bacon including:
 - CDM Smith will furnish all Semi-Annual Labor Standards Enforcement Reports (SALSER) required by HUD each April and October and any Labor Standards Enforcement Reports as needed.
 - Weekly contractor and subcontractor payrolls
 - Employee interview forms
 - Payroll review sheet for each payroll
 - Corrective actions for any wage underpayments or overtime violations
 - Section 3 new hire forms
 - Pictures of posted wage rates and Equal Opportunity posters
 - Change orders
 - Insection reports
 - Semi-Annual Labor Standards Reports and the Final Wage Compliance Reports
- Maintain hard files containing documentation to support compliance for the following:
 - Bid Advertisements
 - Addendums
 - Compliant bid documents that include all CDBG-DR requirements
 - Copies of bids received including completed checklists for completeness of each bid received
 - Written affirmation that contractor is not on the federal debarment list
 - Minutes from bid opening
 - Tabulation of bids
 - Bid award
 - Executed contract
 - Pre-construction conference minutes
 - Copies of completed Section 3 plans with tables A and B from contractor and subcontractors
 - Completed certifications from prime contractors and subcontractors for Section 3 and segregated facilities

EXHIBIT A
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

SCOPE OF SERVICES

Housing Rehabilitation and/or Reconstruction Program

CDM Smith will provide a comprehensive program for up to 125 single family homes. Services to be implemented are listed in the grant proposal and include:

- community and applicant informational workshops
- application intake
- eligibility determination
- third party verification
- assessment and verification of duplication of benefits
- file documentation
- damage assessments
- environmental clearance
- award calculations and allocations
- development of RFP's or RFQ's for contractors
- development for the solicitation for the procurement of contractors
- scoring and recommendations for selected contractors
- contractor progress review services to be limited to pay point inspections, and onsite progress inspections, once per week. The scope of services assumes that the City will complete code inspections.
- payment processing

Housing Acquisition/Buy-Out Program

CDM Smith will provide a comprehensive housing acquisition/buyout program for up to 125 homes. Services to be implemented include:

- community and applicant informational workshops
- application intake
- eligibility determination
- third-party verification
- assessment and verification of duplication of benefits
- environmental reviews
- file documentation
- appraisals
- title work
- award calculations and allocations
- assistance with the procurement of contractors for demolition
- payment processing
- development of RFP's for demolition contractors
- CDBG-DR program requirement related compliance oversight of the demolition contractors

EXHIBIT A
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

SCOPE OF SERVICES

Single Family Housing Down-Payment Assistance Program

CDM Smith will provide a comprehensive housing down payment program for up to 200 homes. Down payment assistance will be offered to those homeowners who elect to move into the City's new development area. Services to be implemented include:

- environmental Review
- homeowner outreach
- homeowner eligibility determinations
- working with lenders to determine appropriate loan amounts
- assist the City to develop appropriate program documents
- assist title companies
- disbursement of funding
- project close-out

Incentive Program

CDM Smith will provide a comprehensive housing incentive program for up to 30 homes . Incentive assistance will be offered to those homeowners who were eligible for the buy-out program and elect to move into the City's new development area. Services to be implemented include:

- environmental Review
- homeowner outreach
- homeowner eligibility determinations
- working with lenders to educate them on the program
- assisting the City to develop appropriate program documents
- assisting title companies
- disbursement of funding
- project close-out

Small Rental Program

CDM Smith will provide a comprehensive small rental program for up to 75 units. Landlords will be offered financial assistance in accordance with the approved Program policies. Services to be implemented include:

- environmental review
- landlord outreach
- landlord eligibility determinations
- working with lenders to educate them on the program
- assisting the City to develop appropriate program documents

EXHIBIT A
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

SCOPE OF SERVICES

- assisting title companies
- disbursement of funding
- project close-out

Economic Development Program

CDM Smith team members will meet with City officials to determine the types of economic development activities the City wishes to fund. The following are a few of the types of eligible and fundable activities:

- Direct loans/grants to for-profit businesses
- Loan interest supplements to for-profit businesses
- Loan guarantees
- Business incubators
- Public infrastructure to assist businesses

Based upon economic development activities that the City wishes to fund, CDM Smith will prepare the program guidelines for the activity with input from the City staff for up to two (2) individual economic development programs. Policies will be dependent upon such decisions as to whether the program will be competitive; first-come, first-serve; ceiling amounts for the grant/loans; cost per job created or retained; disaster impact or economic revitalization, etc. Once policy decisions have been made, the documents necessary to implement the approved activity will be created. For example, if assistance is determined to be loans/grants for for-profit businesses, application forms will be developed that capture the information to determine national objective and to perform the underwriting required by HUD regulations. For any of the above activities, CDM Smith upon approval of the activity by the City will deliver written program policies, guidelines and application forms. It is anticipated that no more than 5% of the City's total allocation will go into economic development activities. Services include:

- a. Take applications from applicants; verify eligibility, calculate assistance amounts, and recommend awards.
- b. Provide applicants with technical assistance.
- c. Review work write ups on eligible projects and verify the amounts of assistance due to projects, prepare all documents related to the commitment and disbursement;
- d. Process commitment letters and process invoices for assistance for eligible applicants. Prepare form of agreement for housing rehabilitation between the homeowner and the contractor. The scope of services assumes the City will perform disbursement to the contractors.
 - i. Develop a mediation process to resolve disputes between vendors participating in the program and City.
 - ii. Provide the City with regular activity, financial and progress reports as required to support billing for services and preparation of reports for City's monitoring agencies and HUD.

EXHIBIT A
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

SCOPE OF SERVICES

Phase 3: Close-out (Months 18-24)

The Program Administrator shall provide the following services in Phase 3 including, but not limited to, the following items:

- Provide final reports on activities, accomplishments and financials
- Close out files for all applications and closed transactions
- Provide all other documentation and certifications required by the contract and terms of the federal funding.

EXHIBIT B
AGREEMENT BETWEEN
CITY OF MINOT AND CDM SMITH

RATE SCHEDULE

Blended Hourly Rate and Maximum Agreement Amount

CDM Smith has provided a "Blended Hourly Rate" based on the estimated labor effort, associated individual labor rate, and applicant associated costs and expenses identified in Section 6 of the CDM Smith CDBG-DR Proposal dated April 10, 2012. The Blended Hourly Rate shall be the sole means of compensation for professional services performed by CDM Smith and will be reimbursed based on the actual number of labor hours devoted to the City's Program multiplied by the blended rate, up to a maximum agreement amount of \$5,124,416.

The CDM Smith original proposal was based on estimated projects and time and materials needed to complete the anticipated programs. This contract contains additional programs that were not originally listed in the RFP. The blended hourly rate is based on 37,958 labor hours. If implementing the additional programs causes the labor hours to be exceeded, both parties must mutually agree to any increase in overall contract amount.

The agreed blended hourly rate for the Minot CDBG-DR program is \$135.00 per hour.

Labor and Expenses Included in the Blended Hourly Rate

The expenses included in the Blended Hourly Rate include the following services relating to the public infrastructure, housing and economic development programs; all are identified in **Exhibit A**:

- CDM Smith and Subconsultant Labor
- Lead Assessment
- Damage Assessment
- 3rd Party Verification
- CREDCO
- Environmental Review
- Escrow Services
- Legal
- Office Space/Equipment
- Title Search and Examination
- Title Insurance
- Closings
- Other Direct Costs related to program office set up and operation; including printers, phones, copiers and other related expenses
- Appraisals
- Staff Travel

*The following costs will be assigned to the contractor during the bidding process and are not part of the CDM Smith blended hourly rate.

- Lead Clearance *
- Asbestos Surveys *
- Asbestos Clearance *