

CONTRACT FOR THE PROVISION OF EMINENT DOMAIN LEGAL SERVICES
BETWEEN THE CITY OF MINOT, NORTH DAKOTA AND SWANSON AND WARCUP,
LTD, GRAND FORKS, NORTH DAKOTA

This contract is made and entered into by and between the **City of Minot**, a North Dakota municipal corporation, whose principal address is P.O. Box 500, 515 Second Avenue SW, Minot, ND 58702-5006 (the "City"), and the law firm of **Swanson & Warcup, Ltd.**, a North Dakota professional corporation, whose principal address is P.O. Box 12909, 1397 Library Circle, Suite 202, Grand Forks, ND 58208-2909.

RECITALS

WHEREAS, the City of Minot, North Dakota suffered severe damage as a result of flooding which occurred in 2011;

WHEREAS, the City of Minot, North Dakota has received notice of available funding from the State of North Dakota and the United States Office of Housing and Urban Development;

WHEREAS, state and federal funds will be used, in whole or in part, for the purchase of certain identified properties located near or adjacent to the Mouse River, as known as the Souris River, within the city limits;

WHEREAS, the City is seeking to obtain legal services for eminent domain proceedings in conjunction with the City's Minot Disaster Recovery Program – Program for Acquisition/Buyout of Real Estate funded in whole or in part by state and/or federal funding;

WHEREAS, Swanson & Warcup, Ltd. is a law firm in good standing and practicing law in the State of North Dakota. Swanson & Warcup, Ltd. possesses experienced and qualified personnel to provide legal services to the City of Minot, North Dakota for eminent domain proceedings in conjunction with the Program for Acquisition/Buyout of Real Estate.

NOW, THEREFORE, the City of Minot and Swanson & Warcup, Ltd. in consideration of the mutual covenants and agreements contained herein do mutually agree as follows:

1. **Employment of Attorneys.** The City of Minot hereby retains and employs Swanson & Warcup, Ltd. to act as legal counsel for the benefit of the City of Minot, North Dakota with respect to eminent domain proceedings for properties acquired for the City of Minot's Disaster Recovery Program – Program for Acquisition/Buyout of Real Estate located within the City of Minot, North Dakota funded in whole or in part by State and/or Federal funding, all as more specifically outlined in the scope of services.
2. **Services for the Benefit of the City of Minot.** It is hereby intended and agreed by and between the parties hereto that the purpose and benefit of this contract for the Provision of Eminent Domain Legal Services is intended for the City of Minot, a North Dakota municipal corporation. It is further understood and agreed that the attorney/client

relationship, including all attorney/client privileged communications, is hereby created by and between Swanson & Warcup, Ltd. and the City of Minot.

3. **Scope of Services.** Swanson & Warcup, Ltd. will provide services to or on behalf of the City of Minot, North Dakota as summarized in Exhibit "A" to this contract. John Warcup will be recognized as a Special Assistant City Attorney.
4. **Fees.** Except as may otherwise be provided herein, the City of Minot agrees to pay Swanson & Warcup, Ltd. for all services provided pursuant to this contract at the rates detailed in Exhibit "B" to this contract.
5. **Compensation.** For and in consideration of the Services rendered by Swanson & Warcup, Ltd., and subject to the agreement amount and rate schedule provisions of Exhibit "B", the City shall pay Swanson & Warcup, Ltd. for its services completed in the scope of this agreement as detailed in Exhibit "A", up to a maximum amount of \$1,050,000.00, for no more than 30 properties. Such consideration and number of properties may only be increased by written amendment to this contract signed by both parties and approved by the City with the understanding services will continue for Eminent Domain cases in the judicial system.
6. **Other Charges and Costs.** Swanson & Warcup, Ltd. will incur various costs and expenses in rendering the legal services required under this contract, which shall be reimbursable by the City in the following manner and amounts:

No per diem meal expenses would be billed except in the event of travel required outside the City of Minot. In such case, per diem meals will be billed at the rate of \$35.00 per day. Mileage will be billed at the applicable IRS rate. Except as otherwise provided herein, any expenses incurred for retaining additional consultants or professionals will be billed at actual cost.
7. **Billing.** Swanson & Warcup, Ltd. shall prepare a monthly statement for fees, costs and expenses incurred. Such statements shall indicate the basis of the fees, including a brief description of the activities, hours worked, and hourly rates. Reimbursable costs and expenses shall be separately itemized.
8. **Subcontracting or Assignment.** The experience, knowledge, capability and reputation of Swanson & Warcup, Ltd., its partners, associates and employees, was a substantial factor for the City to enter into the contract. Therefore, Swanson & Warcup, Ltd. shall not contract with other person(s) or entity to perform, in whole or part, legal services required under this contract without the written approval of the City except as otherwise provided herein. Except for abstract preparation or updating, title insurance, and escrow services, no other professional or legal services to be provided under this contract shall be transferred, assigned or subcontracted without the prior written approval of the City.
9. **Insurance.** Swanson & Warcup, Ltd. agrees to have and keep in force during the term of this contract and for one (1) year following the termination of the services under this

contract, insurance covering the attorney's professional errors, omissions or negligent acts with limits not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate. Swanson & Warcup, Ltd. shall be responsible for all premiums and deductibles on such insurance. Prior to commencement of performance, Swanson & Warcup, Ltd. shall provide a certificate of insurance evidencing the aforementioned coverage.

10. **Indemnification.** Swanson & Warcup, Ltd. agrees to indemnify the City and their officers and employees against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property losses, costs, penalties, obligations, errors, omissions or liabilities that may be asserted or claimed by any person, firm or entity arising out of or in connection with the work, operations or activities of Swanson & Warcup, Ltd., its officers and/or employees arising from fault acts or omissions of Swanson & Warcup, Ltd. or arising from Swanson & Warcup, Ltd.'s performance of or failure to perform any term, provision, covenant or condition of the contract. It is further agreed and understood by and between the parties, hereto that such indemnification does not extend to the fault, negligence or willful misconduct of persons other than the officers and/or employees of Swanson & Warcup, Ltd.
11. **Notices.** Notices required pursuant to this contract shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor, postage prepaid and addressed as follows:

Swanson & Warcup, Ltd.
Attn: John Warcup
1397 Library Circle, Suite 202
Grand Forks, ND 58201

City of Minot
Attn: Kelly Hendershot, City Attorney
P.O. Box 5006
Minot, ND 58702-5006

Service of notice by personal service shall be deemed to have been given as of the date of such personal service. Notice given by deposit in the United States Post Office shall be deemed to have been given three (3) consecutive business days following deposit of the same in custody of said postal service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person, which shall be substituted for that specified above.

12. **Nondiscrimination.** In connection with the performance of this contract, Swanson & Warcup, Ltd. shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, or national origin.
13. **Term and Termination.** This contract shall commence July 1, 2017, and shall remain in full force and effect until June 30, 2018, unless terminated earlier as provided herein

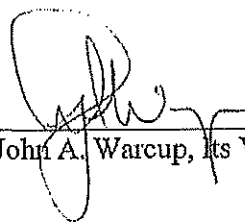
or if Eminent Domain cases remain in the judicial system. The City shall have the option to renew this contract for two additional twelve-month periods upon the same terms and conditions except pricing which shall be agreed by the parties at the time of contract renewal or extension. Either the City or Swanson & Warcup, Ltd. may terminate this contract without cause, with thirty (30) days written notice given to the other party. In the event of termination, Swanson & Warcup, Ltd. shall assist to the fullest extent possible in the orderly transition of all pending matters to the City. In the event of termination, Swanson & Warcup, Ltd. shall be entitled to be paid for all professional fees for all work completed and costs incurred through the date of cessation of legal representation, including without limitation, proration of costs and expenses to the date of such cessation.

- 14. **Conflicts of Interest.** Swanson & Warcup, Ltd. has no present or contemplated employment which is adverse to the City of Minot, North Dakota and agrees it shall not represent clients in matters of either litigation or non-litigation against the City of Minot, North Dakota. In the event of a conflict of interest arising in the representation of the City of Minot, North Dakota, Swanson & Warcup, Ltd. shall seek, where available, waivers from each client with regard to such representation or legal services. However, if real conflicts exist, Swanson & Warcup Ltd. will withdraw from representing both clients in the matter.

- 15. **Interpretation of Contract and Forum.** This contract 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 the District Court, Ward County, North Dakota.

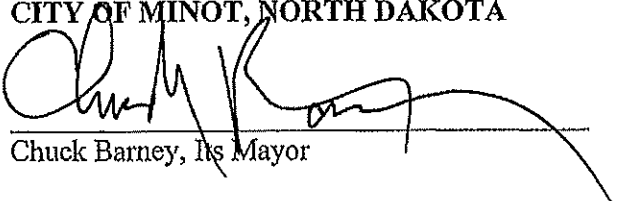
IN WITNESS WHEREOF, the parties have hereto executed this contract as of the effective date of the contract.

SWANSON & WARCUP, LTD.

By: 

John A. Warcup, Its Vice-President

CITY OF MINOT, NORTH DAKOTA

By: 

Chuck Barney, Its Mayor

EXHIBIT "A"
SCOPE OF SERVICES

1. Provide legal services to the City related to Eminent Domain matters.
2. Represent the City as Special Assistant City Attorney relating to Eminent Domain matters as may be necessary arising out of construction of a flood protection project, including but not limited to the following:
 - a. Prepare and file with the District Court the Summons and Complaint,
 - b. Prepare and file all pleadings and motions in Eminent Domain matters, including the Final Order
 - c. Represent the City in all Eminent Domain pre-trial proceedings and discovery, including depositions, exchange of documents and interrogatories,
 - d. Represent the City in pre-Eminent Domain negotiations and Alternative Dispute Resolution proceedings, including mediation,
 - e. Retain for the City expert witnesses for all stages of Eminent Domain matters, including appraisers, engineers and technical consultants,
 - f. Prepare for and conduct Eminent Domain trials, whether by jury or before a judge,
 - g. Prepare for and defend the City against landowner suits of inverse condemnation,
 - h. Represent the City in all post trial Eminent Domain matters, including hearings for the award of landowner's attorney fees and costs,
 - i. Represent the City in all Eminent Domain appeals, including appeals to the Court of Appeals and to the Supreme Court.
3. Work with the City's Disaster Recovery Program Manager and the City's property acquisition program in legal proceedings which result from eminent domain activities.
4. Provide to the City any other Eminent Domain legal services, on an as-needed basis, as directed by the City.
5. In all matters related to the foregoing legal services, the selected attorney and law firm agree that he/they shall not represent any person or entity whose interests are adverse to that of the City, nor whose interests could cause a conflict of interest for the attorney or law firm.

EXHIBIT "B"
FEE SCHEDULE

The following fee schedule is agreed to by Swanson & Warcup, Ltd. and the City of Minot:

Senior Attorney (more than two years experience)	\$185.00/hr.
Associate Attorney (two or fewer years of experience)	\$160.00/hr.
Paralegal	\$100.00/hr.
Acquisition/Relocation Specialist	\$100.00/hr.
Research Assistant	\$ 60.00/hr.
Clerical Service	\$ 50.00/hr.

EXHIBIT "C"
Community Development Block Grant Program Requirements

1. Civil Rights

As may be applicable, the CONTRACTOR agrees to comply with Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 109 of Title 1 of the Housing and Community Development Act of 1974; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; Executive Order 11246, as amended by Executive Orders 11375 and 12086; and all other applicable requirements of 24 C.F.R. Part 570, Subpart K.

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

2. Nondiscrimination

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance.

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

The CONTRACTOR shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this nondiscrimination clause.

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

A. Compliance

The CONTRACTOR agrees to comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders. The CONTRACTOR understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the CITY and the CONTRACTOR. Failure to comply with these requirements shall subject the CITY and the CONTRACTOR, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided, and as set out in 24 C.F.R. Part

135, Subpart D. The CONTRACTOR agrees that no contractual or other disability exists which would prevent compliance with these requirements. The CONTRACTOR shall include the following language in all subcontracts executed under this Agreement:

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

B. Notifications

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

C. Subcontracts

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

4. Environmental Conditions Appendix II Part 200 (G)

A. Air and Water

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

- Clean Air Act, 42 U.S.C.A. 7401- 7671 *et seq.*
- Clean Water Act, 33 U.S.C.A. 1368
- Executive Order 11738
- Federal Water Pollution Control Act, as amended, 33 U.S.C.A. 1251, *et seq.*, 1321 and 1318, relating to inspection, monitoring, entry, reports, and information, and all regulations guidelines issued there under
- Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 50, as amended.
- National Environmental Policy Act of 1969 (42 U.S.C.A. 4321 *et seq.*, as amended)

- HUD Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

5. Energy Efficiency

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

6. Financial Management

The CONTRACTOR shall maintain necessary source documentation for all costs incurred under this Agreement.

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

7. Record-Keeping, Reports, and Audits

A. Retention

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

B. Access to Records

The CITY, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this specific AGREEMENT, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this AGREEMENT will be maintained in a central location by the CONTRACTOR and will be maintained for a period of four (4) years from the official date of the CITY's final closeout of the grant.

C. Audit and Inspection

The authorized representative and agents of the CITY and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, and payrolls, records of personnel, invoices of materials, and other relevant data and records.

D. Reports

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

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

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

8. Conflict of Interest

A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the CONTRACTOR shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this AGREEMENT or to any benefit that may arise there from, but this provision shall not be construed to extend to this AGREEMENT if made with a corporation for its general benefit.

9. Patents

Not applicable.

10. Subcontracts

A. The CONTRACTOR shall not enter into any subcontract with any sub-contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of North Dakota.

B. Nothing contained in this AGREEMENT shall create any contractual relation between any subcontractor and the CITY.

11. Debarment, Suspension, and Ineligibility (Appendix II Part 200)

The CONTRACTOR represents and warrants that it is not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

12. Breach of Contract Terms

Any violation or breach of terms of this AGREEMENT on the part of the CONTRACTOR may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this AGREEMENT. The duties and obligations imposed by the AGREEMENT documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. 2 CFR 200.

13. Changes

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

14. Personnel

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

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.

15. Interest of CONTRACTOR

The CONTRACTOR covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder.

16. Political Activity

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

17. Compliance with the Office of Management and Budget

The parties agree to comply with the regulations, policies, guidelines, and requirements of 2 CFR 200, as they relate to the use of Federal funds under this AGREEMENT.

18. Lobbying

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

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City of Minot.

19. Procurement of Recovered Materials (Appendix II Part 200 (K))

The CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintain a satisfactory level of competition where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.