

CDBG-NDR AGREEMENT BETWEEN THE CITY OF MINOT AND SOURIS BASIN PLANNING COUNCIL

THIS AGREEMENT, entered this 8th day of January, 2018 by and between the City of Minot (herein called the "Grantee") and Souris Basin Planning Council (herein called the "Sub-recipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under the Disaster Relief Appropriations Act, 2013, Public Law 113-2 (Appropriations Act);

and WHEREAS, the Grantee wishes to engage the Sub recipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Sub-recipient will be responsible for the following tasks under the CDBG-NDR Planning activity in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program-NDR Planning Activity:

Task 1: Research to identify and establish means and methods for accessing data on a current basis needed for economic resilience planning and sustainable growth strategy

This task will use the foundation of the Council's lead role in the region as the regional planning and resource focal point with its wealth of research resources and expertise. During the course of the development of Minot's National Disaster Resilience Competition Phase 1 and Phase 2 applications, it became very evident that critically needed data sets were missing that any community needs and uses when preparing economic resilience growth strategies and assuring such strategies remain relevant and effective based on the underlying economic conditions in the city and region.

Data sets such as vacancy in commercial, retail, professional space in downtown and elsewhere in the city, businesses opening/closing, accessibility to financing, have been found to not be available. To accomplish one of the primary goals of the NDRC Action Plan to promote sustainable long term resilient growth all of these types of data sets are needed as building blocks.

The first task will involve the sub-recipient

- identifying all the data sets necessary for the city to establish and sustain a long term sustainable growth
- detailing the necessity of the identified data sets to support a growth plan
- determine which data sets are available from existing sources and which are not available
- formulate methodology and/or means city can utilize to develop and maintain data sets not currently available

Task 2: Planning and research support for the city in timely assessing changing market conditions and needs within the community in its ongoing efforts to deploy its HUD CDBG-DR funds through projects and activities in ways and methods not adversely affecting the private sector marketplaces

A primary goal of the city in carrying out projects and activities contained in the HUD NDRC Action Plan is to address direct and indirect impacts from the 2011 Souris River Flood while promoting sustainable, resilient growth throughout the city. To accomplish this goal, there is a pressing need to be strategic in the deployment of the funds to avoid adversely affect the economic, housing, consumer and related private market conditions within the city.

The sub-grantee as the regional planning council is best suited to provide the city in its management of the HUD CDBG-DR funds with the need planning and research on a regional basis to assure the city remains current on trends and shifts in the private sector. Such efforts by the sub-grantee will support the ongoing efforts by the city to adapt and adjust its projects and activities to timely respond to such trends and shifts.

Activities involved in this task will include:

- monthly meetings with the city's CDBG-NDR staff
- timely respond to inquiries from the city's CDBG-NDR staff on trends connected to specific projects and activities
- Keep the CDBG-NDR staff aware of regional initiatives, activities, and patterns which can affect CDBG-NDR projects and activities

B. National Objectives

CDBG funds expended for planning costs under § 570.205 and § 570.206 will be considered to address the national objectives.

C. Levels of Accomplishment – Goals and Performance Measures

The Sub recipient agrees to provide the following levels of program services:

Task 1 – Research to identify and establish means and methods for accessing data on a current basis

Task 2 – Planning and research support connected to maintaining relevance of CDBG-NDR projects and activities to unmet needs in Minot

D. Staffing

Under the direction and with the support of the Souris Basin Planning Council's Executive Director, staff of the Council will be made available to carry out the tasks.

E. Performance Monitoring

The Grantee will monitor the performance of the Sub recipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub recipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE Services of the Sub recipient shall start on the 8th day of January, 2018 and end on the 31st day of December of 2018. The term of this Agreement and the provisions herein shall be

extended to cover any additional time period during which the Sub recipient remains in control of CDBG funds or other CDBG assets, including program income if applicable.

Sub-grantee will complete this project within 11 months 23 days for a total budget of \$14,500 which includes all costs incurred for the work set forth in the two tasks. Expense documentation as required will be maintained by the sub-grantee and will be available to the City of Minot as policy and procedures require. A breakdown of payments is set forth below:

- Monthly at a rate of \$1,208.33 except for December, 2018 which payment shall be \$1,208.37

F. BUDGET

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Sub recipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Sub recipient.

G. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$14,500. Drawdowns for the payment shall be on a monthly basis through a request for payment from the sub-grantee accompanied by a report of activities for the prior month consistent with Task 1 and Task 2.

Payments may be contingent upon certification of the Sub recipient's financial management system in accordance with the standards specified in 2 CFR 200.84.21.

H. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

- 1) Grantee: John Zakian, Program Manager National Disaster Resilience Project, City of Minot
John.Zakian@minotnd.org, 701-420-4528,

Sub recipient: LYNDSAY UL RICKSON, EXECUTIVE DIRECTOR, SOUTHS BASIN
Planning Council, LYNDSAY@SOUTHSBASIN.ORG, 701-839-6691

I. GENERAL CONDITIONS

A. General Compliance

The Sub recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Sub recipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Sub recipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Sub recipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Sub recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Sub recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub recipient is an independent contractor.

C. Hold Harmless

The Sub recipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Sub recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Sub recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Sub recipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Sub recipient shall comply with the bonding and insurance requirements of 2 CFR 200.304, Bonding and Insurance.

F. Grantee Recognition

The Sub recipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Sub recipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Sub recipient 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 Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Sub recipient from its obligations under this Agreement. The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Sub recipient.

H. Suspension or Termination In accordance with 2 CFR 200.339, the Grantee may suspend or terminate this Agreement if the Sub recipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Sub recipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Sub recipient to the Grantee reports that are incorrect or incomplete in any material respect. In accordance with Appendix II to 2 CFR Part 200 (B), this Agreement may also be terminated for convenience by either the Grantee or the Sub recipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

J. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1) Accounting Standards The Sub recipient agrees to comply with 2 CFR 200.300 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2) Cost Principles - The Sub recipient shall administer its program in conformance with 2 CFR 200.400, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be maintained:

The Sub recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National 2. 2.

2. Objectives of the CDBG program:

- c. Records required to determine 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 records as required by 24 CFR 570.502, and 2 CFR 200.302. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

3. Retention

The Sub recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's close-out report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Client Data (not applicable)

5. Disclosure (not applicable)

6. Close-outs

The Sub recipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records.

7. Audits & Inspections

All Sub recipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of

their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Sub recipient within 30 days after receipt by the Sub recipient. Failure of the Sub recipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Sub recipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning sub recipient audits and 2 CFR 200.500.

C. Reporting and Payment Procedures

- 1. Program Income (not applicable)**
- 2. Indirect Costs**

If indirect costs are charged, the Sub-recipient will develop an indirect cost allocation plan for determining the appropriate Sub-recipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

- 3. Payment Procedures**

The Grantee will pay to the Sub-recipient funds available under this Agreement based upon information submitted by the Sub-recipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Sub recipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Sub-recipient.

- 4. Progress Reports**

The Sub-recipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

K. Procurement

- 1. Compliance**

The Sub-recipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

- 2. OMB Standards**

Unless specified otherwise within this agreement, the Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.300.

3. Use and Reversion of Assets There shall be no use and therefore no disposition of real property and equipment under this agreement.

L. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

There shall be no Acquisition nor Relocation under this Agreement.

M. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Sub-recipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Sub-recipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Section 504

The Sub-recipient agrees to comply with all Federal regulations issued pursuant to compliance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Sub-recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Sub-recipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Sub-recipient to assist in the formulation of such program. The Sub-recipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Sub-recipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business 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 Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Sub-recipient shall furnish and cause each of its own sub-recipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Sub-recipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own sub-recipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards (not applicable)

D. Conduct

1. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Sub-recipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Sub-recipient will 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.

c. Content

The Sub-recipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this agreement

d. Selection Process

The Sub-recipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis Agreement in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Sub-recipient 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 of the U.S.C.

4. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 2 CFR 200.112 and 570.611, which include (but are not limited to) the following:

a. The Sub-recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

- b. No employee, officer or agent of the Sub-recipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Sub-recipient, or any designated public agency.

5. Lobbying

The Sub-recipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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.

d. Lobbying Certification (not applicable)

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

N. ENVIRONMENTAL CONDITIONS

Planning is exempt under 24 CFR Part 58.

O. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

P. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

Q. WAIVER

The Grantee's failure to act with respect to a breach by the Sub-recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

R. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Sub-recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Sub-recipient with respect to this Agreement.

Date: _____

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

By  [Grantee]
By  [Sub-recipient]