

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 1397 Library Circle, Suite 202, Grand Forks, ND 58201.

**RECITALS**

WHEREAS, the City of Minot, North Dakota, is in the process of designing and constructing a project to install, reconstruct, and repair a stormwater system within the City of Minot;

WHEREAS, the City is seeking to obtain legal services for eminent domain proceedings in conjunction with the construction, installation, reconstruction, and repair of a stormwater project;

WHEREAS, Swanson & Warcup, Ltd. is a law firm in good standing and practicing law in 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.

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 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 to be acquired for construction, installation, reconstruction, and repair of a stormwater system.
2. **Services for the Benefit of the City of Minot.** It is intended and agreed by and between the parties 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 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" of 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 under 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 Contract as detailed in Exhibit "A."

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:

Per diem meals will be billed at \$35.00 daily. 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 were substantial factors for the City to enter into the Contract. Therefore, Swanson & Warcup, Ltd. shall not contract with other people or entities 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 the 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 its 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 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: Stefanie Stalheim, 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. **Conflicts of Interest.** Swanson & Warcup, Ltd. has no present or contemplated employment adverse to the City of Minot, North Dakota and agrees it shall not represent clients in litigation or non-litigation matters 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.
13. **Interpretation of Contract and Forum.** This Contract shall be construed and interpreted 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, the forum shall be the District Court, Ward County, North Dakota.

IN WITNESS WHEREOF, the parties have hereto executed this Contract.

**SWANSON & WARCUP, LTD.**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John A. Warcup, Its Vice-President

**CITY OF MINOT, NORTH DAKOTA**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Tom Ross, Its Mayor

EXHIBIT "A"  
SCOPE OF SERVICES

This scope of services shall become effective upon City Council authorization to commence eminent domain proceedings pursuant to the CDBG-DR and CDBG-NDR Policies and Procedures for Involuntary Acquisitions under the flood buyout program.

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 the construction, reconstruction, and repair of a stormwater system, 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 the Supreme Court.
3. 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

Swanson & Warcup, Ltd. and the City of Minot agree to the following fee schedule:

Attorney	\$290/hr.
Paralegal	\$200/hr.
Research Assistant	\$135/hr.
Clerical Service	\$125/hr.