

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR STUDY AND REPORT
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of May 22, , 2015 ("Effective Date") between

City of Minot ("Owner") and

Houston Engineering, Inc. ("Engineer").

Engineer's services under this Agreement are generally described as follows:

Develop an Emergency Action Plan for the City of Minot Flood Control System in accordance with US Army Corps of Engineers template ("Assignment").

If Engineer's services under this Agreement are a part of a more extensive project of the Owner, such project is generally identified as follows:

("Project").

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

A. Owner shall pay Engineer as set forth in Article 4.

B. Owner shall provide Engineer with all criteria and full information as to Owner's requirements for the Assignment, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any anticipated funding sources and budgetary limitations.

- C. Owner shall furnish to Engineer all existing studies, reports, and other available data pertinent to the Assignment, obtain or authorize Engineer to obtain or provide additional reports and data as required, and furnish to Engineer such services of others as may be necessary for the performance of Engineer's services.
- D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- E. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, instructions, reports, data, and other information Owner-furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this Article. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make payments due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. Engineer will be entitled to interest on all amounts due and payable at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

4.03 *Payment for Basic Services (Hourly Rates Plus Reimbursable Expenses)*

- A. Using the procedures set forth in Paragraph 4.01, Owner shall pay Engineer for Basic Services as follows:
 1. An amount equal to the cumulative hours charged to the Assignment by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Assignment, plus reimbursable expenses and Engineer's Consultants' charges, if any.
 2. Engineer's standard hourly rates are set forth in Exhibit C.
 3. The total compensation for services and reimbursable expenses is estimated to be \$100,000.

4.04 *Payment for Additional Services*

- A. For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged to providing the Additional Services under the Assignment by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's Consultants' charges, if any. Engineer's standard hourly rates and reimbursable expenses schedule are set forth in Exhibit B.

4.05 *Disputed Invoices*

- A. If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 5 – OPINIONS OF COST – (NOT USED)

5.01 *Opinions of Probable Construction Cost*

5.02 *Opinions of Total Project Costs*

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- C. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- D. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- E. Engineer shall not have any construction-related duties under this Agreement. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

6.02 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Assignment or Project is completed. Owner shall not rely, in any way, on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance, by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such procedures shall be set forth in an exhibit to this Agreement.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise during storage or transmittal, the party receiving electronic files agrees that it will perform acceptance tests or procedures within ten days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any data deficiencies detected within the ten-day acceptance period will be corrected, if possible, by the party delivering the electronic files.

- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents solely for Owner's information and reference in connection with the specific subject matter of the Documents, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use by Owner unless completed by Engineer; (2) the Documents are instruments of study and report services only, and are not final design or construction documents, (3) no Document shall be altered, modified, or reused by Owner or any third party for any purpose except with Engineer's express written consent; (4) any use, reuse, alteration, or modification of the Documents, except as authorized in this Agreement or by Engineer's written consent, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (5) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any unauthorized use, reuse, alteration, or modification of the Documents; and (6) nothing in this paragraph shall create any rights in third parties.

6.03 Insurance

- A. Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request.

6.04 Termination

- A. *Termination for Cause:* The obligation to continue performance under this Agreement may be terminated:
1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 2. By Engineer:
 - a. upon seven days written notice if Engineer believes that Engineer is being required by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b. upon seven days written notice if the Engineer's services are delayed for more than 90 days for reasons beyond Engineer's control.
 - c. Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 6.04.A.2.

3. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 6.04.A.1. if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- B. *Termination for Convenience:* Owner may terminate the Agreement for Owner's convenience effective upon the Engineer's receipt of written notice from Owner.
 - C. The terminating party under Paragraphs 6.04.A or 6.04.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
 - D. In the event of any termination under Paragraph 6.04, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

6.05 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the subject matter of the Assignment is located.

6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, or other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Any and all Documents prepared by Engineer, including but not limited to the Report to be prepared pursuant to Exhibit A, are prepared solely for the use and benefit of Owner, unless expressly agreed otherwise by Engineer.

6.07 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.08 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.09 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Assignment or Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Assignment or Project.

6.10 *Limitation of Engineer's Liability*

- A. To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, members, employees, agents, and Consultants, or any of them, to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses whatsoever arising out of, resulting from, or in any way related to the Assignment, this Agreement, or the Project from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners,

members, employees, agents, or Consultants, or any of them, shall not exceed the total limits of insurance.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of completion of the Assignment.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 2. *Agreement* – This written contract for study and report professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 - 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
6. *Construction Cost* – The cost to Owner of the construction of a recommended solution presented in the Report furnished by Engineer under Exhibit A, or of a specific portion of the Project for which Engineer has agreed to provide opinions of cost. Construction Cost includes the cost of construction labor, services, materials, equipment, insurance, and bonding, but does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
7. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Assignment as Engineer’s independent professional associates and consultants, subcontractors, or vendors.
8. *Documents* – Data, studies, reports (including the Report referred to in Exhibit A), and other deliverables, whether in printed or electronic media format, provided or furnished by Engineer to Owner pursuant to this Agreement.
9. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
10. *Engineer* – The individual or entity named as such in this Agreement.
11. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
12. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
13. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed.
14. *PCBs* – Polychlorinated biphenyls.

15. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
16. *Project* – The total study, design, and construction to be carried out by Owner through its employees, agents, design professionals, consultants, contractors, and others, of which the Assignment is a preliminary part.
17. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
18. *Site* – Lands or areas where the subject matter of the Assignment or the Project is located.
19. *Total Project Costs* – The total cost of study, design, and construction of the Project, including Construction Cost and all other Project construction labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer and other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Standard Hourly Rates and Reimbursable Expenses Schedule
- C. Exhibit C, CDBG Program Requirements

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the Assignment and the responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

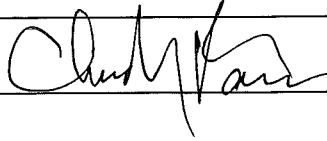
Owner:

City of Minot

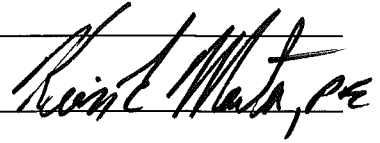
Engineer:

Houston Engineering, Inc.

By: Chuck Barney



By: Kevin Martin, PE



Title: Mayor

Date

Signed: 6/15/15

Title: Senior Project Manager

Date

Signed: _____

Engineer License or Firm's
Certificate No. (if required):

015C

State of: North Dakota

Address for giving notices:

Public Works Department

PO Box 5006

Minot, ND 58701

Address for giving notices:

Houston Engineering, Inc.

3712 Lockport Street

Bismarck, North Dakota 58503

Designated Representative (Paragraph 8.03.A):

Name: Dan Jonasson

Title: Public Works Director

Phone Number: (701) 857-4140

Facsimile Number: _____

E-Mail Address: dan.jonasson@minotnd.org

Designated Representative (Paragraph 8.03.A):

Name: Craig Odenbach

Title: Project Manager

Phone Number: (701) 323-0200

Facsimile Number: (701) 323-0300

E-Mail Address: codenbach@houstoneng.com

**Exhibit A
City of Minot
Emergency Action Plan
P#3135.1
Scope of Engineering Services**

Houston Engineering will develop an Emergency Action Plan in accordance with the US Army Corps of Engineers/Silver Jackets Emergency Action Plan Guidebook dated January 2015. The specific tasks to be accomplished in the process are as follows:

Task 1:	Meetings & Client Coordination	\$6,700
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This task assumes a total of 2 project meetings (kick-off and 50% submittal) with a designated committee of city officials who will provide input and oversight into the plan development in accordance with Chapter 1 of the Guidebook. The first meeting is assumed to coincide with a training session to be hosted by the US Army Corps of Engineers in early June. It is anticipated that this training session will also double as a project kick-off meeting, during which time the data required to complete the plan along with the data already available and the data remaining to be developed will be identified through discussion with City of Minot department officials.

All meetings are assumed to be held in Minot and the budget includes anticipated preparation and travel costs. It is anticipated that each meeting will be approximately three hours in length, with the exception of the COE training session, which is anticipated to constitute a full day session.

This task also includes all other general client coordination efforts.

Task 2:	Plan Chapters	\$80,400
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The following chapters will be developed in accordance with the COE template. This will include all data gathering, development and completion of required forms and written narrative.

Authority

This chapter will include the identification of the process and authorities for declaring state and federal emergencies and disasters, the establishment of a working committee for plan development, and identification of the process required to achieve council adoption of the final plan as well as any mutual aid agreements identified in the following chapter.

Mutual Aid Agreements

This chapter will inventory existing mutual aid agreements and identify areas where additional agreements may be advantageous. Areas to be considered include fire and police, engineering, surveying, water treatment and wastewater plant operators, emergency operation center support, financial managers, materials and equipment. This will potentially include providing assistance in the negotiation and drafting of new agreements.

Flood Organization Personnel

The key personnel will be identified and a contact list with primary and back-up phone numbers and email addresses will be developed. A detailed call tree will be developed clearly identifying who has the responsibility to contact who in the case of an emergency. An organization chart will be developed including identification of back-up personnel for each area of responsibility. The financial considerations associated with payment of additional staff and additional time worked will also be examined. This includes documentation for potential reimbursement.

Contacts

A contact list for people and agencies outside the City of Minot will be developed. This will include all pertinent state and federal agencies, county personnel, utility companies, the red cross, salvation army, and other volunteer organizations. This will include contacts for water level and flood forecast information.

Flood Elevations and History

This chapter will provide all of the pertinent gage information including real time data acquisition, applicable datum conversions, inundation mapping, topographic mapping, levee elevation, and hydraulic profiles. Historic flood information will also be provided.

Tasks & Prioritized Actions

This will include development of a prioritized list of tasks and actions to be taken at various flood levels. This list will include an inventory of temporary pumping, gatewell closures, pump stations, sewer lift stations, road closures, sandbags and temporary levees, and potential bridge closures required at incremental flood levels. This list, along with the various tasks required to protect public and private utilities will then be incorporated into a GIS outlining actions to be taken at various flood levels. This scope does not include development of individual task worksheets for each physical feature potentially flood impacted. Instead it is assumed that tasks will be grouped. Since the total number of tasks is unknown at this time, a total budget of \$17,500 was included for this effort.

Emergency Shelters

Locations where people may be sheltered will be identified. Considerations will include the need for short-term or long-term shelter, elevation of the facility, handicap accessibility, shelter density and other comfort basics. This effort will be coordinated with local volunteer organizations.

Evacuation

This will include designation of who actually has the authority to order an evacuation, the parameters for voluntary and mandatory evacuations, establishment of evacuation zones and routes, traffic control plans, and the public notification process.

Utilities

This chapter will provide a list of contacts for all essential utilities, both publicly and privately owned. In addition to developing a contact list, how these utilities are impacted at various flood levels will be identified and incorporated into the GIS developed under the Tasks & Prioritized Actions Chapter.

Critical Facilities

Critical Facilities include the Emergency Operations Center, fire stations, law enforcement centers, hospitals, nursing homes, water and wastewater treatment facilities, schools and shelters. These facilities will be inventoried and primary and after hour contact information documented.

Hazardous Materials

This will include inventorying businesses and facilities that have potentially hazardous materials.

Communications

This chapter will include the designation of an official spokesperson. Sample press releases will be provided, and all methods of communicating with the public will be examined, including press releases, radio and television, reverse 911, and social media.

Training & Exercises

This will include development of a table top exercise to be conducted as part of the 90% submittal and review. Lessons learned through this table top exercise will be incorporated in the final deliverable and documented in this chapter

Flood Plain Management

The City of Minot's position relative to the National Flood Insurance Program and the ability to mitigate impacts and costs to its residents will be evaluated. This includes evaluation of the potential utility of the Hazard Mitigation Program, the Community Rating System, as well as general mitigation and risk management planning. Lessons learned from prior flood events in relation to these programs will be documented here.

Task 3: Produce Final Document

\$4,200

Produce and distribute the final report document

\$8,700

Sub-Total	\$100,000
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Alternate A - Development of Mobile Web Based Application	\$21,000
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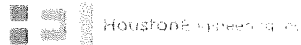
Please note that, in addition to the cost associated with development, there would be an annual cost of approximately \$2,500 for five ArcGIS Online Subscriptions and approximately \$2,500 for annual updates to the database. This estimated \$5,000 of annual cost is not included in the \$21,000 projected for development. The cost of the annual update would simply be billed on a time and material basis using our applicable hourly rates.

Alternate B – Contingency Plan	\$32,950
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This would include identification of a series of contingency plans that would identify secondary protection measures to be implemented in the event of a failure of the primary flood control system.

*6/1/15	Executed Agreement
*6/15/15	COE Training/Kickoff
*12/15/15	50% Submittal
*3/15/16	90% Submittal/Table Top Training
*5/31/16	Final Submittal

EXHIBIT B
2015 FEE SCHEDULE
Bismarck/Minot/Dickinson



The following is a schedule of hourly rates and charges for engineering and surveying services offered by Houston Engineering, Inc.

Senior Project Manager	194.00 per hour
Project Manager	176.00 per hour
Project Engineer	161.00 per hour
Professional Engineer	145.00 per hour
Design Engineer	128.00 per hour
Graduate Engineer	116.00 per hour
Legislative/Grant Specialist	164.00 per hour
Expert Witness	213.00 per hour
Senior Environmental Project Manager	194.00 per hour
Senior Environmental Scientist	170.00 per hour
Environmental Scientist	146.00 per hour
Scientist	128.00 per hour
Graduate Scientist	116.00 per hour
Graduate Scientist I	95.00 per hour
Senior Designer	140.00 per hour
Designer	121.00 per hour
Senior Land Surveyor Project Manager	170.00 per hour
Senior Land Surveyor	158.00 per hour
Land Surveyor	133.00 per hour
Graduate Land Surveyor	116.00 per hour
Senior Construction Engineer	158.00 per hour
Construction Engineer	133.00 per hour
Graduate Construction Engineer	113.00 per hour
Senior Technician	116.00 per hour
Technician	104.00 per hour
Graduate Technician	89.00 per hour
Technician Intern	80.00 per hour
Senior GIS Project Manager	170.00 per hour
GIS Project Manager	146.00 per hour
GIS Developer	133.00 per hour
GIS Specialist	116.00 per hour
GIS Technician/Developer II	101.00 per hour
GIS Technician I	85.00 per hour

Surveyors:	One-person crew (plus equipment)	140.00 per hour
	Two-person crew (plus equipment)	170.00 per hour
	Three-person crew (plus equipment)	213.00 per hour
	Four-person crew (plus equipment)	236.00 per hour
CAD Manager		116.00 per hour
CAD Supervisor		104.00 per hour
Senior CAD Operator		89.00 per hour
CAD Operator		80.00 per hour
Computer Technician		140.00 per hour
Senior Administrative Assistant		80.00 per hour
Administrative Assistant		72.00 per hour

Chargeable Expenses

Subsistence	Actual Cost
Travel Vehicles - 2-wheel drive	IRS Standard Mileage Rate
4-wheel drive	IRS Standard Mileage Rate + \$0.20 per mile
GPS Equipment	\$25.00 per hour per unit
Robotic Total Station	\$20.00 per hour
S6 Robotic Total Station	\$40.00 per hour
All Terrain Vehicle / Snowmobile / Boat	\$15.00 per hour
Long distance telephone, facsimile, overnight mail and postage	Actual Cost
Cost of surveying materials, printing, special equipment, and other materials required for the job	Actual Cost
Sub-Consultants	Actual Cost

**EXHIBIT C TO AGREEMENT
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This Exhibit C is attached to and made a part of, and incorporated by reference into, the Agreement dated May 22, 2015, between City of Minot (OWNER) and HMjv (ENGINEER) for professional services.

1. Civil Rights

The ENGINEER 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; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; 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.

2. Nondiscrimination

The ENGINEER 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 ENGINEER 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 ENGINEER agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the OWNER setting forth the provisions of this nondiscrimination clause.

3. Affirmative Action

A. Approved Plan (applicable for contractors with 50 or more employees and contracts over \$50,000)

The ENGINEER agrees that it shall be committed to carry out, pursuant to the OWNER's specifications, an Affirmative Action Program in keeping with the principles as provided in Presidential Executive Order 11246 of September 24, 1965. The OWNER will provide Affirmative Action guidelines to the ENGINEER to assist in the formulation of such program, upon request.

B. Women/Minority Business Enterprise

The ENGINEER 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 ENGINEER may rely on written representations by businesses regarding their status as minority and women business enterprises in lieu of an independent investigation.

C. Notifications

The ENGINEER 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 ENGINEER's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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D. EEO/AA Statement

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

The ENGINEER agrees to comply with the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; 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.

4. Age Discrimination Act of 1975

The ENGINEER shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

5. Certification of Nonsegregated Facilities (applicable to contracts and subcontracts over \$10,000)

The ENGINEER certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant, or ENGINEER agrees that a breach of this certification is a violation of the equal opportunity clause of this AGREEMENT.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

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

A. Compliance

The ENGINEER 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 ENGINEER understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the OWNER and the ENGINEER. Failure to comply with these requirements shall subject the OWNER and the ENGINEER, 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 ENGINEER agrees that no contractual or other disability exists which would prevent compliance

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with these requirements. The ENGINEER 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 ENGINEER 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 ENGINEER shall include this Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the ENGINEER is in violation of regulations issued by the OWNER. The ENGINEER 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 ENGINEER has first provided it with preliminary statement of ability to comply with the requirements of these regulations.

7. Environmental Conditions

A. Air and Water

The ENGINEER 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 ENGINEER 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.

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8. Energy Efficiency

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

9. Financial Management

The ENGINEER 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.

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

A. Retention

The ENGINEER shall retain all records pertinent to expenditures incurred under this Agreement per the State of North Dakota general Records Retention Schedule or at least 4 years after the 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 OWNER, the OWNER, 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 ENGINEER 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 Engineer and will be maintained for a period of four (4) years from the official date of the OWNER's final closeout of the grant.

C. Audit and Inspection

The authorized representative and agents of the OWNER 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 ENGINEER shall complete and submit all reports, in such form and according to such schedule, as may be required by the OWNER, or the granting agency pertaining to the work or services undertaken pursuant to this Agreement.

10. 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 ENGINEER 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.

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11. Activities and Contracts Not Subject To Executive Order – 11246, as Amended (applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this AGREEMENT, the ENGINEER agrees as follows:

1. The ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The ENGINEER shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. The ENGINEER shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The ENGINEER shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The ENGINEER shall incorporate foregoing requirements in all subcontracts.

12. Patents

The ENGINEER shall hold and save the OWNER and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the AGREEMENT including its use by the OWNER, unless otherwise specifically stipulated in the Contract Document.

License or Royalty Fees: License and/or Royalty Fees for the use of a process which is mandated or specifically requested by the OWNER of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the OWNER and not by or through the ENGINEER.

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

13. Copyright

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

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14. Subcontracts

- A. The ENGINEER 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. The ENGINEER shall be as fully responsible to the OWNER for the acts and omissions of the ENGINEER's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the ENGINEER.
- C. The ENGINEER shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the ENGINEER by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the ENGINEER the same power as regards terminating any subcontract that the OWNER may exercise over the ENGINEER under any provision of the contract documents.
- D. Nothing contained in this AGREEMENT shall create any contractual relation between any subcontractor and the OWNER.

15. Debarment, Suspension, and Ineligibility

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

16. Breach of Contract Terms

Any violation or breach of terms of this AGREEMENT on the part of the ENGINEER 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. 24 CFR 85.36(i)(1).

17. Termination for Convenience and Default: Refer to AGREEMENT Article 6, paragraph 6.05

- ~~1. The City may terminate this contract in whole, or from time to time in part, for the City's convenience or the failure of the ENGINEER to fulfill the contract obligations (default). The City shall terminate by delivering to the ENGINEER a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the ENGINEER shall;~~
 - ~~a. immediately discontinue all services affected (unless the notice directs otherwise); and~~
 - ~~b. deliver to the City all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.~~
- ~~2. If the termination is for the convenience of the City, the City shall be liable only for payment for services rendered before the effective date of the termination.~~
- ~~3. If the termination is due to the failure of the ENGINEER to fulfill its obligations under the contract (default), the City may (i) require the ENGINEER to deliver to it, in the manner and to the extent directed by the City, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the ENGINEER shall be liable for any additional cost incurred by the City; (iii) withhold any~~

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~~payments to the ENGINEER, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the City by the ENGINEER.~~

- ~~4. If, after termination for failure to fulfill contract obligations (default), it is determined that the ENGINEER had not failed, the termination shall be deemed to have been effected for the convenience of the City, and the ENGINEER shall be entitled to payment as described in paragraph (b) above.~~
- ~~5. Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.~~

18. Provisions Required by Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this AGREEMENT shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the AGREEMENT shall forthwith be physically amended to make such insertion or correction.

19. Changes

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

20. Personnel

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

All the services required hereunder will be performed by the ENGINEER 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.

21. Drug Free Workplace

All profit or non-profit agencies or organizations receiving state or Federal grant funds under the official sponsorship of the OWNER 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.

22. Interest of ENGINEER

The ENGINEER 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.

23. Political Activity

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

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24. Compliance with the Office of Management and Budget

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-87, A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this AGREEMENT.

25. Confidential Findings

All of the reports, information, data, etc., prepared or assembled by the ENGINEER under this Contract are confidential, and the ENGINEER agrees that they shall not be made available to any individual or organization without prior written approval of the OWNER and OWNER.

26. Lobbying

The ENGINEER 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 ENGINEER, 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 ENGINEER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

27. Payment for Eligible Expenses

The ENGINEER understands and agrees that the OWNER shall reimburse the ENGINEER for only those costs associated with work that has been authorized by OWNER and costs that are eligible under applicable federal rules, regulations, cost principles, and other requirements relating to reimbursement with HUD grant funds. No reimbursement shall be made for goods and services received by the ENGINEER as in-kind contributions from third parties for assistance to the Program.

28. Repayment of Ineligible Payments

In the event HUD or the OWNER determines through investigations and/or monitoring that any payment or reimbursement to ENGINEER is ineligible or disallowed, the ENGINEER shall immediately and without delay fully reimburse OWNER. If HUD informs OWNER that it is required to refund moneys previously awarded or drawn down from the U.S. Treasury in reference to this agreement, as a result of ENGINEER's sole negligence, willful misconduct, or intentional fraud, the ENGINEER agrees to pay an equal amount to OWNER, through OWNER, prior to the demand date of payback.