

AGREEMENT AMENDMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL CONTRACT

This is an AMENDMENT TO THE AGREEMENT by and between the City of Minot, North Dakota ("OWNER") and HOUSTON ENGINEERING, INC. ("ENGINEER") which was dated July 13th, 2013, for the work associated with the Water Distribution System Modeling and Master Plan, City Project #3701 ("PROJECT").

OWNER and ENGINEER hereby agree as follows:

- Addition of Exhibit L – CDBG Program Requirements

IN WITNESS WHEREOF, OWNER and ENGINEER have signed this AGREEMENT AMENDMENT.

This agreement will be considered effective on July 13, 2013 (the effective date of the Contract).

OWNER:

City of Minot, North Dakota

By: 

Title: Mayor

ENGINEER:

HARSTON ENGINEERING, INC.

By: 

Title: COO/SR. PROJECT MGR.

(Since Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Tami Strokland

Title: Executive Secretary

Address for giving notices:

515 2nd Ave Southwest

PO BOX 5006

Minot, ND 58702

Attest: Kaycee Wilens

Title: Admin.

Address for giving notices:

720 Western Ave

Minot, ND 58701

(Since OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement)

Who has Authority to Sign Contracts

Any Contract

Pres/COO/Officers:	<i>Jeff LeDoux</i>	<i>Kevin Martin</i>	<i>Mark Deutschman</i>
	<i>Jeremy McLaughlin</i>	<i>Jerry Bents</i>	<i>Gregg Thielman</i>
	<i>Rick Gunderson</i>	<i>Rick St. Germain</i>	

Contracts up to \$50,000

Office Managers:	<i>Rick Gunderson</i>	<i>Bart Schultz</i>	<i>Sherwin Wanner</i>
	<i>Jeff Langan</i>	<i>Dave Schwengler</i>	

Contracts up to \$20,000

Project Managers:	<i>Mark Aanenson</i>	<i>Ron Adrian</i>	<i>Emmy Baskerville</i>
	<i>Greg Bowles</i>	<i>Brian Fischer</i>	<i>Michael Gunsch</i>
	<i>Roger Hagen</i>	<i>Zach Herrmann</i>	<i>Brent Johnson</i>
	<i>Stephanie Johnson</i>	<i>Erik Jones</i>	<i>Josh Kadrmas</i>
	<i>Alan Kemmet</i>	<i>David Kirkpatrick</i>	<i>Larry Kramka</i>
	<i>Steve Langlie</i>	<i>Jeff Lansink</i>	<i>Ed Larson</i>
	<i>Michael Lawrence</i>	<i>Joe Lewis</i>	<i>Mike Love</i>
	<i>Dennis McAlpine</i>	<i>Jerry Neu</i>	<i>Chad Nunemacher</i>
	<i>Dave O'Shea</i>	<i>Craig Odenbach</i>	<i>Chris Otterness</i>
	<i>Brian Pattengale</i>	<i>Chad Qualley</i>	<i>Chuck Rebsch</i>
	<i>Jim Schlieman</i>	<i>Curt Skarphol</i>	<i>Nancy Stowe</i>
	<i>Shawn Thomasson</i>	<i>Greg Thompson</i>	<i>James Warne</i>
	<i>Lawrence Woodbury</i>	<i>Randy Engelstad</i>	<i>Adam Walker</i>

**EXHIBIT L TO AGREEMENT
BETWEEN
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FOR
PROFESSIONAL SERVICES**

CDBG Program Requirements

This is an exhibit attached to and made a part of; and incorporated by reference into the Agreement dated JULY 13, 2013, between City of Minot (OWNER) and HOUSTON ENGINEERING, INC. (ENGINEER) for professional services.

1. Civil Rights

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

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hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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. 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.*

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- 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.

7. 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).

8. 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.

9. Record-Keeping, Reports, and Audits

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

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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.

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.

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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.

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 contacting 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).

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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

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 Contractor to fulfill the contract obligations (default). The City shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor 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 Contractor to fulfill its obligations under the contract (default), the City may (i) require the Contractor 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 Contractor shall be liable for any additional cost incurred by the City; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the City by the Contractor.
4. If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the City, and the Contractor 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.

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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.

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,

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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.