

**AMENDMENT NO: 4 TO AGREEMENT BETWEEN OWNER AND ENGINEER**

This Amendment No: 4 is made and entered into this 9th day of November, 2012 to the Agreement between Camp Dresser & McKee Inc. ("ENGINEER") and City of Minot ("OWNER") dated September 19, 2011, ("the Agreement").

WHEREAS, ENGINEER and OWNER entered into the Agreement for the Disaster Management Consultant Services, and

WHEREAS, the parties desire to amend the Agreement so as to amend the scope of work, time periods of performance and payment, and/or responsibilities of OWNER; and

WHEREAS, the Agreement provides that any amendments shall be valid only when expressed in writing and signed by the parties.

NOW THEREFORE, in consideration of the mutual understandings and Agreements contained herein, the parties agree to amend the Agreement as follows:

1. The Basic Services of ENGINEER as described in the Agreement are amended and supplemented as follows:

The City of Minot has received Community Development Block Grant Disaster (CDBG-DR) funds from the United States Government Office of Housing and Urban Development (HUD) under Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011).

This amendment adds appropriate CDBG-DR compliance language to the contract, as the home demolition project tasks will be partially funded with CDBG-DR funds. Refer to information provided in Attachment #1 to this Amendment.

2. The responsibilities of OWNER as described in the Agreement are amended and supplemented as follows: Responsibilities of Owner are as outlined in the original contract or as modified in Attachment #1 to this Amendment.

3. The time periods for the performance of ENGINEER's services as set forth in the Agreement are amended and supplemented as follows: This Amendment does not change the contract end date. The contract end date remains June 30, 2013.

4. The payment for services rendered by ENGINEER shall be as set forth below: There is no change in fees for the project as a result of this amendment. The current contract upper limit remains \$2,342,044.

5. Except as herein modified, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date indicated above for the purpose herein expressed.

\_\_\_\_\_  
ENGINEER

Steven L. Wolsfeld, P.E.  
Associate

Date: November 9, 2012

\_\_\_\_\_  
OWNER

Cindy Hemphill  
Finance Director

Date: November 9, 2012

**ATTACHMENT #1 TO AMENDMENT #4  
CDBG COMPLIANCE PROVISIONS  
FOR  
PROFESSIONAL SERVICES CONTRACTS**

**CONTENTS**

**I. GENERAL REQUIREMENTS**

**A. Civil Rights**

1. Compliance

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

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

2. Nondiscrimination

The Program Administrator 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. The Program Administrator 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 Program Administrator agrees to post, in conspicuous places, available to employees and applicants for employment, notices to be provided by the Program Administrator setting forth the provisions of this nondiscrimination clause. The Program Administrator shall also abide by Title IX of the Education Amendments of 1972 (20 U.S.C.A. 1681 *et seq.*) which prohibits sex discrimination in federally assisted education programs.

**B. Affirmative Action**

1. Approved Plan

The Program Administrator agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program in keeping with the principles as provided in Presidential Executive Order 11246 of September 24, 1965.

2. Women/Minority Business Enterprise

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

### 3. Notifications

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

### 4. EEO/AA Statement

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

### 3. Grievance

The Program Administrator shall establish and maintain written procedures to address grievances or complaints of employees or Program participants under this Agreement. The Program Administrator's written procedures should provide for employees or participants to contact Minot only after the complainant has exhausted the Program Administrator's internal procedures. The Program Administrator shall notify all employees and Program participants of its grievance procedure. Such notification must include the telephone number to reach Minot. The Program Administrator shall immediately notify Minot of all grievances or complaints received by the Program Administrator.

## C. Labor Standards

### 1. Wages

The Program Administrator agrees to comply with the requirements of the Secretary of Labor issued in accordance with the provisions of Contract Work Hours and Safety Standards Act [40 U.S.C.A. 3701 *et seq.*, as amended], as supplemented by Department of Labor regulations; the Copeland "Anti-Kickback" Act [18 U.S.C.A. 874]; the Davis-Bacon Act [40 U.S.C.A. 3141 *et seq.*, as amended]; and all other applicable Federal, state and local laws and regulations pertaining to labor standards, insofar as those acts apply to the performance of this Agreement. The Program Administrator shall maintain documentation that demonstrates compliance with hour and wage requirements of this section. Such documentation shall be made available to the City for review upon request. The Program Administrator shall also abide by Chapter 11 of Title 18 of the U.S. Code [18 U.S.C.A. 201 *et seq.*], which prohibits a number of criminal activities, including bribery, graft and conflict of interest.

### 2. OSHA

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety.

### 3. Drug Free Workplace

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

**D. Prohibited Activity**

The Program Administrator is prohibited from using CDBG-DR funds or personnel employed in the administration of the Program for political activities, sectarian/religious activities, lobbying, political patronage, and/or nepotism activities.

1. Hatch Act

The Program Administrator agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

2. Religious Organization

The Program Administrator agrees that funds provided under this Agreement shall not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization, in accordance with the Federal regulations specified in 24 C.F.R. § 570.200.

**E. False Claims**

The Program Administrator shall abide by 18 U.S.C.A. 286, which provides for conspiracy to defraud the Federal Government with Respect to Claims. In addition, the Program Administrator shall also abide by the False Claims Act (31 U.S.C.A. 3729 *et seq.*); 18 U.S.C.A. 287 relating to False, Fictitious and Fraudulent Claims; 18 U.S.C.A. 245, as amended, relating to Federally Protected Activities; 18 U.S.C.A. 1001, as amended, regarding General Statements or Entries; the Program Fraud Civil Remedies Act (31 U.S.C.A. 3801 *et seq.*); the Federal Claims Collection Act of 1966 (31 U.S.C.A. 3701, 3711, 3716 to 3718), as amended by the Derby Collection Act of 1982; the Meritorious Claims Act (31 U.S.C.A. 3702); the Tucker Act (28 U.S.C.A. 1346, 1491 and 2501 *et seq.*); the Wunderlich Act (41 U.S.C.A. 321-322); the Anti-Deficiency Act (31 U.S.C.A. 1341 *et seq.*); and Section 208(a) of the Intergovernmental Personnel Act of 1970, as amended.

**F. Conflict of Interest**

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 of for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

**G. "Section 3" Clause**

1. Compliance

The Program Administrator 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 Program Administrator understands that compliance shall be a condition of the federal assistance provided under this Agreement and binding upon the City, the Program Administrator and any sub-Program Administrators. Failure to comply with these requirements shall subject the City, the Program Administrator and any sub-Program Administrators, 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 Program Administrator agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Program Administrator shall include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this contract 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."

2. Notifications

The Program Administrator 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.

3. Subcontracts

The Program Administrator shall include this Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the sub-Program Administrator is in violation of regulations issued by the City. The Program Administrator will not subcontract with any sub-Program Administrator 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 sub-Program Administrator has first provided it with preliminary statement of ability to comply with the requirements of these regulations.

**H. Subcontracts**

1. Approvals

The Program Administrator may not subcontract any of its duties or obligations under this Agreement without the express written consent of the City, unless such subcontracts were expressly disclosed and included as a part of the Program Administrator's original Proposal. Any request for the right to use a subcontractor that was not disclosed in the Program Administrator's Proposal shall include the name and address of the subcontractor and a copy of the proposed subcontract. The City shall have the right to require changes or additions to the subcontract as a condition of granting permission to use a subcontractor.

2. Debarment, Suspension, and Ineligibility

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

3. Monitoring

The Program Administrator shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

4. Content

The Program Administrator shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

## **I. Access to Records – Maintenance of Records**

The City of Minot, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected this contract will be maintained in compliance with 24 CFR 570.506.

## **J. Compliance with the Office of Management and Budget and Procurement**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-1-2, A-133, and A-54, as they relate to the use of Federal funds under this contract. Procurement will be in compliance with the 24 CFR Part 85 and the City's adopted Procurement Policy.

## **II. ENVIRONMENTAL CONDITIONS**

### **A. Air and Water**

The Program Administrator 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.* Section 112 of the Clean Air Act, 40 CFR 61, Subpart M, Section 61.145 and environmental Review Guide for Private Non-profit recipients of NSP2 Grants Pages 32-34, and U.S. EPA regulations for asbestos remediation and disposal; and removal of asbestos must follow: Section 33-15-13-02 of the North Dakota Air Pollution Control Rules
- 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 Program Administrator 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.

### **C. Lead-Based Paint**

Lead-based paint (LBP) will be abated per the Site Contamination and Solid Waste Management – Toxic Chemicals and Radioactive Materials section, which follows 24 CFR Part 50.4(i). LBP abatement and demolition must follow the ND Dept of Health, Division of Air Quality regulations, and the North Dakota Air Pollution Control Rules 33-15-24.

### **D. Historic Preservation**

The Program Administrator shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C.A. 470) and the procedures set forth in 36 C.F.R. Part 800,

"Protection of Historic Properties," insofar as they apply to the performance of this Agreement. In general this requires approval from the North Dakota Historical Commission and Antiquities Committee for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, state, or local historic property list.

**E. Wildlife Protection**

The Program Administrator agrees to comply with the requirements of the Endangered Species Act of 1973, as listed in 50 C.F.R. § 17.11 and 50 C.F.R. Part 402; the Lacey Act (16 U.S.C.A. 3371-3378 *et seq.*, as amended); the Migratory Bird Treaty Act (16 U.S.C.A. 703-12); the Fish and Wildlife Coordination Act (16 U.S.C.A. 661 *et seq.*); Section 4(f) of the Department of Transportation Act (49 U.S.C.A. 1653(f)); the Federal Water Pollution Control Act (33 U.S.C.A. 1251 *et seq.*); the Coastal Zone Management Act of 1972, as amended (16 U.S.C.A. 1451); and the Safe Drinking Water Act of 1974 (42 U.S.C.A. 300f *et seq.*, as amended), insofar as they apply to the performance of this Agreement.

