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7550 Meridian Circle North, Suite 120 | Maple Grove, MN 55369

**VIA Email: [ranhorn@ninemilecreek.org](mailto:ranhorn@ninemilecreek.org)**

November 13, 2019

Randy Anhorn  
Administrator  
Nine Mile Creek Watershed District  
12800 Gerard Drive  
Eden Prairie, MN 55346

**Subject: Implementation of HEI's MS4Front Data Management Solution**

Dear Randy,

We are pleased to provide a proposal for implementing Houston Engineering, Inc.'s MS4Front data management solution to the Nine Mile Creek Watershed District. **Attachment A** describes our intended scope of work and provides an estimated compensation based on the proposed scope of services and software subscription costs. The estimated cost is **\$31,000**. We have also enclosed a Services Agreement and a MS4Front Subscription Agreement. If you would like us to proceed with this work, please sign and return to Houston Engineering, Inc.

If you have any questions regarding our proposal, please contact me at 763.493.4522 or via email at [jlewis@houstoneng.com](mailto:jlewis@houstoneng.com).

Sincerely,  
HOUSTON ENGINEERING, INC.

A handwritten signature in blue ink that reads "Joseph A. Lewis".

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Joseph A. Lewis, PE  
MS4Front Lead  
Direct: 763.493.6673  
[jlewis@houstoneng.com](mailto:jlewis@houstoneng.com)

A handwritten signature in blue ink that reads "Brian Fischer".

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Brian Fischer  
Principal  
763-493-6664  
[bfischer@houstoneng.com](mailto:bfischer@houstoneng.com)



MAPLE GRVE OFFICE
7550 MERIDIAN CIRCLE N
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CLIENT/OWNER SERVICES AGREEMENT

PROJECT NAME: MS4Front Implementation, Data Migration and Configuration Services
HOUSTON JOB NO.: 6860-0001 HOUSTON PROJ. MGR.: Joe Lewis
CLIENT/OWNER NAME: Nine Mile Creek Watershed District
CLIENT/OWNER ADDRESS: 12800 Gerard Drive, Eden Prairie, MN 55346
CLIENT/OWNER PHONE NO.: 952-835-2078 CLIENT/OWNER CONTACT: Randy Anhorn

This Client/Owner Services Agreement ("Agreement") is made and entered into effective as of this 13th day of November, 2019, by and between HOUSTON ENGINEERING, INC. ("Houston") and Nine Mile Creek Watershed District ("Client").

Recitals

- A. Client has requested Houston to perform certain professional services in connection with a project generally referred to as MS4Front Implementation – Nine Mile Creek WD ("Project").
B. Houston desires to provide the professional services requested by Client in accordance with this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Houston and Client agree as follows:

- 1. Services. Houston shall perform the services set forth in Attachment A ("Services") in accordance with the terms and conditions of this Agreement.
2. Term of Agreement. This Agreement shall commence on the date first stated above, and Houston is authorized to commence performance of the Services as of that date. This Agreement shall terminate on the 13th day of November, 2021, unless terminated earlier pursuant to the terms and conditions of this Agreement.

3. Attachments. The Attachments below, which have been marked for inclusion, are hereby specifically incorporated into and made a part of this Agreement:

- [X] ATTACHMENT A - SERVICES
[X] ATTACHMENT B - GENERAL TERMS AND CONDITIONS
[X] ATTACHMENT C - MS4Front Software Subscription Agreement and Pricing
[ ] ATTACHMENT D -
[ ] FEE SCHEDULE - DATED
[ ] ALTA/NSPS LAND TITLE SURVEY RIDER

4. Compensation.

- \$ 21,000 Lump Sum Fee - Based on the Services defined herein
\$ Estimated Fee - Client invoiced on an hourly basis commensurate with the attached Fee Schedule
\$ Percentage of Estimated Construction Cost
\$ 10,000 Other – MS4Front Subscription Fee

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written:

CLIENT/OWNER HOUSTON ENGINEERING, INC.
BY: AUTHORIZED REPRESENTATIVE BY: AUTHORIZED REPRESENTATIVE
TITLE: TITLE:

PLEASE SIGN AND RETURN ONE COPY TO HOUSTON AT THE ADDRESS ABOVE

## ATTACHMENT A. PROPOSED SCOPE OF WORK

Houston Engineering, Inc. (HEI) understands that the Nine Mile Creek Watershed District (NMCWD) has multiple data management needs to implement its various programs including stormwater permitting, cost-share grants, and operation and maintenance program. The purpose of this scope of work is to define the tasks and costs to implement MS4Front, a Software as a Service (SaaS) solution, to support NMCWD's permitting and cost-share grant program.

### Task 1. Initial Software Setup and Configuration

#### ACCOUNT CREATION

HEI will set up an instance of the MS4Front web application and database on a cloud server for hosting. As part of the initial setup HEI will:

- Set up a unique domain name to access the web application
- Set up two initial logins as administrators
- Brand the MS4Front header with NMCWD's logo

#### DATABASE CONFIGURATION

During this task, HEI staff will configure two pages within MS4Front based on the identification of specific data fields by NMCWD staff to effectively track the permitting and cost-share grant programs. Typical sections in MS4Front include the following:

- **Permitting Module Sections and Database Fields**
  - Description Section
  - Contacts Section
  - Status/Tracking Section
  - Review Section
  - Surety and Fees Section
  - BMP Section
  - Inspection Section
- **Cost-share Grant Module**
  - Description Section
  - Contacts Section
  - Status/Tracking Section
  - BMP Section
  - Inspection Section

#### CONFIGURATION OF OTHER FEATURES

HEI will configure a number of features in MS4Front specific to NMCWD workflows, reporting, correspondence and automated notifications regarding the permitting and cost-share grant programs. While specific needs have not been reviewed in detail with NMCWD staff, the following items and scope are typical of other watershed district users in Minnesota:

- **Form Letters**—NMCWD staff will provide samples of formatted reports and letter documents in Microsoft Word format for approximately 12 letters in total.
  - **Permit Correspondence** (e.g., Application Received Letter, Application Complete Letter, Board Action Letter, Board Cover Sheet, Permit Issuance Cover Letter, and Permit Issuance)

## Nine Mile Creek Watershed District – MS4Front Data Management Solution Implementation

November 13, 2019

Page 2

- **Advanced Searches** – NMCWD will identify up to 16 database queries (i.e., advanced searches) that are frequently executed during day-to-day program implementation. Search results will be quickly accessible from links within an MS4Front dashboard and can be viewed on the MS4Front map or in a table and also exported to Microsoft Excel. Example advanced searches include “Permits Expiring within 30 Days”, “Upcoming 15.99 Response Deadlines”, or “Surety Register by Calendar Year”.
- **Custom Reports**–NMCWD will provide up to six Microsoft Word or Excel documents for formatted reports. The reports can be generated within MS4Front using results from advanced searches or summary statistics of advanced search results.
- **Esri’s ArcGIS Field Data Collection Mobile App Integration**–HEI will work with the NMCWD to get access to your ArcGIS Online account and then configure up to five mobile inspection forms for use in the Survey123 mobile app. Additionally, HEI will configure the mobile inspections to be automatically written back to the MS4Front database for reporting.
- **Configure Map Viewer**–HEI will configure the map and load up to ten GIS layers. These layers are anticipated to include district boundary, hydrologic subwatershed boundaries, parcels, Hydrologic Soil Groups (HSG) D soils, Drinking Water Supply Management Area (DWSMA) emergency response areas, regulatory floodplains, Minnesota DNR public waters, National Wetlands Inventory (NWI), and historic aerial photos.

### Task 2. Data Migration

Data migration needs have not been discussed in detail with NMCWD staff. Existing records can be imported into MS4Front after being formatted to match the database configuration. HEI can either give guidance to NMCWD staff regarding the import process or perform the complete data formatting, review and import process. This scope assumes HEI will be performing a majority of the effort to migrate data into MS4Front and that the existing data is currently within one database table or spreadsheet for each program.

### Task 3. Testing and Final Configuration Revisions

Upon completion of Task 2, HEI will provide access to the application via a URL. NMCWD staff will use the URL to test the application and provide a prioritized list of feedback to HEI for revisions to the configuration. HEI will make up to 30 hours of revisions based on the prioritization list. HEI assumes these revisions will be limited to the current functionality and no new enhancements will be added.

### ESTIMATED COMPENSATION

This contract will be set up as a fixed fee project. Invoices will be submitted periodically (customarily on a monthly basis) and are due and payable upon receipt. Invoices will include the amount of work currently performed on the total project costs for that given period. Hosting will start at the development of the software product.

|   |                  |
|---|------------------|
| <b>Task 1:</b> Initial Software Setup and Configuration .....   | \$ 11,000        |
| <b>Task 2:</b> Data Migration .....   | \$ 5,500         |
| <b>Task 3:</b> Testing and Final Configuration Revisions .....  | \$ 4,500         |
| <b>Implementation Services Subtotal</b> .....   | <b>\$ 21,000</b> |
| <b>Software Subscription Fee</b> (Includes project management, training and 1 <sup>st</sup> year's annual subscription) ..... | \$ 10,000        |
| <b>TOTAL COST</b> .....   | <b>\$ 31,000</b> |

### Annual Subscription Fees

MS4Front is a SaaS, meaning bug fixes, technical support, and hosting are provided through the service agreement. The MS4Front annual subscription fee is **\$4,000**. Any request for revisions or enhancements to the software can be performed under a professional services agreement.

### Implementation Schedule

HEI will work with the NMCWD staff on the configuration and integration services over a 2-3 month period after a contract is approved followed by roughly one month of testing and configuration revisions before the official launch of MS4Front.

### Additional Modules and Integration

Additional modules can be incorporated to NMCWD's MS4Front account at a later time. In addition to the features described in this scope, the following items were briefly discussed with NMCWD staff in October 2019:

- **Public Application Forms Module**—This module includes creating a publicly available webpage for public citizens to submit an online permit or grant application. HEI can setup these forms based on the current PDF application forms and display submitted applications in MS4Front as a new application. Functionality is assumed to closely resemble Capitol Region Watershed District's public application forms and workflows that have been demonstrated to the NMCWD. The cost to implement this module is estimated to between \$5,000-8,000 in total for both the permit and cost-share programs.
- **BMP Aggregation Module**—This module is a new page that aggregates, into one view, all BMPs created in all MS4Front pages containing BMP data and provides both list and map views. The BMP page will also show summary statistics for the BMPs and allow users to export them into shapefile or to Microsoft Excel. The cost to implement this module is approximately \$3,000.
- **Contacts Aggregation Module**—This module aggregates all contacts across MS4Front pages into a common table where they can be updated or viewed. The contact record will also show the related permits or grants associated with them. The contact list can be exported into Microsoft Excel to use for marketing purposes. The cost to implement this module is approximately \$3,000.



## General Terms and Conditions

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### 1. STANDARD OF CARE

Houston shall perform its Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the region where the Project is located.

### 2. PAYMENT TERMS

Invoices will be submitted periodically (customarily on a monthly basis) and are due and payable upon receipt. Client agrees to pay a service charge on all accounts 30 days or most past due at a rate equal to one percent (1%) each month but in no event shall such service charge exceed the maximum amount allowed by law. Acceptance of any payment from Client without accrued service charges shall not be deemed to be a waiver of such service charges by Houston. In the event Client is past due with respect to any invoice Houston may, after giving five (5) days written notice to Client, suspend all services without liability until Client has paid in full all amounts owing Houston on account of services rendered and expenses incurred, including service charges on past due invoices. Payment of invoices is not subject to discount or offset by Client.

### 3. CHANGES OR DELAYS

If the Project requires conceptual or process development services, such services often are not fully definable in the initial planning. If, as the Project progresses, facts develop that in Houston's judgment dictate a change in the Services to be performed, Houston shall inform Client of such changes and the parties shall negotiate, in good faith, with respect to any change in scope and adjustment to the time of performance and compensation and modify the Agreement accordingly. In the event the parties are unable to reach an agreement, either party may terminate this Agreement without liability by giving fourteen (14) days written notice to the other party. In the event of termination, the final invoice will include all Services and expenses associated with the Project up to the effective date of termination, and will also include equitable adjustment to reimburse Houston for any termination settlement costs incurred relating to commitments that had become firm before termination plus a 10 percent markup on those settlement costs.

### 4. PAYMENT

Where the method of payment under the Agreement is based upon cost reimbursement (e.g., hourly rate, time and materials, direct personnel expense, per diem, etc.), the following shall apply: (a) the minimum time segment for charging work is one-quarter hour; (b) labor (hours worked) and expenses will be charged at rates commensurate with the attached fee schedule or, if none is attached, with Houston's current fee schedule (at the time of the work); (c) when applicable, rental charges will be applied to cover the cost of pilot-scale facilities or equipment, apparatus, instrumentation, or other technical machinery. When such charges are applicable, Client will be advised at the start of an assignment, task, or phase; and (d) invoices based upon cost reimbursement will be submitted showing labor (hours worked) and total expense. If requested by Client, Houston shall provide supporting documentation at Client's cost, including labor and copying costs.

### 5. TERMINATION

Either party may terminate this Agreement, in whole or in part, by giving fourteen (14) days written notice to the other party, if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. In such event, and subject to the limitations set forth in this Agreement, the non-defaulting party may pursue its rights and remedies as contemplated by this Agreement and as allowed by law.

### 6. LIMITATION OF LIABILITY

In no event shall Houston be liable for incidental, indirect or consequential damages of any kind. Houston's maximum cumulative liability with respect to all claims and liabilities under this Agreement, whether or not insured, shall not exceed the greater of \$50,000 or the total compensation received by Houston under this Agreement. The disclaimers and limitations of liability set forth in this Agreement shall apply regardless of any other contrary provision set forth and regardless of the form of action, whether in contract, tort or otherwise. Each provision of this Agreement which provides for a limitation of liability, disclaimer of warranty or condition or exclusion of damages is severable and independent of any other provision and is to be enforced as such. Client hereby releases Houston from any and all liability over and above the limitations set forth in this paragraph.

### 7. INSURANCE

Houston shall obtain and maintain during the term of this Agreement, at its own expense, workers' compensation insurance and comprehensive general liability insurance in amounts determined by Houston and will, upon request, furnish insurance certificates to Client. The existence of any such insurance shall not increase Houston's liability as limited by paragraph 6 above.

### 8. HAZARDOUS SUBSTANCES

Client shall furnish or cause to be furnished to Houston all documents and information known by Client that relate to the identity, location, quantity, nature, or characteristics of any asbestos, pollutant or hazardous substance, however defined ("Hazardous Substances") at, on or under the Project site. Houston is not, and has no responsibility as a handler, generator, operator, treater, storer, transporter, or disposer of Hazardous Substances found or identified at the Project. Client agrees to bring no claim for fault, negligence, breach of contract, indemnity, or other action against Houston, its principals, employees, agents, and consultants, if such claim in any way would relate to Hazardous Substances in connection with the Project. Client further agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Houston, its principals, employees, agents, and consultants from and against all claims, damages, losses, and expenses, direct or indirect, or consequential damages, including but not limited to fees and charges for attorneys and court and arbitration costs, arising out of or resulting from the performance of Houston's Services hereunder, or claims brought against Houston by third parties arising from Houston's Services or the services of others and/or work in any way associated with Hazardous Substance activities. This indemnification shall survive termination of this Agreement.

### 9. INDEMNIFICATION

Client shall indemnify, and hold harmless Houston, together with its officers, directors, agents, consultants and employees from and against any and all claims, costs, losses and damages, including attorneys' fees and other costs of litigation or dispute resolution arising directly or indirectly from Client's breach of this Agreement or Client's fault, negligent acts or omissions or intentional misconduct in connection with this Agreement or the Project. Subject to the limitations set forth in this Agreement, Houston shall indemnify and hold harmless Client, together with its officers, directors, agents, consultants and employees from and against any and all claims, costs, losses and damages, including attorneys' fees and other costs of litigation or dispute resolution arising directly or indirectly from Houston's breach of this Agreement or Houston's fault, negligent acts or omissions or intentional misconduct in connection with this Agreement or the Project. The indemnification obligations set forth in this paragraph shall survive termination of this Agreement.

### 10. WARRANTY

**Except as specifically set forth in this Agreement, Houston has not made and does not make any warranties or representations whatsoever, express or implied, as to Services performed or products provided including, without limitation, any warranty or representation as to: (a) the merchantability or fitness or suitability of the Services or products for a particular use or purpose whether or not disclosed to Houston; and (b) delivery of the Services and products free of the rightful claim of any person by way of infringement (including, but not limited to, patent or copyright infringement) or the like.** Houston does not warrant and will not be liable for any design, material or construction criteria furnished or specified by Client and incorporated into the Services provided hereunder.

# Attachment B

## 11. PROJECT SITE

Client shall furnish such reports, data, studies, plans, specifications, documents, and other information regarding surface and subsurface site conditions required by Houston for proper performance of its Services. Houston shall be entitled to rely upon Client provided documents and information in performing the Services required under this Agreement. Houston assumes no responsibility or liability for the accuracy or completeness of any such documents or information. Houston will not direct, supervise, or control the work, means or methods of contractors or their subcontractors in connection with the Project. Houston's Services will not include a review or evaluation of the contractor's or subcontractor's safety measures. The presence of Houston, its employees, agents or subcontractors on a site shall not imply that Houston controls the operations of others nor shall it be construed to be an acceptance by Houston of any responsibility for job-site safety.

## 12. CONFIDENTIALITY

Houston shall maintain as confidential and not disclose to others without Client's prior consent all information obtained from Client that was not otherwise previously known to Houston or in the public domain and is expressly designated by Client in writing to be "CONFIDENTIAL." The provisions of this paragraph shall not apply to information in whatever form that (a) is published or comes into the public domain through no fault of Houston, (b) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (c) is required to be disclosed by law on order of a court, administrative agency, or other authority with proper jurisdiction. Client agrees that Houston may use and publish Client's name and a general description of Houston's services with respect to the Project in describing Houston's experience and qualifications to other clients or potential clients.

## 13. RE-USE OF DOCUMENTS

All documents, including drawings and specifications, prepared or furnished by Houston (and Houston's affiliates, agents, subsidiaries, independent professional associates, consultants, and subcontractors) pursuant to this Agreement are instruments of service in respect of the Project, and Houston shall retain ownership thereof, whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for re-use by Client or others on extensions of the Project or on any other project. Any re-use without written verification or adaptation by Houston for the specific purpose intended will be at Client's sole risk and without liability to Houston or Houston's affiliates, agents, subsidiaries, independent professional associates, consultants, and subcontractors with respect to any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting therefrom. Any such verification or adaptation will entitle Houston to further compensation at rates to be agreed upon by Client and Houston.

## 14. REMEDIES

Subject to the limitations set forth in this Agreement, in the event any party is in default of this Agreement, the non-defaulting party shall be entitled to pursue all rights and remedies available to it under this Agreement or as allowed by law.

## 15. PROPRIETARY DATA

The technical and pricing information in connection with the Services provided by Houston is confidential and proprietary and is not to be disclosed or otherwise made available to third parties by Client without the express written consent of Houston.

## 16. GOVERNING LAW

The validity, construction and performance of this Agreement and all disputes between the parties arising out of or related to this Agreement shall be governed by the laws, without regard to the law as to choice or conflict of law, of the State of North Dakota. Client consents to jurisdiction as to all issues concerning or relating to this Agreement or the Project with the federal or state district courts designated for Cass County, North Dakota.

## 17. DATA PRACTICES ACT REQUESTS

Houston considers certain information developed during the execution of services as "not public" and "protected" from public disclosure under the various local, state and federal data practices laws. Client shall reimburse Houston for any and all costs and expenses, including attorneys' fees associated with any requests for release of information under any such laws.

## 18. FORCE MAJURE

Houston shall not be liable for any loss, damage or delay resulting out of its failure to perform hereunder due to causes beyond its reasonable control including, without limitation, acts of nature or the Client, acts of civil or military authority, terrorists threats or attacks, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, transportation embargos, extraordinary weather conditions or other natural catastrophe or any other cause beyond the reasonable control of Houston. In the event of any such delay, Houston's performance date(s) will be extended for that length of time as may be reasonably necessary to compensate for the delay.

## 19. WAIVER OF JURY

In the interest of expediting any disputes that might arise between Houston and Client, Client hereby waives its rights to a trial by jury of any dispute or claim concerning this Agreement, the Services, the Project and any other documents or agreements contemplated by or executed in connection with this Agreement.

## 20. NOTICES

Any and all notices, demands or other communications required or desired to be given under this Agreement shall be in writing and shall be validly given or made if personally served; sent by commercial carrier service; or if deposited in the United States Mail, certified or registered, postage prepared, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail or commercial carrier service, such notice shall be conclusively deemed given three (3) days after deposit thereof in the United States Mail or with a commercial carrier service. Notices, demand or other communications required or desired hereunder shall be addressed to the individuals indicated in this Agreement at the addresses indicated in this Agreement. Any party may change its address or authorized recipient for purposes of this paragraph by written notice given in the manner provided above.

## 21. MISCELLANEOUS

This Agreement shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document regarding the Services. If any provision of this Agreement is determined to be invalid or unenforceable in whole or part by a court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that as closely as possible expresses the intention of the stricken provision. This Agreement, including but not limited to the indemnification provisions, shall survive the completion of the Services under this Agreement and the termination of this Agreement. This Agreement gives no rights or benefits to anyone other than Houston and Client and has no third party beneficiaries except as may be specifically set forth in this Agreement. This Agreement constitutes the entire agreement between the parties and shall not in any way be modified, varied or amended unless in writing signed by the parties. Prior negotiations, writings, quotes, and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement. Headings used in this Agreement are for the convenience of reference only and shall not affect the construction of this Agreement. This Agreement and the rights and duties hereunder may not be assigned by Client, in whole or in part, without Houston's prior written approval. No failure or delay on the part of Houston in exercising the right, power or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any rights, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

## Attachment C

### MS4FRONT SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

This Subscription Agreement ("Agreement") for use of the software service as described herein ("Service") is made between Houston Engineering, Inc. ("Provider") and the single business entity or organization identified as "Subscriber" in Schedule A hereto. In consideration of the payment by the Subscriber to Provider of the charges specified in Schedule B to this Agreement, Provider grants to the Subscriber a nonexclusive, worldwide access and use the Service in accordance with the following terms and conditions:

#### 1. The Service.

(1) Provider shall provide to the Subscriber access to the MS4Front software product for MS4 permit compliance (the "Service"). The Specifications for the Service are provided in Schedule A hereto, which is incorporated by reference. Provider agrees that the Service will meet service level standards (SLAs) provided in Schedule A hereto, which is incorporated by reference.

(2) Provider shall promptly report to Subscriber any malfunctions in the System discovered by Provider or any cause for interruption or delay in the Services, together with Provider's proposed solution.

#### 2. Term and Termination.

(1) Subject to the cancellation provisions set forth below, the minimum term for which the Service shall be provided to the Subscriber under this Agreement shall be twelve (12) months, commencing on start-up of the Service and satisfactory completion of reasonable testing and acceptance procedures for the Software and the Service in a "live" environment, as indicated by notice to be provided by Subscriber to Provider (the "Commencement Date"). The Service shall be subject to annual renewal, and payment to Provider and shall be renewed unless otherwise cancelled on or before the one year anniversary from the Commencement Date or any renewal date.

(2) Either party may cancel the Service after the expiration of the applicable minimum term. If Subscriber chooses to cancel the Service, they will provide ninety (90) days written notice and forfeit the remaining annual subscription fee for that year if applicable. If Provider chooses to cancel the Service they will provide the Subscriber one (1) year written notice.

(3) The Service may be cancelled at any time in the event that: (a) the Subscriber fails to pay the charges specified in Schedule B in accordance with Section 3, except as a result of a bona fide billing dispute, and such nonpayment is not cured within fifteen (15) days after Provider notifies the Subscriber of the nonpayment (it being understood that cancellation for such cause is solely Provider's option); or (b) either party is in material breach of this Agreement, and the breach is not cured within thirty (30) days after the non-breaching party notifies the breaching party of the breach (it being understood that cancellation for such cause is solely the non-breaching party's option).

(4) Except as expressly provided in this Agreement, any cancellation of the Service or termination of this Agreement shall not affect any accrued remedies or liabilities of either party and shall not affect or impair any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after that cancellation or termination.

(5) In connection with any cancellation or termination of the Service, Provider will return or destroy all reports, files and data supplied to Provider by the Subscriber within 15 days after cancellation or termination. Provider will provide, at



## Attachment C

Subscriber's cost, such assistance as Subscriber may reasonably request in order to accomplish a transition to another service provider, if applicable. If necessary, for Subscriber to meet legal and business requirements for the safekeeping and/or lookup of historical information, Provider shall permit Subscriber to retain a backup copy of the Service and/or employ a limited version of the Service, without charge.

### 3. Charges for Service.

(1) In return for the Service provided by Provider, the Subscriber agrees to pay the charges specified in Schedule B. The Subscriber may elect to add additional modules to the software at an additional fee to the subscriber.

(2) The charges set forth on Schedule B include API maintenance charges (if applicable), support (as described in the Schedule), and use of the number of browser-based user interfaces indicated in Schedule B.

(3) Subscriber is responsible for maintaining its own access to the Internet so as to access the Service, which is web-based.

(4) Subscriber shall also be responsible for payment of any and all sales, value added, use and other similar taxes or charges levied by any governmental, statutory, or regulatory authority in connection with Provider providing the Service under this Agreement. Provider agrees to consult with Subscriber before charging for any such taxes, and the parties will cooperate with each other to determine the amounts due and avoid the payment of taxes not legally required.

(5) The Subscriber shall pay to Provider, upon demand, interest accruing daily from the date an invoice becomes past due to the date of actual payment on any undisputed amounts which are thirty (30) days or more overdue under this Agreement at the rate of three per cent (3%) per annum.

### 4. Installation, Equipment and Support.

(1) The Subscriber shall promptly provide Provider with all information necessary for the configuration information necessary to provide the Service and will cooperate to facilitate prompt setup.

(2) As part of the Service, Provider shall provide to the Subscriber support for the Service during normal business hours (Central U.S. Time). Provider shall provide such support during Provider's normal business hours in accordance with the terms of the Schedule B.

### 5. Provider Software.

(1) Subscriber agrees that all software and related users' guides and documentation provided by Provider (collectively, the "Provider Software"), including all copies of the Provider Software, and all copyright and all other intellectual property rights in or relating to the Provider Software are and shall, as between the parties to this Agreement, remain the property of Provider. The Subscriber, acting itself and with its contractors and consultants, may use the Provider Software only in the ordinary course of its internal business and only on equipment that meets all the technical specifications provided in writing by Provider prior to execution of this Agreement.

(2) The Subscriber may not copy sell, transfer, rent, share, reverse engineer, decompile, copy, duplicate or translate into any language the Provider Software, or use the Provider Software or the Service to operate a service bureau for other users, except that the Subscriber may make copies of the Provider Software as necessary for Subscriber to have access to and use of the Service in accordance with this Agreement or for backup, test, training or development purposes. The Subscriber shall ensure that all copies of all or any part of the

## Attachment C

Provider Software include all Provider's and its licensors' (if any) copyright and other proprietary rights notices.

(3) The Subscriber shall not modify any part of the Provider Software nor in any way make available to or provide copies of the whole or any part of the Provider Software to any third party.

(4) The Subscriber shall notify Provider promptly upon any unauthorized disclosure, use or copying of the Provider Software of which the Subscriber becomes aware.

### 6. Access to Service and Rights to Data.

(1) The Subscriber shall not permit anyone other than its employees (and any contractors or consultants who are responsible for supporting the Subscriber's relevant business operations) to use the Service, and agrees that the Service will be used only in accordance with the operating instructions and procedures established by Provider and provided from time to time by Provider to the Subscriber.

(2) Data and data compilations provided by Provider (except for data in the form supplied by the Subscriber or any data compilations including such data, which are and shall remain Subscriber's sole property) (collectively, the "Service Data"), and all database, copyright and other intellectual property rights in the Service Data, shall remain the property of Provider or its licensors, and no disclosure, reuse, extraction, re-transmission or storage of any of the Service Data shall be made except as necessary for use of the Service by the Subscriber hereunder or otherwise expressly permitted in writing by Provider. The Subscriber shall not gain or be entitled to assert any rights over the Service Data by virtue of the use or transmission of the Service Data on or through the Service. Subscriber shall ensure that the Service Data shall be kept confidential.

(3) Data cross references supplied by Provider or its licensors shall only be used with the Service and shall not be used for any other purpose.

### 7. Limitation of Liability.

(1) Provider will not be liable for the consequences of any decision taken by the Subscriber based on the Service Data or for any loss or damage that is, in whole or part, attributable to the Subscriber's failure to comply with this Agreement including, without limitation, Subscriber's obligations set out in Section 6.

(2) PROVIDER WARRANTS THAT THE SOFTWARE AND SERVICE WILL MEET ITS SPECIFICATIONS AND THAT THE SERVICE WILL BE PROVIDED IN A COMMERCIALY REASONABLE FASHION IN ACCORDANCE WITH INDUSTRY STANDARDS. ALTHOUGH PROVIDER WILL ENDEAVOR TO ENSURE THAT THE SERVICE DATA ACCURATELY REFLECTS INFORMATION AND DATA SUPPLIED TO IT BY THIRD PARTIES OR BY THE SUBSCRIBER, PROVIDER DOES NOT WARRANT THAT THE SERVICE DATA IS ACCURATE OR COMPLETE. IF PROVIDER DISCOVERS OR IS NOTIFIED OF ANY ERROR OR DEFICIENCY IN THE SERVICE DATA, PROVIDER WILL NOTIFY THE SUBSCRIBER AND TAKE COMMERCIALY REASONABLE EFFORTS TO CORRECT THE SAME.

(3) PROVIDER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF ANY INACCURACY, ERROR OR OMISSION IN THE SERVICE DATA, HOWEVER THEY ARISE, UNLESS RESULTING FROM PROVIDER'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR FOR ANY USE OR RELIANCE PLACED ON THE SERVICE DATA OR THE SERVICE.

(4) Provider will not be liable for any fault, delay or interruption to the Service or for any loss or damage that is in any way attributable to any data, information, equipment or software not supplied directly or indirectly by Provider or to any circumstances outside its control. The Subscriber will indemnify Provider against all losses, claims, expenses, costs, liability and

## Attachment C

damages suffered or incurred by Provider in connection with: any claim or action by any client of the Subscriber or by any third party who has access to the Service or any information from or about the Service via the Subscriber; any claim or action which arises in connection with the Subscriber's failure or delay in complying with its obligations under this Agreement; and any claim or action by any counterparty or other person with whom the Subscriber has done business or is considering doing business; any act or omission of the Subscriber's including, without limitation, any decision to do or not to do business with that person, except in each case to the extent resulting from Provider's negligence or willful misconduct.

(5) In no circumstances whatsoever will either party be liable for any indirect, incidental or consequential loss or damage or for any loss of profits, loss of goodwill, loss of opportunity, or loss or spoiling of data, even if such party was advised of or knew of the likelihood of that loss or type of loss arising.

(6) The express terms of this Agreement are in lieu of all other warranties, conditions, terms and undertakings implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded and disclaimed to the fullest extent permitted by law.

(7) This Section 7 governs Provider's liability in respect of the Service, whether arising in tort (including negligence and willful misconduct), under these terms and conditions, this Agreement, the terms of any Service Level Agreement relating to the Service, any other agreement or document relating to the Service, or in any other way.

(8) Nothing in this Section 7 shall relieve Provider of liability for direct damages caused by the negligence or willful misconduct of Provider or Provider's violation of applicable law.

### 8. Confidentiality, Privacy and Security

(1) Except as otherwise expressly provided in this Agreement, Provider and Subscriber each agrees that (a) all information communicated to it by the other and reasonably known to be or identified as confidential, whether before or after the date hereof, (b) all other information reasonably known to be or identified as confidential to which it has access in connection with the Services, whether before or after the date hereof, and (c) technical specifications, nonstandard price and payment terms, or performance requirements applicable to the Services which are designated as confidential information of one party or the other, will be and will be deemed to have been received in confidence and will be used only for purposes of each party's (i) carrying out the terms of this Agreement, (ii) in Subscriber's case, using, managing, maintaining or replacing the System as its internal needs dictate, and (iii) as otherwise permitted by the Agreement.

(2) Each of Provider and Subscriber agrees to use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the unauthorized use or disclosure and to protect the confidentiality thereof. Except as otherwise permitted by the Agreement, no such information will be disclosed by the recipient party without the prior written consent of the other party; provided, however, that each party may disclose the other party's confidential information to those of the recipient party's employees, contractors, agents, attorneys, auditors, and insurers (if applicable) who have a need to have access to such information in connection with their employment (or engagement, if applicable) by the recipient party. The recipient party takes reasonable steps to require such individuals and entities to be bound by confidentiality obligations no less restrictive than those required hereunder.

(3) The foregoing will not prevent either party from disclosing information that (i) belongs to such party or is already known by the recipient party, free of any other confidentiality obligation (i.e., separate from the confidentiality obligation herein) directly or indirectly owed to the disclosing party, (ii) is publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) is rightfully received from a third party who is not

## Attachment C

subject to any obligation of confidentiality directly or indirectly owed to the disclosing party, (iv) is independently developed without use of the other party's confidential information, or (v) is approved for unrestricted release by the disclosing party. If confidential information is required to be disclosed pursuant to a requirement of law (e.g., any applicable Freedom of Information or Public Records Act) or by lawful demand or order of a governmental authority, such confidential information may be disclosed pursuant to such requirement so long as the party required to disclose the confidential information, to the extent possible, provides the other party with timely prior notice of such requirement and coordinates with such other party in an effort to limit the nature and scope of such required disclosure, provided, however, that in the event of a tax audit or regulatory investigation, notice of a disclosure requirement in connection therewith will not be given, and the parties will use commercially reasonable efforts to ensure that any confidential information that is subject to a valid request for delivery of a copy of such information (including a copy of this Agreement) to the applicable government authority is not subject to further disclosure by it (such as by marking such information as a trade secret).

(4) Provider shall exercise reasonable care for the protection of personally identifiable information included in Subscriber's data processed by or stored by Provider pursuant to the Service and shall maintain reasonable data integrity safeguards against the deletion or alteration of such data. In the event that any such data is compromised, released, lost or destroyed, or there is any unauthorized intrusion into systems operated by Provider adversely affecting Subscriber data, then Provider shall notify Subscriber within 48 hours after Provider's discovery thereof and use commercially reasonable efforts to correct the matter.

(5) During the Term of this Agreement, both parties agree to comply with privacy laws directly applicable to their respective businesses. To the extent Subscriber is required by law to do so with respect to Subscriber data that is provided to Provider to perform the Services, Provider shall implement appropriate security measures, policies and procedures that are designed to meet applicable privacy laws.

### 9. Indemnification and Insurance

(1) Provider and Subscriber each will be responsible for any and all third party claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses (collectively, "Losses") to their respective tangible personal or real property or for personal bodily injury to its employees and agents except to the extent that such Losses result from the negligence or willful misconduct of the other party, its agents or employees.

(2) Provider and Subscriber each agrees to defend, indemnify and hold harmless the other party against any third party Losses to the extent that such action is based upon a claim that the systems, facilities or resources, including confidential information, provided by the indemnitor: (i) infringes a copyright recognized under United States statute, (ii) infringes a patent granted under United States law, (iii) constitutes an unlawful disclosure, use or misappropriation of another party's trade secret, or (iv) conflicts with or violates any contract limitation to which the indemnifying party is a party or otherwise subject. The indemnitor will bear the expense of such defense and pay any Losses that are attributable to such claim finally awarded by a court of competent jurisdiction at indemnitee's cost and expense.

### 10. Miscellaneous.

(1) This Agreement, including the Schedules attached hereto, constitutes the entire agreement of the parties on the subject matter of this Agreement, and supersedes all prior agreements and all oral or collateral representations, agreements and understandings between Provider and the Subscriber relating to that subject matter.

(2) Except as expressly provided in this Agreement, this Agreement may not be amended, waived or varied other than by an agreement in writing signed on behalf of both Provider and the Subscriber.

Attachment C

(3) Without the other party's prior written consent, neither party may assign, sublicense, transfer or otherwise dispose of any of its rights or subcontract, transfer or otherwise dispose of any of its obligations under this Agreement except to its present and future subsidiaries and affiliates and any successors to all or substantially all of its or their business. Subject to the foregoing, this Agreement shall inure to the benefit of, and shall be binding on, each party's respective successors and assigns.

(4) Notices under this Agreement shall be considered to have been duly given when delivered by hand, or two days after being mailed by first class, prepaid post, to Provider at 6901 East Fish Lake Road, Suite 140, Maple Grove, MN 55369-5400 or to the Subscriber at its address specified in Schedule A. Such addressees may be changed by notice given as provided in this Subsection (4).

(5) Failure by either party to enforce any term of this Agreement shall not be construed as a waiver.

(6) The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

(7) Neither party shall be liable to the other for any delay or nonperformance of its obligations under this Agreement arising from any cause beyond its reasonable control. The party who so delays or fails to perform shall promptly notify the other party in writing of the cause and the likely duration of the cause.

(8) This Agreement is governed by and shall be construed in accordance with the laws of the United States and the State of North Dakota as it applies to a contract made and performed solely in such jurisdiction. Any dispute related to, or arising from, these terms or this Agreement shall be resolved by single-member arbitration in accordance with the AAA Commercial Rules of Arbitration, with such arbitration occurring in Fargo, North Dakota.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal.

Subscriber:  
NINE MILE CREEK WATERHED DISTRICT

Provider:  
HOUSTON ENGINEERING, INC

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment C

### SCHEDULE A

SUBSCRIBER (Name; Address; Primary Phone #):

Nine Mile Creek Watershed District

12800 Gerard Drive

Eden Prairie, MN 55346

Subscribers Authorized Contact: Randy Anhorn, ranhorn@ninemilecreek.org

SOFTWARE AS A SERVICE (SaaS):

The Service is Provider's MS4Front software. See: [www.ms4front.com](http://www.ms4front.com). The MS4Front system is hosted on cloud servers and is accessible on a password-protected website via a web browser and standard internet connection. The service provides access to the software to the subscriber's organization with unlimited users for that organization. The service may not be shared with other individuals from other organizations under this agreement unless those individuals are contracted for services by the organization.

Software

Features include:

- Access to and entry of information via web-based interface
- Multiple users can simultaneously access the program
- Allows users account administrator the ability to control user permissions (i.e., full access, read only, or no access)
- Configurable pages and form fields to implement data management tracking for stormwater and water quality programs
- Web-based GIS mapping viewer
- Importing of existing databases in the provided template format in Microsoft Excel
- Exporting of MS4Front databases in Microsoft Excel format
- Ability to export data to commercially available formats
- Store photos of database records, screenings, inspections and maintenance actions

SOFTWARE SPECIFICATIONS:

MS4Front is a web-based application that requires a modern web browser to access. The software is designed for use on a personal computer web browser with a minimum resolution of 1024x768.

Supported Desktop Browsers:

- Internet Explorer version 11+
- Mozilla Firefox
- Google Chrome
- Apple Safari

Mobile Support:

MS4Front may work on a mobile device such as an Ipad or smartphone device, but no guarantees are made with the software that all features will work on smartphones or tablets at this time.

## Attachment C

### Application Hosting:

MS4Front is a hosted solution. We strive for 100% uptime, but no guarantee can be made about uptime due to circumstance out of our control such as power outages. MS4Front makes every reasonable attempt to back up Subscriber's data on a nightly basis but does not retain every night's backup for the life of the Service. Provider should make a reasonable attempt to export their data from time to time for a backup copy at Providers location.

### Data Storage:

This subscription includes a 100GB storage limit for photos, attachments and videos for the account. Additional storage may be purchased if needed at a cost of \$100/year for additional 100GB blocks.

### Software Security:

MS4Front is secured with SSL encryption.

### Subscriber's Responsibilities

- Equipment (computers, monitors, smartphones, tablets, etc.)
- Internet access
- All data entry and management

## Attachment C

### SCHEDULE B

#### SaaS PRICING

Initial Account Creation and Set-up:

Provided under separate professional services agreement.

First Year Software as a Service Subscription Fee for MS4Front:

\$10,000

- Includes unlimited subscriber user accounts for staff of subscriber's organization
- All support requests must go through Subscribers authorized contacts

First Year Software as a Service Subscription Fee for MS4Front's Public Application Forms, BMP and Contacts Modules:

\$

- Includes unlimited subscriber user accounts for staff of subscriber's organization
- All support requests must go through Subscribers authorized contacts

Annual Subscription Fee (starting on the renewal date of the 2<sup>nd</sup> year):

\$4,000

- Includes unlimited subscriber user accounts for staff of subscriber's organization
- All support requests must go through Subscribers authorized contact

3<sup>rd</sup> Party Licensing Requirements

- MS4Front can integrate with ESRI's mobile data collection apps. Subscriber is responsibility to provide appropriate licenses for their users to ESRI's mobile data collection apps, specifically Collector and Survey 123. Costs to integrate with ESRI's mobile data collection apps is included in initial setup and annual subscription fees.

Pricing Assumptions

- The provider reserves the right to increase annual subscription fees if additional modules are implemented in the future. Provider will provide 12 months' notice to subscriber of intent to increase any subscription fees.
- The provider reserves the right to increase annual subscription fees based on standard inflation rates and cloud server costs. Provider will provide 12 months' notice to subscriber of intent to increase any subscription fees.