

PUBLIC WORKS & UTILITIES COMMITTEE

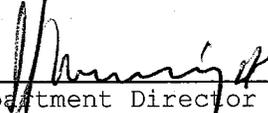
12-0109R

RESOLUTION AUTHORIZING AN AGREEMENT WITH FORTH INFRASTRUCTURE & ENVIRONMENT, LLC., FOR PROFESSIONAL ENGINEERING SERVICES IN THE PREPARATION OF AN OPERATIONS AND MAINTENANCE MANUAL FOR THE CITY'S UTILITIES SERVICES FOR AN AMOUNT NOT TO EXCEED \$49,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement with Foth Infrastructure & Environment, LLC., substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for engineering services related to the preparation of an operations and maintenance manual for the city's utilities services for an amount not to exceed \$49,000, payable from Fund 530-0500-1945-5319 (Sewer, Public Works & Utilities, Utility General Expense, Other Professional Services).

Approved:



Department Director
Purchasing Agent 

Approved as to form:



Attorney

PWU/PRCH DS:SW:le 03/01/2012

Approved for presentation to council:



Chief Administrative Officer

Approved:



Auditor

STATEMENT OF PURPOSE: This resolution authorizes a professional services agreement with Foth Infrastructure & Environment, LLC, for preparation of an operation and maintenance manual for the sanitary sewer utility for an amount not to exceed \$49,000, payable from the sewer fund.

The city of Duluth is under consent decree orders to develop an operations and maintenance manual for the sanitary sewer utility. Two firms submitted proposals to provide services; Foth Infrastructure & Environmental, LLC (Foth) for a cost of \$49,000 and Short Elliot & Hendrickson Inc. (SEH) for a cost of \$93,433. It is recommended that the project be awarded to Foth because the city's past experiences with them indicate that they: (a) are capable of performing the work, (b) are able to meet the tight completion schedule, and (c) have submitted a proposal which is almost half the cost of SEH's proposal. This resolution authorizes an agreement with Foth for engineering services for the preparation of operation and maintenance manuals pursuant to a consent decree requirement.

Foth Infrastructure & Environment, LLC, is located in Lake Elmo, Minnesota.

Requisition No. 12-0109

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
FOTH INFRASTRUCTURE & ENVIRONMENT LLC
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as "City," and FOTH INFRASTRUCTURE & ENVIRONMENT, LLC located at Eagle Point II, 8550 Hudson Blvd., Suite 105, Lake Elmo, MN, 55042 a limited liability company under the laws of Wisconsin, hereinafter referred to as "Engineer" or "Foth" for the purpose of rendering services to the City.

WHEREAS, the City has requested assistance in preparing an operation and maintenance manual for the collection of wastewater collection and transmission system (the "O&M Manual" or "Project");

WHEREAS, Engineer submitted a Proposal in response to the City's request (the "Proposal")

WHEREAS, Engineer has represented itself as qualified and willing to perform the services required by the City and as outlined in Engineer's Proposal

WHEREAS, based on the Proposal the City has selected Engineer's professional services for the Project;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services to be Performed.

Engineer will provide the services described in Engineer's Proposal dated January 3, 2012 attached hereto as Exhibit A (the "Services") provided, however, that in the event of any conflict between the terms and conditions of this Agreement and those contained in Exhibit A, the terms and conditions of this Agreement shall be deemed to be controlling:

II. Fees.

It is agreed between the parties that Engineer's maximum fee for the Project shall not exceed the sum of Forty-nine Thousand and 00/100th dollars (\$49,000.00) inclusive of all travel and other expenses associated with the Project, payable from Fund 530-0500-1945-5319 (Sewer, Public Works & Utilities, Utility General Expense, Other Professional Services). All monthly invoices for services rendered shall be submitted to the attention of Stephen Lipinski and shall be accompanied by such documentation as City shall

reasonably request.

III. General Terms and Conditions.

1. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Engineer only upon being reduced to writing and signed by a duly authorized representative of each party.
2. Assignment. Engineer represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The primary Engineers assigned to this project will be Tom Madigan (the "Primary Engineer"). Mr. Madigan shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Engineer in substitution of the Primary Engineer. The foregoing sentence shall not preclude other employees of Engineer as listed herein from providing support to the Primary Engineer in connection with Primary Engineer's obligations hereunder.
3. Data and Confidentiality, Records and Inspection.
 - a. The City agrees that it will make available all pertinent information, data and records under its control for Engineer to use in the performance of this Agreement, or to assist Engineer wherever possible to obtain such records, data and information.
 - b. All reports, data, information, documentation and material given to or prepared by Engineer pursuant to this Agreement will be confidential and will not be released by Engineer without prior authorization from the City.
 - c. Engineer agrees that all work created by Engineer for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Engineer further agrees that to the extent the work is not a "work made for hire" Engineer will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Engineer agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Engineer represents and warrants that the work created or prepared by Engineer will be

original and will not infringe upon the rights of any third party, and Engineer further represents that the work will not have been previously assigned, licensed or otherwise encumbered. Notwithstanding the forgoing, City's ownership of City Property shall not include any, and Engineer shall retain all right, title, and interest (including any and all intellectual property) it has in trademarks, know-how, technique, software (source code), and practice tools that Engineer has developed, or will develop, wholly independent of any services required by or performed under and without breach of this Agreement ("Engineer Property"). To the extent any Engineer Property is incorporated into City Property, Engineer grants to City a perpetual, non-transferable, non-exclusive, royalty-free, worldwide, paid in full license to copy, perform and use for City's business purposes only all Engineer Property.

- d. Records shall be maintained by Engineer in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Engineer will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Engineer shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Engineer shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement Engineer will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Engineer Representation and Warranties.

Engineer represents and warrants that:

- a. Engineer and all personnel to be provided by it hereunder have sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Engineer and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Engineer has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Engineer will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Engineer is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Engineer contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Engineer's knowledge threatened against the Engineer affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Engineer to perform its obligations hereunder.
- f. The Engineer will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period.

The term of this Agreement shall commence on the Effective Date and

performance shall be completed by November 23, 2012, unless terminated earlier as provided for herein. Notwithstanding the foregoing, the term of this Agreement may be extended for a period of up to six (6) months upon prior written approval of the Director of Public Works & Utilities Division.

The City may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Engineer under this Agreement shall become the property of the City and Engineer shall promptly deliver the same to the City. Engineer shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Engineer, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Engineer which gave rise to such breach.

6. Independent Contractor.

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Engineer as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Engineer and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Engineer's employees while so engaged, and any and all claims whatsoever on behalf of Engineer's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Engineer's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Engineer from liability or judgments arising out of Engineer's intentional or negligent acts or omissions of Engineer or its employees while performing the work specified by this

Agreement.

b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

c. Contractor expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

Engineer shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Engineer's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Engineer's employees or contractors, or d) the use of any materials supplied by the Engineer to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance.

a. Engineer shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.

- (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- (2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- (3) Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days notice prior to any cancellation or modification shall be required; and in such event, Engineer agrees to provide the City with either evidence of new insurance coverage conforming to

the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

- (4) **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Engineer may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Engineer shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Engineer to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Engineer's interests and liabilities.
 - (5) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
 - (6) **The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.**
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Engineer, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Engineer, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

- c. Certificates showing that Engineer is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- d. The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies of the Engineer.
- e. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being given to the City.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City:

City of Duluth
 520 Garfield Ave
 Duluth, MN 55802
 Attn: Stephen Lipinski

Engineer

FOTH Infrastructure &
 Environment, LLC
 Eagle Point II
 3560 Hudson Blvd. North, Suite 105
 Lake Elmo, MN 55042
 Attn: Tom Madigan, P.E.

10. Civil Rights Assurances

Engineer, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this

Agreement.

- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations.

Engineer agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law.

This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure.

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH, a Minnesota municipal corporation

FOTH INFRASTRUCTURE & ENVIRONMENT, LLC

By: _____
Its Mayor

By _____

Attest:
By: _____
City Clerk
Date:

Its _____
Title of Representative
Date:

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

PROPOSAL



Eagle Point II • 8550 Hudson Blvd. North, Suite 105
Lake Elmo, MN 55042
(651) 288-8550 • Fax: (651) 288-8551
www.foth.com

January 3, 2012

Mr. Stephen Lipinski
Utility Operations Manager
City of Duluth
520 Garfield Avenue
Duluth, MN 55802

Dear Mr. Lipinski:

RE: Proposal for Preparation of Operations and Maintenance Manuals for City Utility Services

Thank you for the opportunity to submit a proposal for preparation of operations and maintenance manuals for the City's wastewater collection systems. Foth Infrastructure & Environment, LLC (Foth) has experience completed these types of documents for other communities. Additionally, Foth is familiar with the City's systems having helped train its staff over the years; including most recently on the NASSCO PACP/MACP training.

We are proposing Jim Miller to lead our effort on this project. Jim is quite familiar with this type of document preparation having just completed one for the City of Owatonna, as well as working for the City of Duluth for many years.

Foth appreciates the opportunity to work with the City of Duluth, and we look forward to supporting you on this work.

Sincerely,

Foth Infrastructure & Environment, LLC

A handwritten signature in black ink that reads "Tom Madigan".

Tom Madigan, P.E.
Principle-in-Charge

City of Duluth, Minnesota
Utility Operations and Maintenance Manuals
January 3, 2012

I. Our Understanding of Your Project

The City of Duluth is requesting assistance in the preparation of operations and maintenance manuals (O & M) for its wastewater collection systems to be used for daily work tasks for City Staff and training. Foth Infrastructure & Environment, LLC (Foth) proposes to meet with City Staff and prepare an outline of the manual content for City review. Foth will collect all necessary data from the City; including staff organization, descriptions of systems, procedures, emergency operations, existing record documents, permit requirements, duty officer procedures, safety procedures, training processes, and maintenance schedules. Foth will assimilate all documentation into a livable manual in hard copy and digital format for the City to use and update in the future.

II. Scope of Services - Steps for Success

The tasks and associated estimate of hours for this project are itemized below:

Task 1 - Meet with key stakeholders to define components and assign data collection responsibilities. (16 hours)

Task 2 - Determine draft content for wastewater collection lines and lift stations. (50 hours)

Task 3 - Meet with shareholders to refine content. (16 hours)

Task 4 - Prepare Operations and Maintenance Manual.

- ◆ Write introductory language – purpose, intent and overview of continual revision and updates. (14 hours)
- ◆ Review staff and utility organization (chain of command and responsibility). (14 hours)
- ◆ Collect and organize description of collection system components and establish process overview. (30 hours)
- ◆ Collect and summarize individual operations procedures. (50 hours)
- ◆ Compile emergency operations procedures and format standard operating procedure (SOP) key elements. (12 hours)
- ◆ Incorporate any permit issues into manual with schedules and compliance information. (12 hours)
- ◆ Include duty officer notification elements. (12 hours)
- ◆ Prepare standard operating procedures.
 - ✓ Establish format and content. (12 hours)
 - ✓ Review each section as it relates to impacted users. (20 hours)
 - ✓ Assemble field notes from review and incorporate into SOP for each required element. (30 hours)
 - ✓ Personnel review – obtain and organize job class and descriptions – evaluate present procedures and suggest overlap/shortcomings noted during review. (16 hours)
 - ✓ Review present procedures and record organization. Document procedures and obtain all forms and work orders, documents and forms presently utilized by utility. (20 hours)

- ✓ Review present maintenance schedules and document frequency/procedures/existing manuals. (20 hours)
- ✓ Include emergency operations – call outs. (20 hours)
- ✓ Review present policy and procedures with staff and prepare notes to apply to SOP's developed based on present practice. (16 hours)

Task 5 – Safety.

- ◆ Prepare pocket safety handbook and reference existing safety manual and procedures, coordinate with Safety Director. (24 hours)

Task 6 - Reference materials.

- ◆ Convert key elements to digital access (equipment manuals, lift station manuals and other related operation/maintenance and reference manuals). (24 hours)

Task 7 – Training.

- ◆ Illustrate present training requirements for personnel. (8 hours)

Task 8 – Assemble data and organize and digitize materials. (16 hours)

Task 9 – 90% review meeting with City staff in Duluth. (16 hours)

Task 10 – Incorporate comments from the 90% review meeting and forward to City for final review. (8 hours)

Task 11 – Make final revisions; produce a digital copy and three printed sets. (8 hours)

III. Owner Responsibilities

Foth is requesting the City provide the following support:

- ◆ Provide a single contact source for review, comment, and decision making on all issues related to the project.
- ◆ Have staff available to meet with Foth personnel on a scheduled basis.
- ◆ Provide access to all documents requested by Foth for use in preparation of the manual. Foth will need to take documents to its office for processing and return them back to the City.

IV. Project Team

Foth's approach to providing quality engineering services to the City of Columbia Heights is focused on the knowledge and experience of the project team. We propose to complete this project as described in this proposal using the key members identified below.

- ◆ Tom Madigan, P.E. – Principal-in-Charge at \$138 per hour.
- ◆ Jim Miller – Project Manager at \$121 per hour.
- ◆ Rachel Radloff, P.E. – Project Engineer at \$102 per hour.
- ◆ Roni Oman – Administrative Assistant at \$60 per hour.
- ◆ Paul Weidler – CADD Technician at \$82 per hour.

V. Schedule for Success

Foth proposes to complete the project according to the following schedule:

Task	Date Complete
Contract Award	January 5, 2012
Kick off Meeting	January, 2012
Data Gathering Complete	May, 2012
Submit Draft Documents to City	September, 2012
Meet with City to Review Documents	October 2012
Final Manual to City	November 23, 2012

VI. Compensation

Foth proposes to complete the work described in our scope of services for the hourly not-to-exceed basis including reimbursable expenses of \$49,000.

VII. Additional Information

Why Select Foth?

We understand that the City of Duluth is receiving proposals for this project from another firm. Foth is uniquely qualified to complete this project for you for the following reasons:

- ♦ **FAMILIARITY.** We are familiar with City of Duluth staff and with its ways and means of getting things done. The City of Duluth is also familiar with Foth staff, which provides a level of comfort for you.
- ♦ **EXPERIENCE.** Our staff has completed projects of this nature for other cities. This experience will enable us to provide a quality project for you.
- ♦ **O & M KNOWLEDGE.** Our staff has helped other cities to prepare their O & M Manuals. This experience brings an understanding of the process and a level of effort that is needed to complete this type of project.
- ♦ **ECONOMICS.** Foth has put together a very competitive proposal for this work. Our overhead is very low compared to others firms in the area for our size and capabilities.

<p>Benefits of Foth:</p> <ul style="list-style-type: none"> ♦ Familiarity ♦ Experience ♦ O & M Knowledge ♦ Local ♦ Economics
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