



July 3, 2013

Mr. Mike Cole, P.E.
Utilities Project Manager
City of Gillette
201 East Fifth Street
PO Box 3003
Gillette, Wyoming 82717

Re: Amendment 1 to Construction Phase services Copies for Execution
Gillette Madison Pipeline Project
BMCD Project # 68575

Dear Mike:

Thank you for your consideration on the tasks and fees for Amendment 1. Enclosed please find four copies of Amendment 1 with Burns & McDonnell signature. Could you please obtain signatures and provide me with one fully executed copy for our records? We look forward to our continued work with you and your staff.

Sincerely,

Daniel D. Korinek, P.E.
Principal
Burns & McDonnell

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 1, 2012.

AMENDMENT NO. 1 TO OWNER-ENGINEER AGREEMENT

PROJECT NO. 07EN58

1. Background Data:

- a. Effective date of OWNER-ENGINEER Agreement: May 1, 2012
- b. OWNER: City of Gillette
- c. ENGINEER: Burns & McDonnell Engineering Co.
- d. Project: Gillette Madison Pipeline Project

2. Nature of Amendment: *[Check those that are applicable.]*

- ☒ Additional Services to be performed by ENGINEER
- ☐ Modifications to Services of ENGINEER
- ☐ Modifications to Responsibilities of OWNER
- ☒ Modifications to Payment to ENGINEER
- ☒ Modifications to Time(s) for rendering Services
- ☐ Modifications to other terms and conditions of the Agreement

3. Description of Modifications

- ☒ Attachment 1, "Modifications"
- ☒ Other attachments as listed below:
AMENDMENT NO. 1 TO CONSTRUCTION PHASE AGREEMENT BREAKDOWN

OWNER and ENGINEER hereby agree to modify the above-referenced Agreement as set forth in this agreement. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is July 8, 2013

OWNER:

City of Gillette, Wyoming

By: _____

Title: _____

Date Signed: _____

ENGINEER:

Burns & McDonnell Engineering Co.

By: Mark A. Zuchtman

Title: VICE PRESIDENT

Date Signed: JULY 8, 2013

ATTACHMENT 1

This is **Attachment 1**, consisting of 1 Page(s), to Amendment No. 1, Dated July 8, 2013.

Modifications

- ☒ A1. ENGINEER shall perform the following Additional Services:

Please see "AMENDMENT NO. 1 TO CONSTRUCTION PHASE AGREEMENT BREAKDOWN" (attached) for detailed descriptions of the following changes in services to be performed:

- 1) Additional Field Engineer, Resident Project Representative and Project Manager fee resulting from the following Construction related items:
 - a. Additional Contract 3 C/A Effort – Additional FE Support for Contract 3.
 - b. Contract 3 and Contract 4a Differing Start Dates.
 - c. Change Order #3 to Garney Constructions Contract related to Ameron Delivery Delays and Existing Madison Tie in Modification.
 - d. Contractor's Daily Production Rate Compared to Anticipated Rates.
 - e. Change Order #2 (Schoonover Rd Waterline for 42" line)

- ☐ A2. The Scope of Services currently authorized to be performed by ENGINEER in accordance with the Agreement and previous amendments, if any, is modified as follows:

- ☐ A3. The responsibilities of OWNER are modified as follows:

- ☒ A4. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional or modified compensation:

The following fee adjustments correspond to the service adjustments in A1 above:

- 1) Additional Field Engineer, Resident Project Representative, Project Manager and Subconsultant fee –Add \$280,000

- ☒ A5. The schedule for rendering services is modified as follows:

- 1) Additional Field Engineer, Resident Project Representative, Project Manager and Subconsultant – September 6, 2013

- ☐ A6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:



AMENDMENT NO. 1 TO CONSTRUCTION PHASE AGREEMENT BREAKDOWN

In accordance with our Agreement with the City of Gillette, we have prepared this Amendment 1 to our Construction Phase Agreement document to provide a narrative and fee estimate for revisions to the current Agreement. This Amendment will be used to adjust the fee for the construction administration/management and observations portion of Contracts 3 and 4a. It should be noted that at the time of negotiating the original fee for construction phase services for these projects, tables were provided with Fee Estimates only based on the best information available at that time using assumptions for items out of the Consultants control such as the Contractor's means and methods, production rates, number of crews utilized, etc. Every construction project is different and the challenges that can develop for linear projects are impossible to predict and will affect the level of effort for the construction administration and observation services hence requiring adjustments as the project proceeds. The items included in this Amendment 1 to the Construction phase services are as follows:

Contract 3 Associated Changes

1) **Additional Contract 3 C/A Effort – Change Order #6**

Additional construction period services are necessary for the completion of Contract 3 for the contract time added via Change Order #6 to TIC's contract. An additional 51 days of field staff and construction administration are included in this scope added by Change Order #6. This scope requires resident project representative services for 7 days a week at 9 hours a day, as well as per diem, mileage, and lodging. This scope only covers services up to the Contractor's estimated completion of June 28, 2013 and adds an additional 459 RPR hours and 36 office support hours. Any further services, including continued services provided in the liquidated damages period beyond this date, will require a subsequent amendment. The associated fee is as follows:

MMI Labor:	\$ 52,752
MMI Direct Expenses:	\$ 9,668
Total Price Adjustment:	<u>Add \$ 62,420</u>

Contract 4a Associated Changes

2) **Burns & McDonnell has reached or will be reaching maximum hours and fees for Project Management, Resident Engineering and Resident Project Representative services due to the following reasons:**

A. Additional Contract 3 C/A Effort – Additional FE Support for Contract 3.

Burns & McDonnell's Field Engineer, Clint Madsen is active on all construction phases of the GMPP. For Contract 3 and 4a services all of the FE services were accounted for under the Contract 4 table and fee. As discussed in Item 1 above Change Order #6 added 51 days to TIC's construction for Contract 3. This item also affects the FE services provided by Burns & McDonnell.

B. Contract 3 and Contract 4a Differing Start Dates.



The original fee provided for construction phase services assumed that Contract 3 and Contract 4a were to start at roughly the same time. Due to circumstances beyond our control, Garney Construction started Contract 4 approximately 13 weeks after TIC began Contract 3. Additional on-site construction period services by the FE were therefore necessary for the time that contract 3 and 4a were not running concurrently. This would account for an additional 585 hours of FE time and associated per diem, and vehicle expenses.

C. Change Order #3 to Garney Constructions Contract related to Ameron Delivery Delays and Existing Madison Tie in Modification.

Additional construction period services were necessary for the completion of the Ameron Delivery Delays and Existing Madison Tie in Modification added to Contract 4a. This scope estimates an average of 7 days a week at 9 hours a day, as well as per diem, and vehicle expenses. This scope only covers the 18 days added by Change Order #5 to Garney Constructions contract.

D. Contractor's Daily Production Rate Compared to Anticipated Rates.

When developing a fee for construction phase services for linear projects it is impossible to determine the exact number of days for construction due to the many extenuating circumstances that exist for any construction project, all of which are out of the control of the Design Consultant, City and funding agencies. Likewise it is difficult to determine the working hours that will be maintained by the contractor. To complicate matters the Contractor will often times add crews to try and make up for lost production. As such we must estimate a production rate that the Contractor might be expected to achieve as well as the length of the working day and make adjustments accordingly as the project progresses. Garney Construction has not achieved the estimated production rates for the construction of Contract 4a for many reasons and as such they have asked for change orders requesting extended contract time. In addition, Garney Construction has added a second crew to the project. All of these items affect the fee estimate provided for FE and RPR services.

E. Change Order #2 (Schoonover Rd Waterline for 42" line)

Additional on-site construction period services are necessary for the observation of the 42-inch waterline during the completion of the Schoonover Rd Waterline Project added to Contract 4a. This scope estimates an average of 5 days a week at 9 hours a day, as well as per diem, and vehicle expenses. This scope only covers the 30 days added by Change Order #2 to Garney Constructions contract.

In accordance with C4.01, A.4 of the Agreement for Construction Phase Services, Burns & McDonnell may alter the distribution of compensation between individual phases of the work to be consistent with services actually rendered, but cannot exceed the estimated compensation amount unless approved in writing by the City of Gillette. At this time, the services related to the project management, field engineer and RPR are trending higher than originally estimated based on the above items associated with the general contractor's execution of the project to date. This situation will be further exasperated by the extended substantial and final completion dates. Given that the estimated level of effort on the other tasks (or phases) remains unchanged, Burns & McDonnell does not feel that a redistribution of compensation is feasible at



this time. As such, Burns & McDonnell is notifying the City of Gillette and WWDC of the additional services and requests direction on how to continue with these services. While the agreement recognizes these services as additional services and does not require written authorization to proceed with these additional services (see Exhibit A of Construction Phase Agreement, A2.02, A.4), we feel that based on past experience this issue requires resolution as soon as possible.

To this point Garney Construction has already requested change orders that would extend their substantial completion date to September 6, 2013 and final completion 30 days beyond that time. In consideration of this, we have prepared the attached table indicating where our services are at as of June 14, 2013 and projected the additional services required to meet the latest anticipated completion dates. This scenario is presented as Option 1. Although Garney's latest dates reflect the Substantial completion of September 6, it is the belief of our construction staff that substantial completion is not likely until November 16. As such we have provided Option 2 to reflect this potential scenario. The additional fees would be as follows:

Option 1 fee = \$300,621

Option 2 fee = \$575,081

TOTAL AMENDMENT NO. 1 FEE (with Option 1): \$363,041

TOTAL AMENDMENT NO. 1 FEE (with Option 2): \$637,501

REQUESTED REVISED FEE BASED ON AMENDMENT 1.

Original Construction & Post Construction Phase Agreement = \$2,178,415

Amendment No. 1 Fee (Option 1) = \$363,041

Or

Amendment No. 1 Fee (Option 2) = \$637,501

Latest Fee Considering Amendment 1 (Option 1) = \$2,541,456

Or

Latest Fee Considering Amendment 1 (Option 2) = \$2,815,916

FEE APPROVED BY WWDC AND THE CITY OF GILLETTE

In consideration of the above information the Wyoming Water Development Commission (WWDC) and City of Gillette have decided to only approve this Amendment for the amount of \$280,000. It is understood that the Engineer's scope of services, such as observation coverage, will be affected by the reduction in the requested amendment in order to accommodate the available fee and that consideration for the Contract 4a portions of the Amendment are only for anticipated effort through Garney Construction's latest reported substantial completion date of September 6, 2013. In consideration of this reduction the \$280,000 is allocated as follows:

MMI = \$31,210

Burns & McDonnell = \$248,790



Original Construction & Post Construction Phase Agreement = \$2,178,415
WWDC/COG Reduced Amendment No. 1 Fee = \$280,000

Latest Fee Considering Reduced Amendment 1 = \$2,458,415

AMENDMENT 1 TO CONSTRUCTION PHASE
SPREADSHEET BASED ON HOURS SPENT PER PCC'S

ACTUALS THROUGH JUNE 14, 2013 only

Construction Contract 4A	TASK #	Project Manager			Field Engineer			RPR			CADD			Project Totals			OPTION 1 CONSIDERATION FOR Sept 6 SUBSTANTIAL COMPLETION (Assumes 6 days a week 10 hours per day = 12 weeks)						OPTION 2 CONSIDERATION FOR Nov 15 SUBSTANTIAL COMPLETION (Assumes 6 days a week 10 hours per day = 22 weeks)					
		Original Budget	Current Budget Spent	Hours Remaining Negative Implies Overage	Original Budget	Current Budget Spent	Hours Remaining Negative Implies Overage	Original Budget	Current Budget Spent	Hours Remaining Negative Implies Overage	Original Budget	Current Budget Spent	Hours Remaining Negative Implies Overage	Totals Original Budget	Total Current Budget Spent	Total Hours Remaining Negative Implies Overage	PM (16 hours per week)	PM hours needed	Field Engineer	Field Engineer hours needed	RPR	RPR hours needed	PM (16 hours per week)	PM hours needed	Field Engineer	Field Engineer hours needed	RPR	RPR hours needed
Task Description		392	395	-3	2,205	2,302	-97	2,205	1,840	365	98	3	95	4,900	4,540	361												
Resident Project Representative	13.5			0	2,205	2224.5	-20	2,205	1840	365				4,410	4,065	346			720	817	720	355			1320	1,417	1320	955
Construction Administration Engineering Services	13.6	392	395	-3		77	-77				98	3	95	490	475	15	192	195					352	355				
Construction Totals		392	395	-3	2,205	2,302	-97	2,205	1,840	365	98	3	95	4,900	4,539.5	360.5												

NOTES: ORIGINAL CONTRACT END DATE JULY 19
CURRENT SUBSTANTIAL COMPLETION DATE CONSIDERING CURRENT CHANGE ORDERS SEPTEMBER 6
PROJECTED SUBSTANTIAL COMPLETION DATE BASED ON RE (CLINT) INPUT NOVEMBER 15

OPTION 1:			
PM	195	\$ 205.00	\$ 39,975.00
FE	817	\$187	\$152,779
RPR	355	\$ 195.00	\$ 69,225.00
FE Per Diem 7/19 to 9/6	49	\$108	\$5,292
RPR per diem 7/19 to 9/6	49	\$70	\$3,430
TOTAL TO GET TO SUBSTANTIAL COMPLETION \$ 270,701.00			
SUBSTANTIAL COMPLETION TO FINAL COMPETION			
Assume FE only 5 days a week/ 8 hour days			
	160	\$187	\$29,920
TOTAL TO GET TO FINAL COMPLETION \$ 300,621.00			

OPTION 2:			
PM	355	\$ 205.00	\$ 72,775.00
FE	1417	\$187	\$264,979
RPR	955	\$ 195.00	\$ 186,225.00
FE Per Diem 7/19 to 9/6	119	\$108	\$12,852
RPR per diem 7/19 to 9/6	119	\$70	\$8,330
TOTAL TO GET TO SUBSTANTIAL COMPLETION \$ 545,161.00			
SUBSTANTIAL COMPLETION TO FINAL COMPETION			
Assume FE only 5 days a week/ 8 hour days			
	160	\$187	\$29,920
TOTAL TO GET TO FINAL COMPLETION \$ 575,081.00			

NOTE: AMENDMENT 1 AS FINALIZED DOES NOT REFLECT EITHER OF THESE OPTIONS
AS ONLY A PORTION OF THE ORIGINALLY SUBMITTED AMENDMENT WAS APPROVED AT THIS TIME.
As such assumptions for hour allotments above will need to be modified in order to
accommodate the reduced amendment amounts.