



April 1, 2020

Mr. Howard Jones
Water Manager
City of Gillette
611 N. Exchange Ave.
Gillette, WY 82716

Re: Engineering Services Contract: City of Gillette – AWIA Risk and Resilience Assessment and Emergency Response Plan

Dear Mr. Jones:

In accordance with your recent request, we are pleased to submit our proposal and contract for engineering services on the referenced project as follows:

PROJECT BACKGROUND

The City of Gillette is conducting a Risk and Resilience Assessment (RRA) and updating its Emergency Response Plan (ERP) in accordance with America's Water Infrastructure Act of 2018, P.L 115-270 ("AWIA"). This project will include the following work:

- Conduct the RRA
- Develop the RRA report
- Update the existing ERP
- Provide RRA and ERP Letters of Certification for the District to submit to the EPA

SCOPE OF SERVICES

The Scope of Services to be provided by Burns & McDonnell Engineering Company, Inc., (hereinafter ENGINEER) for the City of Gillette (hereinafter OWNER) is attached in Exhibit A.

RESPONSIBILITIES OF OWNER

The OWNER will provide the following:

Assistance by placing at ENGINEER's disposal all available information pertinent to the assignment, including previous reports, as constructed drawings, and any other data relative thereto. ENGINEER shall rely on information made available by the OWNER as accurate without independent verification.

DELIVERABLES

The OWNER will provide timely review of ENGINEER's deliverables and provide any specific deliverables as outlined in the Scope of Services, Exhibit A.

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OWNERSHIP OF INFORMATION

The OWNER shall own all information gathered by the ENGINEER on the OWNER's behalf in performing services under this Agreement. The ENGINEER shall obtain the OWNER's prior written approval before using such information on any other project. At the end of the project, the original data sheets, reports, drawings, work sheets, and other information collected shall be returned to the OWNER upon request.

TIME OF SERVICE

ENGINEER will proceed with providing the services set forth herein immediately upon execution of this Agreement. The Scope of Services will be completed by October 31, 2020 unless a time extension is granted under mutual agreement by the parties.

COMPENSATION

A. Amount of Payment

1. For services performed, OWNER shall pay ENGINEER the lump sum amount of Two Hundred Nineteen Thousand, Six Hundred Seventy-Seven Dollars (\$219,677.00).
2. The ENGINEER will provide OWNER with monthly statements for payment in ENGINEER'S standard format. The statements will be based on the ENGINEER'S estimated percent of services complete at the end of the preceding month.

TERMS AND CONDITIONS

The attached Terms and Conditions for Professional Services is incorporated and made a part of this Agreement.

We appreciate the opportunity to present this proposal and contract. If it is acceptable, please sign and return one copy for our file.

Respectfully Submitted,
BURNS & McDONNELL ENGINEERING CO., INC.



Jason Schaefer, P.E.
Department Manager, Water Treatment

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ACCEPTED BY:

Howard Jones
Water Manager
City of Gillette

cc: Files

Exhibit A – Scope of Services
Terms & Conditions

EXHIBIT A

Scope of Services

AWIA Compliance: Risk & Resilience Assessment and Emergency Response Plan City of Gillette

SCOPE OF SERVICES

This project includes the following work:

- Conduct Risk & Resilience Assessment (RRA) and develop RRA Report
- Update Emergency Response Plan (ERP)

The above items are detailed further in the Task Series 200 and 300.

The project is being performed to comply with the requirements of Section 2013 of America's Water Infrastructure Act of 2018, P.L 115-270 (AWIA). All work performed by Burns & McDonnell Engineering Company, Inc. (BMcD or Burns & McDonnell) and all deliverables required by this Scope of Services shall address and comply with all relevant requirements of Section 2013 of AWIA.

TASK SERIES 100 – RISK AND RESILIENCE ASSESSMENT COORDINATION

Task 101 – Project Kickoff Meeting:

The Burns & McDonnell (BMcD) project team will attend a Risk and Resilience Assessment kick-off meeting to be held via conference call with the City of Gillette (City) staff. The meeting shall include discussion of pertinent items for the project such as:

- Present project background.
- Introduce key staff involved in the project including City personnel.
- Determine lines of communication and project contacts (contact list to be developed).
- Identify available existing data and exchange.
- Discuss overall project scope of work.
- Discuss key project goals and challenges.
- Review the project schedule and milestones.
- Discuss coordination with appropriate emergency planning committees as required by Section 2013 of the AWIA.

Task 102 – Progress Meetings

The BMcD project team will prepare for, attend, and conduct bi-weekly progress meetings to discuss project progress and direction with the City. When workshops coincide with monthly progress meetings the meetings will be combined at an in-person meeting at the City's offices. This task assumes three and

a half (3.5) months of meetings. Regular meeting attendees will include the Project Manager and/or a process engineer as needed. Other resources will participate on an as-needed basis.

BMcD will provide meeting minutes with a decision log and a list of action items. Meeting minutes will be distributed via e-mail.

BMcD shall, to the extent possible, coordinate with existing emergency planning committees established pursuant to the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.) in performing the work described in Task Series 200 and 300, as required by Section 2013 of the AWIA.

TASK SERIES 200 – RISK AND RESILIENCE ASSESSMENT

Task 201 – Review Existing Documentation and Data Collection:

The BMcD team will review previously completed security or vulnerability assessments, master plan, security plan, cyber security plan, applicable policies, and standard operating procedures as provided by the City.

- This initial document review and analysis will assist with establishing a preliminary assessment baseline of recently identified water system sites, threats, and past implemented risk mitigation measures.
- Based on findings, Burns & McDonnell will coordinate with the City to identify any significant changes or updates that have been implemented since the last assessment, as well as new (or removed) critical assets to be accounted for.

Tasks 202/203/204 – Identify Critical Assets / Develop Critical Asset Summary Report / Gap Analysis & Critical Assets Workshop:

BMcD will follow the AWWA J100 methodology to develop and begin prioritizing a critical asset list. This list will include physical barriers, pipes and constructed conveyances; source water infrastructure; raw water collection and intakes; pretreatment and treatment facilities; finished water storage and distribution facilities; and electronic, computer, and automated system infrastructure.

Once the critical asset list is developed, assets will be prioritized from a high-level perspective according to their significance in maintaining service, their necessity in protecting health or life, and if loss would cause detrimental economic impact.

This task will focus on the following steps in asset characterization, as required by AWWA J100 including:

- Identify mission or critical functions of the utility to determine which assets perform or support the mission or critical functions
- Identify a list of potentially critical assets
- Identify the critical internal and external supporting infrastructures

The proposed list of prioritized assets will be discussed and finalized at the *Gap Analysis & Critical*

Assets Workshop, and prioritization will be further refined in upcoming tasks. BMcD will summarize the critical asset identification process in a technical memorandum.

Task 205 – Threat Characterization & Virtual Roundtable:

The BMcD project team will work with the City to develop and refine a list of threat categories relevant to the City’s infrastructure. Based on the AWIA “All Hazards Approach”, threats in the following categories will be considered:

- Malevolent Threats, such as contamination of product, theft or diversion, cyber insider or outsider, vehicle borne bomb, aircraft, assault team, or maritime.
- Natural Disasters, such as earthquakes, floods, hurricanes, ice storms, tornadoes, or wildfires.
- Dependency threats, such as transportation (ex: chemicals), key customers (ex: hospital), key employees, key suppliers (ex: chemicals), and utilities (ex: electrical).
- Proximity threats such as a nearby facility with hazardous chemicals.

The list of threats will be developed from information gathered from the following sources:

- AWWA J100 baseline document threat information
- Intelligence on existing security threats
- City-specific security related historical events
- Regional and utility specific historical events
- Local crime statistics
- Stakeholder and employee security concerns
- Any other relevant sourced identified by the City or BMcD

Burns & McDonnell will coordinate with the City via conference call during a Threat Characterization workshop to review the list of threats and their applicability to each of the City’s critical assets. The results of this coordination will allow each critical asset to be paired with applicable threats, creating the framework of threat-asset pairs for future analysis.

Task 206 – Consequence Analysis:

The BMcD project team will identify the worst reasonable consequences that can be caused by specific threats on the identified threat-asset pairs and will assign a cost to each consequence. Consequences may include the following:

- Serious injuries
- Fatalities (\$ and number of impacted individuals – value of statistical life)
- Financial loss to utilities (demo & disposal, repair and replacement, legal liabilities, environmental remediation, loss of revenue)
- Economic impact on the regional community (water disruption, negative media, loss of public confidence, loss of tourism, business, etc.)

BMcD will develop a cost estimate for each threat-asset pair. This dollar value will be used as part of

the overall risk calculation and to assist the City in future planning.

Task 207/208 – Vulnerability Analysis / Field Assessment for Critical Assets:

The BMcD project team will estimate the vulnerability for each threat-asset pair. The team will visit critical asset locations to gain familiarity with the infrastructure, location, system operation, and security measures. Information gathered during the site visit will include:

- Facility description and purpose
- Capacity, volume, redundancy, etc. at each facility
- Effects to system operation if asset is out of service
- Power source, description, and access
- Building/materials of construction, doorways, openings, hatches, etc.
- Physical perimeter, surrounding areas, utilities, adjacent land use
- Tools, chemicals, equipment, or other materials stored
- Personnel/operational access, operational security policies
- Physical security access control, surveillance, and detection systems

Vulnerability will be estimated by analyzing the ability of each critical asset to withstand each specified threat. BMcD will consider treatment process and infrastructure (redundancy, interconnections, multiple treatment barriers, operations & maintenance, monitoring, etc.), physical security, and cyber security in the vulnerability analysis. The following considerations will be made in estimating vulnerability:

- Access control and intrusion detection (physical security)
- Building material structural properties
- Building code design standards and year constructed
- Countermeasures and mitigation measures
- Crime Prevention Through Environmental Design (CPTED)
- Weakness in protection measures
- Interdependencies, process flow, and operational practices
- Policies and procedures
- Personnel behavior and interactions

Task 209 – Threat Likelihood Analysis:

The BMcD project team will estimate the likelihood of each threat-asset pair occurring in a given year. For malevolent attacks the proxy method and RAND RMS target groups may be utilized to estimate the likelihood of an attack occurring. For estimating the likelihood of natural hazards local hazard mitigation plans, USGS data, NOAA weather data, FEMA flood insurance rate maps, and hydrologic studies may be used.

Task 210 – Consequence, Vulnerability, and Threat Likelihood Roundtable:

Burns & McDonnell will prepare for and conduct a *Consequence, Vulnerability, and Threat Likelihood Roundtable* with the City to review the identified threats, consequences, and vulnerabilities of each threat-asset pair. The results of this workshop will confirm assumptions, cost estimates, and analysis

thus far, and provide consensus before completing the final Risk and Resilience Analysis calculations.

Task 211 – Risk and Resilience Analysis:

The BMcD project team will estimate the City’s risk and resilience with respect to each threat-asset pair using the J100 risk equation: $\text{Risk} = \text{Consequence} * \text{Vulnerability} * \text{Threat Likelihood}$. Consequence is expressed in dollars; Vulnerability is expressed as a percentage of successes per attempts; and Threat Likelihood is expressed in times per year the threat is likely to occur.

Burns & McDonnell will use the EPA’s web-based Vulnerability Self-Assessment Tool (VSAT) to perform risk calculations. The results of the risk calculations will drive the development of risk management techniques and improvement projects, areas of focus for emergency planning and response, and ultimately where the City will plan to focus capital funds on future projects.

Task 212 – Risk and Resilience Management:

The BMcD project team will prioritize the list of threat-asset pairs based on the risk and resilience calculations. The BMcD team will coordinate with the City to develop management activities to reduce risks and improved resilience in the following areas as required by AWIA:

- Risk to the system from malevolent acts and natural hazards
- Resilience of the infrastructure utilized by the system
- Monitoring practices of the system
- Financial infrastructure of the system
- Use, storage, or handling of various chemicals by the system
- Operation and maintenance of the system
- Evaluation of capital and operational needs for risk and resilience management

For each threat-asset pair, BMcD will identify mitigation measures, develop cost estimates, and re-evaluate consequence, vulnerability, and threat likelihood values to update the calculated risk. Using the updated risk values for each threat-asset pair, risk reduction metrics will be calculated to help prioritize mitigation measures and improvement projects.

Tasks 213/214 – Risk and Resilience Report:

The BMcD project team will develop a Risk and Resilience Report summarizing the Risk and Resilience Assessment Process and the results of Tasks 201 – 212. The report will include a prioritized list of suggested improvements to reduce risks, improve resilience, and mitigate consequences.

The City will be provided with a DRAFT report and two business days to review prior to holding a review meeting to discuss the City’s comments. BMcD will have two weeks to incorporate comments prior to delivering the final report.

Task 215 – Develop Risk and Resilience Letter of Certification:

The BMcD project team will develop the Letter of Certification for the Risk and Resilience Assessment to be submitted by the City to the EPA.

Task Series 200 Deliverables:

- Critical Asset Identification Technical Memorandum
- Risk and Resilience Report
- Risk and Resilience Assessment Letter of Certification

TASK SERIES 300 – EMERGENCY RESPONSE PLAN COORDINATION

Task 301 – ERP Kickoff Meeting:

The Burns & McDonnell (BMcD) project team will attend an ERP kick-off meeting to be held via conference call with the City of Gillette (City) staff. The meeting shall include discussion of pertinent items for the ERP work such as:

- Discuss overall project scope of work.
- Discuss key project goals and challenges.
- Review the project schedule and milestones.
- Discuss coordination with appropriate emergency planning committees as required by Section 2013 of the AWIA.

Task 302 – Progress Meetings

The BMcD project team will prepare for, attend, and conduct monthly progress meetings to discuss project progress and direction with the City. When workshops coincide with monthly progress meetings the meetings will be combined at an in-person meeting at the City's offices. This task assumes four (4) months of meetings. Regular meeting attendees will include the Project Manager and/or a process engineer as needed. Other resources will participate on an as-needed basis.

BMcD will provide meeting minutes with a decision log and a list of action items. Meeting minutes will be distributed via e-mail.

BMcD shall, to the extent possible, coordinate with existing emergency planning committees established pursuant to the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.) in performing the work described in Task Series 200 and 300, as required by Section 2013 of the AWIA.

TASK SERIES 400 – UPDATE EMERGENCY RESPONSE PLAN

Task 401 – Emergency Response Plan Workshops:

The BMcD team will plan for and conduct two (2) Emergency Response Plan Workshops. Based on an initial review of the existing plan, Burns & McDonnell will coordinate with the City to identify any significant changes or updates that have been implemented since the last Emergency Response Plan (ERP), as well as new procedures that should be accounted for. The workshops will be used for coordination required to update the existing plan, development and/or review of media procedures, discussing alternative source water and interconnected utilities, and coordination with local planning and/or emergency responders that may include police, fire, public health, hazardous materials

responders, and state and federal reporting and response agencies to provide accurate updates to the City's ERP.

Task 402/403 – Update Emergency Response Plan:

Burns & McDonnell will utilize the EPA's Community Water System Emergency Response Plan Template developed specifically to support compliance with AWIA to update the City's ERP. The template outlines the minimum ERP criteria required including:

- Utility Information – Description of utility including personnel, primary utility components (wells, intakes, treatment facilities, storage and distribution, and chemical storage), safety and response resources, key local services, and known key potential contamination sources.
- Resilience Strategies – Strategies and resources to improve the resilience of the system, including the physical security and cybersecurity of the system. Roles, responsibilities, and contact information for emergency response partners, key equipment suppliers, or emergency water supply providers. Critical customer contact list, communication equipment, and media outreach contacts and public notification templates.
- Emergency Plans and Procedures – Plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the ability of the community water system to deliver safe drinking water.
- Mitigation Strategies – Actions, procedures, and equipment which can obviate or significantly lessen the impact of a malevolent act or natural hazard on the public health and the safety and supply of drinking water provided to communities and individuals, including the development of alternative source water options, relocation of water intakes, and construction of flood protection barriers.
- Detection Strategies – Strategies that can be used to aid in the detection of unauthorized entry into facilities, water contamination, cyber intrusion, hazardous chemical release, natural hazards, and power outages.

BMCD will incorporate applicable policies and procedures developed and provided by the City and will utilize standard operating procedures prepared by the City. In addition, documents that may be referred to or incorporated by reference include:

- Safety Information and Safety Plans
- Risk Management Plans
- Spill Prevention Control and Countermeasures Plans
- Emergency Power Plans
- The updated ERP will incorporate the relevant findings of the Risk and Resilience Assessment performed under Task Series 200, as required by Section 2013 of the AWIA, and shall include all matters required to be included in an Emergency Response Plan by Section 2013 of the AWIA.

The City will be provided with a DRAFT updated ERP to review prior to BMCD delivering the final updated ERP.

Task 404 – Develop Emergency Response Plan Letter of Certification:

The BMcD project team will develop the Letter of Certification for the Emergency Response Plan to be submitted by the City to the EPA.

Task Series 400 Deliverables:

- Updated Emergency Response Plan
- Emergency Response Plan Letter of Certification

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

Project: AWIA Risk and Resilience and Emergency Response Plan

Client: C i t y o f G i l l e t t e

Date of Letter, Proposal, or Agreement: A p r i l 1, 2 0 2 0

Client Signature: _____

1. SCOPE OF SERVICES

For the above-referenced Project, Burns & McDonnell Engineering Company, Inc. (BMCD) will perform the services set forth in the above-referenced Letter, Proposal, or Agreement, in accordance with these Terms and Conditions. BMCD has relied upon the information provided by Client in the preparation of the Proposal, and shall rely on the information provided by or through Client during the execution of this Project as complete and accurate without independent verification.

2. PAYMENTS TO BMCD

A. Compensation will be as stated in the above-referenced Letter, Proposal, or Agreement. Statements will be in BMCD's standard format and are payable upon receipt. Time is of the essence in payment of statements, and timely payment is a material part of the consideration of this Agreement. A late payment charge will be added to all amounts not paid within 30 days of statement date and shall be calculated at 1.5 percent per month from statement date. Client shall reimburse any costs incurred by BMCD in collecting any delinquent amount, including reasonable attorney's fees. If a portion of BMCD's statement is disputed, Client shall pay the undisputed portion by the due date. Client shall advise BMCD in writing of the basis for any disputed portion of any statement.

B. Taxes as may be imposed on professional consulting services by state or local authorities shall be in addition to the payment stated in the above-referenced Letter, Proposal, or Agreement.

3. INSURANCE

A. During the course of performance of its services, BMCD will maintain Worker's Compensation insurance with limits as required by statute, Employer's Liability insurance with limits of \$1,000,000, and Commercial General Liability and Automobile Liability insurance each with combined single limits of \$1,000,000.

B. If the Project involves on-site construction, construction contractors shall be required to provide (or Client may provide) Owner's Protective Liability Insurance naming Client as a Named Insured and BMCD as an Additional Insured or to endorse Client and BMCD using ISO form CG 20 10 11 85 endorsement or its equivalent as Additional Insureds on all construction contractor's liability insurance policies covering claims for personal injuries and property damage in at least the amounts required of BMCD in 3A above. Construction contractors shall be required to provide certificates evidencing such insurance to Client and BMCD. Contractor's compensation shall include the cost of such insurance including coverage for contractual and indemnification obligations herein.

C. Client and BMCD release each other and waive all rights of subrogation against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of BMCD's services. A provision similar to this shall be incorporated into all construction contracts entered into by Client, and all construction contractors shall be required to provide waivers of subrogation in favor of Client and BMCD for damage covered by any construction contractor's property insurance.

4. INDEMNIFICATION

A. To the extent allowed by law, Client will require all construction contractors to indemnify, defend, and hold harmless Client and BMCD from any and all loss where loss is caused or alleged to be caused in whole or in part by the construction contractors, their employees, agents, subcontractors or suppliers.

B. If this Project involves construction and BMCD does not provide consulting services during construction including, but not limited to, on-site monitoring, site visits, site observation, shop drawing review, and/or design clarifications, Client agrees to indemnify and hold

harmless BMCD from any liability arising from this Project or Agreement, except to the extent caused by BMCD's negligence.

5. PROFESSIONAL RESPONSIBILITY— LIMITATION OF REMEDIES

A. BMCD will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted professional practices. If BMCD fails to meet the foregoing standard, BMCD will perform at its own cost, the professional services necessary to correct errors and omissions reported to BMCD in writing within one year from the completion of BMCD's services for the Project. No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service.

B. In no event will BMCD be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of Client, and/or governmental fines or penalties.

C. BMCD's aggregate liability for all damages connected with its services for the Project not excluded by the preceding subparagraph, whether or not covered by BMCD's insurance, will not exceed \$100,000.

D. These mutually negotiated obligations and remedies stated in this Paragraph 5, Professional Responsibility – Limitation of Remedies, are the sole and exclusive obligations of BMCD and remedies of Client, whether liability of BMCD is based on contract, warranty, strict liability, tort (including negligence), indemnity, or otherwise.

6. PERIOD OF SERVICE AND SCHEDULE

The provisions of this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the Proposal. BMCD's obligation to render services hereunder will extend for a period that may reasonably be required for the completion of said services. BMCD shall make reasonable efforts to comply with deliverable schedules (if any) and consistent with BMCD's professional responsibility.

7. COMPUTER PROGRAMS OR MODELS

Any use, development, modification, or integration by BMCD of computer models or programs does not constitute ownership or a license to Client to use or modify such computer models or programs.

8. ELECTRONIC MEDIA AND DATA TRANSMISSIONS

A. Any electronic media (computer disks, tapes, etc.) or data transmissions furnished (including Project Web Sites or CAD file transmissions) are for Client information and convenience only. Such media or transmissions are not to be considered part of BMCD's instruments of service. BMCD, at its option, may remove all indicia of its ownership and involvement from each electronic display.

B. BMCD shall not be liable for loss or damage directly or indirectly, arising out of Client's use of electronic media or data transmissions.

9. DOCUMENTS

A. All documents prepared by BMCD pursuant to this Agreement are instruments of service in respect of the Project specified herein. They are not intended or represented to be suitable for reuse by Client or others in extensions of the Project beyond that now contemplated or on any other Project. Any reuse, extension, or completion by Client or others without written verification, adaptation, and permission by BMCD for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to BMCD.

B. In the event that BMCD is to reuse, copy or adapt all or portions of reports, plans, or specifications prepared by others, Client represents

(continued on reverse side)

that Client either possesses or will obtain permission and necessary rights in copyright, patents, or other proprietary rights and will be responsible for any infringement claims by others. Client warrants the completeness, accuracy, and efficacy of the information, data, and design provided by or through Client (including prepared for Client by others), for which BMCD shall rely on to perform and complete its services.

10. ESTIMATES, SCHEDULES, FORECASTS, AND PROJECTIONS

Estimates, schedules, forecasts, and projections prepared by BMCD relating to loads, interest rates and other financial analysis parameters, construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are opinions based on BMCD's experience, qualifications, and judgment as a professional. Since BMCD has no control over weather, cost and availability of labor, cost and availability of material and equipment, cost of fuel or other utilities, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's methods of determining prices, economic conditions, government regulations and laws (including the interpretation thereof), competitive bidding or market conditions, and other factors affecting such estimates or projections, BMCD does not guarantee that actual rates, costs, quantities, performance, schedules, etc., will not vary significantly from estimates and projections prepared by BMCD.

11. POLLUTION

In view of the uncertainty involved in investigating and recommending solutions to environmental problems and the abnormal degree of risk of claims imposed upon BMCD in performing such services, notwithstanding the responsibility of BMCD set forth in Paragraph 5A to the maximum extent allowed by law, Client agrees to release, defend, indemnify and hold harmless BMCD and its officers, directors, employees, agents, consultants and subcontractors from all liability, claims, demands, damages, losses, and expenses including, but not limited to, claims of Client and other persons and organizations, reasonable fees and expenses of attorneys and consultants, and court costs, except where there has been a final adjudication that the damages were caused by BMCD's willful disregard of its obligations under this Agreement. Such indemnification includes claims arising out of, or in any way relating to, the actual, alleged, or threatened dispersal, escape, or release of, or failure to detect or contain, chemicals, wastes, liquids, gases, or any other material, irritant, contaminant, or pollutant.

12. ON-SITE SERVICES

A. Project site visits by BMCD during investigation, observation, construction or equipment installation, or the furnishing of Project representatives shall not make BMCD responsible for construction means, methods, techniques, sequences, or procedures; for construction safety precautions or programs; or for any construction contractor(s)' failure to perform its work in accordance with the contract documents.

B. Client shall disclose to BMCD the location and types of any known or suspected toxic, hazardous, or chemical materials or wastes existing on or near the premises upon which work is to be performed by BMCD's employees or subcontractors. If any hazardous wastes not identified by Client are discovered after a Project is undertaken, Client and BMCD agree that the scope of services, schedule, and compensation may be adjusted accordingly. Client agrees to release BMCD from all damages related to any pre-existing pollutant, contaminant, toxic, or hazardous substance at the site.

13. CHANGES

Client shall have the right to make changes within the general scope of BMCD's services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by authorized representatives of Client and BMCD.

14. TERMINATION

Services may be terminated by Client or BMCD by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay BMCD all

amounts due BMCD for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by BMCD in terminating the services. In addition, Client may terminate the services for Client's convenience upon payment of twenty percent of the yet unearned and unpaid estimated, lump sum, or not-to-exceed fee, as applicable.

15. DISPUTES, NEGOTIATIONS, MEDIATION

A. If a dispute arises relating to the performance of the services to be provided and, should that dispute result in litigation, it is agreed that the substantially prevailing party (as determined in equity by the court) shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorney's fees and other related expenses.

B. The parties shall participate in good faith negotiations to resolve any and all disputes. Should negotiations fail, the parties agree to submit to and participate in a third party-facilitated mediation as a condition precedent to resolution by litigation. Unless otherwise agreed to, mediation shall be conducted under the rules of the American Arbitration Association.

C. Causes of action between the parties shall accrue, and applicable statutes of limitation shall commence to run the date BMCD's services are substantially complete.

16. WITNESS FEES

A. BMCD's employees shall not be retained as expert witnesses, except by separate written agreement.

B. Client agrees to pay BMCD pursuant to BMCD's then current schedule of hourly labor billing rates for time spent by any employee of BMCD responding to any subpoena by any party in any dispute as an occurrence witness or to assemble and produce documents resulting from BMCD's services under this Agreement.

17. CONTROLLING LAW AND VENUE

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Colorado, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the 18th Judicial District in the County of Douglas, State of Colorado, or the United States District Court for the District of Colorado.

18. RIGHTS AND BENEFITS – NO ASSIGNMENT

BMCD's services will be performed solely for the benefit of Client and not for the benefit of any other persons or entities. Neither Client nor BMCD shall assign or transfer interest in this Agreement without the written consent of the other.

19. ENTIRE CONTRACT

These Terms and Conditions and the above-referenced Letter, Proposal, or Agreement contain the entire agreement between BMCD and Client relative to BMCD's services for the Project herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to BMCD's services for the Project are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event Client issues to BMCD a purchase order, no preprinted terms thereon shall become part of this Agreement. Said purchase order documents, whether or not signed by BMCD, shall be considered only as an internal document of Client to facilitate administrative requirements of Client's operations.

20. SEVERABILITY

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and affect.

21. TEMPORARY STAFFING

Contractor may engage temporary staffing agencies or obtain assistance from its affiliates and subsidiaries including, without limitation, Burns & McDonnell Canada Ltd., Burns & McDonnell International Inc., and Burns & McDonnell India Pvt. Ltd. ("Labor Sources") to fulfill Contractor's performance obligations under this Agreement. The parties agree that contracts, purchase orders, or similar agreements between Contractor and any Labor Sources are not subcontracts as that term is used in this Agreement, and personnel

from such Labor Sources shall be billed according to the applicable rate sheet for the Scope of Work as if such personnel is a direct hire employee. Personnel from Labor Sources shall be considered agents of Contractor and able to act on behalf of Contractor within the scope of the authority granted such personnel according to job function and billing classification.

21. PROJECT DELAYS

BMcD shall not be responsible for delays caused by factors beyond BMcD's reasonable control, including but not limited to delays because of a force majeure, strikes, lockouts, work slowdowns or stoppages, government regulation, industry shutdowns, power or server outages, Acts of God, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of BMcD's services or work product, or delays caused by faulty performance by the Client's contractor or other consultants, of any level. When such delays beyond BMcD's reasonable control occur, the Client agrees that BMcD shall not be responsible for delays or damages, nor shall BMcD be deemed in default of this Agreement.

- END -