

**AMENDMENT NO. 2
 AGREEMENT TO THE ENGINEERING SERVICES
 IRVINEDALE DRIVE TRANSMISSION MAIN – PHASE 3
 ANKENY, IOWA**

This Amendment is made on the _____ day of January, 2024, by and between *McClure Engineering Company, of Clive, Iowa* (herein referred to as "**Engineer**") and the *City of Ankeny, Iowa* (hereinafter referred to as "**Owner**"). Services shall be performed per the fees, terms and conditions outlined in this Amendment and/or the Hourly Rates established on Exhibit 'A'. The **Engineer** shall provide services for the Project which consists of the services listed on Exhibit 'B'.

It is the intent of the Owner to revise the previous Agreement to add the following Scope Items and Fees, which were not included in the original Agreement: Additional Services – Water Leak Repairs to the Irvinedale Drive Transmission Main – Phase 3 project.

This Amendment authorizes the **Engineer** and establishes fees for the phases stated below.

2. The **Engineer** shall conduct the following services marked "Included", for approval by the **Owner**:

Item	Included	Not Included
R. Additional Services – Water Leak Repairs		
1. Additional construction administration and resident project representative services to identify, correct, and observe installation of repairs to correct water leaks identified after construction was completed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Additional project management and administration to negotiate construction contract deduct on behalf of Owner.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3. Fee Schedule:

Fees for Services are shown below:

R. Construction Administration.....	T&M, NTE	\$ 30,320.01
Total Amendment:		\$ 30,320.01

- LS Lump Sum
- NTE Not-to-Exceed
- N/A Not Applicable
- NIC Not Included
- TBD To Be Determined
- T&M Time and Materials
- Est. Estimated

The Hourly Rate Schedule is included in Exhibit 'A' and attached to this Agreement to be used for work performed on a *Time and Material* basis.

4. Past due amounts owed shall accrue interest at 1.5% per month from the 30th day. If the Owner fails to make monthly payments due the Engineer, the Engineer may, after giving (7) days written notice to the Owner, suspend services under this Agreement.
5. This Agreement represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Engineer.
6. This Amendment is subject to all the Terms and Conditions listed on the following pages.

Project No.: 200478
 Project Name: Irvinedale Drive Transmission Main – Phase 3
 Project Manager: Gary Brons


Exhibits		Included	Not Included
Exhibit 'A'	Hourly Rate Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'B'	Expanded Project Scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'C'	Preliminary Construction Phase Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'F'	Duties, Responsibilities and Limitations of Authority of the Resident Project Representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SPECIAL INSTRUCTIONS:

**OWNER: CITY OF ANKENY
 ANKENY, IOWA**

**ENGINEER: MCCLURE ENGINEERING COMPANY
 CLIVE, IOWA**

Signed: _____

Signed:  _____
 Gary Brons

Title: _____

Title: Vice President – Water

Phone: _____

Phone: 515.964.1229

Email: _____

Email: gbrons@mccclurevision.com

McCLURE ENGINEERING COMPANY

STANDARD TERMS AND CONDITIONS

ACCESS TO SITE: The Engineer shall at all times have access to the site to complete his Work.

INFORMATION PROVIDED BY OTHERS: The Engineer shall be entitled to rely upon the accuracy and completeness of data provided by the Owner and shall not assume liability for such data. The Engineer does not practice law, insurance or financing, therefore, the Owner shall furnish all legal, accounting and insurance counseling services as may be necessary to protect themselves at any time during the Project. Owner shall hold Engineer harmless from damages that may arise as a result of inaccuracies of information or data supplied by Owner or others to Engineer.

ADDITIONAL SERVICES: As an Additional Service in connection with changes in the scope of the Engineer's work by the Owner, the Engineer shall prepare Drawings, Specifications and other documentation and data, evaluate Contractor's proposal and provide any other services made necessary by such Change Orders and Construction Change Directives. The Engineer will be entitled to additional compensation to coordinate such changes and schedules shall be adjusted accordingly.

OWNERSHIP AND REUSE OF DOCUMENTS: All reports, plans, specifications, field data and other documents written and/or electronic, prepared by Engineer in doing work on the project, shall remain the property of the Engineer. The documents prepared by the Engineer for this Project are for use solely with respect to this Project. The Engineer's Drawings, Specifications or other documents shall not be used by the Owner on other projects or for additions to this Project, except by agreement in writing and with appropriate compensation to the Engineer.

OPINIONS OF PROBABLE COSTS: It is recognized that neither the Engineer nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from any estimate of costs or evaluation prepared or agreed to by the Engineer.

DISPUTE RESOLUTION: Claims, disputes or other matters, involving a value less than \$200,000.00, in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless each of the parties mutually agrees otherwise. No mediation arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Engineer, and any other person or entity sought to be joined. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. The award rendered in the mediation shall be non-binding.

TERMINATION: This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Engineer in the event the Project is permanently abandoned.

Failure of the Owner to make payments to the Engineer in accordance with the Agreement shall be considered substantial non-performance and cause for termination. If the Owner fails to make payment when due the Engineer for services, the Engineer may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Engineer within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

In the event of termination not the fault of the Engineer, the Engineer shall be compensated for services performed prior to termination and all termination expenses. Termination expenses are in addition to compensation for *Basic and Additional Services*, and include expenses which are directly attributable to termination.

CONTRACTOR MATTERS: The Engineer has no control over the Contractor's means, methods, schedule, costs, quality control, workmanship, on-site storm water runoff/erosion control, or project safety measures. For this reason, the Engineer shall not be responsible for or assume liability for the same.

UNDERGROUND UTILITIES: Information for location of underground utilities may come from the Owner, third parties, and/or research performed by the Engineer or its subcontractors. Unfortunately, the information the Engineer must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the Owner agrees to indemnify and hold harmless the Engineer for all claims, losses, costs and damages arising out of the location of underground utilities provided by the Engineer under this Agreement.

SHOP DRAWING REVIEW: If, as part of this Agreement Engineer reviews Contractor submittals, such as shop drawings, product data, samples and other data, as required by Engineer, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. Engineer shall not be responsible for any deviations from the contract documents not brought to the attention of Engineer in writing by the contractor. Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

CONSTRUCTION OBSERVATION: If, as part of this Agreement, Engineer is providing construction observation services, Engineer shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the Contractor's work and to determine if the work is proceeding in general accordance with the Contract Documents. Unless otherwise specified in this Agreement, the Owner has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project.

HAZARDOUS MATERIALS – INDEMNIFICATION: The Engineer is not in the business of making environmental site assessments for purposes of determining the presence of any toxic, hazardous or other environmental damaging substances. The purpose of this provision is to be certain that the Owner is aware of the potential liability if toxic, hazardous or environmental damaging substances are found on or under the property. Engineer makes no representations regarding an environmental site assessment, relies upon Owner to have fully investigated the need and/or scope of such assessment and assumes no responsibility for the determination to make an environmental site assessment on the subject property.

PAYMENT: Amounts unpaid 30 days after invoice date shall bear interest from the date payment is due at a rate of 1.5% per month compounded and shall include costs for attorney fees and other collection fees related to collecting fees for service.

INSURANCE: The Engineer shall maintain insurance to protect the Engineer from claims under Workmen's Compensation Acts; claims due to personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for which the Engineer is legally liable. The amounts and extent of such insurance is as follows:

1. Professional Liability: \$1,000,000 each, \$2,000,000 annual aggregate
2. Vehicle Coverage: \$ Combined Single Limit, \$1,000,000 each
3. Worker's Compensation: \$1,000,000 each, \$1,000,000 each employee
4. General Liability: \$1,000,000 each occurrence and \$2,000,000 aggregate
5. Excess/Umbrella Liability: \$5,000,000 each, \$5,000,000 aggregate

WAIVERS: The Owner and the Engineer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction. The Owner and Engineer each shall require similar waivers from their contractors, consultants and agents.

ASSIGNMENT: The Owner and Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Engineer shall assign this Agreement without the written consent of the other.

GOVERNING LAW: Unless otherwise provided, the Agreement shall be governed by the law of the principal place of business of the Engineer.

COMPLETE AGREEMENT: This Agreement represents the entire and integrated agreement between the Owner and Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Engineer.

Effective 10/10/18

EXHIBIT A

McCLURE ENGINEERING COMPANY HOURLY RATE SCHEDULE (Effective 1/1/2023 through 12/31/2023)



PERSONNEL	HOURLY RATE
Principal	\$270 - \$295
Project Manager	\$185 - \$230
Senior Professional.....	\$185 - \$285
Professional.....	\$155 - \$185
Junior Professional.....	\$125 - \$155
Senior Technician	\$155 - \$175
Technician.....	\$115 - \$135
Landscape Architect	\$125 - \$160
On-Site Representative	\$115 - \$155
Client/Project Liaison	\$135 - \$185
Administrative	\$65 - \$85
Public Relations	\$115 - \$150
3 Member Survey Crew	\$280
2 Member Survey Crew	\$210
1 Member Survey Crew	\$135

EQUIPMENT	
3D Scanner per Scan	\$30.00
UAV per Flight	\$125.00
Sonar Boat	\$125.00

MISCELLANEOUS EXPENSES	
Survey Vehicle Mileage.....	\$0.75/Mile + \$0.15 fuel surcharge
Automobile Mileage (at current IRS rate).....	Current IRS Rate
Printing.....	Per Contract
Survey Supplies (Hubs, Lath, Paint, Nails, etc.)	Per Contract
Out-of-Pocket Expenses (Meals, Hotels, etc.).....	Per Contract

*Rates are subject to change based on billing rates for future years

EXHIBIT 'B'

EXPANDED PROJECT SCOPE AMENDMENT NO. 1 – CONSTRUCTION PHASE SERVICES

Construction of 24-inch PVC Water Main, Ankeny, Iowa

Amended Scope of Engineering Services:

The Original Scope of Engineering Services for the Project was described as follows:

Part 2: Construction Phase Services: Shall include Project Management during construction phase of the project. Services include acting on behalf of Owner during construction phase to monitor progress and construction activities performed by contractor as outlined in the project plans and specifications. Engineer will attend monthly project progress meetings, (total of 10 meetings is anticipated) including preconstruction meeting documented by agenda with minutes. Engineer will perform services on the Owner's behalf to receive and answer questions from contractor, interpret contract documents, review compliance with SRF requirements, review and track submittals, review contractor's application for payments, and act as Owner's representative during construction phase services. Engineer will monitor contractor's work to confirm work is performed in compliance with contract documents and technical specifications. Services include part time Resident Project Representative (RPR) Services during construction. Previously completed Geotechnical Coordination Services have been included in Amendment No. 1. In conjunction with the Owner's representative, it was determined during design phase services that site geotechnical investigation was necessary in the completion of design phase services. Following completion of construction, Engineer's work will include development and delivery of record drawings.

The preliminary construction phase schedule is included in Exhibit 'C'.

EXHIBIT 'C'

PRELIMINARY CONSTRUCTION PHASE SCHEDULE

<u>MILESTONE</u>	<u>PRELIMINARY CONSTRUCTION PHASE SCHEDULE</u>
Council Receive Bids and Award Contract	Monday, January 18 th , 2021
Council Approves Construction Contract	Monday, February 1, 2021
Council Approves Construction Phase Engineering Services Amendment No. 1	Monday, February 1, 2021
Notice to Proceed Issued	March 1, 2021 - April 15, 2021
Final Completion	August 4, 2021 - October 21, 2021

Exhibit F: A Listing of The Duties, Responsibilities and Limitations of Authority of The Resident Project Representative

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist **OWNER** in observing performance of the Work of the Contractor.

Through on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, **ENGINEER** shall endeavor to provide further protection for **OWNER** against defects and deficiencies in the Work; but, the furnishing of such services will not make **ENGINEER** responsible for or give **ENGINEER** control over construction means, methods, techniques, sequences, procedures, storm water runoff, erosion control, or for safety precautions or programs, or responsibility for **CONTRACTOR**'s failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of **ENGINEER** in **ENGINEER**'S agreement with the **OWNER** and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is **OWNER**'S agent at the site, will act as directed by and under the direction of **OWNER**, and will confer with **OWNER** regarding RPR's actions. RPR's dealings in matters pertaining to the on- site work shall in general be with **OWNER** and **CONTRACTOR** keeping **OWNER** advised as necessary. RPR's dealings with sub-contractors shall only be through or with the full knowledge and approval of **CONTRACTOR**.

B. Duties and Responsibilities of RPR

1. *Conferences and Meetings:* Attend meetings with **CONTRACTOR**, such as pre- construction conferences, progress meetings, job conferences and other project- related meetings.
2. *Liaison:*
 - a. Serve as **OWNER**'S liaison with **CONTRACTOR**, working principally through **CONTRACTOR**'s superintendent and assist in understanding the intent of the Contract Documents; and assist **OWNER** in serving as **OWNER**'S liaison with **CONTRACTOR** when **CONTRACTOR**'s operations affect **OWNER**'S on-site operations.
 - b. Assist in obtaining from **OWNER** additional details or information, when required for proper execution of the Work.
4. *Shop Drawings and Samples:*
 - a. Receive samples that are furnished at the site by **CONTRACTOR** and notify **OWNER** of availability of samples for examination.
 - b. Advise **OWNER** and **CONTRACTOR** of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by **OWNER**.
5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
 - a. Conduct on-site observations of the Work in progress to assist **OWNER** in determining if the work is in general proceeding in accordance with the Contract Documents.
 - b. Report to **OWNER** whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise **OWNER** of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel and that **CONTRACTOR** maintains adequate records thereof; and observe, record and report to **OWNER** appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to **OWNER**.
6. *Interpretation of Contract Documents:* Report to **OWNER** when clarifications and interpretations of the Contract Documents are needed and transmit to **OWNER** clarifications and interpretations as issued by **OWNER**.
7. *Modifications:* Consider and evaluate **CONTRACTOR**'s suggestions for modifications in Drawing or Specifications and report with RPR's recommendations to **OWNER**. Transmit to **CONTRACTOR** decisions as issued by **OWNER**.

8. *Records:*
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences. Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, and additional Drawings issued subsequent to the execution of the Contract. **OWNER'S** clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book, recording **CONTRACTOR** hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures; and send copies to **OWNER**.
 - c. Record names, addresses and telephone numbers of all **CONTRACTORS**, subcontractors and major suppliers of materials and equipment.
9. *Reports:*
 - a. Furnish **OWNER** periodic reports as required of progress of the Work and of **CONTRACTOR's** compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - b. Consult with **OWNER** in advance of schedule major tests, inspections or start of important phases of the Work.
 - c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from **CONTRACTOR** and recommend to **ENGINEER** Change Orders, Work Directive Changes and Field Orders.
 - d. Report immediately to **OWNER** upon occurrence of any accident.
10. *Payment Requests:* Review applications for payment with **CONTRACTOR** for compliance with the established procedure for their submission and forward with recommendations to **ENGINEER**, noting particularly the relationship of the payment requested to the schedule of values. Work completed, and materials and equipment delivered at the site but not incorporated in the Work.
11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by **CONTRACTOR** are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to **OWNER** for review and forwarding to **OWNER** prior to final payment for the Work.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by **OWNER**.
2. Shall not exceed limitations of **OWNER'S** authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of **CONTRACTOR**, subcontractors or **CONTRACTOR's** superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences, storm water management, erosion control or other procedures of construction.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawings or sample submittals from anyone other than **CONTRACTOR**.
7. Shall not authorize **OWNER** to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by other except as specifically authorized by **OWNER**.