



office memorandum

DATE: August 6, 2018
TO: Steve Lewis, City Manager
THROUGH: Kenneth Komiske, Director of Utilities *K Komiske*
FROM: Charlie Thomas, Capital Projects Engineer
SUBJECT: Crossroads Blvd Area Water Line project, Proposed Change Order #1

BACKGROUND: The Crossroads Boulevard Area Waterline project (WA0213) is located north of Robinson Street between I-35 and 36th Avenue NW (map attached). The project will replace about 15,300 feet of six-inch (6") and eight-inch (8") ductile iron (DI) water line with polyvinyl chloride (PVC) pipe. The existing DI pipe is not compatible with the corrosive clay soils and is failing, causing water outages, water loss and damage to driveways, streets, and yards.

On September 12, 2017, the Norman Utilities Authority (NUA) approved Contract K-1718-5 for the project, in the amount of \$1,184,999, with McKee Utility Contractors, Inc. (McKee) of Prague. The Notice to Proceed was issued effective September 25, 2017, and construction is behind schedule, but nearing completion.

DISCUSSION: During September 2017, the contractor, McKee, was informed that PVC pipe manufacturers were canceling all purchase orders that were in place before Hurricane Harvey. PVC pipe production is fundamentally a petroleum based process, and largely based in the Houston area. The effects of Harvey severely impacted virtually all PVC pipe production for several weeks. Subsequently, both manufacturers and suppliers invoked *force majeure* clauses in their purchase/sales agreements.

Force Majeure is a contract clause which reflects unforeseeable or extraordinary events, frequently "acts of God" such as Hurricane Harvey. It allows pricing and/or other adjustments to contracts already in effect, such as in this case.

Neither the Competitive Bidding Act nor our contract documents address a force majeure action. Usually force majeure is only relevant for entities we have a direct contract with, not a manufacturer nor the supplier to someone with whom we have a contract. However, because of the extraordinary nature of the Hurricane Harvey disaster, the way PVC pipes are manufactured (completely dependent on oil), and because this change did not affect the fact that McKee was the low bidder, both NUA and legal staff recommend approval of proposed Change Order No 1 (CO1). McKee, its supplier and their manufacturer all acted in good faith.

McKee has documented the required increase for both 6" and 8" PVC pipe from the prices bid on the project. As shown in attached CO1, 8" pipe increased \$1.33/foot from \$5.74 to \$7.07, and 6" pipe increased \$0.72/foot from \$3.36 to \$4.08. Neither increase is substantial in and of itself, and the total increase of \$16,567 is less than 1½% of the contract total.

The Fiscal Year Ending 2019 (FYE19) budget includes an unencumbered balance of \$16,821 (rounded) in Crossroads Boulevard Area Water Line, Construction (account 031-9360-462.61-01, project WA0213), which is sufficient to fund CO1.

RECOMMENDATION: Staff recommends the NUA approve Change Order No. 1 with McKee Utility Contractors, Inc., increasing the contract amount by \$16,567 to a revised contract amount of \$1,201,566.

Reviewed By: Clint Mercer, Chief Accountant *CM*
Reviewed By: Anthony Francisco, Finance Director *A. Francisco*
Reviewed By: Kathryn Walker, Assistant City Attorney *KW*

APPROVE: *[Signature]*

Date: 9-11-18

DISAPPROVE: _____

Date: _____