REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
February 19, 2020

Department Utilities **Director Approval** *Terry Lybarger*

AGENDA ITEM Consider an agreement with PEC for the Phase 2 improvements at the Water Treatment plant.

SUMMARY RECOMMENDATION Approve a modified contract.

BACKGROUND On October 9, 2019 the City Commission met with representatives of PEC and City staff to review a proposed scope of work for Phase II of the Water Treatment Plant Project prepared by PEC. At that meeting it was decided that PEC would make changes to the contract adding language for the contact basin work and utilize a local survey crew prior to returning for contract approval. For your discussion and consideration, a revised agreement has been received from PEC. The City Attorney is currently reviewing the revised contract. Sarah Unruh with PEC will be available at the meeting to further discuss the revised agreement.

BUDGET IMPACT $166,000 for PEC's fee to be paid from the Water Treatment Plant Upgrade Fund (Fund 10).

SUGGESTED MOTION I move to approve a contract with PEC for design services for Phase II of the Water Treatment Plant Project, pending City Attorney approval.

SUPPORTING DOCUMENTS

1. Revised contract prepared by PEC
2. Status of projects previously identified
3. October 9, 2019 Approved Minutes
4. October 9, 2019 RCA

PROFESSIONAL ENGINEERING CONSULTANTS

February 12, 2020

Mr. Leonhard Caflisch
Mayor
City of Independence
811 W. Laurel Street
Independence, KS 67301

Reference: AGREEMENT for Independence WTP Phase 2 Improvements
PEC Project No. 35-190768-000-0918

Dear Mr. Caflisch:

Professional Engineering Consultants, P.A. ("PEC") is pleased to provide professional services to City of Independence ("Client") in connection with the referenced Project, and in accordance with this letter agreement ("Agreement"). The services to be performed by PEC ("the Services") are described in Exhibit A – Services, Schedule, and Payment (attached and incorporated by reference) and are subject to the following terms and conditions.

Performance. PEC will perform the Services with the level of care and skill ordinarily exercised by other consultants of the same profession under similar circumstances, at the same time, and in the same locality. PEC agrees to perform the Services in as timely a manner as is consistent with the professional standard of care and to comply with applicable laws, regulations, codes and standards that relate to the Services and that are in effect as of the date when the Services are provided.

Client Responsibilities. To enable PEC to perform the Services, Client shall, at its sole expense: (1) provide all information and documentation regarding Client requirements, the existing site, and planned improvements necessary for the orderly progress of the Services; (2) designate a person to act as Client representative with authority to transmit instructions, receive instructions and information, and interpret and define Client requirements and requests regarding the Services; (3) provide access to, and make all provisions for PEC to enter the project site as required to perform the Services, including those provisions required to perform subsurface investigations such as, but not limited to, clearing of trees and vegetation, removal of fences or other obstructions, and leveling the site; (4) site restoration and repair, as needed following field investigations; (5) establish and periodically update a project budget, which shall include a contingency to cover additional services as may be required by changes in the design or Services; and (6) timely respond to requests for information and timely review and approve all design deliverables. PEC shall be entitled to rely on all information and services provided by Client. Client recognizes field investigations may damage existing property. PEC will take reasonable precautions to minimize property damage whenever field investigations are included in the Services.

Payment. Invoices will be submitted periodically and are due and payable upon receipt. Unpaid balances more than 30 days past due shall be subject to an interest charge at the rate of 1.5 % per month from the date of the invoice. PEC reserves the right to suspend the Services and withhold deliverables if the Client fails to make payment when due. In such an event, PEC shall have no liability for any delay or damage resulting from such suspension.

Work Product. PEC is the author and owner of all reports, drawings, specifications, test data, techniques, photographs, letters, notes, and all other work product, including in electronic form, created by PEC in connection with the Project (the "Work Product"). PEC retains all common law, statutory, and other reserved rights in the Work Product, including copyrights. The Work Product may not be reproduced or used by the Client or anyone claiming by, through or under the Client, for any purpose other than the purpose for which it was prepared, including, but not limited to, use on other projects or future modifications to the Project, without the prior written consent of PEC. Any unauthorized use of the Work Product shall be at the user's sole risk and Client shall indemnify PEC for any liability or legal exposure arising from such unauthorized use. To the extent PEC terminates this Agreement due to non-payment by Client shall not be entitled to use the Work Product for any purpose without the prior written consent of PEC.

Unless otherwise agreed by Client and PEC, Client may rely upon Work Product only in paper copy ("hard copy") or unalterable digital files, with either wet or digital signature meeting the requirements of the governing licensing authority having jurisdiction over the Project. In all instances, the original hard copy of the Work Product takes precedence over electronic files. All electronic files furnished by PEC are furnished only for convenience, not reliance by Client, and any reliance on such electronic files will be at the Client sole risk.

Insurance. PEC and Client agree to each maintain statutory Worker's Compensation, Employer's Liability Insurance, General Liability Insurance, and Automobile Insurance coverage for the duration of this Agreement. Additionally, PEC will maintain Professional Liability Insurance for PEC's negligent acts, errors, or omissions in providing Services pursuant to this Agreement.

Supplemental Agreements. Changes in the Services may be accomplished after execution of this Agreement only by a written Supplemental Agreement signed by PEC and Client. For any change that increases PEC's cost of, or time required for performance of any part of the Services, PEC's compensation and time for performance will be equitably increased.

Differing, Concealed, or Unknown Conditions. If PEC encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the information provided to PEC or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities provided for in this Agreement, PEC will, if practicable, promptly notify Client before conditions are disturbed. Subsurface condition identification is limited to only those points where samples are taken. The nature and extent of subsurface condition variations across the site may not become evident until construction. PEC assumes no liability for site variations differing from those sampled or changed conditions discovered during construction. If the differing, concealed, or unknown conditions cause an increase in PEC's cost of, or time required for performance of any part of the Services, PEC's compensation and time for performance will be equitably increased.

Additionally, Client (1) waives all claims against PEC and (2) agrees to indemnify and hold harmless PEC as well as its respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys' fees from all third-party claims resulting from differing, concealed, or unknown conditions.

Fast-Track, Phased or Accelerated Schedule. Accelerated, phased or fast-track scheduling increases the risk of incurring unanticipated costs and expenses including costs for PEC to coordinate and redesign portions of the Project affected by the procuring or installing elements of the Project prior to the completion of all relevant construction documents, and costs for the contractor to remove and replace previously installed work. If Client selects accelerated, phased or fast-track scheduling, Client agrees to include a contingency in the Project budget sufficient to cover such costs.

Force Majeure. PEC will not be liable to Client for delays in performing the Services or for any costs or damages that may result from: labor strikes; riots; war; acts of terrorism; acts or omissions of governmental authorities, the Project Client or third parties; extraordinary weather conditions or other natural catastrophes; acts of God; unanticipated site conditions; or other acts or circumstances beyond the control of PEC. In the event performance of the Services is delayed by circumstances beyond PEC's control, PEC's compensation and time for performance will be equitably increased.

Construction Means; Safety. PEC shall have no control over and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for construction safety precautions and programs. PEC shall not be responsible for the acts or omissions of any contractor, subcontractor or any other person performing any work (other than the Services), or for the failure of any of them to carry out their work in accordance with all applicable laws, regulations, codes and standards, or the construction documents.

Cost Estimates. Upon request, PEC may furnish estimates of probable cost, but cannot and does not guarantee the accuracy of such estimates. All estimates, including estimates of construction costs, financial evaluations, feasibility studies, and economic analyses of alternate solutions, will be made on the basis of PEC's experience and qualifications and will represent PEC's judgment as a design professional familiar with the construction industry. However, PEC has no control over (1) the cost of labor, material or equipment furnished by others, (2) market conditions, (3) contractors' methods of determining prices or performing work, or (4) competitive bidding practices. Accordingly, PEC will have no liability for bids or actual costs that differ from PEC's estimates.

Termination. Both the Client and PEC have the right to terminate this Agreement for convenience upon fifteen calendar days' written notice to the other party. In the event the Client terminates this Agreement without cause, PEC shall be entitled to payment for all Services performed and expenses incurred up to the time of such termination, plus fees for any required transition services, and reimbursement of all costs incurred which are directly attributable to such termination.

Environmental Hazards. Client acknowledges that the Services do not include the detection, investigation, evaluation, or abatement of environmental conditions that PEC may encounter, such as mold, lead, asbestos, PCBs, hazardous substances (as defined by Federal, State or local laws or regulations), contaminants, or toxic materials that may be present at the Project site. Client agrees to defend, indemnify, and hold PEC harmless from any claims relating to the actual or alleged existence or discharge of such materials through no fault of PEC. PEC may suspend the Services, without liability for any damages, if it has reason to believe that its employees may be exposed to hazardous materials.

Betterment. PEC will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

Dispute Resolution. The Client and PEC will endeavor to resolve claims, disputes and other matters in issue arising out of this Agreement, the Project or the Services through a meet and confer session. The meeting will be attended by senior representatives of Client and PEC who have full authority to

resolve the claim. The meeting will take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meeting, the parties will exchange relevant information that will assist in resolving the claim.

If the parties resolve the claim, they will prepare appropriate documentation memorializing the resolution.

If the parties are unable to resolve the claim, PEC and Client agree to submit the claim to mediation prior to the initiation of any binding dispute resolution proceedings (except for PEC claims for nonpayment). The mediation will be held in Wichita, Kansas, and the parties will share the mediator's fees and expenses equally.

Jurisdiction; Venue; Governing Law. To the fullest extent permitted by law, PEC and Client stipulate that the Eighteenth Judicial District, District Court, Montgomery County, Kansas is the court of exclusive jurisdiction and venue to determine any dispute arising out of or relating to this Agreement, the Project or the Services. PEC and Client further agree that this Agreement shall be construed, interpreted and governed in accordance with the laws of the State of Kansas without regard to its conflict of laws principles.

Indemnity. To the fullest extent permitted by law, Client and PEC each agree to indemnify and hold harmless the other, as well as their respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys' fees, provided such claim, loss, damage, or expense is attributable to bodily injury, sickness, disease, death, or property damage, but only to the extent caused by the negligent acts or omissions of the indemnifying party, or anyone for whose acts they may be liable.

Agreed Remedy. To the fullest extent permitted by law, the total liability, in the aggregate, of PEC and PEC's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages, including, without limitation, attorneys' fees, arising out of or in any way related to this Agreement, the Services, or the Project, from any cause and under any theory of liability, shall not exceed PEC's total limits of insurance liability under this Agreement. In no event will PEC be liable for any indirect, incidental, special or consequential damages, including, without limitation, loss of use or lost profits, incurred by Client or anyone claiming by, through or under Client.

Assignment. Client will not assign any rights, duties, or interests accruing from this Agreement without the prior written consent of PEC. This Agreement will be binding upon the Client, its successors and assigns.

No Third-Party Beneficiaries. This Agreement is solely for the benefit of PEC and Client. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of PEC or Client in favor of such third parties. Further, PEC assumes no obligations or duties other than the obligations to Client specifically set forth in this Agreement. PEC shall not be responsible for Client obligations under any separate agreement with any third-party.

Entire Agreement. This Agreement represents the entire and integrated agreement between PEC and Client and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by a writing signed by PEC and Client.

Severability. If any provisions of this Agreement is determined to be unenforceable, in whole or in part, the remainder shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

Thank you for engaging PEC; we look forward to working with you. If this Agreement is acceptable, please sign below and return an executed copy to me. Receipt of the executed copy will serve as PEC's notice to proceed with the Services.

Sincerely,

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Sarah C. Unruh, P.E.
Project Manager

SCU:hsr

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: _____, Signatory

Printed Name: Michael D. Kelsey, P.E.

Title: Principal, Municipal Division Manager

Date: February 12, 2020

ACCEPTED:

CITY OF INDEPENDENCE

By: _____

Title: _____

Date: _____

EXHIBIT A

A. **Project Description**.

1. The project includes the second phase of work at the water treatment plant, funded by the State Revolving Loan Fund (SRLF) under the OWNER's existing loan agreement. The work includes: SRLF assistance associated with adding these design projects to the loan; addressing the permitting of the existing residuals lagoons per KDHE requirements and communication dated April 18, 2019; replacement of the existing sludge line from the clarifier; inspection of the clearwells to determine if leakage is occurring and how to address issues noted; protection of the high service pump station from the entrance of flood waters; coating of the filter building floor; relocation of the chlorine gas storage and feed into a new structure; modification of the existing filter building to accommodate new spaces; security fencing; field survey and geotechnical work; and bidding and construction administration services associated with the designs.

B. **Anticipated Project Schedule.**

1. PEC shall commence its services on the Project within 7 days after receiving CLIENT's notice to proceed.
2. CLIENT acknowledges that directed changes, unforeseen conditions, and other delays may affect the completion of PEC's services. PEC will not have control over or responsibility for any contractor or vendor's performance schedule.

C. **Scope of Services.**

1. Task 1 - Project Management:

   a) Project management tasks to include development and management of the project schedule, preparation and distribution of meeting minutes, progress reports, and client communications.
   b) Kick-off meeting with the CLIENT to confirm the scope items, establish a project schedule, and discuss initial design items.

2. Task 2 - Site Survey:

   b) Prepare survey request for the water treatment plant property as noted in Exhibit B and submit to Cornerstone Regional Surveying, LLC (Cornerstone). PEC will contract with Cornerstone for the project field survey work.
   c) Review survey files from Cornerstone and work with them to address any questions or data gaps.
   d) Utilize provided survey files for design drawings. PEC will not be responsible to field verify information received and will solely rely on Cornerstone for the accuracy of the survey data.

3. Task 3 - Geotechnical Investigations:

   a) Field geotechnical investigation scope shall include work for the chemical feed relocation scope item only.
   b) ENGINEER will use an appropriate One-Call utility locate system prior to arriving onsite.
   c) Field work to include:

i. (2) subsurface borings to depths 20 feet below existing grade
ii. SPT sampling at the following intervals: 1.5', 3.0', 6.0', 8.5', and at 5.0' intervals thereafter
iii. Relatively undisturbed soil samples (Shelby Tubes) will also be obtained, if applicable

d) Laboratory testing will be performed to determine the following index and engineering properties:

i. Moisture Content
ii. Density
iii. Atterberg Limits
iv. Percent Passing #200 sieve
v. Unconfined Passing #200 sieve

e) Prepare sealed geotechnical report, including boring logs, soil descriptions and classifications, groundwater elevations at the time of drilling, and laboratory test results.
f) Building foundation design and construction recommendations, including deep and shallow foundation design parameters, earthwork, excavation, soil stabilization, and controlled fill.
g) Boreholes will be plugged with sodium bentonite, auger cuttings (spoils) and capped with similar materials.
h) General cleanup of the site.

4. Task 4 - Start Revolving Loan Fund (SRLF) Assistance:

a) Prepare paperwork for amendment of the loan and send to Owner for review.
b) Assist Owner in submission of loan amendment paperwork to KDHE.
c) Prepare updated Preliminary Engineering Report (PER) to include the Phase 2 design projects outlined herein and submit to KDHE for review.
d) Conduct wage rate interviews during construction as required by KDHE and submit to Owner with associated disbursement request. Owner shall be responsible to execute and submit wage rate interviews to KDHE.
e) Receive and review weekly payroll forms from Contractor during construction and address any comments or issues with Contractor. Maintain electronic copies of all payroll forms and provide to Owner.
f) Prepare disbursement request forms for Owner for each Contractor pay application processed. Owner shall be responsible to execute and submit disbursement requests and associated paperwork to KDHE.
g) Prepare MBE/WBE reports during construction as required by KDHE and submit to Owner. Owner shall be responsible to execute and submit MBE/WBE reports to KDHE.
h) Obtain American Iron and Steel (AIS) material certificates from Contractor and submit to KDHE for review as required for the project. Maintain database of AIS certifications and supply to Owner for their loan record.
i) Prepare and maintain a spreadsheet to track the SRLF loan projects for Phase 1 and Phase 2 to include: phase, project work, change orders approved, final cost, and loan balance.

5. Task 5 - Residuals and Solids Handling:

The OWNER received a letter from KDHE after a recent inspection of the water treatment plant that noted the existing residuals lagoons that accept a waste stream from the existing clarifier is not permitted to discharge. This task will prepare the necessary reporting and permit application to submit to KDHE for permitting of this existing system.

a) Review existing drawings and available information for residuals lagoons including piping, structures and Construction Observation and Testing.
b) Contact KDHE to review requirements for permitting of existing residuals lagoons including study components, sampling requirements of existing discharge flow, anticipated required sampling once lagoon is permitted, and field investigation required.
c) Coordinate sampling of existing lagoon discharge. CLIENT shall collect recommended samples, submit to laboratory approved by KDHE for analysis and pay directly for laboratory costs. CLIENT shall supply sampling results to ENGINEER.
d) Prepare draft anti-degradation study and submit to CLIENT for review. Study to include summary of existing treatment processes and lagoon system; discussion of discharge sampling results, and process diagrams for the water treatment processes; and evaluation of three options to address the discharge from the residual lagoon system.
    i. discharge to a publicly owned treatment works (POTW),
    ii. non-discharging system, and
    iii. discharge to the tributary
e) Address CLIENT comments and submit study to KDHE for review and approval.
f) Address KDHE comments and provide updated study as required.
g) Prepare and submit permit application as needed for discharge permit approval.

6. Task 6 - Filter Backwash:

The OWNER received a letter from KDHE after a recent inspection of the water treatment plant that noted the existing filter backwash waste line is piped to the storm sewer which discharges to the Verdigris River and is not permitted. This task will evaluate options to address the filter backwash waste stream per KDHE requirements. Design of any improvements related to these identified waste streams will be done by supplemental agreement.

a) Review existing drawings and available information for settling basin drains and filter backwash system including design elements, flow, frequency, water quality, and existing infrastructure.
b) Contact KDHE to review regulatory requirements and options for addressing discharge and/or disposal of the filter backwash and settling basin drain waste streams.
c) Develop conceptual drawings and budgetary cost estimates for up to two options to address the identified waste streams per KDHE requirements.
d) Present options and estimated costs to CLIENT in technical memorandum for review.

7. Task 7 - Clarifier Sludge Line Replacement:

   a) The project will include design drawings and specifications for replacement of the following: Approximately 150-ft of the existing 12" clarifier blowdown piping from the sludge draw-off manhole to the first yard manhole.
   b) Review existing drawings and equipment information, as provided by the CLIENT, for the piping from the clarifier to the sludge beds.
   c) Meet with CLIENT in onsite meeting to observe existing systems noted, review system operation and needs, and obtain additional available manuals and information for the project elements.
   d) Develop 60% drawings, specifications, and cost estimates for CLIENT review. Process pipe replacement drawings to include pipe size, material, general location consistent with existing location, connection details, and general notes.
   e) Address CLIENT comments and prepare 100% drawings, technical specifications, and cost estimates for CLIENT review.
   f) Prepare final sealed drawings and specifications and submit to KDHE for review.

8. Task 8 - Rehabilitation of Clearwells and North Settling Basin:

   a) Determine options for inspection of interior of clearwells while in service and if taken out of service for inspection.
   b) Contact inspection firms and obtain proposals for the required inspection work. Review with Owner and assist in procuring inspection services for the interior of the clearwells. Inspection services shall be paid for by the OWNER directly.
   c) Perform visual inspection of clearwell exterior by structural engineer and review available drawings and previous inspection reports.
   d) Develop preliminary options and cost estimates to address observed issues in clearwells and prepare a summary technical memorandum to discuss with CLIENT.
   e) Prepare 90% drawings and specifications for clearwell and north settling basin repairs. Clearwell repairs shall be based on selected solution from inspection performed. Drawings and specifications shall also include repair of north settling basin concrete per the Design Memo (Dated November 28, 2017) recommendations. Submit 90% drawings and specifications with cost estimate to CLIENT for review.
   f) Address CLIENT comments and prepare 100% drawings and technical specifications for CLIENT review.
   g) Prepare final sealed drawings and specifications and send to KDHE for review.

9. Task 9 - High Service Pump Station Flood Protection:

   a) Review historical flood level information and construction limitations in floodway/floodplain.
   b) Review permitting requirements for working in floodplain and prepare a Division of Water Resources floodplain fill permit if required.
   c) Develop two options to protect high service pump station from flood waters and present in a memo to review with CLIENT. Options to be evaluated include replacement of existing exterior doors facing the river and construction of a low wall around the building entrance.
   d) Prepare 90% drawings and specifications based on selected solution and submit to CLIENT with cost estimate for review.

e) Address CLIENT comments and prepare 100% drawings, technical specifications and cost estimate for CLIENT review.
f) Prepare final sealed drawings and specifications and send to KDHE for review.
g) Prepare permitting as required for CLIENT to execute. Permit fees shall be paid for directly by the CLIENT.

10. Task 10 - Filter Building Floor Coating

a) Evaluate options for floor coating and present to CLIENT for review.
b) Prepare 90% drawings and specifications based on selected solution and submit to CLIENT for review.
c) Address CLIENT comments and prepare 100% drawings and technical specifications for CLIENT review.
d) Prepare final sealed drawings and specifications and send to KDHE for review. Address KDHE comments until approval is achieved.

11. Task 11 - Relocation of Chlorine Gas Chemical Feed

a) Review existing facility chlorine gas feed equipment and operations including chlorine gas storage tanks, feed piping, gas feed equipment, and feed points. Review existing site layout, limitations and survey data gathered from previous task.
b) Develop preliminary drawings for construction of new chlorine gas feed building east of the existing filter building and relocation of parking lot to the west side of the filter building.
c) Preliminary drawings will include survey information, proposed chlorine gas feed building size and location, proposed storage and feed equipment, proposed feed piping routing, and pavement limits for new parking lot.
d) Review preliminary drawings and cost estimate with CLIENT.
e) Develop 90% drawings and specifications based on preliminary plan comments and submit with cost estimate to CLIENT for review.
f) Address CLIENT comments and prepare 100% drawings and technical specifications for CLIENT review. Submit with cost estimate.
g) Prepare final sealed drawings and specifications and send to KDHE for review.

12. Task 12 - Security Fencing

a) Security fencing shall include 8' tall fencing around the perimeter of the water treatment plant including access gates at the main entrances/accesses. Design does not include fencing for the intake, pump stations, or other structures not in the main plant area.
b) Prepare 30% plans and details for either chainlink or decorative metal fence. If a decorative metal fence with columns is requested, a supplemental agreement will be issued for the additional scope.
c) Review 30% drawings and cost estimate with CLIENT.
d) Develop 90% drawings, details, and specifications based on 30% design comments and submit with cost estimates to CLIENT for review.
e) Address CLIENT comments and prepare 100% drawings and specifications for CLIENT review. Submit with cost estimate.
f) Prepare final sealed drawings and specifications and send to KDHE for review.

13. Task 13 - Rehabilitation of Clarifier

    a) Contact Ovivo to obtain updated cost estimates for clarifier repairs per their recommendations as included in the previous Design Memo (dated November 28, 2017).
    b) Develop 90% drawings and specifications to address the recommendations for the clarifier repairs included in the Design Memo (dated November 28, 2017) and submit with cost estimate to CLIENT for review.
    c) Address CLIENT comments and prepare 100% drawings and technical specifications for CLIENT review. Submit with cost estimate.
    d) Prepare final sealed drawings and specifications and send to KDHE for review.

14. Task 14 - Filter Building Modifications

    a) Filter building modifications to include reconfiguring the existing floor plan to accommodate locker room/restroom, laboratory, breakroom, office, and associated spaces.
    b) Develop schematic architectural floor plan and exterior elevations for review with CLIENT.
    c) Develop 60% plans and specifications for the filter building modifications including structural, electrical, mechanical, and architectural elements. Connection to existing HVAC systems is assumed; if replacement of the existing HVAC system is required, a supplemental agreement will be issued for the additional design work. Submit to CLIENT with cost estimate for review.
    d) Address CLIENT comments and prepare 100% drawings, specifications and cost estimate for CLIENT review.
    e) Prepare final sealed drawings and specifications and send to KDHE for review. Prepare permitting as required for CLIENT to execute.

15. Task 15 - Bidding Services

    a) Prepare the advertisement for bids and post to ENGINEER website plan room; address bidder questions; issue addenda as needed; review bids; and prepare award recommendation letter for CLIENT.
    b) Conduct a pre-bid meeting and issue minutes.
    c) Prepare bid packet checklist and submit to KDHE per SRLF requirements.

16. Task 16 - Construction Administration Services

    a) Review and process submittals, requests for information (RFIs), change orders, and contractor pay applications.
    b) Attendance at up to ten (10) progress meetings as coordinated by the contractor. Contractor shall schedule meetings and issue minutes to all attendees.
    c) Coordination of final inspection with KDHE.
    d) Coordinate and participate in final walkthrough of project.
    e) Develop and distribute punchlist; update and distribute as required until project completion.
    f) Project close-out including issuing of substantial completion certificate, close-out items as required by KDHE SRLF, and preparation of record drawings to include pdf markups of sealed bid drawings.

D. **Additional Responsibilities of CLIENT:**

The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.

1. Drawings, studies, reports, and other information available pertaining to the existing building and site.
2. Timely reviews of reports, design submittals, or other project documentation.
3. Assuring that private utilities, not located by an appropriate One-Call utility locate system, are identified prior to arrival onsite for field work, or have made arrangements for a CLIENT representative with knowledge of such utilities to meet onsite prior to commencement of drilling activities.
4. Information related to known and/or potentially hazardous subsurface conditions and/or history of site contamination.
5. Provide right of entry for ENGINEER's personnel in performing site visits, field surveys and inspections.
6. Provide current Title Report for water treatment plant property.

E. **Exclusions:**

The following shall be specifically excluded from the Scope of Services to be provided by PEC.

1. Development of separate design document sets for each improvement. Scope is based on all design work being developed in one design and bid package. If separate design and bid packages are desired, the additional scope and fee associated with this will be done so by supplemental agreement.
2. Any filing or permit fees - all fees shall be paid directly to the regulatory agency/entity by the CLIENT.
3. Boundary survey.
4. Vacuum excavation of utilities.
5. Environmental assessments.
6. Outside consultants.
7. Sampling of lagoon discharge and associated analytical testing costs.
8. Design of any improvements to the lagoon system or wastewater treatment facility.
9. Review of the mixing zone and resulting impacts of discharging from the lagoon system to the receiving stream.
10. Destructive testing of concrete for clearwells.
11. On-site inspection services during construction.
12. Geotechnical work for existing residuals lagoons shall include only a boring log. No soil analysis or recommendations will be developed.
13. Offsite removal of spoils.
14. Handling of contaminated soils.
15. Construction staking.
16. Development of or updating of existing Risk Management Plan or Emergency Response Plan.
17. Permitting other than completion of KDHE Public Water Supply Permit for the proposed work.

F. **PEC's Fees & Reimbursable Expenses.**

1. PEC will invoice CLIENT one time per month for services rendered and Reimbursable Expenses incurred in the previous month. CLIENT agrees to pay each invoice within 30 days after receipt.
2. PEC's Fee for its Scope of Services will be on a lump sum basis including reimbursables in the amount of $166,000.00.
3. Reimbursable Expenses shall include mileage.
4. Taxes are not included in PEC's Fees. CLIENT shall reimburse PEC for any sales, use, and value added taxes which apply to these services.

MEMO

PEC
PROFESSIONAL ENGINEERING CONSULTANTS

TO: City of Independence
811 West Laurel Street
Independence, KS 67301
ATTENTION: Kelly Passauer
FROM: Sarah Unruh, P.E.
REFERENCE: State Revolving Loan Fund Project Summary

DATE: February 17, 2020
PROJECT NO.: 170498-000
PROJECT: Independence Water Treatment Plant Improvements
COPIES TO: File

Please advise immediately of any misconceptions or omissions you believe to be contained herein.

A Design Memorandum was prepared in 2017 that detailed the potential projects the City was considering at the water treatment plant under the State Revolving Loan Fund (SRLF) program. Phase 1 of the improvements was completed in 2019, with Phase 2 planned to begin design in 2020. Each project identified in the 2017 Design Memo is listed below, with status noted.

2017 Design Memorandum Project Status

Improvement Project	Improvement Phase	Status
Electrical System Upgrades	Phase 1	Complete
Primary Settling Basin Repairs	Phase 2	Not complete
Clarifier Repairs	Phase 2	Not complete
Filter Building Renovations	Phase 2	Not complete
Security Fencing	Phase 2	Not complete

Additional potential projects that have been identified by the City for inclusion in the Phase 2 improvement project are listed below.

Additional Proposed Phase 2 Improvements

Improvement Project	Improvement Phase	Notes
Anti-Degradation Study	Phase 2	Required by KDHE
Filter Backwash Review Memo	Phase 2	Required by KDHE
Clarifier Sludge Line Replacement	Phase 2	
High Service Flood Plain Protection	Phase 2	
Filter Building Floor Coating	Phase 2	
New Chlorine Building	Phase 2	

The current contract for consideration includes all items noted above as “Phase 2” with the project management, funding assistance, survey and geotechnical support tasks required to complete the project.

Minutes of the Independence City Commission's October 9, 2019 Special Meeting

The Independence City Commission met for a special meeting on October 9, 2019 at 9:00 A.M. at the Water Treatment Plant. Mayor Louis Ysusi, Commissioner Gary Hogsett and Commissioner Leonhard Caflisch were present. Others present included:

City Staff
Kelly Passauer, Assistant City Manager/Zoning Administrator
David Schwenker, City Clerk/City Treasurer
Terry Lybarger, Director of Utilities
Lacey Lies, Director of Finance
Ed Sykes, Chief Water Plant Operator

Visitors
Sue Scovel
Larry McHugh
Sarah Unruh
Shawn Schrader
Dean Hayse
Randy Kelly

I. SPECIAL SESSION AT 520 EAST OAK STREET

A. Call to Order

Mayor Ysusi called the meeting to order.

II. 9:00 AM – SITE TOUR AT 520 EAST OAK STREET

A. Site visit at Water Treatment Plant.

Shawn Schrader led the tour.

III. 10:00 AM DISCUSSION AT 410 NORTH PENNSYLVANIA AVENUE

A. Discuss Phase II of the Water Treatment Plant Project.

IV. ITEMS FOR COMMISSION ACTION

A. Consider a contract with PEC for design services for Phase II of The Water Treatment Plant Project.

Sarah Unruh reviewed the contract, including the scope of services.

Director Lybarger stated that the contract needs to be modified to include rehabilitation of the contact basins.

Sarah Unruh stated that can be added but she was hesitant to add the

design fee for that project until they find out what the issues are and possible solutions.

Commissioner Hogsett inquired about the size of the proposed chemical feed building.

Sarah Unruh noted that the chlorine cylinders are pretty large but the structure would take up most of the existing parking lot.

Commissioner Caflisch asked to be provided a list of projects that were proposed under this loan program and the status of those projects,

Sarah Unruh stated that she could provide a list of what was identified in the first report and mark what has been completed.

After further discussion it was decided that Sarah Unruh would make changes to the contract adding in language for the contact basin work and utilizing a local survey crew and return later for contract approval.

V. ADJOURNMENT

Motion:
Mayor Ysusi moved to adjourn. Commissioner Hogsett seconded.

Aye: Ysusi, Caflisch, Hogsett
Nay: None

Louis Ysusi

Louis Ysusi, Mayor

Leonhard Caflisch

Leonhard Caflisch, Commissioner

Gary Hogsett, Commissioner

Attest: _____

City Clerk/Treasurer

REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
October 9, 2019

Department Utilities **Director Approval** *Terry Lybarger*

AGENDA ITEM Consider a contract with PEC for design services for Phase II of the Water Treatment Plant Project.

SUMMARY RECOMMENDATION Approve a modified contract.

BACKGROUND Representatives of PEC and the Utilities Department met and reviewed a proposed scope of work for Phase II of the Water Treatment Plant Project. A proposed contract was prepared by PEC. The City Attorney reviewed the contract and prepared a memo of suggested modifications which were sent to PEC for their review. PEC acknowledged receipt and is in the process of reviewing the modifications. City staff will advise the Commission when we have received a revised contract.

In addition to the modifications suggested by the City Attorney, the City Commission may wish to further modify the agreement, particularly as it relates to the scope of services.

BUDGET IMPACT $102,000 for PEC's fee to be paid from the Water Treatment Plant Upgrade Fund (Fund 10).

SUGGESTED MOTION I move to approve a contract as modified by the City Attorney and City Commission with PEC for design services for Phase II of the Water Treatment Plant Project.

SUPPORTING DOCUMENTS

1. Proposed contract prepared by PEC with input from staff of the Utilities Department
2. Proposed modifications prepared by the City Attorney.

PROFESSIONAL ENGINEERING CONSULTANTS

October 3, 2019

Mr. Louis Ysusi
Mayor
City of Independence
811 W. Laurel Street
Independence, KS 67301

Reference: AGREEMENT for Independence WTP Phase 2 Improvements
PEC Project No. 35-190XXX-000-0918

Dear Mr. Ysusi:

Professional Engineering Consultants, P.A. ("PEC") is pleased to provide professional services to City of Independence ("Client") in connection with the referenced Project, and in accordance with this letter agreement ("Agreement"). The services to be performed by PEC ("the Services") are described in Exhibit A – Services, Schedule, and Payment (attached and incorporated by reference) and are subject to the following terms and conditions.

Performance. PEC will perform the Services with the level of care and skill ordinarily exercised by other consultants of the same profession under similar circumstances, at the same time, and in the same locality. PEC agrees to perform the Services in as timely a manner as is consistent with the professional standard of care and to comply with applicable laws, regulations, codes and standards that relate to the Services and that are in effect as of the date when the Services are provided.

Client Responsibilities. To enable PEC to perform the Services, Client shall, at its sole expense: (1) provide all information and documentation regarding Client requirements, the existing site, and planned improvements necessary for the orderly progress of the Services; (2) designate a person to act as Client representative with authority to transmit instructions, receive instructions and information, and interpret and define Client requirements and requests regarding the Services; (3) provide access to, and make all provisions for PEC to enter the project site as required to perform the Services, including those provisions required to perform subsurface investigations such as, but not limited to, clearing of trees and vegetation, removal of fences or other obstructions, and leveling the site; (4) site restoration and repair, as needed following field investigations; (5) establish and periodically update a project budget, which shall include a contingency to cover additional services as may be required by changes in the design or Services; and (6) timely respond to requests for information and timely review and approve all design deliverables. PEC shall be entitled to rely on all information and services provided by Client. Client recognizes field investigations may damage existing property. PEC will take reasonable precautions to minimize property damage whenever field investigations are included in the Services.

Payment. Invoices will be submitted periodically and are due and payable upon receipt. Unpaid balances more than 30 days past due shall be subject to an interest charge at the rate of 1.5 % per month from the date of the invoice, and any related attorneys' fees and collection costs. PEC reserves the right to suspend the Services and withhold deliverables if the Client fails to make payment when due. In such an event, PEC shall have no liability for any delay or damage resulting from such suspension.

Work Product. PEC is the author and owner of all reports, drawings, specifications, test data, techniques, photographs, letters, notes, and all other work product, including in electronic form, created by PEC in connection with the Project (the "Work Product"). PEC retains all common law, statutory, and other reserved rights in the Work Product, including copyrights. The Work Product may not be reproduced or used by the Client or anyone claiming by, through or under the Client, for any purpose other than the purpose for which it was prepared, including, but not limited to, use on other projects or future modifications to the Project, without the prior written consent of PEC. Any unauthorized use of the Work Product shall be at the user's sole risk and Client shall indemnify PEC for any liability or legal exposure arising from such unauthorized use. To the extent PEC terminates this Agreement due to non-payment by Client shall not be entitled to use the Work Product for any purpose without the prior written consent of PEC.

Unless otherwise agreed by Client and PEC, Client may rely upon Work Product only in paper copy ("hard copy") or unalterable digital files, with either wet or digital signature meeting the requirements of the governing licensing authority having jurisdiction over the Project. In all instances, the original hard copy of the Work Product takes precedence over electronic files. All electronic files furnished by PEC are furnished only for convenience, not reliance by Client, and any reliance on such electronic files will be at the Client sole risk.

Insurance. PEC and Client agree to each maintain statutory Worker's Compensation, Employer's Liability Insurance, General Liability Insurance, and Automobile Insurance coverage for the duration of this Agreement. Additionally, PEC will maintain Professional Liability Insurance for PEC's negligent acts, errors, or omissions in providing Services pursuant to this Agreement.

Supplemental Agreements. Changes in the Services may be accomplished after execution of this Agreement only by a written Supplemental Agreement signed by PEC and Client. For any change that increases PEC's cost of, or time required for performance of any part of the Services, PEC's compensation and time for performance will be equitably increased.

Differing, Concealed, or Unknown Conditions. If PEC encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the information provided to PEC or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities provided for in this Agreement, PEC will, if practicable, promptly notify Client before conditions are disturbed. Subsurface condition identification is limited to only those points where samples are taken. The nature and extent of subsurface condition variations across the site may not become evident until construction. PEC assumes no liability for site variations differing from those sampled or changed conditions discovered during construction. If the differing, concealed, or unknown conditions cause an increase in PEC's cost of, or time required for performance of any part of the Services, PEC's compensation and time for performance will be equitably increased.

Additionally, Client (1) waives all claims against PEC and (2) agrees to indemnify and hold harmless PEC as well as its respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys' fees from all third-party claims resulting from differing, concealed, or unknown conditions.

Fast-Track, Phased or Accelerated Schedule. Accelerated, phased or fast-track scheduling increases the risk of incurring unanticipated costs and expenses including costs for PEC to coordinate and redesign portions of the Project affected by the procuring or installing elements of the Project prior to the completion of all relevant construction documents, and costs for the contractor to remove and replace previously installed work. If Client selects accelerated, phased or fast-track scheduling, Client agrees to include a contingency in the Project budget sufficient to cover such costs.

Force Majeure. PEC will not be liable to Client for delays in performing the Services or for any costs or damages that may result from: labor strikes; riots; war; acts of terrorism; acts or omissions of governmental authorities, the Project Client or third parties; extraordinary weather conditions or other natural catastrophes; acts of God; unanticipated site conditions; or other acts or circumstances beyond the control of PEC. In the event performance of the Services is delayed by circumstances beyond PEC's control, PEC's compensation and time for performance will be equitably increased.

Construction Means; Safety. PEC shall have no control over and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for construction safety precautions and programs. PEC shall not be responsible for the acts or omissions of any contractor, subcontractor or any other person performing any work (other than the Services), or for the failure of any of them to carry out their work in accordance with all applicable laws, regulations, codes and standards, or the construction documents.

Cost Estimates. Upon request, PEC may furnish estimates of probable cost, but cannot and does not guarantee the accuracy of such estimates. All estimates, including estimates of construction costs, financial evaluations, feasibility studies, and economic analyses of alternate solutions, will be made on the basis of PEC's experience and qualifications and will represent PEC's judgment as a design professional familiar with the construction industry. However, PEC has no control over (1) the cost of labor, material or equipment furnished by others, (2) market conditions, (3) contractors' methods of determining prices or performing work, or (4) competitive bidding practices. Accordingly, PEC will have no liability for bids or actual costs that differ from PEC's estimates.

Termination. Both the Client and PEC have the right to terminate this Agreement for convenience upon fifteen calendar days' written notice to the other party. In the event the Client terminates this Agreement without cause, PEC shall be entitled to payment for all Services performed and expenses incurred up to the time of such termination, plus fees for any required transition services, and reimbursement of all costs incurred which are directly attributable to such termination.

Environmental Hazards. Client acknowledges that the Services do not include the detection, investigation, evaluation, or abatement of environmental conditions that PEC may encounter, such as mold, lead, asbestos, PCBs, hazardous substances (as defined by Federal, State or local laws or regulations), contaminants, or toxic materials that may be present at the Project site. Client agrees to defend, indemnify, and hold PEC harmless from any claims relating to the actual or alleged existence or discharge of such materials through no fault of PEC. PEC may suspend the Services, without liability for any damages, if it has reason to believe that its employees may be exposed to hazardous materials.

Betterment. PEC will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

Dispute Resolution. The Client and PEC will endeavor to resolve claims, disputes and other matters in issue arising out of this Agreement, the Project or the Services through a meet and confer session. The meeting will be attended by senior representatives of Client and PEC who have full authority to

resolve the claim. The meeting will take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meeting, the parties will exchange relevant information that will assist in resolving the claim.

If the parties resolve the claim, they will prepare appropriate documentation memorializing the resolution.

If the parties are unable to resolve the claim, PEC and Client agree to submit the claim to mediation prior to the initiation of any binding dispute resolution proceedings (except for PEC claims for nonpayment). The mediation will be held in Wichita, Kansas, and the parties will share the mediator's fees and expenses equally.

Jurisdiction; Venue; Governing Law. To the fullest extent permitted by law, PEC and Client stipulate that the Eighteenth Judicial District, District Court, Sedgwick County, Kansas is the court of exclusive jurisdiction and venue to determine any dispute arising out of or relating to this Agreement, the Project or the Services. PEC and Client further agree that this Agreement shall be construed, interpreted and governed in accordance with the laws of the State of Kansas without regard to its conflict of laws principles.

Indemnity. To the fullest extent permitted by law, Client and PEC each agree to indemnify and hold harmless the other, as well as their respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys' fees, provided such claim, loss, damage, or expense is attributable to bodily injury, sickness, disease, death, or property damage, but only to the extent caused by the negligent acts or omissions of the indemnifying party, or anyone for whose acts they may be liable.

Agreed Remedy. To the fullest extent permitted by law, the total liability, in the aggregate, of PEC and PEC's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages, including, without limitation, attorneys' fees, arising out of or in any way related to this Agreement, the Services, or the Project, from any cause and under any theory of liability, shall not exceed PEC's total fee under this Agreement. In no event will PEC be liable for any indirect, incidental, special or consequential damages, including, without limitation, loss of use or lost profits, incurred by Client or anyone claiming by, through or under Client.

Assignment. Client will not assign any rights, duties, or interests accruing from this Agreement without the prior written consent of PEC. This Agreement will be binding upon the Client, its successors and assigns.

No Third-Party Beneficiaries. This Agreement is solely for the benefit of PEC and Client. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of PEC or Client in favor of such third parties. Further, PEC assumes no obligations or duties other than the obligations to Client specifically set forth in this Agreement. PEC shall not be responsible for Client obligations under any separate agreement with any third-party.

Entire Agreement. This Agreement represents the entire and integrated agreement between PEC and Client and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by a writing signed by PEC and Client.

Severability. If any provisions of this Agreement is determined to be unenforceable, in whole or in part, the remainder shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

Thank you for engaging PEC; we look forward to working with you. If this Agreement is acceptable, please sign below and return an executed copy to me. Receipt of the executed copy will serve as PEC's notice to proceed with the Services.

Sincerely,

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Sarah C. Unruh, P.E.
Project Manager

SCU:apg

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: _____, Signatory

Printed Name: Michael D. Kelsey, P.E.

Title: Principal, Municipal Division Manager

Date: October 3, 2019

ACCEPTED: CITY OF INDEPENDENCE

By: _____

Title: _____

Date: _____

EXHIBIT A

A. **Project Description**.

1. The project includes the second phase of work at the water treatment plant, funded by the State Revolving Loan Fund (SRLF) under the OWNER's existing loan agreement. The work includes: SRLF assistance associated with adding these design projects to the loan; addressing the permitting of the existing residuals lagoons per KDHE requirements and communication dated April 18, 2019; replacement of the existing sludge line from the clarifier; inspection of the clearwells to determine if leakage is occurring and how to address issues noted; protection of the high service pump station from the entrance of flood waters; coating of the filter building floor; relocation of the chlorine, alum, and carbon chemical storage into a single structure; field survey and geotechnical work; and bidding and construction administration services associated with the designs.

B. **Anticipated Project Schedule.**

1. PEC shall commence its services on the Project within 7 days after receiving CLIENT's notice to proceed.
2. CLIENT acknowledges that directed changes, unforeseen conditions, and other delays may affect the completion of PEC's services. PEC will not have control over or responsibility for any contractor or vendor's performance schedule.

C. **Scope of Services.**

1. Task 1 - Project Management:

   a) Project management tasks to include development and management of the project schedule, preparation and distribution of meeting minutes, progress reports, and client communications.
   b) Kick-off meeting with the CLIENT to confirm the scope items, establish a project schedule, and discuss initial design items.

2. Task 2 - Site Survey:

   a) Field survey scope shall include survey for the clarifier sludge line replacement and chemical feed relocation scope items only.
   b) Prepare a one-foot contour interval on-the-ground topographic survey, locating both horizontally and vertically all visible improvements that may impact the site work design.
   c) Set inter-visible control points in area of construction. Obtain reference ties.
   d) Set benchmark within building area for construction.
   e) Collect topographic survey data, including surface locations sufficient to provide 1' contours per the survey limits sketch (Exhibit C).
   f) Locate all above and below grade utility improvements. PEC will not be responsible for searching for utilities beyond utilizing the One Call system.
   g) Locate all points of egress for any structures within the survey limits, including a Finished Floor Elevation (FFE) at each doorway.
   h) Locate all sanitary and storm sewer structures, such as area inlets, curb inlets, junction boxes, manholes, etc., the top of structure information will be collected as well as all flowlines in and out, and pipe size/material.

i) Locate all buildings and substantial features, including parking stripes, sidewalks, paving limits/type, playground areas/equipment, landscape areas, etc.
j) Any trees four (4) caliper inches and larger shall be identified/shown.
k) Survey limits that extend into the adjacent street right of way shall include all improvements/utilities within the half width of right of way.
l) Boundary survey to include review of a current Title Report (Report to be provided by CLIENT), recovering existing property corner monumentation to aid in drafting of road rights of way. Restrictive easements and encumbrances listed in the Title Report will be delineated on the Survey.
m) The coordinate base will be Kansas State Plane NAD 83(2011) - South/North Zone and the elevations will be referenced to the NAVD 88 datum.
n) Processing of survey data.

3. Task 3 - Geotechnical Investigations:

a) Field geotechnical investigation scope shall include work for the chemical feed relocation scope item only.
b) ENGINEER will use an appropriate One-Call utility locate system prior to arriving onsite.
c) Field work to include:

i. (2) subsurface borings to depths 20 feet below existing grade
ii. SPT sampling at the following intervals: 1.5’, 3.0’, 6.0’, 8.5’, and at 5.0’ intervals thereafter
iii. Relatively undisturbed soil samples (Shelby Tubes) will also be obtained, if applicable

d) Laboratory testing will be performed to determine the following index and engineering properties:

i. Moisture Content
ii. Density
iii. Atterberg Limits
iv. Percent Passing #200 sieve
v. Unconfined Passing #200 sieve

e) Prepare sealed geotechnical report, including boring logs, soil descriptions and classifications, groundwater elevations at the time of drilling, and laboratory test results.
f) Building foundation design and construction recommendations, including deep and shallow foundation design parameters, earthwork, excavation, soil stabilization, and controlled fill.
g) Boreholes will be plugged with sodium bentonite, auger cuttings (spoils) and capped with similar materials.
h) General cleanup of the site.

4. Task 4 - Start Revolving Loan Fund (SRLF) Assistance:

a) Prepare paperwork for amendment of the loan and send to Owner for review.
b) Assist Owner in submission of loan amendment paperwork to KDHE.
c) Prepare updated Preliminary Engineering Report (PER) to include the Phase 2 design projects outlined herein and submit to KDHE for review.

d) Conduct wage rate interviews during construction as required by KDHE and submit to Owner with associated disbursement request. Owner shall be responsible to execute and submit wage rate interviews to KDHE.
e) Receive and review weekly payroll forms from Contractor during construction and address any comments or issues with Contractor. Maintain electronic copies of all payroll forms and provide to Owner.
f) Prepare disbursement request forms for Owner for each Contractor pay application processed. Owner shall be responsible to execute and submit disbursement requests and associated paperwork to KDHE.
g) Prepare MBE/WBE reports during construction as required by KDHE and submit to Owner. Owner shall be responsible to execute and submit MBE/WBE reports to KDHE.
h) Obtain American Iron and Steel (AIS) material certificates from Contractor and submit to KDHE for review as required for the project. Maintain database of AIS certifications and supply to Owner for their loan record.

5. Task 5 - Residuals and Solids Handling:

The OWNER received a letter from KDHE after a recent inspection of the water treatment plant that noted the existing residuals lagoons that accept a waste stream from the existing clarifier is not permitted to discharge. This task will prepare the necessary reporting and permit application to submit to KDHE for permitting of this existing system.

a) Review existing drawings and available information for residuals lagoons including piping, structures and Construction Observation and Testing.
b) Contact KDHE to review requirements for permitting of existing residuals lagoons including study components, sampling requirements of existing discharge flow, anticipated required sampling once lagoon is permitted, and field investigation required.
c) Coordinate sampling of existing lagoon discharge. CLIENT shall collect recommended samples, submit to laboratory approved by KDHE for analysis and pay directly for laboratory costs. CLIENT shall supply sampling results to ENGINEER.
d) Prepare draft anti-degradation study and submit to CLIENT for review. Study to include summary of existing treatment processes and lagoon system; discussion of discharge sampling results, and process diagrams for the water treatment processes; and evaluation of three options to address the discharge from the residual lagoon system.
    i. discharge to a publicly owned treatment works (POTW),
    ii. non-discharging system, and
    iii. discharge to the tributary
e) Address CLIENT comments and submit study to KDHE for review and approval.
f) Address KDHE comments and provide updated study as required.
g) Prepare and submit permit application as needed for discharge permit approval.

6. Task 6 - Filter Backwash:

The OWNER received a letter from KDHE after a recent inspection of the water treatment plant that noted the existing filter backwash waste line is piped to the storm sewer which discharges to the Verdigris River and is not permitted. This task will

evaluate options to address the filter backwash waste stream per KDHE requirements. Design of any improvements related to these identified waste streams will be done by supplemental agreement.

a) Review existing drawings and available information for settling basin drains and filter backwash system including design elements, flow, frequency, water quality, and existing infrastructure.
b) Contact KDHE to review regulatory requirements and options for addressing discharge and/or disposal of the filter backwash and settling basin drain waste streams.
c) Develop conceptual drawings and budgetary cost estimates for up to two options to address the identified waste streams per KDHE requirements.
d) Present options and estimated costs to CLIENT in technical memorandum for review.

7. Task 7 - Clarifier Sludge Line Replacement:

a) The project will include design drawings and specifications for replacement of the following: Approximately 150-ft of the existing 12" clarifier blowdown piping from the sludge draw-off manhole to the first yard manhole.
b) Review existing drawings and equipment information, as provided by the CLIENT, for the piping from the clarifier to the sludge beds.
c) Meet with CLIENT in onsite meeting to observe existing systems noted, review system operation and needs, and obtain additional available manuals and information for the project elements.
d) Develop 60% drawings, specifications, and cost estimates for CLIENT review. Process pipe replacement drawings to include pipe size, material, general location consistent with existing location, connection details, and general notes.
e) Address CLIENT comments and prepare 100% drawings, technical specifications, and cost estimates for CLIENT review.
f) Prepare final sealed drawings and specifications and submit to KDHE for review.

8. Task 8 - Rehabilitation of Clearwells:

a) Determine options for inspection of interior of clearwells while in service and if taken out of service for inspection.
b) Contact inspection firms and obtain proposals for the required inspection work. Review with Owner and assist in procuring inspection services for the interior of the clearwells. Inspection services shall be paid for by the OWNER directly.
c) Perform visual inspection of clearwell exterior by structural engineer and review available drawings and previous inspection reports.
d) Develop preliminary options and cost estimates to address observed issues and prepare a summary technical memorandum to discuss with CLIENT.
e) Prepare 90% drawings and specifications based on selected solution and submit with cost estimate to CLIENT for review.
f) Address CLIENT comments and prepare 100% drawings and technical specifications for CLIENT review.
g) Prepare final sealed drawings and specifications and send to KDHE for review.

9. Task 9 - High Service Pump Station Flood Protection:

   a) Review historical flood level information and construction limitations in floodway/floodplain.
   b) Review permitting requirements for working in floodplain and prepare a Division of Water Resources floodplain fill permit if required.
   c) Develop two options to protect high service pump station from flood waters and present in a memo to review with CLIENT. Options to be evaluated include replacement of existing exterior doors facing the river and construction of a low wall around the building entrance.
   d) Prepare 90% drawings and specifications based on selected solution and submit to CLIENT with cost estimate for review.
   e) Address CLIENT comments and prepare 100% drawings, technical specifications and cost estimate for CLIENT review.
   f) Prepare final sealed drawings and specifications and send to KDHE for review.
   g) Prepare permitting as required for CLIENT to execute. Permit fees shall be paid for directly by the CLIENT.

10. Task 10 - Filter Building Floor Coating

   a) Evaluate options for floor coating and present to CLIENT for review.
   b) Prepare 90% drawings and specifications based on selected solution and submit to CLIENT for review.
   c) Address CLIENT comments and prepare 100% drawings and technical specifications for CLIENT review.
   d) Prepare final sealed drawings and specifications and send to KDHE for review. Address KDHE comments until approval is achieved.

11. Task 11 - Relocation of Chemical Feed

   a) Review existing facility chemical feed equipment and operations including chemical tanks, feed piping, pumping equipment, and feed points. Review existing site layout, limitations and survey data gathered from previous task.
   b) Develop preliminary drawings for construction of new chemical feed building east of the existing filter building to contain chlorine, carbon, and alum, and relocation of parking lot to the west side of the filter building.
   c) Preliminary drawings will include survey information, proposed chemical feed building size and location, proposed chemical storage and feed equipment, proposed chemical feed piping routing, and pavement limits for new parking lot.
   d) Review preliminary drawings and cost estimate with CLIENT.
   e) Develop 90% drawings and specifications based on preliminary plan comments and submit with cost estimate to CLIENT for review.
   f) Address CLIENT comments and prepare 100% drawings and technical specifications for CLIENT review. Submit with cost estimate.
   g) Prepare final sealed drawings and specifications and send to KDHE for review.

12. Task 12 - Bidding Services

   a) Prepare the advertisement for bids and post to ENGINEER website plan room; address bidder questions; issue addenda as needed; review bids; and prepare award recommendation letter for CLIENT.

b) Conduct a pre-bid meeting and issue minutes.
c) Prepare bid packet checklist and submit to KDHE per SRFL requirements.

13. Task 13 - Construction Administration Services

a) Review and process submittals, requests for information (RFIs), change orders, and contractor pay applications.
b) Attendance at up to ten (10) progress meetings as coordinated by the contractor. Contractor shall schedule meetings and issue minutes to all attendees.
c) Coordination of final inspection with KDHE.
d) Coordinate and participate in final walkthrough of project.
e) Develop and distribute punchlist; update and distribute as required until project completion.
f) Project close-out including issuing of substantial completion certificate, close-out items as required by KDHE SRLF, and preparation of record drawings to include pdf markups of sealed bid drawings.

D. **Additional Responsibilities of CLIENT:**

The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.

1. Drawings, studies, reports, and other information available pertaining to the existing building and site.
2. Timely reviews of reports, design submittals, or other project documentation.
3. Assuring that private utilities, not located by an appropriate One-Call utility locate system, are identified prior to arrival onsite for field work, or have made arrangements for a CLIENT representative with knowledge of such utilities to meet onsite prior to commencement of drilling activities.
4. Information related to known and/or potentially hazardous subsurface conditions and/or history of site contamination.
5. Provide right of entry for ENGINEER's personnel in performing site visits, field surveys and inspections.

E. **Exclusions:**

The following shall be specifically excluded from the Scope of Services to be provided by PEC.

1. Development of separate design document sets for each improvement. Scope is based on all design work being developed in one design and bid package. If separate design and bid packages are desired, the additional scope and fee associated with this will be done so by supplemental agreement.
2. Any filing or permit fees - all fees shall be paid directly to the regulatory agency/entity by the CLIENT.
3. Boundary survey.
4. Vacuum excavation of utilities.
5. Environmental assessments.
6. Outside consultants.
7. Sampling of lagoon discharge and associated analytical testing costs.
8. Design of any improvements to the lagoon system or wastewater treatment facility.
9. Review of the mixing zone and resulting impacts of discharging from the lagoon system

to the receiving stream.

10. Destructive testing of concrete for clearwells.
11. On-site inspection services during construction.
12. Geotechnical work for existing residuals lagoons shall include only a boring log. No soil analysis or recommendations will be developed.
13. Offsite removal of spoils.
14. Handling of contaminated soils.
15. Construction staking.

F. **PEC's Fees & Reimbursable Expenses.**

1. PEC will invoice CLIENT one time per month for services rendered and Reimbursable Expenses incurred in the previous month. CLIENT agrees to pay each invoice within 30 days after receipt. Unpaid invoices will bear interest at the rate of 18% per annum.
2. PEC's Fee for its Scope of Services will be on a lump sum basis including reimbursables in the amount of $102,000.00.
3. Reimbursable Expenses shall include mileage.
4. Taxes are not included in PEC's Fees. CLIENT shall reimburse PEC for any sales, use, and value added taxes which apply to these services.

10.3.2019

Memo

To
Kellly Passauer;
City Commission

From
Jeff Chubb

CC
n/a

Re
Review of Proposed Contract with PEC for Phase II Improvements

COMMENTS AND OBSERVATIONS:

1. The services to be performed by PEC are set forth on Exhibit A. City Staff should review the scope of services in detail to make sure everything anticipated is being covered in Exhibit A. I have not been a participant in the various meetings with PEC and am not in a position to evaluate whether their scope of services covers everything that you feel should be covered.

2. Under the paragraph titled "Payment", there is provision for interest at 1.5% per month plus attorney fees and collection costs if the City neglects payment. Our common practice is to request that provisions for interest and attorney fees be deleted.

3. Under the paragraph titled "Force Majeure", the typical language recognizing that delays in performance can occur under a number of circumstances is fine. But the very last sentence states that PEC's compensation will be increased in the event of a force majeure. I am not sure I understand the justification for increasing the compensation to PEC in the event of a force majeure. I understand they should be allowed additional time, but how that translates into increased compensation does not follow.

4. In the paragraph titled "Termination", both sides have the right to terminate for any reason upon 15 days' written notice. If the City exercises its right to terminate upon 15 days' notice, it will still be responsible for PEC for all work performed to that date plus "fees for any required transition services, and reimbursement of all costs incurred which are directly attributable to such termination."

5. The paragraph on dispute resolution requires that the two parties meet informally to try and resolve, and then submit the matter to mediation which is a non-binding process.

6. In the paragraph titled "Jurisdiction and Venue", they the City to agree to exclusive jurisdiction and venue in a Sedgwick County District Court. This is objectionable since all the services will be performed in Montgomery County. The exclusive venue should be the Montgomery County District Court sitting in Independence, Kansas.

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7. The paragraph on “Indemnity” is reciprocal and for a change is acceptable.

8. The paragraph titled “Agreed Remedy” is objectionable in that it caps the liability of PEC to a sum of money not to exceed the fees they would receive under this agreement. I do not like these paragraphs. I think they are totally unacceptable. Basically, PEC could do anything, ranging from an act of mere negligence to one of its employees going to the top floor and pulling out a rifle and shooting people, and their liability would be limited to what they are paid under this agreement. I am sure this is being dictated to them by their insurance company. This is totally unacceptable.

JAC

HEADING:

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