

April 9, 2013

City of Clinton
415 Gary Blvd
Clinton, OK 73601

Attention: Mr. Steve Hewitt, City Manager

Reference: Canute Water Transmission Line
PEC Project No. 13K20-6994

Dear Mr. Hewitt:

Professional Engineering Consultants, P.A. (PEC), hereafter called the ENGINEER, will assist the Clinton Public Works Authority (CPWA), hereafter called the OWNER, in the design of a water transmission line from the proposed Canute Water Treatment Plant to the existing Clinton Water Treatment Plant, hereinafter called the PROJECT. The PROJECT will consist of the development of an Engineering Report Form (for the Oklahoma Department of Environmental Quality), and plans and specification for 29,000 linear feet of new waterline.

A. PROJECT SCOPE:

The following is a description of the individual tasks to be completed for this PROJECT:

PRELIMINARY DESIGN

- One (1) kickoff meeting with OWNER and ENGINEER.
- Determine hydraulic capacity necessary for conveyance of treated water from the proposed Canute water treatment plant (WTP) to the City of Clinton's existing WTP. Required hydraulic capacity of the proposed waterline shall be based on flow rates of 0.75MG-1.5 MG.
- Prepare preliminary plans and specifications and submit to the OWNER for review and comment.
- Prepare a preliminary cost opinion and submit to the OWNER for review and comment.

FINAL DESIGN

- Conduct final field investigations of the PROJECT.
- Incorporate OWNER comments into the final Construction Plans and Specifications.
- Prepare and submit final plans and specifications to the Oklahoma Department of Environmental Quality (ODEQ) for review and approval.
- Prepare and submit the Engineering Report Form for Water Distribution Systems and Ground Water Wells to ODEQ for review and approval.
- Prepare and submit a final cost opinion to the OWNER for review and approval.

BIDDING AND CONSTRUCTION SERVICES

- Prepare the advertisement for bid
- Make all necessary document copies for distribution to perspective contractors.
- Attend pre-bid conference.
- Coordinate with perspective general contractors during the bid phase, answer requests for information (RFIs), and prepare addenda.
- Evaluate submitted bids and prepare bid tabulation and letter of recommendation of award for Council approval.
- Attend pre-work conference.
- Prepare and submit as-constructed drawings based on mark ups from the Resident Project Representative and/ or Contractor.

EXCLUSIONS

- Surveying services
- Geotechnical services
- Resident inspection services
- Submittal review and approval
- Contractor pay request review and approval
- Attendance to monthly construction progress meetings

B. PAYMENT PROVISIONS

PEC proposes to perform the Scope of Services described above on the basis of a lump sum amount of \$55,250.

C. Responsibility of CLIENT

1. Coordinate with Canute's consulting engineer to obtain and provide PEC with necessary data to complete this project, including plans, specifications, and data utilized for the design of the new Canute Water Treatment Plant.
2. To furnish to PEC for their use all prior pertinent data developed including applications, reports, design calculations, drawings and correspondence with State and Federal agencies.
3. To promptly review all preliminary submittals from PEC and to transmit any suggested revisions, modifications or changes to be made.
4. To pay PEC for services in accordance with the requirements of this Agreement.

D. TIME OF PERFORMANCE

PEC proposes to begin work on the PROJECT within five (5) business days following receipt of an executed copy of this agreement and shall complete the PROJECT within 60 business days.

This letter and the "Standard Conditions" attached hereto comprise the entire agreement between the CLIENT and PEC. They may be altered only by written supplemental agreement agreed to by both parties. Furthermore, this agreement may be canceled by CLIENT, for any reason, by providing PEC with thirty (30) day prior written notice.

Thank you for contacting us to provide professional services on the subject PROJECT. Should you have questions or need additional information, please do not hesitate to call. Return receipt of an executed copy of this letter will serve as our contract and notice to proceed with the work.

Very truly yours,

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.



Ethan J.L. Edwards, P.E.
Tulsa Office Manager/Principal

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: Ethan J.L. Edwards
Ethan J.L. Edwards, P.E.

Date: 4/9/13

City of Clinton, Oklahoma

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

PEC STANDARD CONDITIONS

1. **STANDARD OF CARE:** Professional Engineering Consultants, P.A., its officers, directors, employees, agents, shareholders, partners, consultants, sub-consultants, contractor, and sub-contractors (collectively "PEC") shall provide professional services to Client, its officers, directors, employees, agents, owners, members, shareholders, partners, consultants, sub-consultants, contractors, and sub-contractors, (collectively "Client") according to the agreed upon scope of services. 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 time the services are performed, and in the same locality.

2. **USE OF DOCUMENTS:** Drawings, specifications, reports, programs, manuals, cost estimates, or other documents, including documents on electronic media, prepared under this Agreement are instruments of service and as such are only applicable to the subject PROJECT. Use of these documents for any other purpose without written authorization and consent of PEC is prohibited. PEC shall retain ownership thereof.

3. **INSURANCE:** PEC and the 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. If the Client is a design professional, then the Client agrees to maintain Professional Liability Insurance for its negligent acts, errors, or omissions in providing services pursuant to this Agreement. If a project is Design-Build, the Client and all subcontractors providing professional design or other services (e.g., architects, engineers, inspectors) shall maintain professional or similar liability insurance for claims arising from its negligent performance of said services. Proof of insurance shall be provided, upon request, prior to commencement of said services.

4. **NO GUARANTEE:** PEC does not provide a warranty or guarantee, express or implied, for any portion of the scope of services including drawings, specifications, reports, programs, manuals, cost estimates, or other documents of service. PEC does not warrant or guarantee any certification of the project, including any level of LEED certification. Items of beneficial use to the Owner, whether or not included in the contract documents, shall be paid for by the Owner. The provisions of this paragraph shall apply notwithstanding any statement or language contained in any other document or agreement that might be related to the project.

5. **INDEMNIFICATION/HOLD HARMLESS:** PEC agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client and its employees from any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) resulting from PEC's negligent acts, errors, or omissions through services provided pursuant to this Agreement by PEC or anyone for whom PEC is legally liable. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless PEC, its employees and subconsultants from any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) resulting from the negligent acts, errors, or omissions by Client or those contractors, subcontractors, consultants, or anyone for whom Client is legally liable, and arising from the project(s) that is the subject of this agreement. PEC is not obligated to indemnify the Client in any manner whatsoever for the Client's own negligence. If any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) result from the concurrent negligence of PEC and the Client, this indemnification shall only apply to the extent of each party's proportion of the responsibility.

6. **DISPUTES:** Any action or claims arising out of or related to this Agreement or the project that is the subject of this Agreement shall be

governed by Oklahoma law. Good faith negotiation and mediation are express conditions precedent to the filing of any legal action. Mediation shall be conducted in accordance with the latest edition of the Construction Mediation Rules of the American Arbitration Association.

7. **ASSIGNMENT OR SUBLETTING OF CONTRACT:** Client shall not assign, transfer, or sublet any rights, duties, or interests accruing from this Agreement without the prior written consent of PEC. This Agreement shall be binding upon the Client, its successors and assigns.

8. **NON PAYMENT/TERMINATION OF AGREEMENT:** If the Client fails to make payment for services and expenses within 30 days following receipt of an invoice, PEC may, after giving seven days written notice to the Client, without liability for delay charges, suspend services under this Agreement until PEC has been paid in full for all amounts due. Each party to this Agreement reserves the right to terminate the Agreement at any time, without cause, upon 15 days written notice and subject to payment to PEC for the value of services rendered up to the time of termination.

9. **DIFFERING SITE CONDITIONS:** The conditions at the site are the property of the Client/Owner regardless of whether or not they could be identified by an investigation or exploration conducted according to the professional standard of care. A "Differing Site Condition" is a subsurface, hidden, latent, or physical condition at a project site/building not revealed by the site exploration, site investigation, or other information provided to the Client and which cannot be reasonably anticipated. Special risks occur whenever engineering is applied to identifying site/building conditions. Even a comprehensive investigation according to the professional standard of care may not detect all subsurface or site/building conditions. PEC shall not be liable for site/building conditions which could not be identified by such an investigation or exploration. Accordingly, the Owner/Client agrees to indemnify, including all costs and attorney fees, and hold PEC harmless from all claims for Differing Site Conditions, provided PEC performs the services specified in the Contract in a manner reasonably conforming to the terms of the Contract and to the Standard of Care.

10. **EXTRA WORK:** Services not specified in the Scope of Services set forth in this Agreement or due to regulatory changes shall be considered "extra work". No "extra work" will be performed without additional compensation per a supplemental agreement.

11. **FORCE MAJEURE:** The Client shall not hold PEC responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of PEC, or that could not have been reasonably foreseen and prevented including, but not limited to, fire, weather, floods, earthquakes, epidemics, war, riots, terrorism, strikes, and unanticipated site conditions.

12. **AGREEMENT SOLELY FOR PARTIES' BENEFIT:** 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.

13. **LIMITATION OF LIABILITY:** To the fullest extent permitted by law, PEC's total liability to Client is limited to the greater of \$50,000 or two times PEC's fee, for any and all damages or expenses arising out of this Agreement from any cause(s) or under any theory of liability. In no event shall PEC be liable for consequential damages, including, without limitation, loss of use or loss of profits, incurred by Client or its subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.