

April 10, 2013



City of Clinton  
415 Gary Blvd  
Clinton, OK 73601

Attention: Mr. Steve Hewitt, City Manager

Reference: Water Treatment Plant Concept Plan  
PEC Project No. 13K21-6994

Dear Mr. Hewitt:

This letter is written to serve as an agreement between the City of Clinton, Oklahoma, (CLIENT) and Professional Engineering Consultants, P.A. (PEC) to perform professional services to assist the City of Clinton in developing and presenting a conceptual plan to procure and treat additional raw water resources from the Washita River alluvium, hereinafter called the PROJECT.

This project is the first step in the process of designing a new water treatment plant for the City of Clinton. Establishing a reliable and sustainable portfolio of potable water for Clinton means considering several factors during the design of a new water treatment plant, including:

- The amount of available Washita alluvial water
- Quality of the raw water
- Desired quality of the drinking water (level of treatment)
- Cost of the facility and ultimate cost to the customer
- Future expansion capabilities of the proposed water treatment plant
- Viability and long term sustainability of Foss MCD

Specifically, PEC proposes to perform the Scope of Services as outlined in Paragraph A below.

A. Scope of Services:

1. Determine the estimated saturated thickness, yield and available water rights from current available information (exclusionary of a test well) of the Washita River alluvium in the vicinity of Clinton, OK, to be included within the deliverables defined within this document.
2. Review existing water quality data and communications with the CLIENT.
3. Prepare estimated planning capital and operational costs for conveyance and treatment of Washita River alluvium water to supply the City of Clinton. Develop estimated costs for a comprehensive hydrogeologic evaluation of the Washita River alluvium, exploratory wells and permanent public water supply wells.

4. Prepare a conceptual project schedule for the development of the Washita River alluvium water supply.
5. Develop one (1) executive summary and preliminary conceptual cost report to be provided to the CLIENT.
6. Review of current EPA 40 CFR Parts 141 and 142 (dated 03/01/2013) and potential future contaminants contained within the CCL 3.
7. Review of the OAC 252:626 Public Water Supply Construction Standards and how they specifically apply to the CLIENT.
8. Review the proposed treatment process for its ability to meet National Secondary Drinking Water Regulations, specifically focusing on the aesthetic quality of the finished water.
9. Attend one (1) onsite presentation with CLIENT and stakeholders to discuss treatability, current regulations, and emerging regulations that may be associated with the Washita River alluvium. Presentation shall be given to the City Council during normally scheduled monthly meetings. Presentation shall be Microsoft PowerPoint Presentation™ format.
10. Provide up to fifteen (15) copies of the PowerPoint Presentation™, executive summary and preliminary conceptual cost report to the CLIENT.

**B. Responsibility of CLIENT:**

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

1. Provide available data such as distribution system maps, water usage records, test well data, water quality data, construction plans, or other records pertinent to the water supply system.
2. Provide timely review and comments of interim information prepared by PEC for the CLIENT for review.
3. Provide other information requested by PEC to assist in the development of the final deliverables.

**C. Exclusions:**

The following items are specifically excluded from the Scope of Services provided by PEC:

1. Engineering report, surveying, geotechnical, design, bidding and construction phase services.
2. Payment and field work associated with collection of water quality analysis and/or test well drilling.

**D. Payment Provisions:**

PEC proposes to perform the Scope of Services described above at a rate of 3.05 times direct labor cost, plus reimbursable expenses, for a not to exceed (NTE) amount of \$18,000.

Unless otherwise agreed upon, billings will be made monthly based on completion of the items listed above.

Taxes are not included in stated fees. CLIENT shall reimburse PEC for any sales, use and value-added taxes, which apply to these services.

**E. 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 to complete the Scope of Services in

accordance within forty-five (45) business days, exclusive of any delays beyond the control of PEC.

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) days 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 Division Manager/Principal

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

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

Date: 4/10/13

**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.