



August 6, 2021

Mr. Rod Philo  
City of Arkansas City, KS  
2929 N. 2<sup>nd</sup> Street  
Arkansas City, KS 67005

Reference: AGREEMENT for Ark City Water Master Plan  
Arkansas City, Kansas  
PEC Project No. 35-210525-000-0655

Dear Mr. Philo:

Professional Engineering Consultants, P.A. (“PEC”) is pleased to provide professional services to City of Arkansas City (“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 reso

Ive 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.

Mr. Rod Philo  
City of Arkansas City  
Ark City Water Master Plan  
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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.

Nicole D. Franken, P.E.  
Project Manager

NDF:hsr

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By:  \_\_\_\_\_, Signatory

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

Title: Principal, Municipal Division Manager

Date: 8/6/21

ACCEPTED:

CITY OF ARKANSAS CITY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### A. Project Description.

1. The Project shall consist of preparing a Water Distribution System Master Plan (Master Plan). The planning period for the Master Plan shall be 20 years. Tasks required to prepare the Master Plan include the following.
  - a) Collect and review information relating to the Public Water Supply System;
  - b) Defining the water distribution system service area;
  - c) Projecting the water service area growth and water demands within the planning period;
  - d) Preparing a dynamic hydraulic water model of the City's distribution system using the WaterGEMS software;
  - e) Complete field flow testing for water model calibration
  - f) Identifying potential deficiencies within the water distribution system;
  - g) Developing alternatives to address system deficiencies; and,
  - h) Providing recommendations for future improvements

### B. Anticipated Project Schedule.

1. PEC shall commence its services on the Project within 14 days after receiving CLIENT's notice to proceed.
2. PEC and CLIENT anticipate that the draft Master Plan will be completed within 180 days after receiving Notice to Proceed. A detailed schedule will be determined with the CLIENT during the project kickoff meeting.
3. 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. Project Deliverables.

1. This Project Deliverables shall consist of the following sealed by an Engineer licensed in the State of Kansas where applicable:
  - a) Draft Master Plan Report
  - b) Final Master Plan Report

### D. Scope of Services:

1. Project Management:
  - a) Prepare an information request and coordinate information needs and assumptions as required to complete project tasks.
  - b) Conduct project kick-off meeting.
  - c) Conduct a maximum of two project progress meetings and two report review meetings with City Staff/City Commission.
  - d) Prepare meeting agendas and distribute meeting minutes to all attendees.
2. Data Collection:
  - a) Obtain GIS mapping of the existing distribution system from the City and conduct interviews as needed with key staff familiar with the distribution

- system.
- b) Collect water use data including average day use, peak daily use, peak hourly use, and usage information for large water consumers from City staff.
  - c) Obtain design and operations information pertaining to distribution system pumps, storage facilities, control valves, and system controls from the City.
  - d) Review existing studies, water models, master plans, and comprehensive plans to be provided by the City.
  - e) Perform fire hydrant flow testing to collect system flow and pressure data. The ENGINEER will establish field test locations with City input, provide flow testing equipment, perform field testing, and evaluate results. The City shall provide staff to operate valves and inform residents of testing operations prior to and during testing as necessary. ENGINEER plans to provide 2 people to perform flow testing.
3. Projecting Water Demands (20-Year Planning Period):
- a) Evaluate existing land use and determine potential growth areas and projected future service areas based on the City's comprehensive plan. Projections will be established for growth areas that are to be included in the defined service area.
  - b) Review existing water demand data for the system and project the water demand over the 20-year planning period based on the growth areas and comparable population projections for the City. Review the top water users and include analysis of their existing and future use. The water demand data from the North Pressure Zone Pump Station analysis will be utilized and updated for these projections.
4. Dynamic Modeling:
- a) Develop a hydraulic model of the distribution system including the existing system and any future modifications. The model shall include:
  - b) A network of model segments consisting of water lines 4-inches and larger. Additional lines shall only be included as needed to prepare a functioning model.
  - c) The model will not include the raw water system (raw waterlines and wells). Water supply will be modeled at the water treatment plant.
  - d) Water storage facilities, pump data, fire hydrants, valves, and system controls.
  - e) Utilize the field-collected flow testing data and other system information to calibrate the model within reasonable accuracy of the existing system's actual performance.
  - f) Create a scenario within the water model based on current water usage demands. Create two future scenarios - one for each 10-year interval.
  - g) Utilize the water model to analyze the system under current and projected average day, maximum day, and peak hour demands along with a maximum day extended period simulation. Evaluate current and projected available fire flows.
  - h) Evaluate fire hydrant coverage.
  - i) Identify current system deficiencies and future deficiencies based on the projected demands. System storage and pumping will be analyzed for the ability to meet future demand conditions.
5. Distribution System Improvement Alternatives:
- a) Identify alternatives to address deficiencies and provide water distribution service to growth areas.

- b) Alternatives will be developed to a planning level which will indicate general locations and sizes of major water lines, booster pump stations and/or storage requirements. Considerations will be based on cost effectiveness and feasibility of construction.
  - c) The alternatives will be presented to the CLIENT. Information will be revised and refined to incorporate CLIENT's input.
6. Establish Estimated Conceptual Costs:
- a) Determine estimated total project costs for all recommended improvements.
  - b) Determine recommended improvements based on need, feasibility of construction, capital costs, and maintenance costs.
7. Report Preparation and Presentation:
- a) Produce draft report for City review and comment. Address CLIENT's comments for final report.
  - b) Preparation of final report to include a discussion of data collected and field observations, analysis of the existing and future service areas, recommended improvements, cost estimates, and maps showing the general location of current and proposed future water system infrastructure.
  - c) Presentation of the master planning process, findings, and recommendations at one City Commission meeting

**E. Additional Responsibilities of CLIENT:**

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

1. Provide distribution system drawings/files, operational data, and other system information as requested and available in a timely manner.
2. Provide access to system components upon ENGINEER's request.
3. Provide City personnel to review flow testing set-ups, pre-test valve operation, and perform testing with PEC. Testing is expected to take one full day.
4. Review submitted reports and documents in a timely manner.

**F. Additional Services:**

The following services can be provided by PEC at an additional cost by Supplemental Agreement:

1. Design or assistance with implementation of any recommended improvements.
2. Field survey or geotechnical investigations.
3. Evaluation of water rights, the raw water supply system components, and/or the water treatment system.
4. Communication with regulatory agencies on behalf of the City outside of what is noted in the scope.
5. Assisting with preparing a Capital Improvement Plan with the recommended improvements.
6. Conducting a rate study and/or reviewing potential project funding sources for the recommended improvements.



**G. Exclusions:**

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

1. Distribution system water quality evaluation including compliance with regulatory requirements associated with lead and copper, disinfection byproducts, or the Total Coliform Rule.
2. Water quality sampling or testing.

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

1. PEC will invoice CLIENT one time per month for services rendered 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 in the amount of \$43,500.
3. 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.