

STAFF REPORT

DATE: August 31, 2022

TO: City Manager

FROM: Anne Stephens, PE, City Engineer

RE: 2022 Street Repair Construction Observation



BACKGROUND:

PEC has been assisting the City with preparing plans for the 2022 Street Repair project. Due to current workload, City staff does not have the time to dedicate to observing the construction of these street repairs.

DISCUSSION:

Since PEC assisted the City with the plans for the 2022 Street Repair Project, PEC was asked to prepare an agreement for construction observation services. The construction observation will be performed on a part-time basis with observation occurring as a spot check of construction for quality and conformance with City Standard Specifications. This type of construction observation is typical on a project of this scope. PEC will also perform construction administration services, which includes reviewing pay requests and submittals and assisting in answering any questions that arise throughout the construction process.

PEC's fees for construction administration and construction observation for the budgeted \$1.4m project is \$62,500 on an hourly, not to exceed basis. This is less than 5% of the construction cost, which is reasonable for this type of work.

FINANCIAL CONSIDERATIONS: PEC's fees for construction administration and construction observation for the budgeted \$1.4m project is \$62,500 on an hourly, not to exceed basis. This is less than 5% of the construction cost, which is reasonable for this type of work.

POLICY DECISION: In order to ensure proper compliance with bid specifications and work outlined in the project scope, the City believes inspections are needed throughout the project. The City does not have the staff needed to properly inspect the projects and therefore contracts this work with engineering firms. City staff worked with PEC to provide a cost for this work since they assisted us with the design and bidding of the project. Council's decision is whether to continue having such projects inspected and whether to accept PEC's price.

RECOMMENDATION: Staff recommends that Council approve the contract with PEC for construction administration and observation services.

August 30, 2022

Anne Stephens
Public Works Director/City Engineer
City of Bel Aire
7651 E. Central Park Avenue
Bel Aire, Kansas 67226

Reference: AGREEMENT for Bel Aire 2022 Street Maintenance Construction Phase
Bel Aire, Kansas
PEC Project No. 31-210641-004-2564

Dear Ms. Anne Stephens:

Professional Engineering Consultants, P.A. ("PEC") is pleased to provide professional services to the City of Bel Aire ("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 net 30 days from invoice date. Unpaid balances 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.

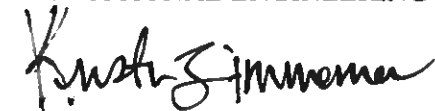
Anne Stephens
City of Bel Aire
Street Maintenance Construction Phase
August 30, 2022
Page 5

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,

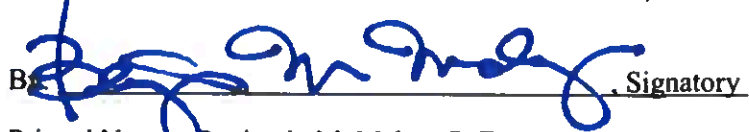
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.



Kristen Zimmerman, AICP
Community and Regional Planner

BMM:mmm

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.


By: _____, Signatory

Printed Name: Benjamin M. Mabry, P. E.

Title: Principal / Municipal Transportation Division Manager

Date: August 30, 2022

ACCEPTED:

CITY OF BEL AIRE

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

A. Project Description:

1. Provide Construction Phase Services (Construction Administration and Construction Inspection Services) for the street maintenance 2022 project located in Bel Aire, Kansas and hereinafter referred to as PROJECT.

B. Anticipated Project Schedule:

1. PEC shall commence its services on the Project within fourteen (14) days after receiving CLIENT's notice to proceed.
2. Construction duration is anticipated to be 36 weeks; PEC anticipates the notice to proceed for construction to be issued approximately October 21, 2022 and for the PROJECT to be complete by June 30, 2023. The inspection services fee will be based on 36 weeks.
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.
4. CLIENT acknowledges that PEC cannot inspect PROJECT for compliance of specifications and intent of the design for work being installed when resident project representative is not on site.

C. Scope of Services:

1. Construction Administration Services:

During the construction phase PEC shall provide construction administration services for the PROJECT, when requested by the CLIENT. The scope of services will be as follows:

- a) Attend and assist in facilitating the preconstruction conference.
- b) Issue contract documents and review bonds and insurance submitted by the PROJECT awarded contractor.
- c) Review Contractor's shop drawings and material test certifications for compliance with plans and specifications.
- d) Make a maximum of five (5) visits to the PROJECT site to determine Contractor's progress and general character of the work, upon written request of CLIENT.
- e) Consult with the inspector regarding interpretations or clarifications of the plans and specifications.
- f) Provide decisions in accordance with the contract documents on questions regarding the PROJECT.
- g) Review materials test reports as submitted by the City Inspector.
- h) Prepare Change Orders covering modifications or revisions necessitated by field conditions.
- i) Conduct a final on-site PROJECT review.
- j) Issue Certificate of Substantial Completion when each separate part of the PROJECT has been completed.

2. Construction Inspection Services:

- a) PEC will provide construction inspection services as noted in this agreement and shall apply to all services provided throughout the construction of the PROJECT on a part time / spot check basis unless a separate agreement for additional services is executed.
- b) Provide a resident project representative (RPR) to perform construction inspection and documentation. The RPR will spot check the construction activities to determine general compliance with the intent of the design; and provide a brief weekly summary report noting the spot check inspections completed through the week.

D. **Additional Services:**

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

1. Field Survey Services.
2. Production of record drawings, as-builts, or release of electronic files.
3. Additional services associated with an expansion of the PROJECT or increase in PROJECT size and construction cost.
4. Attendance at public meetings.
5. Plan revisions, as necessary, to reduce the cost of construction after issue of CD's. (Typically referred to "Value Engineering" or "VE".)
6. Alternate designs not specifically listed in the Scope of Services.
7. Construction Testing and Construction Staking.

E. **Exclusions:**

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

1. Additional services not included in the above scope of services.
2. Entrance into a permit-required or non-permit required Confined Space.
3. Environmental site assessments.
4. Observation of contractor activities other than on a spot check inspection basis between 7:00AM and 6:00PM Monday through Friday.
5. Work on Saturdays, Sundays and City holidays. If the contractor is granted permission to work on these days, staff may be available for observation but this work or any work beyond the spot check inspections described above is eligible to be considered additional services reimbursed at 1.5 times the PEC Standard Rates.

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 standard hourly basis, at the rates established on the attached Rate Schedule, estimated as outlined below, plus Reimbursable Expenses.

Services	Fees
Construction Administration Services	\$ 7,500.00
Construction Inspection Services	\$ 55,000.00
TOTAL	\$ 62,500.00

3. The Construction Inspection Services Fee is based on the anticipated construction duration of thirty-six (36) weeks that will be provided for the contractor to reach completion for the PROJECT. Inspection time will be on a part time / spot check basis and is anticipated on Monday through Friday for ten (10) regular hours per week.
4. If more than 36 weeks elapse from the Construction Notice to Proceed to completion of the PROJECT, then a supplemental agreement shall be negotiated and executed for any additional work, and PEC will be reimbursed at the current PEC Standard Hourly Rates for any additional inspection hours.
5. Though not anticipated, any labor more than 8 hours per day Monday through Friday, shall be reimbursed at 1.5 times the Standard Rate for the Construction Observer (including any time worked on Saturdays).
6. 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.