

January 23, 2024

Mr. Ty Lasher, City Manager
City of Bel Aire
7651 E Central Park Ave
Bel Aire, KS 67226

Reference: MASTER SERVICES AGREEMENT
PEC Project No. 36-237363-000-2564

Dear Mr. Lasher:

Professional Engineering Consultants, P.A. ("PEC") is pleased to provide professional services to City of Bel Aire ("Client") in accordance with this Master Services Agreement ("Agreement"). The specific services to be performed by PEC (the "Services") for any project subject to this Agreement (each a "Project") will be described in a written work order in the form of Exhibit A to this Agreement ("Work Order"). The parties' rights and obligations under this Agreement shall also be governed by the following terms and conditions.

Term; Conflicts. This Agreement will commence on the effective date and continue in effect for a period of two (2) years with four (4), one-year renewals for a total of six (6) years. Thereafter, it shall automatically renew for successive 1-year periods unless terminated by either party upon 3 calendar days' written notice prior to the end of the then current term, or terminated earlier for cause. The parties agree that this Agreement, by itself, does not guarantee any future work, and neither party shall be obligated to execute any Work Order. With respect to any Work Order entered into prior to termination (except termination for cause), this Agreement shall continue in effect for the remaining term of the Work Order.

Each executed Work Order shall be incorporated into this Agreement reference. In the event of a conflict between this Agreement and a Work Order, the Work Order shall govern.

Client Responsibilities. To enable PEC to perform the Services, Client shall, at its sole expense: (1) provide all information and documentation regarding Client's requirements as necessary for the orderly progress of the Services; (2) designate a person to act as Client's representative with authority to transmit instructions, receive instructions and information, and interpret and define Client's 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, leveling the site, and providing access roadways to the site as needed; (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 Project; 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 to the Project or damage to Client or any third-party resulting from such suspension.

Work Product. Full and final payment by the Owner to Consultant shall vest in the Owner, title to all drawings, sketches, studies, analyses, reports, models, and other paper, documents, computer files, and material produced by Consultant exclusively for the project services performed pursuant to this Agreement up to the time of such payments, and the right to use the same without other or further compensation, provided the Owner agrees not to use Consultant-generated documents for projects other than the project for which the documents were prepared by the Consultant, or for future modifications to this project, without the Consultant's express written permission or project specific modification by Consultant. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by the Consultant will be at the Owner's sole risk and without liability to the Consultant or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. The Owner shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the Consultant from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution. Notwithstanding any provision to the contrary, Consultant shall retain ownership of its (i) working papers, (ii) preexisting materials, software and associated source code, trade secrets, and intellectual property, (iii) general skills, (iv) know-how, and (v) process.

Insurance. Client and PEC 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.

Change Orders. Changes in the Services may be accomplished after execution of this Agreement or any Work Order only by a written change order signed by Client and PEC. 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 in performance of the Services 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 of the character provided for in the Project or Work Order, 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 a Project site may not become evident until construction commences. PEC assumes no liability for site variations differing from those sampled, or concealed or unknown 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 claims, including 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/or redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant construction documents, and costs for others 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 owner, 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 Client and PEC have the right to terminate this Agreement for cause upon seven calendar days' written notice to the other party. In the event the PEC terminates this Agreement for 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 and damages 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 any 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, Client and PEC agree to submit the claim (except PEC claims for nonpayment) to mediation prior to the initiation of any binding dispute resolution proceedings. 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, Client and PEC 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. Client and PEC 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 conflicts 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 the applicable Work Order. 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. Neither Client nor PEC will assign any rights, duties, or interests accruing from this Agreement without the prior written consent of the other. This Agreement will be binding upon Client, PEC, and their successors and assigns.

No Third-Party Beneficiaries. This Agreement is solely for the benefit of Client and PEC. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of Client or PEC 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's obligations under any separate agreement with any third-party including, without limitation, any agreement between Client and a Project owner.

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.

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

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.

This Agreement is effective upon the later of the two dates below.

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: _____

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

Title: Senior Vice President of Government Markets

Date: _____

CITY OF BEL AIRE, KANSAS

By: _____

Printed Name: _____

Title: _____

Date: _____