

CITY COMMISSION SPECIAL MEETING AGENDA

City Hall Commission Chambers

Thursday, May 19, 2016

5:00 p.m.

MEETING #5037

CALL TO ORDER

ROLL CALL

NEW BUSINESS

1. Discussion of Bio Gas Project and Approval of Bio Gas Project Agreements

ADJOURNMENT

Memorandum

*To: City Manager
City Commissioners*

*From: Ray Slattery, P.E.
Director of Engineering Services*

Date: May 18, 2016

*Subject: Consulting Agreement for Bio-Gas Upgrading
Facility Design, SS 1601.*

Agenda Item: New Business

Recommendation: Approve Consulting Services Agreement with PEC Consultants pending review by City Attorney.

Background: As you are well aware of, the city has been looking at utilizing the raw gas generated at the South WWTP in some fashion for a number of years now. Most recently the city was working with a firm who would provide a "Turn Key" upgrading of the raw gas. Due to the inability of providing some guarantees, that project has been terminated. The City then started looking at the project on their own. We are now to the point that we are comfortable to start design of the Up-Grading Facility so that the up-graded bio-gas can be injected into a nearby natural gas line and the bio-gas and environmental credits sold on the open market. PEC is very familiar with the City's waste water system. They designed the expansion project of the South WWTP along with the Reclamation Facility. PEC has a good working relationship with city staff, and KDHE.

Justification: The well needs to be replaced so that the water rights associated with it can be utilized. Depending upon the year the City needs the ability to rotate its water pumping to meet the needs of its citizens. PEC and Layne will provide the necessary services to insure that the design meets all the requirements of DWR and KDHE.

Financial Considerations: The contract with PEC is for \$346,650.00. Funding of this project will be from the low interest loan the City has with KDHE. This loan was used to construct the Reclamation Plant and associated projects.

Purpose/Mission: The completion of this project will enable the City to sell the upgraded bio-gas generated at the South WWTP for another income source for the City.

Legal Considerations: The City is entering into a contract with PEC Consultants and is bound by the provisions of this contract.

Attachments: The Consulting Services Agreement with PEC Consultants.

AGREEMENT

for

ENGINEERING SERVICES

between

CITY OF DODGE CITY, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

303 SOUTH TOPEKA STREET

WICHITA, SEDGWICK, KANSAS

This Agreement, made at Dodge City, Kansas, this _____ day of _____, 2016, by and between the City of Dodge City, hereinafter called the "OWNER", and Professional Engineering Consultants, P.A., Wichita, Sedgwick County, Kansas, hereinafter called the "ENGINEER".

WITNESSETH: That whereas the OWNER intends to construct bio-gas system improvements, hereinafter called the PROJECT, and

WHEREAS it is the desire of both parties that the ENGINEER furnish engineering and technical services in conjunction with the PROJECT; the improvements being more specifically described as a bio-gas processing system at the south wastewater treatment facility and,

WHEREAS all of the aforesaid is located within the corporate limits of the the Dodge City, Ford County, Kansas, and

WHEREAS the OWNER is authorized by law to retain a consulting engineer to assist in the preparation of plans, specifications, and studies for the PROJECT, as well as such other tasks as may be requested by the OWNER;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth for the completion of the PROJECT, the parties hereto do mutually agree as follows:

ARTICLE I. SCOPE OF SERVICES

The Scope of Services to be performed by the ENGINEER shall be as set forth in EXHIBIT A as attached.

ARTICLE II. THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material, and transportation to perform the tasks as outlined in the Scope of Services.
- B. To make available during regular office hours at the Wichita office all calculations, sketches, and drawings such as the OWNER may wish to examine periodically during performance of the Agreement.
- C. Where payment is based on other than a lump sum amount, to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such material available at ENGINEER'S office at reasonable times during the contract period and for three years from the date of final payment under the contract for inspection by the OWNER or OWNER'S authorized representatives.
- D. To comply with and/or to the following additional provisions with respect to his performance and obligation under this agreement:
 - 1. The ENGINEER shall observe the provisions of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act and the applicable provisions of the American with Disabilities Act, and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry.

2. In all solicitations or advertisements for employees, the ENGINEER shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Commission on Civil Rights.
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- E. To accept compensation for the services herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in conjunction with the PROJECT.
 - F. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with paragraph D, Exhibit A; except that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the OWNER or others, or for other unavoidable delays beyond the control of the ENGINEER.
 - G. To indemnify and hold harmless the OWNER, its employees and agents from and against claims, damages, losses, and expenses arising out of or resulting from the performance of the services of ENGINEER, but only to the extent such claims, damages, losses, or expenses are caused by the negligent act, error, or omission of ENGINEER or any person or organization for whom ENGINEER is legally liable. Unless otherwise stated herein, in the event such claims, damages, losses, or expenses are caused by the joint or concurrent negligence of the OWNER and ENGINEER and/or others, such liability shall be borne by each party in proportion to its own negligence.
 - H. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from negligent errors, omissions and acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this Agreement and for which the ENGINEER is legally liable. Such policy of insurance shall be in an

amount not less than \$ 500,000 subject to deductible. In addition, a Worker's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Worker's Compensation Law. The liability limit shall not be less than:

Worker's Compensation - Statutory
Employer's Liability - \$500,000.00 each accident
\$500,000.00 disease, each employee
\$500,000.00 disease, policy limit

Further, a commercial general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER's employees) or damage to property of the OWNER or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of ENGINEER services under this Agreement. The liability limit shall not be less than \$500,000 per occurrence for bodily injury, death and property damage.

Satisfactory Certificates of Insurance shall be filed with the OWNER within fourteen (14) days of written request by the OWNER. The ENGINEER shall furnish the OWNER certificates of insurance that relate to the insurance policies that must be maintained hereunder. In addition, insurance policies applicable hereto shall contain a provision that provides that the OWNER shall be given thirty (30) days written notice by the Insurance Company before such policy is substantially changed or canceled.

- I. To deliver to the OWNER tracings of the completed plans, and copies of electronic data files as may be requested, and other pertinent drawings and documents for

the PROJECT, all such documents to become the property of the OWNER PROVIDED, however, that all documents designated to become property of the OWNER shall be understood to be instruments of service in respect to this PROJECT and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER whether or not the PROJECT is completed). Use of these documents for any other purpose without written authorization and consent of PEC is prohibited.

- J. To attend meetings with the OWNER and other local, state and federal agencies as defined in the Scope of Work.
- K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed and to advise the OWNER in writing of the person(s) so designated.
- L. The ENGINEER hereby certifies that:
 - 1. It has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above ENGINEER) to solicit or secure this Agreement.
 - 2. It has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement.
 - 3. It has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the above ENGINEER) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement.

ARTICLE III. THE OWNER AGREES

- A. To furnish the ENGINEER any information currently available relative to existing and proposed improvements in the PROJECT area which may be pertinent to the PROJECT. Such information may include, soil borings and geotechnical reports about subsurface conditions, hazardous conditions and/or history of site contamination, underground utilities, etc.
- B. To provide right of entry for the ENGINEER's personnel in performing field surveys and inspections.
- C. To promptly review all preliminary study reports, drawings, recommendations, contract documents and other data submitted by the ENGINEER and to advise the ENGINEER of any desired corrections, modifications or additions thereto.
- D. To pay the ENGINEER for its services in accordance with the requirements of this Agreement.

ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until OWNER has paid in full all amounts due for services, expenses, and other related charges. OWNER waives any and all claims against ENGINEER for any such suspension.

If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on ENGINEER's services or compensation under this Agreement, then the ENGINEER may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be

applied. OWNER shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which ENGINEER is entitled under the terms of Exhibit B.

E. To pay the ENGINEER for authorized additional work.

ARTICLE IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for performance of the design services required by this Agreement shall be at the lump sum prices listed below for each phase.

Phase 1 - 30% Design Services	\$ 86,300.00
Phase 2 - 100% Design Services	\$ 40,000.00
Phase 3 - Construction Services	\$220,350.00

B. If additional or reduced services should be necessary by virtue of a change in the scope of work for the PROJECT, the ENGINEER will be given written notice by the OWNER, along with a request for an estimate of the actual costs plus a fee for profit for performance of such services; but no additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

ARTICLE V. IT IS FURTHER MUTUALLY AGREED BY THE OWNER AND THE ENGINEER.

A. That the right is reserved to the OWNER to terminate this Agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER's inability to proceed with the work, or because the services of the ENGINEER breach Article V, paragraph I.; PROVIDED, however, that in any case the ENGINEER shall be paid the

reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Agreement, but in no case shall payment be more than the ENGINEER's actual costs plus a reasonable sum for profit.

- B. That the pertinent drawings and documents pertaining to the PROJECT shall become the property of the OWNER upon completion or termination of the ENGINEER's service in accordance with this Agreement. ENGINEER shall be permitted to reuse standard details, designs and specifications without further consent of OWNER.

OWNER shall indemnify ENGINEER from all claims, damages, or costs relating to reuse, completion or modification of such documents by OWNER, including allegations of ENGINEER's own negligence. ENGINEER's seal and name shall not be reproduced on such documents if reused by OWNER for any purpose. ENGINEER shall have no liability for documents which are incomplete due to a termination or suspension of services.

Electronic drawings shall be delivered to the OWNER in the CADD file format, drafting standards and layering conventions used by the ENGINEER to produce the contract drawings.

Further, once delivered, the ENGINEER shall no longer be responsible for the contents of electronic files, their compatibility with the OWNER's CADD system or the length of life of a file. The OWNER will have an acceptance period of 45 days following delivery of electronic data within which to review and accept the files. During this period the ENGINEER will correct any deficiencies as a part of this Agreement. 'Deficiency' shall not apply to the development of software of any kind as a corrective measure.

- C. That the services to be performed by the ENGINEER under the terms of this Agreement are personal and cannot be assigned, sublet or transferred by either party without prior written consent of the other party.
- D. That in the event of unavoidable delays in the progress of the work contemplated by this Agreement, reasonable extensions in the time allotted for the work will be granted by the OWNER, provided, however, that the ENGINEER shall request such extensions in writing giving the reasons therefore.
- E. That neither party shall hold the other responsible for damages or for delays in performance caused by acts of God or other acts or circumstances beyond the control of the other party or that could not have been reasonably foreseen and prevented. For this purpose, such acts or circumstances shall include, but not be limited to, unusual weather affecting performance, floods, epidemics, war, riots, strikes, lockouts, or other industrial disturbances, protest demonstrations, unanticipated site conditions, and inability, with reasonable diligence, to supply personnel, equipment, or material for the services. Should such acts or circumstances occur, both parties shall use their best efforts to overcome the difficulties arising and to resume as soon as reasonably possible the normal pursuit of the services.
- F. That this Agreement and all contracts entered into under the provisions of the Agreement shall be binding upon the Parties hereto and their successors and assigns.
- G. That the rights and remedies of the OWNER and ENGINEER provided for under this Agreement are in addition to any other rights and remedies provided by law.

- H. That it is not intended by any of the provisions of any part of this Agreement to create the public or any contractor, subcontractor or surety a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- I. That services performed by the ENGINEER under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession currently practicing in the same locality under similar conditions. No other representations, expressed or implied, and no **warranty or guarantee** is included in this Agreement, or in any report, opinion, document, certification or otherwise.
- J. 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 Kansas 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.
- K. That should the OWNER at any time be unable to appropriate sufficient funds for the work covered by this Agreement, for whatever reason, the ENGINEER shall reserve the right to cease work on the PROJECT until sufficient monies are available, without liability for delay.
- L. That authorization for any appropriate Extra Work under the terms of this Agreement shall be evidenced by the OWNER in writing. No extra work shall be compensated without written consent from the OWNER.

At the discretion of the OWNER, and in accordance with the terms of this Agreement, Extra Work will usually be of limited extent and may consist of, but is not necessarily limited to:

1. The introduction of new items of work beyond the stated scope of the Agreement.
 2. Redesign and/or detailing based on changes in law, or changes of concept after prior approval and authorization to proceed, and causing appreciable loss of work accomplished.
- M. That since the ENGINEER has no control over the cost of labor, material or equipment, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, the estimates of construction costs provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's judgment as a design professional familiar with the construction industry, but ENGINEER cannot and does not guarantee that the bids or the project construction costs will not vary from the cost estimates prepared by ENGINEER. If OWNER desires greater assurance of probable cost, it shall retain a separate cost consultant or contractor.
- N. That hazardous materials may exist where there is no reason to believe they could or should be present. In this event, the ENGINEER agrees to notify the OWNER as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The OWNER waives any claim against the ENGINEER and agrees to indemnify, defend and hold the ENGINEER harmless from any claim or liability for injury or loss arising from unanticipated hazardous materials or suspected hazardous materials. The OWNER also agrees to compensate the ENGINEER for any time spent and expenses incurred by the ENGINEER in defense of any such claim, with such compensation to be based upon the ENGINEER's prevailing fee schedule and expense reimbursement policy.

- O. The conditions at the site are the property of the 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 OWNER 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. ENGINEER shall not be liable for site/building conditions which could not be identified by such an investigation or exploration. Accordingly, the OWNER agrees to indemnify, including all costs and attorney fees, and hold ENGINEER harmless from all claims for Differing Site Conditions, provided ENGINEER performs the services specified in the Contract in a manner reasonably conforming to the terms of the Contract and to the Standard of Care.
- P. This Agreement is solely for the benefit of ENGINEER and OWNER. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of ENGINEER or OWNER in favor of such third parties.

IN WITNESS THEREOF, the Parties hereto have affixed their hand and seals at Dodge City, Ford County, Kansas on the date first written above.

OWNER

CITY OF DODGE CITY

By: _____

Title: _____

ATTEST

Sarah C. Unruh, P.E.

ENGINEER

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: _____

Ethan J.L. Edwards, P.E.
Water & Wastewater Division Manager

WITNESS

SCOPE OF SERVICES

The ENGINEER agrees to furnish and perform the various engineering and technical services for the PROJECT in accordance with the following provisions and the requirements of the City of Dodge City.

A. 30% DESIGN SERVICES

1. Conduct a kick-off meeting to finalize scope and schedule.
2. Prepare a data request for any needed system information, operational data, or other data needed to complete the design.
3. Site survey to include the proposed location for the bio-gas conditioning equipment and the proposed piping alignment to the gas discharge point.
4. Geotechnical investigations to include two soil borings, one at the bio-gas equipment location and one along the proposed pipeline alignment.
5. Work with Guild Associates, Inc. to establish the recommended equipment for the project installation.
6. Preparation of preliminary concept plans for CLIENT review to include equipment location, equipment sizing, pipe sizing and alignment, and electrical service.
7. Review preliminary concept plans with the CLIENT in an on-site meeting.
8. Prepare 30% design plans and specifications for the purpose of obtaining a Guaranteed Maximum Price (GMP) from contractors. Prepare a 30% cost estimate.
9. Determine permits needed from local, state, and federal entities for the project.
10. Assist the CLIENT in the development of a Request for Proposals (RFP) to solicit GMPs from contractors.
11. Review received RFP responses and make a recommendation to the CLIENT for award.

B. 100% DESIGN SERVICES

1. Conduct 4 design meetings to achieve 100% plans and specifications to include process equipment, gas piping and connections, structural equipment pads, electrical power supply and connections, instrumentation, and controls.
2. Prepare permitting as required for CLIENT completion and submission.

C. CONSTRUCTION SERVICES

1. Review contractor submittals, pay applications, and requests for information (RFIs).
2. Perform full-time onsite inspection for a total of 6 months. Onsite inspection services to include daily reports of activities and construction photographs.
3. Project close-out to include a final inspection and preparation of record drawings.

D. TIME OF PERFORMANCE

The ENGINEER shall commence work on the PROJECT within 10 days following authorization by the OWNER to proceed and shall deliver the 30% plans for GMP determination to the OWNER within 60 days; except that the ENGINEER shall not be responsible or held liable for delays occasioned by the action or inaction of the OWNER or other agencies.

E. EXCLUSIONS

The following tasks, or design elements, are specifically excluded from the Scope of Services intended herein:

1. Special inspection services are not included in the Sope of Work, which may be required by building codes, building officials, or designers. Special inspections are a specific set of requirements that are generally not covered under standard inspection services. Special inspections are usually required for structural

elements of the project, but may include other design disciplines and testing agencies. Any special inspection services required will be covered under a separate or supplemental agreement.

2. Studies or design for any other improvements at the wastewater treatment facility.
3. Improvements to the gas conveyance system beyond the discharge connection point.

DRAFT



2016 RATE SCHEDULE**
ATTACHMENT A

<u>TITLE</u>	<u>HOURLY RATE *</u>
Principal Engineer 5	\$155.00
Principal Engineer 4	\$150.00
Principal Engineer 3	\$145.00
Principal Engineer 2	\$140.00
Principal Engineer 1	\$130.00
Project Manager 8	\$160.00
Project Manager 7	\$155.00
Project Manager 6	\$145.00
Project Manager 5	\$135.00
Project Manager 4	\$125.00
Project Engineer 6	\$125.00
Project Engineer 5	\$115.00
Project Engineer 4	\$105.00
Project Engineer 3	\$100.00
Project Engineer 2	\$90.00
Design Engineer 4	\$95.00
Design Engineer 3	\$85.00
Design Engineer 2	\$80.00
Landscape Arch. 4	\$125.00
Landscape Arch. 3	\$95.00
Land Use Planner 3	\$120.00
Land Use Planner 2	\$100.00
Airport Planner 4	\$140.00
Design Technician Supervisor 6	\$130.00
Design Technician Supervisor 5	\$120.00
Design Technician Supervisor 4	\$110.00
Design Technician Supervisor 3	\$90.00
Design Technician Supervisor 2	\$70.00
Design Technician 6	\$105.00
Design Technician 5	\$95.00
Design Technician 4	\$80.00
Design Technician 3	\$65.00
Design Technician 2	\$55.00
Drafter/CAD Operator 4	\$70.00
Drafter/CAD Operator 3	\$65.00
Drafter/CAD Operator 2	\$50.00
Balance Technician Supervisor 3	\$95.00
Balance Technician 4	\$90.00
Balance Technician 3	\$75.00
Balance Technician 2	\$65.00
Balance Technician 1	\$55.00
Land Surveyor	\$100.00
Party Chief	\$85.00
Survey Aid	\$65.00
Field Engineer 5	\$155.00
Field Engineer 4	\$135.00
Field Engineer 3	\$110.00
Field Engineer 2	\$100.00



2016 RATE SCHEDULE
ATTACHMENT A
Page 2

<u>TITLE</u>	<u>HOURLY RATE *</u>
Inspector Supervisor 3.....	\$95.00
Inspector 6.....	\$90.00
Inspector 5.....	\$80.00
Inspector 4.....	\$75.00
Inspector 3.....	\$70.00
Lab Technician Supervisor 4.....	\$95.00
Lab Technician Supervisor 3.....	\$90.00
Lab Technician 4.....	\$70.00
Lab Technician 3.....	\$65.00
Lab Technician 2.....	\$55.00
Lab Technician 1.....	\$50.00
Administrative Assistant Supervisor 4.....	\$70.00
Administrative Assistant Supervisor 2.....	\$65.00
Administrative Assistant 3.....	\$60.00
Clerk Typist 2.....	\$50.00
Clerk Typist 1.....	\$45.00
Computer Programmer.....	\$85.00
CAD Assistant 1.....	\$35.00
Technical Writer 4.....	\$85.00
Technical Writer 3.....	\$70.00
Technical Writer 2.....	\$65.00
Public Relations 1.....	\$95.00
Computer/CAD.....	\$18.00
Infrared Camera.....	\$50.00
Structural Testing Equipment.....	\$50.00
*Premium time for all non-salaried personnel	1.5 multiplier

REIMBURSABLES:

Outside Consultants.....	Cost plus 10%
Reproduction & Photography.....	Cost plus 10%
Equipment Rental.....	Cost plus 10%
Material.....	Cost plus 10%
Vehicle Mileage.....	\$0.54/Mile
ATV.....	\$20.00/Hour
GPS.....	\$50.00/Hour
3D Laser Scanner.....	\$150.00/Hour
Robotic Total Station.....	\$50.00/Hour
Car Rental and Fuel.....	Cost
Per Diem.....	\$35.00/Day
Telephone (Long Distance).....	No Charge
Postage (Regular Mail).....	No Charge
Deliveries and Overnight Mail.....	Cost plus 10%
Travel, Hotel, Meals, and Subsistence.....	Cost
Filing Fees.....	Cost

**The rates shown above are effective for services through December 31, 2016, and are subject to revision thereafter.