

- A. **CALL TO ORDER/ROLL CALL**
__Garretson __Schmidt __Nisly __Brislin __Fairbanks __Scofield

- B. **PLEDGE OF ALLEGIANCE**
- C. **APPROVAL OF AGENDA (ADDITIONS/DELETIONS)**
- D. **CITIZEN COMMENTS**
- E. **HEARINGS, PRESENTATIONS, PROCLAMATIONS & RECOGNITIONS**
- F. **CONSENT AGENDA**
 - 1. Approval of Minutes - Regular Council Meeting, June 12, 2023
 - 2. Approval of Invoices

Motion _____ Second _____ Vote _____

- G. **ACTION ITEMS**
 - 1. WWTF Phosphorous System

Motion _____ Second _____ Vote _____

- H. **DISCUSSION ITEMS**
- I. **CITY ADMINISTRATOR'S REPORT**
- J. **GOVERNING BODY COMMENTS**
- K. **EXECUTIVE SESSION**
- L. **ADJOURNMENT**

SUBMITTED BY: Jeff Schenk, City Administrator

MEETING DATE: June 26, 2023

AGENDA ITEM: Consent Agenda

BACKGROUND:

Consent agendas are designed to take routine business items, non-controversial items, and other matters where a consensus has been reached and combine them into one single motion and vote.

DESCRIPTION:

Items on the consent agenda should not be discussed or debated by the governing body. Any member of the governing body may elect to pull an item from the consent agenda for a separate vote.

PROPOSED ITEMS:

- Approval of Minutes from the following meetings:
 - June 12, 2023, Regular Council Meeting
- Approval of Invoices

RECOMMENDATION:

Motion to approve the consent agenda as presented.

ATTACHEMENTS:

Exhibit A - Minutes from June 12, 2023, Regular Council Meeting

Exhibit B - AP Invoices

**Present: Mayor Garretson, Councilmen: Schmidt, Nisly, Fairbanks, Scofield,
Police Chief Darrin Pickering, Fire Chief Greg Henke, City Superintendent Ronnie
Pederson, City Administrators Jeff Schenk and Joseph Turner, City Attorney Mark
Tremaine**

A. CALL TO ORDER/ROLL CALL

_X_Garretson _X_Schmidt _X_Nisly __VACANT _X_Fairbanks _X_Scofield

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA (ADDITIONS/DELETIONS)

Added 5 agenda items to section G

D. CITIZEN COMMENTS – No Citizen Comments

E. HEARINGS, PRESENTATIONS, PROCLAMATIONS & RECOGNITIONS

F. CONSENT AGENDA

1. Approval of Minutes – Special Council Meeting, May 18, 2023
2. Approval of Minutes – Regular Council Meeting, May 22, 2023
3. Approval of Minutes – Special Council Meeting, June 2, 2023
4. Approval of Invoices

Motion: Scofield

Second: Nisly

Vote: 4-0

G. ACTION ITEMS

1. Appointment of Dina Brislin to City Council - followed by Oath

Motion: Nisly

Second: Scofield

Vote: 4-0

2. Resolution No. 23-01 Personnel Policy Amendment – increased vacation time and buy back

Motion: Fairbanks

Second: Nisly

Vote: 5-0

Agenda Item Additions

ACTION ITEMS

- G3. Approval to add City Administrator Jeff Schenk as an authorized signer on all City bank accounts at Farmers Bank & Trust, Simmons Bank, and all certificates of deposit.

Motion: Nisly

Second: Schmidt

Vote: 5-0

- G4. Approval to remove City Administrator Joseph Turner as an authorized signer on all City bank accounts at Farmers Bank & Trust, Simmons Bank, and all certificates of deposit no later than July 14, 2023.

Motion: Nisly

Second: Scofield

Vote: 5-0

- G5. Approval to transfer up to \$46,600 from the water utility to the general fund representing an internal franchise fee charge of \$38,000 and an employee benefits reimbursement of \$8,600.
Schmidt asked for clarity regarding this transfer and Mr. Turner explained it was 5% sales charges and previously approved in the 2022 budget.

Motion: Nisly

Second: Schmidt

Vote: 5-0

- G6. Approval to transfer up to \$67,000 from the sewer utility to the general fund representing an internal franchise fee charge of \$59,000 and an employee benefits reimbursement of \$8,000.

Motion: Schmidt

Second: Fairbanks

Vote: 5-0

- G7. Approval to transfer up to \$500,000 from the general fund to capital improvement reserve fund.
Mr. Turner explained a revised budget with 84% coverage over the course of the year, which leaves the city in positive financial standing. Mr. Turner also expressed concern about underestimating the cost of equipment and facility improvements.

Motion: Schmidt

Second: Nisly

Vote: 5-0

H. **DISCUSSION ITEMS**

1. Professional Services Contracts

City Administrator Jeff Schenk stated the city would be cancelling the contract with PEC (Professional Engineering Consultants) due to antiquated verbiage. He will suggest separate contracts for engineering and zoning moving forward. Mr. Schenk will meet with PEC soon to discuss such contracts. The City Council agreed with this action.

I. **CITY ADMINISTRATOR'S REPORT**

Jeff Schenk met with department heads and toured facilities. He will be conducting a facilities study to determine where improvements need to be made.

J. **GOVERNING BODY COMMENTS**

A discussion took place regarding street signs and how/when they will be replaced. City Superintendent Ronnie Pederson stated they have replaced all the street signs they could with remaining stock. Public Works is completing their GIS field mapping online and collecting data to determine upcoming street sign needs. Estimates for replacing street signs will be conducted. It was questioned as to whether or not to change the color from green. It was also suggested to reach out to Graphic Impressions here in town.

Police Chief Darrin Pickering discussed the feral cat issue within the city and several complaints that have been made as to how to rectify the situation. He explained the city has a contract with Prairie Vista for capturing, neutering/spaying, boarding, which the city is responsible for.

Councilman Fairbanks stated he would speak with Kathy from the Hutchinson Street Cat Society and ask her to speak at our meeting June 26, 2023, if available.

K. **EXECUTIVE SESSION** – no executive session was held

L. **ADJOURNMENT**

Scofield motioned to adjourn the meeting at 6:36 p.m.

Motion: Scofield

Second: Nisly

Vote: 5-0

(Attest): *Michele Nightingale*
Michele Nightingale, City Clerk

INVOICES PAID (6/8/2023 thru 6/21/2023)

Gen Gov	Description	Vendor	Inv. Amt	Ck Date
101-101-6000	June Gas Services	Ks Gas	\$48.69	6/21/2023
101-101-6000	May Electric	Evergy	\$268.29	6/13/2023
101-101-6000	Cable Service	COX	\$16.78	6/13/2023
101-101-6000	Monthly Voice Services	Vaspian	\$116.70	6/21/2023
101-101-6002	July Premiums	Freedom Claims	\$5,299.90	6/22/2023
101-101-6002	Janitorial Srvices	Fresh Co	\$150.00	6/13/2023
101-101-6002	PlazaGo CMB Renewal License Fee	KS Dept of Rev ABC Div.	\$25.00	6/13/2023
101-101-6002	Monthly Comp Support	Leading Edge	\$145.72	6/21/2023
101-101-6002	Admin License - Schenk	Leading Edge	\$67.50	6/21/2023
101-101-6004	Postage Meter Lease	Pitney Bowes	\$59.37	6/13/2023
101-101-6004	UPS/Surge Protector Replacement	Leading Edge	\$79.99	6/21/2023
101-101-7000	Office Supplies	Office Plus	\$139.47	6/13/2023

\$6,417.41

Police	Description	Vendor	Inv. Amt	Ck Date
101-102-5001	June Premiums	BCBS	\$5,439.01	6/22/2023
101-102-5001	June Vision Ins.	VCD	\$256.72	6/22/2023
101-102-6000	May Electric	Evergy	\$430.00	6/13/2023
101-102-6000	Cable Service	COX	\$39.87	6/13/2023
101-102-6000	June Gas Services	Ks Gas	\$141.05	6/21/2023
101-102-6000	Monthly Voice Services	Vaspian	\$216.70	6/21/2023
101-102-6001	2023 Durange #2 Insurance	Pro Value	\$1,173.00	6/13/2023
101-102-6002	2023 Durango #2 Tags	Reno Co Treasurer	\$30.25	6/13/2023
101-102-6002	Monthly Comp Support	Leading Edge	\$949.40	6/21/2023
101-102-6002	Spam Filtering	Leading Edge	\$56.25	6/21/2023
101-102-6004	Postage Meter Lease	Pitney Bowes	\$59.37	6/13/2023
101-102-6004	AA Battery	DESS	\$26.40	6/13/2023
101-102-6004	Door Access Switch	Leading Edge	\$458.30	6/21/2023
101-102-6007	2015 Explorer	Carquest	\$400.38	6/13/2023
101-102-7000	Office Supplies	Office Plus	\$130.16	6/13/2023
101-102-7002	Hardware/Parts	Westlake Ace Hardware	\$23.92	6/13/2023
101-102-7003	May Fuel	Bridgman	\$1,943.11	6/13/2023

\$11,773.89

Street	Description	Vendor	Inv. Amt	Ck Date
101-103-5001	June Premiums	BCBS	\$1,368.13	6/22/2023
101-103-5001	June Vision Ins	VCD	\$68.56	6/22/2023
101-103-6000	May Electric	Evergy	\$406.11	6/13/2023
101-103-6000	June Gas Services	Ks Gas	\$99.07	6/21/2023
101-103-6000	Monthly Voice Services	Vaspian	\$50.00	6/21/2023
101-103-6002	Uniform Service	Unifirst	\$122.63	6/13/2023
101-103-6002	Monthly Comp Support	Leading Edge	\$130.60	6/21/2023
101-103-6004	Postage Meter Lease	Pitney Bowes	\$59.37	6/13/2023
101-103-7002	Shop Use/Stock	Carquest	\$59.88	6/13/2023
101-103-7002	Riding Mower Parts	Fairview	\$60.26	6/21/2023
101-103-7002	Idler	Fairview	\$41.36	6/21/2023
101-103-7002	Mosquito Sprayer Chems	Van Diest	\$812.65	6/21/2023
101-103-7003	May Fuel	Bridgman	\$102.11	6/13/2023

\$3,380.73

Fire	Description	Vendor	Inv. Amt	Ck Date
101-104-6000	Cable Service	COX	\$10.49	6/13/2023
101-104-6000	May Electric	Evergy	\$362.97	6/13/2023

101-104-6000	June Gas Services	Ks Gas	\$73.78	6/21/2023
101-104-6000	Monthly Comp Support	Leading Edge	\$140.68	6/21/2023
101-104-6000	Monthly Voice Services	Vaspian	\$50.00	6/21/2023
101-104-7000	UPS Ground Shipping	Joy's Packing & Shipping	\$17.81	6/13/2023
101-104-7002	Hardware/Parts	Westlake Ace Hardware	\$3.59	6/13/2023
101-104-7003	May Fuel	Bridgman	\$104.33	6/13/2023
101-104-7009	HCC Future Female FF Camp Uniforms	D's Duds Embroidery	\$350.00	6/13/2023
			\$1,113.65	

Court	Description	Vendor	Inv. Amt	
101-106-6004	Inmate Health Care	Diamond Drug	\$18.62	6/21/2023
101-106-6015	Muni Court Collections	Ks State Treasurer	\$945.50	6/13/2023
101-106-6017	May Inmate Housing	Reno Co Sheriff	\$1,200.00	6/21/2023
101-106-7000	Office Supplies	Office Plus	\$24.99	6/13/2023
			\$2,189.11	
		GENERAL TOTAL	\$24,874.79	

Park	Description	Vendor	Inv. Amt	
101-105-6000	May Electric	Evergy	\$124.59	6/13/2023
101-105-6004	Janitorial Services	Fresh Co	\$50.00	6/13/2023
			\$174.59	

Non-Departmental	Description	Vendor	Inv. Amt	
101-109-6000	May Electric	Evergy	\$5,873.56	6/13/2023
			\$5,873.56	

Water	Description	Vendor	Inv. Amt	
201-000-5001	June Premiums	BCBS	\$1,200.66	6/22/2023
201-000-5001	June Vision Ins	VCD	\$44.65	6/22/2023
201-000-6000	May Electric	Evergy	\$5,628.73	6/13/2023
201-000-6002	Monthly Comp Support	Leading Edge	\$174.45	6/21/2023
201-000-6003	Uniform Service	Unifirst	\$122.63	6/13/2023
201-000-6004	Postage Meter Lease	Pitney Bowes	\$59.37	6/13/2023
201-000-6004	Matt Mock - Boots	A5 Western LLC	\$185.24	6/13/2023
201-000-7002	Supplies	Core & Main	\$857.45	6/13/2023
201-000-7002	Well 5	Carquest	\$372.50	6/13/2023
201-000-7002	Hardware/Parts	Westlake Ace Hardware	\$36.98	6/13/2023
201-000-7002	6x20 REP CLP	Core & Main	\$379.71	6/21/2023
201-000-7002	Blue, Green Marking Paint	Michael Todd	\$150.48	6/21/2023
201-000-7003	May Fuel	Bridgman	\$400.99	6/13/2023
			\$9,613.84	

Sewer	Description	Vendor	Inv. Amt	
301-000-5001	June Premiums	BCBS	\$1,177.74	6/22/2023
301-000-5001	June Vision Ins	VCD	\$16.45	6/22/2023
301-000-6000	May Electric	Evergy	\$10,210.57	6/13/2023
301-000-6002	Troubleshoot VFD	Zenor Electric	\$312.50	6/13/2023
301-000-6002	Lab Analysis	SDK	\$604.00	6/13/2023
301-000-6002	AC Repair	Decker & Mattison	\$262.84	6/13/2013
301-000-6002	Accreditation	Ks Dept Health/Enviro	\$200.00	6/21/2023
301-000-6002	Monthly Comp Support	Leading Edge	\$174.45	6/21/2023
301-000-6002	Yearly PH/OD Meter Cal	QA Balance Services	\$207.00	6/21/2023
301-000-6003	Grit Removal	Reno Co Solid Waste	\$164.00	6/13/2023
301-000-6003	Uniform Service	Unifirst	\$122.64	6/13/2023
301-000-6004	Postage Meter Lease	Pitney Bowes	\$59.37	6/13/2023

301-000-6005	May Sewer Cell Services	Verizon	\$288.84	6/13/2023
301-000-7002	Inspect & Evaluate Mixer for repair	Fluid Equip (Cogent)	\$240.00	6/13/2023
301-000-7002	Pipe	Western Supply	\$99.73	6/13/2023
301-000-7002	Harware/Parts	Westlake Ace Hardware	\$8.99	6/13/2013
301-000-7002	Blue, Green Marking Paint	Michael Todd	\$150.48	6/21/2023
301-000-7002	Lift Station Parts	Smith & Loveless	\$502.39	6/21/2023
301-000-7002	Plumbing Fixtures	Westlake Ace Hardware	\$15.99	6/21/2023
301-000-7003	May Fuel	Bridgman	\$332.22	6/13/2023
			\$15,150.20	

Employee Benefits	Description	Vendor	Inv. Amt	
501-000-5007	Life Insurance	Dearboorn	\$480.38	6/22/2023
			\$480.38	

ASAP	Description	Vendor	Inv. Amt	
801-000-4009	Cash Bond Return	Justin Ronzale Hodge	\$1,000.00	6/21/2023
801-000-6004	Restitution - Butts	Kwik Shop	\$27.00	6/13/2023
			\$1,027.00	

Comm Ctr	Description	Vendor	Inv. Amt	
811-000-6000	May Electric	Evergy	\$277.45	6/13/2023
811-000-6000	June Gas Services	Ks Gas	\$116.44	6/21/2023
811-000-6004	Janitorial Services	Fresh Co	\$500.00	6/13/2023
811-000-7002	Augered Stool	Roto Rooter	\$60.00	6/13/2023
			\$953.89	

Equipment Reserve	Description	Vendor	Inv. Amt	
901-000-8021	Outfit 2023 Durango #2	Superior Emergency	\$7,881.68	6/13/2023
901-000-8027	Hyd Ext	Core & Main	\$8,449.82	6/13/2023
			\$16,331.50	

GRAND TOTAL **\$74,479.75**

SUBMITTED BY: Jeff Schenk, City Administrator
PREPARED BY: Ronnie Pederson, Public Works Superintendent
MEETING DATE: June 26, 2023
AGENDA ITEM: WWTF Phosphorous System, 23-01

BACKGROUND:

On June 8th, 2022 the Kansas Department of Health and Environment (KDHE) issued a fully executed consent order to the City of South Hutchinson regarding phosphorous and chloride limits. A timeline for the schedule of compliance is in the consent order attached on page 3, Order, 9.

The City's wastewater treatment facility was designed for nutrient removal and since being online in 2004 it has been unable to biologically treat phosphorus. The main reason is that Tyson foods is roughly 60 to 65 percent of the City's flow. The water that is sent from Tyson foods is relatively clean because they treat it prior to entering our system. This hydraulically overloads our facility and reduces important bacteria that is needed for phosphorus removal to take place biologically. Since the biological process isn't working the only other option is for chemical application for phosphorus removal. WSU conducted a study in May of 2021 to see what chemical and dosage would be needed to meet the requirement of KDHE.

City staff and PEC Engineering firm have been working with Tyson foods to resolve these issues. The chemical application at the City's wastewater facility for phosphorus removal is the next step for the city to stay on track with the consent order.

PROJECT DESCRIPTION:

The project will only be the design, bidding, and construction administration services for a chemical feed system at the wastewater treatment plant to address reduction in the total phosphorous discharge from the facility as required by consent order and permit issued by Kansas Department of Health and Environment (KDHE)

PROPOSED CONTRACT:

The proposed contract with PEC for design services is an Lump Sum contract with a not to exceed amount of \$62,300. This will include some construction services and the final closeout of the project.

RECOMMENDATION:

City staff recommends the council approve the consultant agreement with PEC in the amount of \$62,300 and authorize the mayor to sign.



June 5, 2023

Jeff Schenk
City Administrator
City of South Hutchinson
2 South Main
South Hutchinson, KS 67505

Reference: AGREEMENT for Wastewater Treatment Plant Phosphorous System
South Hutchinson, KS
PEC Project No. 35-237055-001-1173

Dear Mr. Schenk:

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

Jeff Schenk
City of South Hutchinson
WWTP Phosphorous System
June 5, 2023
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.



Sarah C. Unruh, PE
Project Manager

SCU:cem

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: _____, Signatory

Printed Name: Ryan W. Glessner, PE

Title: VP | Civil Municipal and W/WW Engineering

Date: 6/5/2023

ACCEPTED:

CITY OF SOUTH HUTCHINSON

By: _____

Printed Name: _____

Title: _____

Date: _____

SOUTH HUTCHINSON WWTP PHOSPHOROUS SYSTEM

EXHIBIT A

A. Project Description

1. The project includes the design, bidding, and construction administration services for a chemical feed system at the wastewater treatment plant to address reduction in the total phosphorous discharged from the facility as required by consent order and permit issued by the Kansas Department of Health and Environment (KDHE).

B. Anticipated Project Schedule

1. PEC shall commence its services on the Project within 7 days after receiving CLIENT's notice to proceed.
2. PEC and CLIENT anticipate that the construction documents will be completed by September 15, 2023, and will be submitted to KDHE by September 30, 2023, to comply with the CLIENT's Consent Order requirements. This is contingent on receipt of the Notice to Proceed no later than June 26, 2023.
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) Chemical Feed System Memo
 - b) Construction Document Narrative, Plans, and Book Specifications:
 - 1) 30% and 90% submittals
 - c) Permit/100% Construction Document Plans and Book Specifications

D. Scope of Services

1. Project Management:
 - a) Project management tasks to include development and management of the project schedule, preparation, and distribution of meeting minutes, progress reports, and client communications.
 - b) Development of data requests for drawings, studies, influent and effluent data, and other information as identified as necessary for the design project.
 - c) Kick-off meeting with the CLIENT to confirm the scope items, establish a project schedule, and discuss initial design items. An initial pre-design site visit will be conducted in conjunction with the Kick-off meeting to assess existing conditions.
2. Site Survey:
 - a) Set inter-visible control points in the area of construction. Obtain reference ties.
 - b) Set benchmarks within structure area for construction.

- c) Collect topographic survey data, including surface locations, sufficient to provide 1' contours per the survey limits.
- d) Locate all above and below grade utility improvements marked by others. PEC will not be responsible for searching for utilities beyond utilizing the One Call system.
- e) Compare record information received from utility providers to actual utilities flagged in the field. Notify locating service of any discrepancies and make a reasonable effort to resolve in the field. Utilities identified in record information that cannot be resolved in the field will be drafted in the general alignment shown in the record information and will be specifically identified as "RECORD" on the deliverable drawing. PEC is not responsible for the accuracy of utility information not physically identified on-site.
- f) Locate all points of egress for any structures within the survey limits, including a Finished Floor Elevation (FFE) at each doorway.
- g) Locate all sanitary and storm sewer structures, such as area inlets, curb inlets, junction boxes, manholes, process structures, etc. The top of structure information will be collected as well as all flowlines in and out, and pipe size and material.
- h) Locate all buildings and substantial features, including parking stripes, sidewalks, paving limits/type, playground areas/equipment, landscape areas, etc.
- i) The coordinate base will be Kansas State Regional Coordinates Zone – 17 Wichita and the elevations will be referenced to the NAVD 88 datum.

3. Preliminary Design:

- a) Review previously prepared report by Wichita State University regarding testing and recommended dosage of chemical.
- b) Prepare data request for influent and effluent data, operations information, site information, and other data deemed necessary for the project.
- c) Review data and discuss any gaps with the CLIENT.
- d) Determine footprint and electrical requirements needed for phosphorous treatment system to address CLIENT flow only, CLIENT flow and Tyson high phosphorous flow (12 mg/L), and CLIENT flow and reduced phosphorous concentration in Tyson flow (3 mg/L and 6 mg/L). Determine if chemical feed system can be housed in an existing structure or if a new structure would be required for each scenario; develop preliminary cost estimates. Prepare a memo outlining the chemical feed system options and costs.
- e) Discuss treatment system options with the CLIENT and finalize design parameters for chemical feed system.
- f) Prepare 30% drawings for the phosphorous treatment system. 30% drawings to include site plan, chemical dosing system schematic and schedules, chemical system layout, and structures.
- g) Prepare a specification table of contents to include front end and anticipated technical sections.
- h) Submit 30% design and preliminary opinion of construction cost estimate to CLIENT for review.
- i) Conduct an in-person review meeting with the CLIENT.

4. Final Design:

- a) Prepare 90% design drawings and full specification manual. 90% drawings to include final chemical feed system plans and details; structural plans and details; electrical power connections, details, and controls; mechanical design as required for new structures. New structure, if required, will be based on a metal panel building as a delegated structural design or precast concrete panels without architectural treatment.
- b) Civil design to include:
 - 1) Site grading and sidewalks to new structure as needed.
 - 2) Process design for chemical feed system including chemical storage, feed pump, piping, and control strategy.
- c) Mechanical design to include:
 - 1) Provide code required exhaust per NFPA and KDHE requirements.
 - 2) Provide heating for freeze protection and human comfort.
 - 3) Provide cooling for electrical equipment, as necessary.
 - 4) Provide domestic water and waste where required for process equipment and cleanup.
- d) Electrical design to include:
 - 1) Design electrical service to chemical system structure.
 - 2) Design interior and exterior building lighting systems.
 - 3) Design building electrical distribution system.
 - 4) Design general purpose power and equipment connections.
 - 5) Design raceway system(s) for all applicable low voltage systems.
 - 6) Design modifications to existing SCADA for incorporation of new control elements.
- e) Prepare opinion of probable construction cost estimate.
- f) Submit 90% design documents to CLIENT for review.
- g) Conduct and in-person review meeting with the CLIENT.
- h) Address CLIENT comments and prepare 100% design documents. Submit to CLIENT.
- i) Address CLIENT comment and prepare sealed drawings and specification and submit to the Kansas Department of Health and Environment for review and approval.
- j) Address KDHE comments to achieve approval to bid the project.

5. Bidding Services:

- a) Prepare the advertisement for bids and post to PEC's website plan room; address bidder questions; and issue addenda as needed.
- b) Prepare an engineer's estimate of probable construction cost and provide to CLIENT with bid tab for CLIENT use at bid opening.
- c) Lead bid opening and complete bid tab; provide to CLIENT.
- d) Conduct a pre-bid meeting and issue minutes.
- e) Review received bids.

6. Construction Administration Services:
 - a) Prepare Contract Documents for execution by the Contractor and CLIENT.
 - b) Coordinate and facilitate a pre-construction meeting to review project requirements, establish protocols, and set the notice to proceed date.
 - c) Review shop drawings for systems and elements designed by PEC and its subconsultants. Review period will be ten (10) business days after received by PEC office unless other terms are agreed to by PEC and CLIENT.
 - d) Respond to RFIs generated by the contracting team. Response will be provided within seven calendar (7) days after received by PEC office unless other terms are agreed to by PEC and CLIENT.
 - e) Review and process contractor's submittals, shop drawings, and material test certifications for compliance with the drawings and specifications.
 - f) Review contractor pay applications and provide to CLIENT for approval and processing.
 - g) Prepare change orders covering modifications or revisions, as needed.
 - h) Attendance at up to three (3) progress meetings as coordinated by the contractor. Contractor shall schedule meetings and issue minutes to all attendees.
 - i) Coordination of final inspection with KDHE.
 - j) Coordinate and participate in final walkthrough of project.
 - k) Develop and distribute punchlist; update and distribute as required until project completion.

7. Project Close-Out:
 - a) Project close-out including issuing of substantial completion certificate, close-out items as required by KDHE, and preparation of record drawings to include pdf markups of sealed bid drawings.

E. Additional Responsibilities of CLIENT

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

1. Drawings, studies, reports, utility data, and other information as requested and available pertaining to the existing buildings, site, equipment, and processes.
2. Timely reviews of reports, design submittals, or other project documentation.
3. Assuring that private utilities, not located by an appropriate One-Call utility locate system, are identified prior to arrival onsite for field work, or have made arrangements for a CLIENT representative with knowledge of such utilities to meet onsite prior to commencement of drilling activities.
4. Information related to known and/or potentially hazardous subsurface conditions and/or history of site contamination.
5. Provide right of entry for PEC's personnel and subconsultants in performing site visits, field surveys and inspections.
6. Participate in and provide input for review meetings, pre-bid meeting, construction progress meetings, and final inspections.
7. Establish and pay for a testing and inspection plan that includes all code-mandated special structural inspections to be performed.

F. **Additional Services**

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

1. Assistance with funding option review, preparation of funding applications, and administration of funding requirements.
2. Design engineer construction site observations in excess of the number above will be performed on an hourly basis.
3. Plan revisions, as necessary, to reduce the cost of construction after issuance of construction documents (typically referred to as “value engineering or “VE”).
4. Construction testing, on-site inspection services, and construction staking.
5. Easement and right-of-way acquisition or vacation.
6. Platting and/or Zoning change processes.
7. ALTA/NSPS Land Title Survey.
8. Geotechnical services.

G. **Exclusions**

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

1. Any filing or permit fees - all fees shall be paid directly to the regulatory agency/entity by the CLIENT.
2. Boundary survey.
3. Vacuum excavation of utilities.
4. Environmental assessments.
5. Permitting other than that required by KDHE’s Bureau of Water for the proposed work.
6. Water quality testing.
7. Detailed SCADA and Control Panel designs – work shall be completed by the project systems integrator.
8. Outside consultants.
9. Procurement of Ownership and Encumbrance Report.

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 an aggregate lump sum basis including reimbursables in the amount of \$62,300.00. Approximate distribution as follows:

Task	Fee
Preliminary Design	\$21,600
Final Design	\$29,300
Bidding Services	\$3,300
Construction Administration Services	\$8,100
Total	\$62,300

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.

Office of Legal Services
Curtis State Office Building
1000 SW Jackson St., Suite 560
Topeka, KS 66612-1368



Phone: 785-296-5334
Fax: 785-559-4272
www.kdheks.gov

Janet Stanek, Secretary

Laura Kelly, Governor

June 9, 2022

Ronnie Pederson
City of South Hutchinson
2 South Main
South Hutchinson, Kansas 67505

Re: City of South Hutchinson
KDHE Case #22-E-002 BOW

Dear Mr. Pederson:

Enclosed please find a copy of the fully executed Consent Order in the above-referenced matter.

If you have any questions or require any additional information, please do not hesitate to contact Emily Quinn at (785) 296-2622.

Sincerely,

A handwritten signature in blue ink that reads "Brenda Snyder".

Brenda L. Snyder
Office Manager

/bls
Enclosure

e/att: Andrew Bowman
Michael Beezhold
Shelly Shores-Miller
Emily Quinn

**STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT**

In the Matter of:)

CITY OF SOUTH HUTCHINSON)
2 SOUTH MAIN)
SOUTH HUTCHINSON, KS 67505)

Case No. 22-E-002 BOW

KANSAS WATER POLLUTION CONTROL)
PERMIT NO. M-AR82-0002)
)
)
)

CONSENT ORDER

Now on this 8th day of June, 2022, the Kansas Department of Health and Environment (“KDHE”) and the City of South Hutchinson (“Respondent”) (collectively, the “Parties”), having agreed that settlement of this matter is in the best interests of the Parties and conducive to protection of public health and the environment, hereby represent and state as follows:

The Parties acknowledge that this Consent Order (“CO”), upon execution by the Secretary of KDHE (“Secretary”), shall be a final agency order. Respondent shall not contest the authority of the Secretary to issue this CO or any action by KDHE to enforce this CO. Respondent voluntarily and knowingly waives the right to an appeal or review of matters leading up to the execution of the CO under the Kansas Administrative Procedure Act (“KAPA”), K.S.A. 77-501, *et seq.* or the Kansas Judicial Review Act. K.S.A. 77-601, *et seq.* KAPA authorizes KDHE to enter into an informal settlement of this matter without the necessity of proceeding to a formal hearing, K.S.A. 77-505.

The Secretary and Respondent deems that the Findings of Fact and Conclusions of Law in this CO are true and correct as related to the City of South Hutchinson Wastewater Treatment Plant (“Facility”). As used in this CO, “Facility” shall mean the real property, buildings, structures, fixtures, and appurtenances located in the Northeast quarter of the Southwest quarter of the Northeast quarter of the and Northwest quarter of the Southeast quarter of the Northeast quarter of Section 25, Township 23S South, Range 6 West of Reno County Kansas.

Findings of Fact

1. The Kansas Department of Health and Environment, KDHE, issued Kansas Water Pollution Control Permit Number M-AR82-OO02 (“Permit”) to the Respondent permitting the Facility, with an effective date of January 1, 2018, and an expiration date of November 30, 2022.
2. Regarding parameters for Chlorides and Total Phosphorus, the Permit’s Effluent Limitations and Monitoring Requirements state in pertinent part that “the permittee is authorized to discharge from outfall(s) with serial number(s) as specified in this permit. The effluent limits shall become effective on the dates specified herein. Such discharges shall be controlled, limited, and monitored by the permittee as specified” and lists the following requirements:

<u>Effluent parameter(s)</u>	<u>Final Limit</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Chlorides – mg/l	860	Twice Monthly	24-Hour Composite
Total Phosphorus (as P) Annual Avg. Load – lbs/day	25	Once Monthly	Calculated

3. The Discharge Monitoring Reports (DMRs) provided by the Respondent show the Respondent has violated the permit’s Chloride concentration limit in 14 of the previous 28 reporting cycles.
4. The DMRs provided by the Respondent show the Respondent has violated the permit’s Phosphorus Total Maximum Daily Load (TMDL) limit in 28 of the previous 28 reporting cycles.
5. On December 15, 2021, KDHE sent Respondent a letter outlining a new Chloride concentration limit of 920 milligram per liter, which will come into effect in the next permit cycle.
6. On February 14, 2022, Respondent sent a letter to KDHE providing a schedule for completion of the required modifications to meet effluent limits.

Conclusions of Law

7. The KDHE is a duly authorized agency of the State of Kansas created by an act of the legislature. The Secretary has general jurisdiction over matters involving the environment and the public health of the people of Kansas, K.S.A. 65-101 *et seq.*, including general jurisdiction of matters involving the discharge of sewage, K.S.A. 65-161 *et seq.*
8. Pursuant to K.S.A. 65-164 *et seq.*, any person discharging wastewater or planning to discharge wastewater to waters of the State is required to obtain a KDHE-issued permit for such discharges. The permit provides information about the permitted facility, operating and record keeping requirements and other conditions required pursuant to Kansas Statutes and Regulations. Requirements of the permit are enforceable under the authority of the Secretary of the KDHE (K.S.A. 65-101 and 65-164 *et seq.*) and the KDHE Director of the Division of Environment (K.S.A. 65-170 *et seq.*).

ORDER

9. Based upon the above-referenced Findings of Fact and Conclusions of Law and pursuant to the authority granted by K.S.A. 65-164d, the Secretary hereby orders the Respondent, and the Respondent hereby agrees to comply with the following Schedule of Compliance:
 - (A) By September 30, 2023, Respondent shall submit copies of design plans for all projects which are being implemented to bring the facility back into compliance.
 - (B) Respondent shall submit quarterly progress reports detailing the status of all projects, both public and private and any updated sewer ordinances which are being used to bring the facility back into compliance. These reports will be submitted on the 15th of each month following the end of a quarter (January, April, July, October) until the completion of all such projects.
 - (C) By September 30, 2024, Respondent shall complete all projects being implemented to bring the facility back into compliance.
 - (D) By March 31, 2025, Respondent shall be in substantial compliance with permit effluent limits. If Respondent is not in substantial compliance, an updated Engineering Report, including an updated Schedule of Compliance will be provided to KDHE.
10. The activities conducted under this CO are subject to approval by KDHE. The Respondent shall provide all appropriate necessary information requested by KDHE consistent with this CO.

11. The Respondent shall operate the Facility in accordance with all applicable Kansas statutes and regulations.

Terms of the Settlement

12. The Respondent agrees to comply with the terms of this CO and the applicable regulations. Failure to comply with the terms of this CO may subject the Respondent to further enforcement action as provided for in Kansas water pollution control law, K.S.A. 65-161 *et seq.*
13. **Additional Tasks May Be Required.** KDHE may determine that tasks may be required that are in addition to those specified in this CO. In the event KDHE makes such a determination, it shall notify Respondent in writing that additional tasks are necessary in order to meet the goals and objectives of this CO, to conform to applicable laws, and/or to protect public health or safety or the environment. If such tasks are required, they shall be completed as specified by KDHE and within the timeframes established by KDHE. KDHE's issuance of written notice of additional tasks shall constitute a final decision subject to Dispute Resolution of this CO.
14. This CO shall apply to and be binding upon the Parties, their agents, successors, and assigns. The Parties agree to undertake all actions required of them by the terms and conditions of this CO.
15. Notwithstanding the terms of any contract, the Respondent is responsible for compliance with this CO and for ensuring that its contractors and agents comply with this CO.
16. This resolution is meant to be a full resolution of the matters set forth herein.
17. **Liability.** Nothing herein shall be legally binding or have any effect on the position of the Parties on any matter that may be included in any other agreements negotiated between them. Neither the State of Kansas, nor any agency thereof shall be held out as a party of any contract entered into by the Respondent in carrying out activities pursuant to this CO.
18. **Force Majeure.** The following shall constitute the governing terms for force majeure, excusable delay and modification of the CO.
 - (A) Respondent shall perform the requirements under this CO within the time limits set forth herein unless the performance is prevented or delayed solely by events which constitute force majeure. For purposes of this CO, force majeure is defined as any event beyond the control of the Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this CO. Such events do not include increased costs of performance or changed economic circumstances. Any delay caused in whole or in part by action or inaction by state

or federal authorities shall be considered a force majeure event but shall not extend the period of performance of the obligation required by the CO by more than the period of delay.

- (B) Respondent shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this CO.
- (C) Respondent shall notify KDHE in writing within seven (7) days after becoming aware of an event, which the Respondent knew, or should have known, constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure claim and shall be grounds for KDHE to deny the Respondent an extension of time for performance.
- (D) Within seven days of the receipt of written notice from the Respondent of a force majeure event, KDHE shall notify the Respondent of the extent to which modifications to this CO are necessary. In the event that KDHE and the Respondent cannot agree that a force majeure event has occurred, or if there is no agreement on the length of the extension, the dispute shall be resolved as set forth in Paragraph 19.
- (E) Any alterations to any schedule for performance or completion of a task required by this CO pursuant to this paragraph shall not alter the schedule for performance or completion of any other task required by this CO unless specifically agreed to by the parties in writing and incorporated into this CO.

19. **Modification.** This CO may only be amended by written agreement of KDHE and the Respondent.

20. **Dispute Resolution.** The Parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this CO.

- (A) If Respondent disagrees, in whole or in part, with any final action or decision made by KDHE under this CO, Respondent may invoke dispute resolution, as follows: Respondent shall send written notice to the KDHE project coordinator stating the specific terms of the disputed KDHE action or decision, and shall provide copies of relevant information; KDHE must receive such notice within fifteen (15) days of the date of KDHE's final action or decision.

- (B) Within thirty (30) days of receipt of any such notice of dispute from Respondent, KDHE and respondent shall meet to negotiate an agreement on the matter in dispute. If the Parties cannot reach agreement by consent during this period, KDHE shall issue a brief written decision on the dispute. The final written decision or resolution shall be incorporated as a part of this CO. As authorized by applicable law, issuance of the final written decision under this subparagraph shall be deemed an "Order" as defined by K.S.A. 77-502(d) and shall trigger applicable time limits for requesting a hearing.
- (C) In the event Respondent seeks dispute resolution concerning a date for performance of an act set out in the CO or an incorporated document or submittal, the date for performance of such act shall be extended for a period equal to the delay resulting from the invocation of the dispute resolution provision. However, such extension does not alter the schedule for performance of completion of any other tasks required by this CO.

- 21. **Other Claims And Parties.** Nothing in this CO shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this CO for any liability it may have arising out of or relating in any way to the subject violations alleged in this CO.
- 22. **Effective Date.** This Consent Order shall become effective when signed by the Secretary of the Kansas Department of Health and Environment.
- 23. **Termination.** This CO will be terminated upon written notice by KDHE to the Respondent that the requirements of this CO have been satisfied. Such notice shall not be unreasonably withheld by KDHE. KDHE reserves the right to unilaterally withdraw this CO for substantial non-compliance.

IT IS SO ORDERED AND AGREED

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT

By:

Janet Stanek
Janet Stanek
Secretary

6-8-2022
Date

CITY OF SOUTH HUTCHINSON

By:

Joseph Turner
Signature

JOSEPH TURNER
Name

CITY ADMINISTRATOR
Title

5/31/2022
Date