

**SAPULPA MUNICIPAL AUTHORITY**  
TRUST PROCEEDINGS  
Meeting of April 16, 2018

The Board of Trustees of the Sapulpa Municipal Trust Authority met in regular session Monday, April 16, 2018, at 7:00 o'clock P.M. in the City Hall Council Chambers, 425 East Dewey Avenue, Sapulpa, Oklahoma.

Present: Chairman Reg Green  
Vice-Chairman Louis Martin  
Trustee John Anderson  
Trustee Marty Cummins  
Trustee Wes Galloway  
Trustee Craig Henderson  
Trustee Alan Jones  
Trustee Hugo Naifeh  
Trustee Charles Stephens  
Trustee Carla Stinnett

Staff Present: Joan Riley, Trust Manager; Rick Rumsey, Assistant Trust Manager; Pam Vann, Trust Treasurer; David Widdoes, Trust Attorney; Shirley Burzio, Secretary

**1. MINUTES, CONSENT ITEMS AND ADMINISTRATION.**

Motion was made by Vice-Chairman Louis Martin, seconded by Trustee Hugo Naifeh, to approve the following items of business:

- A.** Consider approving minutes of the April 2, 2018, regular municipal authority meeting.
- B.** Approve claims in the amount of \$350,343.57;
- C.** Approve the agreement for Geotechnical Engineering Services with Kleinfelder, Inc., for borings to determine the ground composition at the site of the new one-way surge tank to the Skiatook Raw Water Conveyance System (SRWCS) in a shared total amount of \$6,300.00, of which the City of Sapulpa is obligated for \$2,520.00.

ROLL CALL: AYE-John Anderson, Marty Cummins, Wes Galloway, Reg Green, Craig Henderson, Alan Jones, Louis Martin, Hugo Niafhe, Charles Stephens, Carla Stinnett. NAY-None. Motion carried 10-0.

2. **INFORMATIONAL ITEMS FROM CHAIRMAN, BOARD OF TRUSTEES, TRUST MANAGER, OR TRUST ATTORNEY.**

- A. A status report from Tetra Tech, Inc., regarding various City and SMA projects was presented for review and discussion. No action was taken by the board.

3. **PUBLIC COMMENTS:**

There were no comments made to the board.

4. **ADJOURNMENT.**

There being no further business to consider, the meeting adjourned.

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Chairman

Attest:

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Secretary



**AGENDA ITEM**

**Municipal Authority Regular**

**3.A.**

**Meeting Date:** April 16, 2018

**Submitted By:** Shirley Burzio, City Clerk

**Department:** City Clerk

**Presented By:**

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**SUBJECT:**

Consider approving minutes of the April 2, 2018, regular municipal authority meeting.

**BACKGROUND:**

**RECOMMENDATION:**

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**Attachments**

minutes.04-02-2018 sma draft

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# DRAFT

**SAPULPA MUNICIPAL AUTHORITY**  
TRUST PROCEEDINGS  
Meeting of April 2, 2018

The Board of Trustees of the Sapulpa Municipal Trust Authority met in regular session Monday, April 2, 2018, at 7:00 o'clock P.M. in the City Hall Council Chambers, 425 East Dewey Avenue, Sapulpa, Oklahoma.

Present: Reg Green, Chairman  
Louis Martin, Vice-Chairman  
John Anderson, Trustee  
Marty Cummins, Trustee  
Wes Galloway, Trustee  
Craig Henderson, Trustee  
Alan Jones, Trustee  
Hugo Naifeh, Trustee  
Charles Stephens, Trustee

Absent: Carla Stinnett

Staff Present: Joan Riley, Trust Manager; Rick Rumsey, Assistant Trust Manager; Pam Vann, Trust Treasurer; David Widdoes, Trust Attorney; Shirley Burzio, Secretary

**1. MINUTES AND CONSENT ITEMS.**

Motion was made by Trustee Alan Jones, seconded by Trustee Charles Stephens, to approve the following items of business:

- A.** Approve the minutes of the March 19, 2018, regular municipal authority meeting;
- B.** Approve claims in the amount of \$105,022.96.

ROLL CALL: AYE-John Anderson, Marty Cummins, Wes Galloway, Reg Green, Craig Henderson, Alan Jones, Louis Martin, Hugo Naifeh, Charles Stephens. NAY-None. Motion carried 9-0.

**2. INFORMATIONAL ITEMS FROM CHAIRMAN, BOARD OF TRUSTEES, TRUST MANAGER, OR TRUST ATTORNEY.**

- A. Correspondence dated March 9, 2018, from Patty S. Thompson, Oklahoma Department of Environmental Quality, regarding closing of previous notice of violation notifications.

**3. PUBLIC COMMENTS:**

There were no comments made to the board.

**4. ADJOURNMENT.**

There being no further business to consider, motion was made by Trustee Alan Jones, seconded by Vice-Chairman Louis Martin, to adjourn the meeting. Motion carried unanimously.

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Chairman

Attest:

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Secretary



**Consent Agenda 5.A.**

**Municipal Authority Regular**

**Meeting Date:** April 16, 2018

**Submitted For:** Amber Fisher, Accounts Payable Clerk

**Submitted By:** Amber Fisher, Accounts Payable Clerk

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**SUBJECT:**

Consider approving Claims in the amount of \$350,343.57  
(Refer to: Purchase Order Claim Register with City Agenda)

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## AGENDA ITEM

Administration 7.A.

### **Municipal Authority Regular**

**Meeting Date:** April 16, 2018

**Submitted For:** Bobby Petitt, Water Treatment Supervisor

**Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Water Treatment

**Presented By:** Bobby Petitt

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### **SUBJECT:**

Discussion and possible action regarding an Agreement for Geotechnical Engineering Services with Kleinfelder, Inc. for borings to determine the ground composition at the site of the new One-Way Surge Tank to the Skiatook Raw Water Conveyance System (SRWCS) in a shared total amount of \$6,300.00, of which the City of Sapulpa is obligated for \$2,520.00.

### **BACKGROUND:**

On February 5, 2018 the Sapulpa Municipal Authority entered into an agreement with Tetra Tech for the design, bidding, construction administration, and resident project representation services associated with the construction of an additional one-way surge adjacent to the existing surge tank.

This Agreement for Geotechnical Engineering Services with Kleinfelder will allow for two (2) borings to be made to determine the ground composition at the site of the new surge tank. The design requirements for the surge tank's foundation will be based on the findings of tests performed on samples obtained from these borings. Boring locations and minimum depths were provided to Kleinfelder on plans prepared by Tetra Tech.

The City of Sand Springs is apportioned 60% of the costs associated with the agreement for a total amount of \$6,300.00 and the City of Sapulpa is apportioned the remaining 40% resulting in an amount of \$2,520.00. For additional information regarding this item, please refer to the attachments.

### **RECOMMENDATION:**

Staff recommends the Authority approve this Agreement with Kleinfelder and authorize Chairman to execute same.

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**Fiscal Impact**

**Amount:** \$2,520.00

**To be paid from:** Sapulpa Municipal Authority

**Account number:** 20-524-315B

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**Attachments**

Proposal - Kleinfelder

Amendment - Kleinfelder

Appendix A - Kleinfelder

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March 28, 2018  
Kleinfelder Proposal TUL18P75004-REV

Sand Springs Municipal Authority/Sapulpa Municipal Authority  
c/o Mr. Srin Sundaramoorthy, PE  
Tetra Tech  
7645 E. 63<sup>rd</sup> Street, Suite 301  
Tulsa, Oklahoma 74133  
[Srin.Sundaramoorthy@tetrattech.com](mailto:Srin.Sundaramoorthy@tetrattech.com)

**Subject: Proposal for Geotechnical Engineering Services  
Proposed One Way Surge Tank  
Skiatook Raw Water Conveyance System  
Skiatook, Oklahoma**

Dear Mr. Sundaramoorthy:

Kleinfelder is pleased to present this proposal to provide geotechnical engineering services for the proposed One Way Surge Tank located in the rural of Sperry, Osage County, Oklahoma. Our understanding of the project is based on the "Geotechnical Scope of Services – One Way Surge Tank – Skiatook Raw Water Conveyance System – City of Sand Springs/City of Sapulpa (hereafter referred to as the "Specifications") transmitted via email communication dated March 9, 2018. Included in this proposal is a brief summary of our understanding of the project, the scope of services we can provide, and an estimate of our fees and schedule.

Kleinfelder is committed to providing quality service to its clients, commensurate with their wants, needs, and desired level of risk. If a portion of this proposal does not meet your needs, or if those needs have changed, Kleinfelder stands ready to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions may result in changes to the risks assumed by the client, as well as adjustments to our fees.

## **BACKGROUND INFORMATION**

The project includes design and construction of a subgrade valve vault and concrete foundation for a 20-foot diameter, 60,000-gallon steel tank. Anticipated construction for the valve vault is cast-in-place concrete walls and top slab on a mat foundation. Plan dimensions for the valve vault will be approximately 11 feet by 17 feet with a depth of approximately 10 feet deep. The anticipated foundation for the steel tank is a cast-in-place concrete grade beam (ring wall foundation) with a diameter of approximately 20 feet. Anticipated maximum valve vault load is approximately 1,500 pounds per square foot (psf) while the anticipated maximum tank load is approximately 1,800 psf.

A total of 2 borings has been requested. The boring locations and minimum depths have been provided on plans in the Specifications prepared by Tetra Tech. We should be notified if the information presented in the previous paragraphs is inaccurate to determine if modifications of the Scope of Services presented in this proposal would be warranted.

## **SCOPE OF SERVICES**

### Task 1 – Site Access & Boring Layout/Utility Clearance

Kleinfelder will coordinate public utility locating services prior to starting our field work. Prior to initiating our subsurface explorations, private site utilities and utility easements must be accurately located in the field, on a scaled map, or both. This information must be made available to Kleinfelder by the client at least two days before beginning our field exploration. Kleinfelder will not accept responsibility for damage to existing private utilities not accurately located in the manner described above.

Please be aware that penetrating the ground surface is inherently risky. It is impossible to determine with certainty the precise location of all structures, including utilities, which may be buried in the ground. Therefore, the disruption/damage of utilities or underground structures which have not been marked will be the responsibility of the owner. Services rendered by Kleinfelder to repair utilities damaged during our field exploration will be billed at cost.

Kleinfelder will layout the borings in the field by using a handheld GPS device with an approximate accuracy of 15 feet. Surface elevations at each boring location will also be determined by Kleinfelder using an engineer's level and local benchmark, i.e. top of adjacent slab or other site features with a known elevation. We recommend that actual locations and elevations be determined at a later time by the project surveyor. Boring locations may need to be offset from the planned footprint of the proposed structures to facilitate accessibility to the planned boring locations or to clear buried utilities.

This proposal assumes the site is accessible with a track-mounted drill rig. Necessary removal of fences or gates, permission to enter the site, and/or required use-permits must be secured by the client prior to our initiating field activities.

### Task 2 - Field Exploration

Kleinfelder has reviewed the Specifications provided by Tetra Tech and takes no exception to the number and locations of borings requested. The tank borings will be advanced to a maximum depth of 35 feet below existing ground surface or 10 feet into bedrock strata, whichever comes first while the valve vault boring will be advanced to approximately 20 feet below existing ground surface or 5 feet into bedrock, whichever comes first. The borings will be logged in the field by an experienced technician. For the purpose of this proposal, we anticipate bedrock will not be encountered to the termination depth of the borings.

The borings will be drilled with a track-mounted rotary drill rig using either hollow stem augers or rotary wash methods to advance the boreholes. Sampling in the borings will consist of split-barrel samples (ASTM D1586) in cohesionless soils, and hard soils, and Shelby tubes (ASTM D1587) in cohesive soils. Samples will be obtained at 2.5 feet intervals in the top 10 feet and at 5 feet intervals thereafter. Shelby-tube samples will be tested with a hand-held pocket penetrometer. If weathered bedrock or shale are encountered in the borings, the bedrock will be tested with Texas Cone Penetration (TCP). If hard bedrock is encountered in the borings, the bedrock will be cored with NQ coring technology to the planned depth. If the top of the competent bedrock is

encountered at depths that are very close to the planned termination depth (35 feet) of the borings, the bedrock will be tested with SPT. All soil samples will be visually classified in accordance with the Unified Soil Classification System.

Groundwater observations will be made during drilling, at the completion of drilling operation and 24 hours after completion of drilling operations, if possible. Borings will be backfilled with bentonite chips and auger cuttings.

The engineer (Tetra Tech) will be notified before demobilization of drill rig from the site and the engineer will be advised about the subsurface conditions encountered.

### Task 3 - Laboratory Testing

Depending upon on the actual site conditions encountered, the following preliminary laboratory testing has been scoped. Actual type and number of tests will be assigned following completion of the explorations:

- Moisture content determinations (ASTM D2216)
- Atterberg Limits tests (ASTM D4318)
- Grain size Distribution Tests (ASTM D422)
- California Bearing Ratio (ASTM D7012)
- Corrosion Test (pH, resistivity, sulfate, etc.)

### Task 4 – Analysis & Report Preparation

A geotechnical engineering report will be prepared under the direction of a professional engineer registered in the State of Oklahoma. Only electronic (pdf) format of the report will be provided. This report will include all the requested items (item 1 through 13) requested in the Specifications with the following exceptions:

- Item No. 2 requires an evaluation of deep foundations. Based on the loads provided in the specifications, we do not anticipate the need for deep foundations and therefore have not included the scope and fee to perform this task. However, possible deep foundation alternatives and their general pros and cons can be provided in the report.
- Item No. 6 request for pavement design. It should be noted that traffic data shall be provided to Kleinfelder in order to perform pavement design recommendations (item 2). If traffic data is not available, typical pavement sections based on our local experience will be provided.
- Item No. 8 request for stability of slopes. It is our understanding that there are no slopes proposed at the project site, per the plan attached to the Specification. Therefore, no slope stability analyses are included in the scope.

- Item No. 9 requests seismic site classification based on a 100-foot boring or site specific procedure involving measurement of shear wave velocities. We anticipate that the costs of performing this task may outweigh the benefits from such studies for this project. Hence scope and fee for this item is not included. However, if desired by the engineer we can add an optional cost item for this task.

## **ADDITIONAL SERVICES**

### Environmental Assessment

This proposal does not include an assessment of environmental characteristics involving hazardous or toxic substances. A separate or concurrent environmental assessment may be appropriate prior to development. Kleinfelder would be pleased to outline a scope of services for such an assessment in a separate proposal, if required.

In the event potentially hazardous materials are identified visually or by odor within our exploratory borings, such borings will be immediately terminated. We will notify you as soon as possible of such an occurrence in order to mutually decide whether to continue, modify, or cease the remainder of the field exploration program. All costs incurred as a result of encountering suspected hazardous materials would be charged on a time-and-expense basis over and above the estimated fee for the geotechnical site exploration.

## **LIMITATIONS**

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions, and at the date the services are provided. Our conclusions, opinions, and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided. This proposal was prepared specifically for the client and its designated representatives and may not be provided to others without Kleinfelder's express permission.

## **ESTIMATED FEE**

Based on the above program, we will charge a lump sum fee of **\$6,300** for the geotechnical investigation. Unless otherwise instructed, invoices will be submitted to Tetra Tech upon completion of our service. Our fee is based upon one field day, and assuming a total of 55 feet of auger drilling. If subsurface conditions differ significantly from those anticipated above, we may need to revise our scope of services and estimated fee in order to complete the project. Should this occur, we would contact you for authorization before proceeding with any additional work. An invoice for our services will be submitted at the completion of the field services.

## **SCHEDULE**

We will make every effort to submit our draft report within four weeks from the Notice of proceed (NTP) with a final report submitted five weeks from the NTP. However, we will work with your design priorities and provide any preliminary recommendations earlier, if necessary.

## AUTHORIZATION

It is our understanding that each of the joint project owners, City of Sapulpa and City of Sand Springs, will issue a Purchase Order (PO) to Kleinfelder to initiate the project.

## CLOSURE

We are pleased to submit our proposal for the geotechnical engineering services for the proposed One Way Surge Tank and the valve vault at rural of Skiatook, Osage County, Oklahoma. If you have questions regarding this proposal or require additional information, please contact the undersigned.

Sincerely,

### **KLEINFELDER, INC.**

*Certificate of Authorization #7292 Exp. 6/30/19*



Simon Wang, PE  
Project Engineer

SYW/KR: LNK



Karthik Radhakrishnan PE, GE, MBA  
Senior Project Manager

# CLIENT MASTER SERVICES AGREEMENT

**This Agreement is made on:** March 28, 2018

**Between** Sand Springs / Sapulpa Joint Board with offices at 109 North Garfield Avenue, Sand Springs, OK 74063 (**Client**)

**And** Kleinfelder, Inc. with offices at 10835 East Independence, Suite 102, Tulsa, OK 74116 (**Kleinfelder**).

## Recitals

- A. Client wishes to appoint Kleinfelder to provide certain services (the **Services**, as defined below) required by Client or Client's agreement with the Owner for one or more projects on a Work Order basis and on the terms and conditions contained in this Agreement.
- B. Kleinfelder has agreed to perform the Services on the terms and conditions contained in this Agreement.

**Now it is agreed** as follows:

## 1. CONTENTS OF AGREEMENT

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- 1.1 The parties agree that the documents listed in 1.1(a) through (e) constitute the "**Contract Documents**" of this Agreement. To establish obligations and resolve ambiguities in the Contract Documents, the following order of precedence will prevail:
  - (a) first, amendments and Change Orders issued in accordance with this Agreement;
  - (b) second, Work Orders (Appendix A, as defined below);
  - (c) third, Kleinfelder's Proposal, dated March 28, 2018, which the Client acknowledges receipt and confirms understanding of, and agreement with the contents thereof, in full (Appendix B), or Kleinfelder's Proposals subsequently issued and referenced, attached or incorporated into Work Orders;
  - (d) fourth, this Agreement; and
  - (e) fifth, those portions of the Client's agreement with Owner dated N/A (**Prime Agreement**), if and as applicable to Kleinfelder and incorporated as provided in clause 1.4 (Appendix C).
- 1.2 To the extent of any inconsistency between this Agreement and any Prime Agreement, the provisions of this Agreement will always prevail.
- 1.3 Any pre-printed terms and conditions on forms used by either party in the administration of this Agreement are void and do not supplement or replace the terms and conditions of the Contract Documents of this Agreement.
- 1.4 Kleinfelder agrees to be bound to Client in the same way Client is bound to (**Owner**), to the extent the provisions referenced at clause 1.1(e) are applicable to the Services under a given Work Order and provided those provisions of the Prime Agreement are expressly identified and furnished to Kleinfelder prior to entering into the Work Order.

## 2. APPOINTMENT AND SCOPE OF SERVICES

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- 2.1 This Agreement anticipates the execution of various written work orders (in the form of Appendix A) which the parties agree will specify the scope of Services to be performed (**Services**) and Client's project for which the Services will be performed (**Project**), the location of Client's Project for providing the Services (**Site**), the time period for performance, the agreed fees and additional provisions, if any, applicable to such Services (**Work Orders**).
- 2.2 By executing this Agreement, Client does not guarantee any future work, nor does Kleinfelder commit to performing any specific future Work Order.

## 3. STANDARD OF CARE

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- 3.1 Kleinfelder will perform its Services in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the Services are provided.
- 3.2 Kleinfelder makes no representation, guarantee or warranty, express or implied, regarding the Services, or any communication (oral or written), certification, report, opinion, or Instrument of Service provided pursuant to this Agreement.
- 3.3 Kleinfelder will not be responsible for constant or exhaustive inspection of the work, for the means, methods, techniques sequences or procedures of construction, or for the safety procedures employed by any party other than its own employees, subconsultants and subcontractors.
- 3.4 No level of assessment can conclusively determine whether a property or its structures are completely free of geotechnical hazards or hazardous substances (including but not limited to mold). Client represents that it has carefully reviewed the limitations described in the Proposal.
- 3.5 Even with diligent observation, some defects, deficiencies, or omissions may occur. Before exercising any other remedy for any alleged breach by Kleinfelder of this Agreement, Client will direct Kleinfelder in writing to re-perform any defective Services within twelve (12) months after completion of the Services.
- 3.6 Kleinfelder will only sign certifications relating to the Services if Kleinfelder agreed in writing prior to the commencement of the Services to provide such certifications. Such certifications are statements of professional opinion only.

## 4. KLEINFELDER'S RESPONSIBILITIES

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- 4.1 Kleinfelder will perform the Services as an independent contractor and not as an agent or employee of Client. Nothing in this Agreement creates any special relationship or fiduciary duty.
- 4.2 Kleinfelder will, as reasonably directed by Client or its authorized agent:
- (a) provide qualified staff to perform the Services;
  - (b) maintain records of Project activities and costs for no more than three years from its completion of the Services;
  - (c) coordinate to the extent reasonably possible with Client's employees, contractors, consultants so as not to impede the progress of the Project; and
  - (d) require its personnel to maintain a safe, clean and orderly work environment.

## **5. TERM AND TERMINATION**

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- 5.1 This Agreement will commence on the date of its execution, except as to any Services authorized by Client and performed by Kleinfelder beforehand, and will continue in effect for two years or until terminated by either party or extended for an additional two years by mutual written agreement of the parties.
- 5.2 Either party may terminate this Agreement or any Work Order at any time by providing not less than ten (10) days' written notice to the other party.
- 5.3 Notwithstanding the termination or expiry of this Agreement, the terms of this Agreement will survive and continue to apply to all Work Orders signed by both parties prior to the Agreement's effective termination or expiry date, and until all of the rights and obligations of both parties have been fulfilled.
- 5.4 Within fifteen (15) days from termination Client will pay Kleinfelder on demand for all Services rendered and costs incurred through to the date of any termination and for all reasonable costs and expenses incurred by Kleinfelder in effecting the termination, including, without limitation, non-cancellable commitments, fixed cost components and other demobilization costs.

## **6. COMPENSATION**

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- 6.1 In consideration for undertaking the Services, the Client shall pay to Kleinfelder the sum specified in each Work Order in payments in accordance with the terms of each Work Order and the payment provisions of this Agreement.
- 6.2 Client agrees to provide any special invoicing requirements to Kleinfelder in advance of signing this Agreement, to which additional charges may apply.
- 6.3 Kleinfelder reserves the right to periodically adjust its fee schedule.
- 6.4 Kleinfelder will generally submit its invoices to Client on a monthly basis. Client must pay all invoices within thirty (30) days from the date of invoice, with interest at the rate of one and one-half percent (1 1/2 %) per month payable on all outstanding payments. Interest on all outstanding payments will be charged from the initial date of invoice.
- 6.5 Kleinfelder may suspend performance of Services under this Agreement until it has been paid in full for all outstanding payments, including interest charges.
- 6.6 Kleinfelder will be entitled to recover from Client on demand all expenses incurred (including all legal costs and expenses) in recovering any outstanding payments from Client.
- 6.7 All travel will be invoiced at cost and reimbursed by Client. All travel required under this Agreement is subject to the terms, conditions and applicable rates set forth in the U.S. Federal Travel Regulations.

## **7. INSURANCE**

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- 7.1 Kleinfelder will maintain during the term of this Agreement worker's compensation, commercial general liability, automobile liability Insurance and professional indemnity insurance coverage.
- 7.2 Client will maintain during the term of this Agreement adequate insurance coverage and will require and verify any contractors or parties it hires to have adequate insurance coverage. Client agrees that failure to comply with this clause will invalidate any indemnity provided by Kleinfelder under clause 12.1.



## 8. CHANGES TO SCOPE OF SERVICES

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- 8.1 Client or Kleinfelder may request to modify the scope of Services as set out in any Work Order, whereon both parties agree to negotiate in good faith and execute a written Change Order. A **Change Order** is an amendment to this Agreement or to a Work Order that modifies the Services and specifies the following:
- (a) a change in the terms and conditions of Services;
  - (b) an adjustment in the schedule for performance; and
  - (c) the amount of adjustment in Kleinfelder's compensation.
- 8.2 Kleinfelder will treat as a Change Order any written or oral Client order (including directions, instructions, interpretations, or determinations) which request changes in the Services. Kleinfelder will give Client written notice within a reasonable time of any resulting adjustment in the schedule and compensation. Unless Client objects in writing within 5 business days, the proposed terms of the Change Order with the adjustment in the schedule and price shall become a part of this Agreement.
- 8.3 If Client and Kleinfelder cannot agree upon an equitable adjustment in the schedule and compensation, and Kleinfelder does not sign the Change Order, the disagreement shall be treated as a Dispute under clause 18.

## 9. FORCE MAJEURE

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- 9.1 Kleinfelder will not be liable for delay or failure to perform its Services caused directly or indirectly by circumstances beyond its control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action or inaction, changed conditions, delays resulting from actions or inactions of Client or third parties, Site inaccessibility or inability of others to obtain material, labor, equipment, or transportation.
- 9.2 Should any of the preceding circumstances occur, then the date for completion or any other milestone date shall be adjusted for the delay in accordance with clause 8, provided Kleinfelder reports the delay to Client within a reasonable time of discovery.

## 10. INSTRUMENTS OF SERVICE

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- 10.1 All data, reports, drawings, plans, or other documents (or copies) provided to Kleinfelder by Client for the purposes of this Agreement will, at Client's written request, be returned upon completion of the Services and payment in full for all Services rendered. Client agrees that Kleinfelder may retain one copy of all such documents.
- 10.2 Client agrees:
- (a) all reports, drawings, plans, documents, software, source code, object code, boring logs, field data, field notes, calculations, estimates, laboratory test data and other similar data, documents and work products (or copies thereof) in any form prepared by Kleinfelder pursuant to this Agreement are instruments of service (**Instruments of Service**), not products;
  - (b) Kleinfelder will retain exclusive ownership, copyright and title to all Instruments of Service, and Client has no rights to incomplete or partial data;
  - (c) all opinions, certifications, communications (oral or written) or Instruments of Service furnished to Client are intended for the benefit of Client for the specific purposes stated herein and therein, are not intended to inform, guide, or otherwise influence any entities or persons other than Client in relation to the Project, and are not intended or represented to be suited for reuse by Client or others, and;
  - (d) reuse without the specific prior written consent of Kleinfelder will be at the user's sole risk and without Kleinfelder liability, and Client agrees (i) to remove Kleinfelder's and Kleinfelder's consultants' names and seals therefrom, and (ii) to defend, indemnify and hold harmless Kleinfelder and Kleinfelder's

contractors, consultants, affiliates, directors and employees from and against all losses, damages and liabilities (including all legal expenses) in connection with the unauthorized use.

- 10.3 Any requests by third parties for reliance upon any communication (oral or written), certification, report, opinion, or Instrument of Service provided by Kleinfelder pursuant to this Agreement will be subject to approval at Kleinfelder's sole discretion and to additional fees, terms and conditions.

## 11. CLIENT'S RESPONSIBILITIES

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- 11.1 Client agrees to provide and discuss with Kleinfelder on an ongoing basis throughout all available material, data, and information pertaining to the Services, including, without limitation, (i) the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any Site, (ii) any hazards that may be present, (iii) the nature and location of underground or otherwise not readily apparent utilities, (iv) summaries and assessments of the Site's past and present compliance status, (v) the status of any filed or pending judicial or administrative action concerning the Site or Project, and (vi) Client records (in electronic format where possible) for such data as benchmarks, plans, maps, and property ownership.
- 11.2 Client will ensure the cooperation of Client's employees, contractors and consultants with Kleinfelder.
- 11.3 Client acknowledges and agrees that Kleinfelder is entitled to rely upon the accuracy and completeness of any information given by Client, its employees, contractors and consultants.
- 11.4 Client will provide reasonable assistance to obtain data and records concerning the Site or Project in the possession, custody or control of third parties.

## 12. ALLOCATION OF RISK AND INDEMNITIES

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- 12.1 Subject to the limitation of liability provisions of this Agreement, Kleinfelder indemnifies Client against all liabilities, losses or damages caused by the negligence or other fault of Kleinfelder and its employees, agents, representatives, subcontractors, and any other party for whom Kleinfelder is legally responsible (**Kleinfelder Parties**), but only to the extent such liabilities, losses or damages are caused by the negligence or other fault of the Kleinfelder Parties when compared to the negligence or other fault of all other persons and entities. If California law applies to this Agreement, the parties also expressly agree that this indemnity provision does not include, and in no event shall Kleinfelder be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or the Services rendered by Kleinfelder. This clause 12.1 is not intended to and will not in any way be limited by any insurance coverage available to Client under any Kleinfelder insurance policy.
- 12.2 Client indemnifies Kleinfelder against all liabilities, losses or damages caused by the negligence or other fault of Client and its employees, agents, representatives, subcontractors, and all other parties for whom Client is legally responsible (**Client Parties**), but only to the extent such liabilities, losses or damages are caused by the negligence or other fault of Client Parties when compared to the negligence or other fault of all other applicable persons and entities. If California law applies to this Agreement, the parties also expressly agree that this indemnity provision does not include, and in no event shall Client be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or services rendered by Client. This clause 12.2 is not intended to and will not in any way be limited by any insurance coverage available to Kleinfelder under any Client, Owner or Project insurance policy.
- 12.3 Subject to any applicable statutory limitations, the indemnity obligations in this clause 12 shall survive the expiration or termination of this Agreement.

### **13. LIMITATION OF LIABILITY**

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- 13.1 The maximum aggregate liability of Kleinfelder arising out of or related to this Agreement and all Work Orders and amendments thereto, whether based in contract or tort or otherwise in law or equity, will be limited to the greater of the compensation actually paid to Kleinfelder for the Services under all Work Orders or \$50,000, and Client hereby releases Kleinfelder from any liability above such amount. This limitation of liability includes any losses payable to Client under clause 12.1 and will apply to any and all claims.
- 13.2 This limitation of liability has been agreed after Client and Kleinfelder discussed the risks and rewards associated with the Project and the Services as well as the provision of the Services within both the obligations of this Agreement and the associated compensation. Upon written request by Client, the parties may negotiate in good faith and agree, by way of a written Change Order in accordance with clause 8 herein, to increase the amount of this liability limitation or eliminate it in exchange for payment of increased compensation to Kleinfelder.
- 13.3 As used in this clause 13, "Kleinfelder" includes Kleinfelder, its affiliates, subconsultants and subcontractors, and their respective partners, officers, directors, shareholders and employees. The limitation of liability established in this clause 13 shall survive the expiration or termination of this Agreement.

### **14. WAIVER OF CONSEQUENTIAL DAMAGES**

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- 14.1 Neither party will be liable to the other party for any special, incidental, indirect, exemplary, punitive, penal or consequential damages however arising incurred by either Kleinfelder or Client or for which either may be liable to a third party.

### **15. NO CONTROL OF MEANS AND METHODS OF OTHERS**

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- 15.1 Client agrees:
- (a) Kleinfelder will have no control over or charge of or responsibility for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs of Client's employees, or contractors or consultants engaged by Client in connection with the Project;
  - (b) Kleinfelder's performance of the Services does not include any job site safety obligations which may be required by or in connection with the Project or the Services or any applicable code or regulation, other than strictly in respect of its own employees; and
  - (c) Kleinfelder will not have control over or charge of the acts or omissions of any contractor or contractors' agents, employees or subcontractors.

### **16. SITE ACCESS**

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- 16.1 Client agrees to:
- (a) provide unimpeded and timely access to the Site, including any third party sites, if required;
  - (b) provide an adequate area for Kleinfelder's Site office facilities, equipment storage, and parking;
  - (c) furnish all construction utilities and utility releases necessary for the performance of the Services; and
  - (d) obtain all permits, licenses or authorizations necessary for the performance of the Services.

### **17. WARRANTY OF TITLE, WASTE OWNERSHIP**

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- 17.1 Kleinfelder will not take title to or be liable for any hazardous materials found at any Project Site. Any risk of loss with respect to all materials remains with Client or the Site owner, who will be considered the generator of such materials, execute all manifests as the generator of such materials, and be liable for the arrangement,

transportation, treatment, and/or disposal of all material. All samples remain the property of Client. Client agrees to promptly, at its cost, remove and lawfully dispose of samples, cuttings, and hazardous materials.

## **18. DISPUTE RESOLUTION**

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- 18.1 If a dispute arises out of or relates this Agreement (**Dispute**), the parties agree to submit the Dispute to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (**AAA**). The mediator will be an independent person agreed between the parties from a panel suggested by the Institute or, failing agreement, a mediator appointed by AAA. A party shall not call for mediation of any Dispute after such period of time as would bar the initiation of legal proceedings to litigate such Dispute under the laws of the state in which the Project is located.
- 18.2 Client and Kleinfelder agree that in the event of a Dispute, they will not seek recourse against individual officers, employees, directors, or shareholders of the other party.
- 18.3 A party shall not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.
- 18.4 If the Dispute cannot be resolved through mediation, either party may file suit in an appropriate court in the state where the Services are performed.
- 18.5 This clause survives termination or expiry of this Agreement.

## **19. MISCELLANEOUS**

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- 19.1 This Agreement is governed and construed in accordance with the laws of the state where the Services are performed. The parties hereby submit to the jurisdiction of the courts of the state where the Services are performed and waive any right to object to any proceedings being brought in those courts.
- 19.2 Waiver of any term, condition or breach of this Agreement will not operate as a subsequent waiver of the same term, condition or breach. A waiver is not valid or binding unless made in writing.
- 19.3 If any provision of this Agreement is found by a duly constituted authority to be invalid, void, or unenforceable, all remaining provisions shall continue in force.
- 19.4 This Agreement does not create, nor will it be construed to create, any benefit or right in any third party or any special relationship or fiduciary duty to third parties.
- 19.5 This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter. It supersedes all earlier conduct, prior agreements and understandings between the parties in connection with its subject matter.
- 19.6 Client and Kleinfelder shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

- 19.7 All notices, requests or instructions hereunder must be in writing and either hand delivered to the recipient, delivered by registered mail or express mail the addresses given in this Agreement.
- 19.8 This Agreement cannot be assigned by either party without the prior written approval of the other party. Kleinfelder may subcontract performance of portions of the Services to a qualified subcontractor.
- 19.9 Any amendment or revision to this Agreement, including for the avoidance of any doubt, to any Work Order, must be in writing and signed by both parties. Any oral modification or revision of this Agreement shall not operate to modify this Agreement.
- 19.10 This Agreement may be executed in counterparts, including photo or electronic copies, which taken together, shall constitute one original document.

**IN WITNESS WHEREOF**, Client and Kleinfelder have caused this Agreement to be executed on the date first written above.

**CLIENT:**

**CLIENT:**

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

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

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

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

Title:

Title:

**KLEINFELDER:**

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

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

Title:

**ATTACHMENTS:** Appendix A, Sample Work Order  
 Appendix B, Kleinfelder Proposal (as applicable)  
 Appendix C, Prime Agreement /Client Requirements (as applicable)

**APPENDIX A: WORK ORDER**

Issued Pursuant to The Client Master Services Agreement effective as of March 28, 2018 by and between Sand Springs / Sapulpa Joint Board (**Client**) and Kleinfelder, Inc. (**Kleinfelder**).

Client Name: Sand Springs / Sapulpa Joint Board

Kleinfelder Project No: TBD

Project Name: Skiatook Raw Water Conveyance System – One Way Surge Tank

Work Order Type: (Check One)

Time-and-Materials

Fixed-Price

Kleinfelder Office: Tulsa, OK

Subcontractor Reference No: TBD

Kleinfelder Contact Name: Simon Wang, PE

1. SCOPE OF WORK: See Proposal TUL18P75004-REV \_\_\_\_\_

(Continue on additional page, if needed)

2. LOCATION/CLIENT FACILITY INVOLVED: Skiatook, OK

3. PERIOD OF PERFORMANCE: See Proposal TUL18P75004-REV

4. AUTHORIZED FUNDING: \$6,300

5. SPECIAL PROVISIONS: See Proposal TUL18P75004-REV

**NOTICE TO PROCEED IS GIVEN ON (DATE):** \_\_\_\_\_

**CLIENT:**

**KLEINFELDER:**

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

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

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

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

Title:

Title:

Address:

Address:



**AGENDA ITEM**

**Municipal Authority Regular**

**9.A.**

**Meeting Date:** April 16, 2018

**Submitted For:** Joan Riley, City Manager

**Submitted By:** Anna Jo Fife, City Manager Assistant

**Department:** City Manager

**Presented By:**

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**SUBJECT:**

Status Report from Tetra Tech regarding various City and SMA projects.

**BACKGROUND:**

**RECOMMENDATION:**

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**Attachments**

Status Report 04-16-18

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STATUS  
 O = Operations  
 P = Planning  
 E = Engineering Design  
 C = Construction

TETRA TECH, INC.  
 PROJECT STATUS REPORT  
 SAPULPA, OKLAHOMA  
 APRIL 16, 2018

PROJECT	TETRA TECH CONTACT	STATUS	FUNDING	COMMENTS	RECOMMENDED ACTION
1. Water Atlas Creation	Ryan Mittasch, P.E.	P		Tetra Tech is waiting for atlas markups from city staff to document facilities that were not in the plans previously provided.	City to review draft atlas and provide updated information to Tetra Tech for data entry.
2. N02-N04 Lift Station, Force Main, and Gravity	Ryan Mittasch, P.E.	E		Design was completed and submitted for ODEQ approval on March 1, 2017. Easement exhibits were provided for ROW acquisition.	Acquire the necessary right-of-way and then advertise for construction.
3. Dewey Ave. Sewer Connection	Ryan Mittasch, P.E.	E		Construction will be complete this month.	None.
4. SeneGence/Westside Sewer Plan	Josh Muskopf, P.E.	E		Subconsulting and survey underway.	None.
5. Sapulpa Fire Training Facility Waterline	Josh Muskopf, P.E.	E		Permit approvals received from ODOT and ODEQ. Minor comments received and addressed for Stillwater Central Rail crossing permit. Awaiting approval from Omega Rail Mgmt.	None.