

**KIMHEC**

ENVIRONMENTAL CONSULTING

## Agreement for Professional Services

This is an agreement effective as of

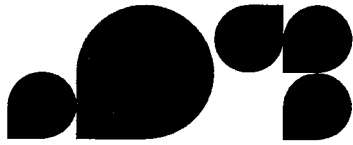
1/28/2019  
[Client to Enter Effective Date in Line Above]

between The City of Lamar (herein after called "Client") and KimHEC (herein after called "Consultant"). Client's Project, of which Consultant's services under this Agreement are part, is generally defined as follows: Pretreatment Program and Permitting Assistance. Consultant's services under this Agreement are generally defined as providing support for the Pretreatment Program and operating permitting assistance.

### Section A, Basic Services

Specifically, the Consultant further agrees to perform duties related to the structure of the City's Pretreatment Program including but not limited to services such as:

- a. Assist in the deactivation of the Pretreatment Program and/or the updating of the Pretreatment Program.
- b. Assist in the sample coordination for any current for potential new industries. Also coordinate for pretreatment-related samples such as biosolids and permit renewal such as expanded effluent testing.
- c. As needed, evaluate potential industries that may be significant or categorical. This may include inspections, review of permit applications, coordination of sampling for characterization, and other related services.
- d. Update or develop documents associated with the Pretreatment Program such as the Local Limit calculations, City code, the Enforcement Response Plan (ERP), and other documents.
- e. If the City determines that Pretreatment Program Updates are necessary, then modifications to the associated component will be made and drafted for review by Missouri department of Natural Resources.
- f. KimHEC will be present if desired during inspections by the State (Missouri DNR) or EPA Region VII to provide support to City staff.
- g. KimHEC will provide technical assistance associated with the City of Lamar's state operating permit as needed and requested.



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*Section B, Client's Responsibilities:*

- a. Provide the labor and analytical fees associated with any and all analytical work (influent, effluent, industry, biosolids) associated with this Project.
- b. Client is responsible for printing, postage, and mailing of all hard copy communications (Industrial Waste Surveys, communications, reports, etc.)
- c. Client shall assist the Consultant during all site visits.

*Section C, Schedule for Rendering Services:*

Upon this agreement becoming effective, Consultant is authorized to begin services as set forth in Section A, Basic Services, and shall continue until the not-to-exceed amount has been billed.

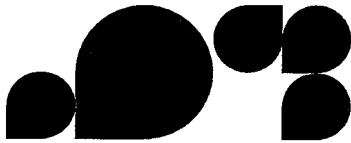
*Section D, Payments to Consultant*

Client shall pay Consultant for services rendered under this Agreement as follows:

- a. A not-to-exceed amount of \$8,000.
- b. Each invoice amount shall include a description of tasks performed, associated labor hours, labor fees (including overhead and profit), and reimbursables for the Consulting Services defined herein.
- c. The hourly rate for tasks performed will be billed at \$130 per hour.
- d. If Services beyond the allocated not-to-exceed amount set forth in this Section is required, the Client shall authorize any such work via e-mail or other written documentation. Consultant will be paid at an hourly rate of \$130 per hour for any such Services related to the management of the City's Pretreatment Program or permitting process or other associated tasks beyond the allocated budget herein.

*Section E, Total Agreement*

This Agreement with the Terms and Conditions attached constitutes the entire Agreement between Client and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written instrument.



# KIMHEC

ENVIRONMENTAL CONSULTING

In Witness Whereof, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

**Client Acceptance:**

*Russ Worsley*  
Signature

*RUSS WORSLEY, CITY ADMINISTRATOR*  
Printed Name, Title

*1104 BROADWAY*  
Address

*LAMAR, MO 64759*  
City, State, Zip

*1/28/2019*  
Date of Acceptance

**Address for Giving Notices:**

*CITY OF LAMAR  
ATTN: RUSS WORSLEY  
1104 BROADWAY  
LAMAR, MO 64759*

**Designated Representative:**

Name: *JOSH MUNDY*  
Title: *WATER PLANT SUPERVISOR*  
Phone: *417-682-5554 EXT 2350*  
Email: *HWATERPLANT@LAMARMO.ORG*

**Consultant Agreement:**

*Kimberly L. Cole*  
Signature

*Kim Cole, P.E., Principal*  
Printed Name, Title

*123 Oak Tree Drive*  
Address

*St. Louis, Missouri 63119*  
City, State, Zip

*January 23, 2019*  
Date of Agreement

**Address for Giving Notices:**

*Kim Cole, P.E.  
KimHEC  
123 Oak Tree Drive  
St. Louis, MO 63119*

**Designated Representative:**

Name: *Kim Cole, P.E.*  
Title: *Principal*  
Phone: *314-276-9575*  
Email: *kim.cole@kimhec.com*

# 2019 KimHEC TERMS AND CONDITIONS

## 1. DEFINITIONS

- 1.1. "Additional Services" - the services to be performed for or furnished to the Client by the Consultant in accordance with any mutually agreed upon written Amendment to the Agreement.
- 1.2. "Agreement" - the scope of services and responsibilities for each party of the Agreement; these terms and conditions are hereby made a part of the Agreement and does not include previous or contemporaneous agreements, representations, promises, or conditions pertaining to the Consultant's services for this project and are hereby superseded. The Agreement includes the terms and conditions herein, the Agreement, and any Amendments mutually signed.
- 1.3. "Basic Services" - the services to be performed for or furnished to Client by Consultant in accordance with the Agreement.
- 1.4. "Client" - the entity with which the Consultant has entered into this Agreement and for which the Consultant's services are to be performed.
- 1.5. "Consultant" - the person, firm or company performing the Basic Services.
- 1.6. "Designated Representatives" are the specific individual designated by each Party who shall act as a with respect to the Services to be performed or furnished by the Consultant and the responsibilities of the Client under these Basic Services. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Basic Services or Additional Services on behalf of each respective party.
- 1.7. "Industry" - any industry, commercial facility, or manufacturing facility identified in the Agreement which may be integral to the Services being performed for the Client. The Industry is not a party of the Agreement; however information provided by the Industry may be integral to the Services being provided. The Services being performed may require site visits to the Industry, information and data from the Industry, as well as additional information.
- 1.8. "Site" - the Client's Wastewater Treatment Plant, an Industry location, a Commercial location or other location of interest in performing the Services associated with the Agreement herein.

## 2. COMPENSATION

- 2.1. Consultant shall prepare invoices in accordance with its standard invoicing practices and the terms of the Agreement. Consultant shall submit its invoices to the Client on a monthly basis.
- 2.2. Invoices are due and payable within thirty (30) days of receipt.
- 2.3. Payment will be credited first to any interest owed to Consultant and then to principal.
- 2.4. If Client fails to make any payment due Consultant for Services within 30 days after receipt of Consultant's invoice, then:
  - 2.4.1. Amounts due Consultant will be increased at the rate of 1% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day and
  - 2.4.2. Consultant may, after given seven days written notice to Client, suspend services as defined herein until Client has paid in full all amounts due for services and other related charges. Client waives any and all claims against Consultant for any such suspension.
- 2.5. If any amount of an invoice is disputed then the Client shall inform the Consultant in writing of the grounds for such dispute within fifteen (15) days of receipt of the invoice and shall pay to the Consultant the value of the invoice less the disputed amount in accordance with these payment terms. Once settlement of the dispute has been agreed, any sum then outstanding shall also be payable in accordance with these payment terms.

## 3. TIMETABLE

- 3.1. The Consultant shall complete its obligations within a reasonable time. Specific periods of time for rendering services or specific dates by which services are to be completed are provided in the Agreement.
- 3.2. If, through no fault of the Consultant, the periods of time or dates referenced in Section 3.1 are changed, or the orderly and continuous progress of Consultant's services is impaired, or Consultant's services are delayed or suspended, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.
- 3.3. If Client authorizes changes in scope, extent, or character of the Basic Services, then the time for completion of Consultant's Additional Services and the rates and amounts of Consultant's compensation, shall be adjusted accordingly.

## TERMS AND CONDITIONS, CONTINUED

- 3.4. The Client shall make decisions and carry out its other responsibilities herein in a timely manner so as not to delay the Consultant's performance of its Services.

### 4. TERMINATION

- 4.1. Services may be terminated by the Client or Consultant by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay Consultant all amounts due for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by the Consultant as a result of terminating the Services.
- 4.2. Services may be terminated by the Client or Consultant for convenience by providing fifteen (15) days written notice. If Client so terminates the Services, Consultant is entitled to all amounts due for all services properly performed plus Consultant's costs as a result of the termination for convenience. If Consultant terminates its Services for convenience, it shall be paid for all Services performed as of the effective date of the termination.

### 5. DELIVERY USAGE OF THE SERVICES OR MATERIALS

- 5.1. The majority of Services supplied by the Consultant is dispatched electronically by email and shall be deemed delivered upon receipt of the email by the Client.
- 5.2. Once delivered to the Client, it is the Client's responsibility to ensure the documents are transferred to the appropriate regulatory agency or other intended recipient.
- 5.3. Documents submitted to State or Federal Agencies and approved shall not be altered by the Client following such approval.
- 5.4. Client shall not make, or permit to be made, any modifications to any documents, including drawings and specifications, furnished by Consultant pursuant to this Agreement, without the prior written authorization of Consultant.

### 6. CONFIDENTIALITY

- 6.1. Both parties shall maintain strict confidence and shall not disclose to any third party any information or material relating to the other or the other's business which comes into that party's possession and shall not use such information and material without written permission by the other party. This provision shall not, however, apply to information or material which is, or becomes, public knowledge by means other than by breach of this clause by a party to this Agreement.

### 7. INDEMNIFICATION AND MUTUAL WAIVER

- 7.1. Indemnification by Consultant: To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client, and Client's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by Section 8.1 hereof.
- 7.2. Indemnification by Client: Client shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants as required by applicable Laws and Regulations.
- 7.3. Percentage Share of Negligence: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Client, Consultant, and all other negligent entities and individuals.
- 7.4. Mutual Waiver: To the fullest extent permitted by law, Client and Consultant waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Services.

## TERMS AND CONDITIONS, CONTINUED

### 8. LIMITATION OF LIABILITY

- 8.1. In recognition of the relative risks and benefits of the project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant to the Client shall not exceed the general and professional liability insurance coverage defined in 8.2. It is intended that this limitation apply to any and all liability or cause of action unless prohibited by law.
- 8.2. Consultant will maintain general liability with not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate limit and professional liability insurance with not less than \$1,000,000 per occurrence with a \$1,000,000 annual aggregate limit and will name the Client as an additional insured.

### 9. DISPUTE RESOLUTION

- 9.1. The Client and Consultant agree that all disputes between them arising out of the Consultant's Services provided or related to the Services in the Agreement, shall be submitted to non-binding mediation (unless the parties mutually agree otherwise), thereby providing for mediation as the primary method for dispute resolution between Client and Consultant. Any such mediation shall take place in St. Louis, Missouri before a mediator of the parties choice.

### 10. GENERAL CONSIDERATIONS

- 10.1. Standards of Care: The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied under this agreement or otherwise in connection with Consultant's services.
- 10.2. Consultant shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Client-furnished information.
- 10.3. The Basic Services defined herein may be amended, in writing, by mutual agreement between the Consultant and Client. The Amendment may amend the scope (Additional Services), schedule, or compensation for the Services associated with the Agreement.
- 10.4. Consultant and Client shall comply with applicable Laws and Regulations
  - 10.4.1. Prior to the Effective Date, Client provided to Consultant in writing any and all policies and procedures of Client applicable to Consultant's performance of services under this Agreement. Consultant shall comply with such policies and procedures, subject to the standard of care set forth in Section 10.1, and to the extent compliance is not inconsistent with professional practice requirements.
  - 10.4.2. This Agreement is based on applicable Laws and Regulations and Client-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Client-provided written policies and procedures, may be the basis for modifications to Client's responsibilities or to Consultant's scope of services, times of performance, or compensation.
  - 10.4.3. Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant having to certify, guarantee, or warrant the existence of conditions whose existence the Consultant cannot ascertain. Client agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant signing any such documents.
  - 10.4.4. Consultant shall not be responsible for the acts or omissions of the Client or for the information provided to the Client by the Industry or of any of its agents or employees or of any other persons (except Consultant's own agents, employees, and Consultants) or otherwise furnishing or providing information, other than those made by Consultant.
  - 10.4.5. While at the Site, Consultant's employees and representatives shall comply with the specific applicable requirements of the Site's and Client's safety programs of which Consultant has been informed in writing.