



## AGREEMENT

### CONTRACT TO ENGAGE CITY ENGINEER

THIS AGREEMENT is made effective on the \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of Garnett, Kansas, a municipal corporation, acting by and through its authorized officers and located in the County of Anderson, State of Kansas, hereinafter referred to as “CITY”, and BG Consultants, Inc., of Lawrence, Kansas, hereinafter referred to as “ENGINEER”.

The parties agree as follows:

#### SECTION 1 – NATURE OF ENGAGEMENT

- 1.1 CITY retains and engages, pursuant to the authority conferred by it and its authorized officers of the City of Garnett, Kansas, such BG Consultants, Inc. to act, under the title of City Engineer, as the ENGINEER for the CITY and to render to CITY and its authorized officers all engineering advice for the CITY and to represent CITY and its authorized officers in all related matters upon the CITY or any of its authorized officers upon request.

#### SECTION 2 – ACCEPTANCE OF ENGAGEMENT

- 2.1 ENGINEER accepts the engagement as set forth in this Agreement and will render the services described in and during the continuance of this Agreement to meet the professional standard of care. As a principal in the firm, Jason Hoskinson, P.E. will personally supervise the City Engineering services to be provided by the ENGINEER. He is the point of contact. The ENGINEER reserves the right to appoint such special assistants and consultants as necessary to assist in the duties of City Engineer. However, the ENGINEER will not proceed with any service(s) without prior approval, request or instructions from the CITY, unless there is an emergency and reasonable efforts to reach the CITY are unsuccessful.
- 2.2 The ENGINEER shall not subcontract or assign any of the Professional Services to be performed under this Agreement without first obtaining the written approval of the CITY regarding the services to be subcontracted or assigned and the firm or person proposed to perform the services. Neither the CITY nor the ENGINEER shall assign any rights or duties under this Agreement without prior written consent of the other party.

#### SECTION 3 – COMPENSATION

- 3.1 As compensation for professional services to be rendered by Engineer under and pursuant to this Agreement, CITY will pay to ENGINEER the current hourly rates, attached as **Exhibit 1**. BG Consultants performs annual employee evaluation and reviews in December of each year and minimal salary adjustments take place in January of each year and must be reflected in the hourly rates for services. The CITY will be provided with an hourly rate schedule annually.
- 3.2 Direct expenses for mileage, postage, printing and reproductions and incidental expenses will be charged. Unit rates for reimbursables will be calculated on the actual cost plus ten (10) percent basis.
- 3.3 Billings will be submitted on a monthly basis for work provided by the ENGINEER during the prior month. Each billing will be due and payable within thirty (30) days of billing. Any unpaid amounts will accrue interest at a rate of one and one half (1 ½) percent per month.

#### **SECTION 4 – TERMINATION**

- 4.1 If the CITY fails to make payments to the ENGINEER in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the ENGINEER's option, cause for suspension of performance of services under this Agreement. If the ENGINEER elects to suspend services, the ENGINEER shall give seven (7) days' written notice to the CITY before suspending services. In the event of a suspension of services, the ENGINEER shall have no liability to the CITY for delay or damage caused the CITY because of such suspension of services. Before resuming services, the ENGINEER shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the ENGINEER's services. The ENGINEER's fees for the remaining services and the time schedules shall be equitably adjusted.

#### **SECTION 5 – GOVERNING LAW**

- 5.1 This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Kansas. Furthermore, work will be performed in a manner and reasonable level of skill, care and diligence as is ordinarily possessed and exercised by a licensed professional performing the same services under similar circumstances in Kansas.

#### **SECTION 6 – INDEMNITY**

- 6.1 Because of the nature of City Engineer services the ENGINEER and CITY agree together that the ENGINEER is functioning to help represent the CITY concerning City Engineering matters that are assigned to the ENGINEER. The CITY and ENGINEER will work together with common goals in a good faith attempt to solve civil engineering problems of the CITY.
- 6.2 To the fullest extent provided by law, CITY shall indemnify and hold harmless ENGINEER and their respective agents and employees from and against any claims, suits, damages, costs and expense to the extent caused by breach of this Agreement, including negligent acts, errors or omissions of ENGINEER.
- 6.3 In the event the engineering services are found to have need for correction, the sole remedy will be for the engineering work to be corrected at no charge to the CITY.

#### **SECTION 7 – COPYRIGHT AND LICENSE CLAUSES**

- 7.1 All documents prepared or furnished by ENGINEER pursuant to this Agreement are instruments of ENGINEER's professional service, and ENGINEER shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, ENGINEER grants CITY a license to use instruments of ENGINEER's professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CITY, without ENGINEER's written permission, shall be at CITY's sole risk, and CITY agrees to indemnify, defend, and hold ENGINEER harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CITY or by others acting through CITY.

#### **SECTION 8 – NO FIDUCIARY DUTY**

- 8.1 The ENGINEER shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The ENGINEER shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. ENGINEER

makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with ENGINEER's services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. The ENGINEER shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

**SECTION 9 – SPECIAL PROVISIONS**

9.1 Special Provisions to this contract may be added as **Exhibit 2**, if needed.

**SECTION 10 – ENTIRE AGREEMENT**

10.1 This Agreement constitutes the entire Agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

**SECTION 11 – MODIFICATION OF AGREEMENT**

11.1 Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

**SECTION 12 – PARAGRAPH HEADINGS**

12.1 The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
**Authorized Representative**  
**City of Garnett, Kansas**

\_\_\_\_\_  
**BG Consultants, Inc.**  
**Engineer**

**ATTEST:** \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Notary

END OF CITY ENGINEER AGREEMENT

## EXHIBIT 1

### 2020 BG CONSULTANTS, INC. STANDARD HOURLY RATES

<u>POSITION</u>	<u>STANDARD PER HOUR 2020</u>
PRINCIPAL 3	\$266.00
PRINCIPAL 2	\$236.00
PRINCIPAL	\$212.00
PROJECT ENGINEER IV	\$194.00
PROJECT ENGINEER III	\$170.00
PROJECT ENGINEER II	\$159.00
PROJECT ENGINEER I	\$138.00
SENIOR DESIGN ENGINEER	\$155.00
DESIGN ENGINEER	\$128.00
ASSISTANT DESIGN ENGINEER	\$110.00
ARCHITECT	\$202.00
PROJECT ARCHITECT	\$162.00
DESIGN ARCHITECT	\$122.00
ASSISTANT ARCHITECT	\$100.00
TECHNICIAN II	\$117.00
TECHNICIAN I	\$99.00
SENIOR CONSTRUCTION OBSERVER	\$115.00
CERTIFIED CONSTRUCTION OBSERVER	\$103.00
CONSTRUCTION OBSERVER	\$92.00
SENIOR PROJECT SURVEYOR	\$192.00
PROJECT SURVEYOR	\$143.00
ASSISTANT PROJECT SURVEYOR	\$106.00
FIELD SUPERVISOR	\$111.00
SURVEYOR II	\$81.00
SURVEYOR I	\$69.00
CAD SYSTEM AND OPERATOR	\$110.00
CLERICAL	\$65.00

- Note:
- 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.
  - 2) For any Federal Wage and Hour Law nonexempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
  - 3) Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.