

City of Sedgwick  
City Council Meeting  
March 5, 2025

**TO:** Mayor and City Council

**SUBJECT:** Consultant Agreement – BG Consultants, Inc.

**INITIATED BY:** Administration

**AGENDA:** New Business

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**Recommendation:** Approve the contract with BG Consultants as presented

**Background:** BG Consultants was contracted during the CDBG application process to develop the preliminary architectural report. The Kansas Department of Commerce has awarded the city \$650,000 in grant funding to be utilized towards the Sedgwick Fire-Ems Station project. Due to their familiarity with the project, BG Consultants is the recommended firm to move forward with architectural design and engineering services.

A full listing of services that are to be rendered by the consultant is listed in Exhibit 1 of the proposed contract. Design services are anticipated to occur over a 28-week period timeline.

**Financial Considerations:** Exhibit 2 of the proposed contract provides a breakdown of costs that are associated with this agreement. The anticipated total will be \$246,010.00 to be billed monthly and appropriated to correspond with percent of work completed.

**Recommendations/Actions:** It is recommended that the governing body approve the contract with BG Consultants for a not-to-exceed amount of \$246,010.00.

**Attachments:** Draft Contract



## **AGREEMENT CONSULTANT-CLIENT**

**THIS AGREEMENT** made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and SEDGWICK FIRE-EMS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

Sedgwick Fire-EMS Facility
Design and Construction Administration
Sedgwick, Kansas

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

### **SECTION 1 – DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “Client” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

## SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 SCOPE OF SERVICES: The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

### 2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Clint B. Hibbs, Architect
Address:	4806 Vue Du Lac Place
	Manhattan, Kansas 66503
Phone:	785/712 2750

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’s profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The Client will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.
- 2.2.11. **No Fiduciary Duty:** The CONSULTANT 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 CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. CONSULTANT makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with CONSULTANT'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 CONSULTANT 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 3 – CLIENT RESPONSIBILITIES**

### **3.1 GENERAL DUTIES AND RESPONSIBILITIES**

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Kyle Nordick, City Administrator  
Address: 520 N Commercial Ave  
Sedgwick, Kansas 67135  
Phone: 316/772 5151

- 3.1.8. **Billing Contact:** In this section, the CLIENT will identify the billing contact and address. The CONSULTANT will submit invoices according to this contract to the CLIENT's billing contact at the address shown:

Name: Kyle Nordick, City Administrator  
Address: 520 N Commercial Ave  
Sedgwick, Kansas 67135  
Phone: 316/772 5151

## SECTION 4 – PAYMENT

### 4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement. The Lump Sum Fee for this project is a total of \$246,010.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in **Exhibit 1** of this Agreement. Payment of the Lump Sum Fee and

reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.4. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.5. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.6. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.7. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.
- 4.1.8. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at

CONSULTANT's standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

- 4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT's fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

## SECTION 5 – MUTUAL PROVISIONS

### 5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on failure of CLIENT to make payments or any material breach by the CLIENT.

If the CLIENT fails to make payments to the CONSULTANT 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 CONSULTANT's option, cause for suspension of performance of services under this Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven (7) days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT's services. The CONSULTANT's fees for the remaining services and the time schedules shall be equitably adjusted.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.

- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

## 5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

## 5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

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

## 5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.
- 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.
- 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.



5.5 ENTIRE AGREEMENT

- 5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

- 5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

- 5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

- 5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

- 5.9.1. CLIENT's exclusive remedy for any alleged breach of CLIENT's standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to \$500,000.00 (Five Hundred Thousand Dollars) of available insurance under the engineer's professional liability policy.
- 5.9.1. It is agreed to by the parties to this Agreement that the CONSULTANT's services in connection with the Project shall not subject CONSULTANT's employees, officers, or directors to any personal liability or legal exposure for risks associated with the Project. Therefore, the CLIENT agrees that the CLIENT's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Kansas corporation, and not against any of the CONSULTANT's individual employees, officers or directors.
- 5.9.2. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

- 5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

- 5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

- 5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

- 5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

- 5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

- 5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

- 5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.

**CONSULTANT:**

**CLIENT:**

**BG Consultants, Inc.**

**Sedgwick Fire-EMS**

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

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

Printed Name: Clint Hibbs

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

Title: Principal

Title: \_\_\_\_\_

END OF CONSULTANT-CLIENT AGREEMENT

## **EXHIBIT 1**

### **SCOPE OF SERVICES**

#### **PROJECT PARAMETERS**

The scope of work includes design of a Fire-EMS facility in Sedgwick, Kansas. Work will include design for construction of improvements for the facility and associated site work and shall be based upon the Preliminary Architectural Report prepared by the CONSULTANT October 2024.

#### **SCOPE OF BASIC SERVICES**

The CONSULTANT will provide architectural and engineering services for the Project(s) as described in this Agreement. CONSULTANT's services will include the following:

- Architectural Design
- Structure Engineering
- MEP Engineering
- Civil Engineering
- Topographic Surveying

#### **Scope of CONSULTANT's Base Services**

1. Perform Architectural and Engineering design and construction administration services limited to the scope of work identified herein. To include:
  - a. Provide a topographic survey.
  - b. The CONSULTANT will prepare construction documents and specifications for the project.
  - c. The Construction work anticipated by this Design Package will be delivered by a prime contractor.
2. Coordinate CONSULTANT's services with those services provided by the CLIENT and the CLIENT's consultants; relying on the accuracy and completeness of services and information furnished by the CLIENT and the CLIENT's consultants.
3. Assist CLIENT in coordination of the services of selecting a Geotechnical Engineer for development of a Geotechnical Report. The CLIENT will contract directly with the Geotechnical Engineer for services, Geotechnical Engineering is not included in this contract.
4. Meetings with the CLIENT, or site visits, throughout the project design are provided. Consult with CLIENT to coordinate each major section of the project development and design.

#### **Scope of CONSULTANT's Services for Design, Bidding, Construction Administration Phases of the Project**

##### *Schematic Design Phase Services*

1. The CONSULTANT will review the program and other information furnished by the CLIENT, and will review known laws, codes, and regulations applicable to the CONSULTANT's services.
2. Based on the Project's requirements agreed upon with the CLIENT, the CONSULTANT will prepare and present for the CLIENT's approval a preliminary design illustrating the scale and relationship of the Project components.
3. Based on the CLIENT's approval of the preliminary design, the CONSULTANT will prepare Schematic Design Documents for the CLIENT's approval. The Schematic Design Documents will consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials will be noted on the drawings or described in writing.

4. The CONSULTANT will submit to the CLIENT an opinion of probable construction cost for the Work.
5. The CONSULTANT will submit the Schematic Design Documents to the CLIENT, and request the CLIENT's approval.

*Design Development Phase Services*

6. After the CLIENT has approved schematic design documents, design development documents will be prepared.
  - a. Prepare design development drawings, outline specifications and associated documents after receiving approval of the Schematic Design from the CLIENT.
  - b. Update working opinion of probable construction costs for divisions of the work.

*Construction Documents Phase Services*

7. After the CLIENT has approved design development documents, contract documents will be prepared.
  - a. Prepare working drawings, specifications, and contract documents with Architect/Engineer professional seal after receiving approval of the Design Development effort from the CLIENT.
  - b. Prepare and review final opinion of probable construction costs and construction scheduling with CLIENT.
  - c. Prepare alternate work items in an effort to match construction costs with available funds.
  - d. Provide and submit final plans and specifications to CLIENT and known regulatory agencies for final approval.
  - e. Review the final opinion of probable construction costs with the CLIENT.

*Bidding or Negotiation Phase Services*

8. After the CLIENT has approved construction documents, the CONSULTANT will assist the CLIENT in bidding the project.
  - a. Advertise the project for bids.
  - b. Release and distribute final plans and specifications to prospective bidders.
  - c. Issue addenda identified during the bidding process.
  - d. Attend and chair pre-bid meeting at the project site with prospective contractors.
  - e. Attend one (1) bid letting, analyze bids and provide recommendations for accepting the low responsible bidder, and recommend award of contract to the CLIENT.
  - f. Assist the CLIENT in securing a General Contractor Agreement.

*Construction Phase Services*

9. After the project has been awarded for construction, the CONSULTANT will assist the CLIENT during construction of the project.
  - a. Advise and consult with the CLIENT during the Construction Administration Phase Services.
  - b. Provide site visits for construction observation to become generally familiar with the progress and quality of the portion of the Work completed, and to develop opinion, in general, if the Work observed is performed in a manner indicating the Work, when fully completed, will be in accordance with the Contract Documents.
  - c. Review and make recommendations for payments due the Contractor for partially and completed work.
  - d. Review and provide recommendation for Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
  - e. Review and respond to requests for information about the Contract Documents.
  - f. Authorize minor changes in Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time.

- g. Prepare Change Orders and Construction Change Directives for the CLIENT's approval and execution in accordance with the Contract Documents.
- h. Maintain records relative to changes in the Work.
- i. Conduct site visit to determine the date or dates of Substantial Completion and the date of final completion; receive from the Contractor and forward to the CLIENT, for the CLIENT's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and review the final application for payment.
- j. Conduct observations of the Work with the CLIENT to develop an opinion of conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
- k. Make recommendations to the CLIENT for acceptance and prepare a Certificate of Substantial Completion and Certificate of Final Completion.

#### Additional Services

1. Any significant revisions to the documents after CLIENT approval, any work excluded from or not included in this proposal, or items noted as such above will be considered as Additional Services. Additional services may be provided upon written authorization and agreement on compensation therefore.
2. Upon recognizing the need to perform the following Additional Services, the CONSULTANT will notify the CLIENT and explain the facts and circumstances giving rise to the need. The CONSULTANT will not proceed to provide the following services until the CONSULTANT receives the CLIENT's written authorization:
  - .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the CLIENT, or a material change in the Project including, but not limited to, size, quality, complexity, the CLIENT's schedule or estimate of probable construction cost of the Work, or procurement or delivery method;
  - .2 Services necessitated by the CLIENT's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
  - .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
  - .4 Preparing digital data for transmission to the CLIENT's consultants and contractors, or to other CLIENT authorized recipients;
  - .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the CONSULTANT is party thereto;
  - .6 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
  - .7 Assistance to the Initial Decision Maker, if other than the CONSULTANT.
3. In the Construction Phase, the CONSULTANT will provide the following Additional Services, and explain the facts and circumstances giving rise to the need. If the CLIENT subsequently determines that all or parts of those services are not required, the CLIENT will give prompt written notice to the CONSULTANT, and the CLIENT will have no further obligation to compensate the CONSULTANT for those services:
  - .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the CONSULTANT;
  - .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other CLIENT-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
  - .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
  - .5 Evaluating substitutions proposed by the CLIENT or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
  - .6 To the extent the CONSULTANT's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.
4. The CONSULTANT will provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the CONSULTANT will notify the CLIENT:
- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
  - .2 Three ( 3 ) visits to the site by the CONSULTANT over the duration of the Project during construction
  - .3 Two ( 2 ) observations for select portions of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
  - .4 One ( 1 ) observation for select portions of the Work to determine final completion

## **EXHIBIT 2**

### **COST AND SCHEDULE**

#### **COMPENSATION**

The CONSULTANT's compensation will be a Lump Sum Fee of \$246,010.00 to be billed monthly and appropriated to correspond with percent of work completed as follows:

1. Topographic Survey: \$8,000
2. Architecture, Engineering Design and Bidding Services: \$136,006
3. Construction Administration: \$102,004

The CONSULTANT's efforts are intended to serve the CLIENT during the period where services are performed and thereafter.

**Reimbursable Expenses** are in addition to compensation for Basic and Additional Services, and include expenses incurred by the CONSULTANT and the CONSULTANT's subconsultants directly related to the project, as follows:

- Fees paid for securing approval of authorities having jurisdiction over the Project.

#### **PROJECT SCHEDULE**

Professional services are proposed to be completed by mutual agreement between CLIENT and CONSULTANT. Design services are anticipated to occur over a 28-week period timeline unless influences outside of the CONSULTANT's control cause delay.



### **EXHIBIT 3**

### **SPECIAL PROVISIONS**

1. DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT:

The Securities and Exchange Commission (SEC) has passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, therefore, BG Consultants, Inc. recommends and advises all clients and potential clients (counties/municipalities/improvement districts....etc.) that are considering infrastructure improvements to contract with and receive professional financial advice from a registered municipal financial advisor. BG Consultants, Inc. and all related staff are not registered municipal financial advisors and all information provided concerning infrastructure projects and financing of improvements is general and typical information.

2. (BABA) BUILD AMERICA, BUY AMERICA, BUY AMERICA ACT

This agreement is for professional services related to a project that is subject to the Build America, Buy America Act (BABA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. While professional services are not subject to BABA, the Provider understands that, absent a waiver by the Department of Housing and Urban Development, Provider shall, in accordance with the Professional Standard of Care, not approve for use in this project, any iron, steel, manufactured products, or construction materials unless such materials have been produced in the United States. Provider shall, in accordance with the Professional Standard of Care, require that compliance certificates for materials provided for work specified within provider's scope of work. Guidance on complying with BABA is outlined by Office of Management and Budget's Memorandum M-24-03, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

3. The CONSULTANT shall operate within all known CDBG guidelines, specifically:

- a. Title VI Civil Rights Act of 1964.
- b. Section 109 Certifications.
- c. Section 504 Certifications.
- d. Age Discrimination Act of 1975.
- e. Fair Housing Amendments Act of 1988.
- f. Executive Order 11063 Certifications.
- g. Kansas Act Against Discrimination.
- h. Executive Order 11246 Certifications.
- i. Section 3 Certifications.
- j. Title VIII of the Civil Rights Act of 1968 as amended by the Housing Act of 1974.
- k. Section 503 of the Rehabilitation Act of 1973 as amended.
- l. 24 CFR 85 as modified by CFR 570 Subpart J.
- m. Title I of the Housing & Community Development Act of 1974 as amended.
- n. Section 519 Public Law 101-144 (The 1990 HUD Appropriation Act).
- o. Cranston-Gonzales National Affordable Housing Act (Section 906 & 912).