



Due to efforts to mitigate the spread of COVID-19, physical access to the City Commission meeting will be restricted.

In accordance with Kansas Open Meetings Act (KOMA), the meeting can be viewed live on Channel 23 and via Facebook Live or listened to by dialing: 1-312-626-6799 and entering meeting ID 919 2144 9005#.

If you need this information in another format or require a reasonable accommodation to attend this meeting, contact the City's ADA Coordinator at 785-229-3621. Please provide advance notice of at least two (2) working days. TTY users please call 711.

Citizens may submit comments (300 words or less) for the City Commission to be read during public comment or during discussion on an agenda item. Submit your comment to publiccomments@ottawaks.gov no later than **2:00 pm on October 12th**; all emails must include your name and address.

Participants who generate unwanted or distracting noises may be muted by the meeting host. If this happens, unmute yourself when you wish to speak.

PUBLIC COMMENTS

Subject to the above restrictions, persons who wish to address the City Commission regarding items on the agenda may do so as that agenda item is called. Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so at this time when called upon by the Mayor. Comments on personnel matters and matters pending in court or with other outside tribunals are not permitted. Speakers are limited to three minutes. Any presentation is for information purposes only. No action will be taken.

ITEMS TO BE PLACED ON THE REGULAR CITY COMMISSION AGENDA

1. Minutes (Pp. 2-6)
 - A. August 24, 2020 Study Session
 - B. August 31, 2020 Study Session

ITEMS FOR PRESENTATION AND DISCUSSION

1. City Connecting Link Improvement Program (CCLIP) - Michael Haeffele (Pp. 7-22)
2. Update From Franklin County Development Council - Paul Bean
3. Report by City Manager
4. Reports by City Commissioners
5. Report by Mayor

ANNOUNCEMENTS

1. October 19, 2020 Study Session, 4:00 pm, via Zoom
2. October 21, 2020 Regular Meeting, 10:00 am, via Zoom
3. October 21, 2020 Joint City/County/USD 290 Meeting, 12:00 pm, Hosted by USD 290

ADJOURN

ITEMS ALREADY PLACED

**Study Session Minutes
Ottawa, Kansas
Minutes of August 24, 2020**

The Governing Body met at 4:00 pm this date with the following members present and participating to wit: Mayor Weigand, Commissioner Skidmore, Commissioner Caylor, Commissioner Jorgensen, and Commissioner Crowley. A quorum was present.

Mayor Weigand called the meeting to order.

Opening statement was read by City Clerk Amy Finch providing information on accessing the meeting remotely and guidelines that will be followed for this meeting.

Public Comments

None given at this time.

Proclamation—Library Card Sign-Up Month

The Governing Body reviewed a proclamation recognizing September 2020 as Library Card Sign-Up Month and agreed by consensus to place this item on the next Regular Meeting agenda on September 2, 2020.

Kansas Housing Assistance Program Resolution and Cooperation Agreement

It was explained Sedgwick and Shawnee counties administer the program and have requested City participation to allow citizens to obtain mortgage loans through the program. The Governing Body heard from Scott Riffle, Stifel Public Finance, who stated that he is requesting approval at a borrower's request; that Franklin County is already participating but approval by the City is needed for applicants within City limits; and answered questions Governing Body.

The Governing Body asked if the City Attorney has reviewed the agreement and resolution. City Attorney Blaine Finch confirmed he had reviewed the documents and that the Governing Body could approve today if so desired.

The Governing Body agreed by consensus to place this item on the next Regular Meeting Agenda.

Presentation Concerning Power Plant Shift Changes

The Governing Body heard from Utility Director Dennis Tharp who provided an informational presentation of a proposal to eliminate a shift at the Power Plant after two employees left the organization. Mr. Tharp stated advances in technology makes this an ideal time to move away from the current 24-hour Power Plant operation and stated only 6-8 other Kansas plants still operate 24-hours. Mr. Tharp stated this can be achieved with the use of a third-party call center, provided the following information, and answered questions from the Governing Body:

- Not replacing the two vacant positions would result in estimated savings of \$150,000 - \$200,000
- Information that used to require an operator on site can now be monitored and tracked using technology
- Change would increase employee morale and reduce the number of times being on call to once every 6 – 8 weeks

August 24, 2020

Unofficial Until Approved

- Kansas Municipal Energy Agency (KMEA) is discussion establishing a call center for Kansas communities
- Additions of substations, improved connections, advances in technology and market changes have all prepared for the change and allow greater flexibility in operations
- Minimal upfront costs to implement are needed for security measures; annual costs for licensing would exist
- Citizens would call the same after-hours number and quality of service to our citizens would remain the same as today

City Manager Richard U. Nienstedt stated no action is required from the Governing Body and this presentation was to provide information to the Commission and the public to make them aware of the changes.

City Manager's Report

City Manager Richard U. Nienstedt who gave an update on the CARES application, stating that if funding is received, it should help low to moderate income citizens access wireless broadband and have access to devices that can be checked out. Mr. Nienstedt further stated that COVID-19 cases are still increasing and reminded the public to wear a mask, social distance, wash hands, and be weary of being in groups.

Commissioner's Reports

None were given.

Mayor's Report

Mayor Weigand stated there were many good things during this meeting: the presentation by Scott Riffle, savings in the Utilities Department, and the decommissioning of the STAG unit. Mayor Weigand further echoed the comments made by City Manager Richard U. Nienstedt, encouraging citizens to wear masks.

Announcements

Mayor Weigand announced the following:

- August 31, 2020 Study Session, 4:00 pm via Zoom
- September 2, 2020 Regular Meeting, 7:00 pm, via Zoom
- September 7, 2020 Labor Day Holiday, Study Session CANCELLED
- September 7, 2020 Labor Day Holiday, City Offices CLOSED

Adjournment

There being no further business to come before the Governing Body, Mayor Weigand declared the meeting duly adjourned at 4:47 pm.

Misty Kems, Acting City Clerk

August 24, 2020

Unofficial Until Approved

Study Session Minutes
Ottawa, Kansas
Minutes of August 31, 2020

The Governing Body met at 4:00 pm this date with the following members present and participating to wit: Mayor Weigand, Commissioner Skidmore, Commissioner Caylor, Commissioner Jorgensen, and Commissioner Crowley. A quorum was present.

Mayor Weigand called the meeting to order.

Opening statement was read by Assistant City Clerk Misty Kems providing information on accessing the meeting remotely and guidelines that will be followed for this meeting.

Public Comments

None given at this time.

Minutes to Review

The Governing Body reviewed minutes from July 1, 2020 Regular Meeting, July 6, 2020 Study Session, July 13, 2020 Study Session, and July 15, 2020 Regular Meeting. The Governing Body agreed by consensus to place these on the next Regular Meeting agenda on September 2, 2020.

Ottawa University Educational Facilities Revenue Bonds 2020

The Governing Body heard from City Clerk Amy Finch, Ottawa University representatives Tom Corley and Clara Ribordy, and KICFA representative Scott Tschudy who answered questions from the Governing Body and explained these are educational revenue bonds; are an obligation of Ottawa University that arises from financing that Ottawa University is getting out of Arizona and no liability will fall upon the City.

After some discussion, the Governing Body agreed by consensus to place this item on the next Regular Meeting Agenda.

Solar Partnership with Evergy

The Governing Body heard from Utility Director Dennis Tharp and Evergy representatives Lindsay Freeman and Brandon Sack who presented how the solar partnership would go; the responsibilities of Evergy and the City; answered questions from the Governing Body. Mr. Tharp stated that he would be coming back to the Governing Body at a later date with more details and no action is needed to be taken today.

First Street Sidewalk and Parking

The Governing Body heard from Public Works Director Michael Haeffele and Community Development Director Wynndee Lee who stated the following and answered questions from the Governing Body:

- Receive Recreational Trails Grants
- Will be working on the trail at 1st Street and Walnut
- Will make it ADA accessible and add parking on the west side near Walnut
- The work will be contracted out to RFB Construction who had the lowest bid of \$54,550.55
- Business owners in the area were spoken to about phasing of the project
- There is quite a disparity between bids, the city engineer from Bartlett and West analyzed the cost of the project and their estimate came in between the costs of the two lowest bids

August 31, 2020

Unofficial Until Approved

- There are two grants: \$75,000 from Wildlife and Parks and \$55,000 from Sunflower the work will be split into four phases
- Phase 1-sidewalks and parking, the city will incur some design costs
- Phase 2-signage along the trails, the city will install and provide the labor
- Phase 3-benches, shade structures, and counters, the city contribution is \$3,159 for the work
- Phase 4-is pending time and funds- another layer of rock with chemical to retard weed growth and possible improvements to both trails

After some discussion, the Governing Body agreed by consensus to place this item on the next Regular Meeting agenda.

Monthly Financial & Activity Reports—July

The Governing Body reviewed the July Monthly Financial and Activity reports with City Staff and community support organizations.

City Manager's Report

City Manager Richard U. Nienstedt stated the following:

- No meeting on September 7th
- September 14, 2020 Study Session will have a vacation of easement with Select Steel that will need action taken on the September 16, 2020 Regular Meeting
- Will have discussion about the purchase of houses and property out of the storm sewer funds for flood mitigation
- Notice of Virtual League Conference
- Forwarded info on the Kansas Housing Project to present on the next Regular Meeting

Commissioner's Reports

None offered.

Mayor's Report

Mayor Weigand commented that it was a good meeting and that the City has an interesting future going forward.

Open Agenda

The mayor invited city staff and community partners to speak about the monthly financial activity and reports. The following community members reported their activity and answered questions from the Governing Body:

- Tiffany Evans – Ottawa Memorial Auditorium
- Kelsie Eads – Ottawa Main Street Association
- Terry Chartier – Ottawa Library
- Tim Matthias – Ottawa Fire Department
- John Coen – Ottawa Area Chamber of Commerce
- Melissa Reed – Prairie Paws Animal Shelter

Announcements

None Given

Adjournment

There being no further business to come before the Governing Body, Mayor Weigand declared the meeting duly adjourned at 5:31 pm.

Misty Kems, Acting City Clerk

CITY OF OTTAWA, KANSAS
PUBLIC WORKS DEPARTMENT
MEMORANDUM

TO: Richard U. Nienstedt
FROM: Michael Haeffele
SUBJECT: City Connecting Link Improvement Program (CCLIP)
DATE: October 2, 2020

Attached you will find a contract for engineering services for the CCLIP project for FY 2022. This project was approved by the City Commission at the Study Session on August 10, 2020. Although the project will not go to construction until 2022, the project must be designed prior to that.

The project that KDOT has approved for K-68 from Poplar to the Marais des Cygnes River Bridge involves repairing concrete joints with some full depth replacements of failed pavement sections, and storm sewer inlet repairs. The attached contract is for the design services for this project. Funds for the design were included in the 2020 Special Street Budget. The estimate for engineering design on this project was \$37,500 and the estimate for construction engineering inspection was \$26,100. The attached contract is below the estimate and B&G is the City Engineer and they have the best knowledge of the project and city street needs.

Recommendation: To approve the contract for design services from B&G Consulting in an amount not to exceed \$34,000 for design and \$25,216 for Construction Engineering Inspections services.

Respectfully submitted,

Michael W. Haeffele
Public Works Director



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 City of Ottawa, Kansas, 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:

K-68 Surface Preservation Project (State Fiscal Year 2022)

Marais des Cygnes River Bridge to Poplar Street

Ottawa, 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:	Jason Hoskinson, P.E., PTOE
Address:	1405 Wakarusa Drive
	Lawrence, KS 66049
Phone:	785-749-4474

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: Michael Haeffele
 Address: 101 S. Hickory Street
Ottawa, KS 66067
 Phone: 785-229-3631

- 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: Michael Haeffele
 Address: 101 S. Hickory Street
Ottawa, KS 66067
 Phone: 785-229-3631

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee of **thirty-four thousand and NO/100 Dollars (\$34,000.00)** according to **Exhibit 2** of this Agreement plus reimbursable expenses as outlined in **Exhibit 2** for the Scope of Services as shown in **Exhibit 1, Items A and D** 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**. The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in **Exhibit 2** and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of **twenty-five thousand two hundred sixteen and NO/100 dollars (\$25,216.00)** according to **Exhibit 2** of this Agreement plus reimbursable expenses as outlined in **Exhibit 2** for the Scope of Services as shown in **Exhibit 1, Item E** of this Agreement. 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. discounted 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 discounted 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 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 the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.
- 5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.
- 5.9.3. 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 _____, 20__.

CONSULTANT:

CLIENT:

BG Consultants, Inc.

City of Ottawa, Kansas

By:



By:

Printed Name: David J. Hamby, P.E., CFM

Printed Name: _____

Title: Vice President

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1

SCOPE OF SERVICES

PROJECT: The Scope of Services described in this Exhibit 1 is for the Surface Preservation Project on Kansas Highway 68, between the Marais des Cygnes River bridge and Poplar Street in Ottawa, Kansas, hereinafter referred to as “PROJECT”. The PROJECT will be funded in part by the Kansas Department of Transportation’s (KDOT) City Connecting Link Improvement Program (CCLIP).

A. DESIGN PHASE SERVICES

CONSULTANT will provide the following Design Phase Services.

1. Receive any available information from CLIENT applicable to the PROJECT.
2. Design and prepare the construction documents (construction plans, project manual, and opinion of probable construction costs) for the PROJECT referencing the Local Public Authority (LPA) Project Development Manual prepared by KDOT.
3. Surveying services are not included. CONSULTANT will perform up to two (2) site visits to:
 - a. Measure pavement widths to use for estimating bid item quantities.
 - b. Observe existing pavement conditions.
 - c. Estimate approximate quantities of pavement patching.
 - d. Review existing pavement markings.
4. Prepare a project base map in AutoCAD using measurements and observations from Item 3 above and aerial photography.
5. Receive information from utility companies having facilities within the PROJECT limits. CONSULTANT will contact ONE CALL to request utility companies locate existing utility infrastructure within the PROJECT area.
6. Perform engineering design of PROJECT. CONSULTANT and CLIENT anticipate the engineering design of surface preservation improvements will require the following:
 - e. Typical pavement sections and typical patching details.
 - f. Pavement patching plans.
 - g. Pavement marking plans and details.
 - h. Temporary traffic control plan.
 - i. Summary of quantities.
7. Prepare construction plans for the PROJECT improvements on 22”x36” sheets.
8. Prepare a project manual to include construction contract documents, KDOT required contract provisions, technical specifications, and project specific Special Provisions for items of work included in the PROJECT which are not specified in the Standard Specifications for State Road and Bridge Construction, 2015 Edition or the KDOT Special Provisions.
9. Construction plans and project manual will be prepared to a Field Check stage (approximately 50% complete status) and submitted to CLIENT for review and comment.
10. Attend a Field Check meeting at the PROJECT to discuss the design status.
11. After the Field Check meeting, CONSULTANT will address CLIENT’s review comments and process the following stages of construction document reviews with CLIENT: Office Check and Final Check.
12. After the Final Check review, CONSULTANT provide CLIENT with up to five (5) hard copies and one (1) PDF of the final construction documents sealed by a licensed professional engineer.
13. Prepare an opinion of probable construction costs at the Field Check, Office Check, and Final Check project development stages.

14. Prepare the permit application and applicable exhibits for known permits required for construction. CONSULTANT will deliver permit application(s) to CLIENT for CLIENT to submit for approval. Permit application fees will be the CLIENT's responsibility. CONSULTANT and CLIENT anticipate the following permits may be needed.
 - a. KDHE NOI Permit.
15. Applying for and obtaining a Section 404 Permit from the U.S. Army Corps of Engineers is not anticipated and therefore is not included in this scope of services.
16. Environmental Assessment or Environmental Impact Statement services concerning the National Environmental Policy Act are not included in this AGREEMENT. The CONSULTANT does not anticipate these services will be necessary for the PROJECT. Should the need for such services arise, the CONSULTANT can provide these services by supplemental agreement.
17. Geotechnical engineering services are not included within this scope of services. CONSULTANT will assist CLIENT in soliciting proposals for services from geotechnical engineering companies. CLIENT will contract directly with a qualified geotechnical engineering firm to provide geotechnical services.

B. PUBLIC INVOLVEMENT SERVICES – Public Involvement Services are not included. CONSULTANT can provide CLIENT with Public Involvement Services by separate agreement or addendum to this AGREEMENT.

C. PROPERTY ACQUISITION SERVICES – Property Acquisition Services are not included. After the PROJECT has achieved Field Check status and the need for additional rights-of-way and/or easements is known, CONSULTANT and CLIENT may incorporate property acquisition assistance services by addendum to this AGREEMENT.

D. BID PHASE SERVICES

CONSULTANT will provide the following Bid Phase Services.

1. Assist CLIENT with advertising the PROJECT bid documents.
2. Address questions from prospective bidders regarding the bid documents. Issue addenda, if necessary, prior to the bid letting.
3. Provide CLIENT with an Engineer's Opinion of Probable Construction Costs at the time of the opening of bids
4. Attend the bid opening, review and tabulate bids, and provide CLIENT with a recommendation regarding award of the construction contract.

E. CONSTRUCTION ENGINEERING SERVICES

CONSULTANT will provide the following Construction Engineering Services.

1. Assist CLIENT with administration of the construction contract.
2. Provide qualified, part-time personnel to assist CLIENT with construction engineering services based on a construction project duration of 35 Working Days.
3. The budget of hours included in this Agreement for the Construction Engineering Services is 8-hours of "Principal" time, 24-hours of "Project Engineer I" time and 220-hours of "Senior Construction Inspector" time.

END OF EXHIBIT 1

EXHIBIT 2
COST AND SCHEDULE

A. FEE

1. CONSULTANT will provide services in Exhibit 1, Items A and D for a lump sum fee of **thirty-four thousand and NO/100 dollars (\$34,000.00)**. CLIENT will be invoiced for services in Exhibit 1, Items A and D in accordance with Section 4 of this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.
2. CONSULTANT will provide services in Exhibit 1, Item E, for a fee based on the actual hours expended at CONSULTANT's Discounted Hourly Rates, but not to exceed **twenty-five thousand two hundred sixteen and NO/100 dollars (\$25,216.00)**. CLIENT will be invoiced for services in Exhibit 1, Item E in accordance with Section 4 of this AGREEMENT. CLIENT acknowledges and understands this fee is an estimated budget based on the volume of hours identified in Exhibit 1, Item E. Additional compensation in excess of this estimated budget may be necessary depending on the actual volume of hours expended by CONSULTANT.

B. ESTIMATED PROJECT SCHEDULE

1. CONSULTANT will perform services in Exhibit 1, Item A and D, in an effort to meet CLIENT scheduling goal to bid the PROJECT in the State of Kansas Fiscal Year 2022. CLIENT understands the completion of CONSULTANT's services is contingent upon CLIENT and governmental agency reviews which are beyond CONSULTANT's control and could delay the performance of services beyond the estimated completion date(s).
2. CONSULTANT and CLIENT anticipate CONSULTANT will perform services in Exhibit 1, Item E, during the State of Kansas Fiscal Year 2022.

END OF EXHIBIT 2

EXHIBIT 3
SPECIAL PROVISIONS

A 1-page project location map is attached to the AGREEMENT after this page.

END OF EXHIBIT 3

