

CITY OF WESTWOOD, KS

MASTER AGREEMENT FOR BUILDING CODE SERVICES

This Master Agreement (hereafter referred to as the "Agreement") is entered into on the 10th Day of August, 2023 between the City of Westwood, KS ("CITY"), located at 4700 Rainbow Blvd, Westwood, KS 66205 and George Butler Associates Inc. ("CONSULTANT"), located at 9801 Renner Boulevard, Suite 300, Lenexa, Kansas 66219.

WHEREAS, the CITY intends to engage the CONSULTANT in a variety of projects, performing certain professional building code services. Details of the projects will be included in individual TASK ORDERS to be attached to and made a part of this Master Agreement.

The CITY and CONSULTANT therefore agree as follows:

ARTICLE I - DEFINITIONS AND RULES OF INTERPRETATION

- A. The agreement between the CITY and the CONSULTANT consists of this Master Agreement for Building Code Services, the Additional Provisions of Agreement for Building Code Services attached as Exhibit A, and any subsequent executed TASK ORDERS. All such items together shall be referenced herein as the "Agreement."
- B. TASK ORDERS will describe the specific services requested by the CITY, the budget, and the schedule. Each TASK ORDER will be sequentially numbered and will be considered as an exhibit to this Agreement. The TASK ORDER shall be executed by both the CITY and the CONSULTANT before any work proceeds. A TASK ORDER format is attached as Exhibit B.
- C. In the event of any conflict in the language of any TASK ORDER attached hereto with other provisions of Agreement, the language of the TASK ORDER shall control.
- D. This Agreement, including any TASK ORDERS, represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CITY and the CONSULTANT. If the CITY issues a purchase order or work order to the CONSULTANT at any time, no terms thereon shall become part of this Agreement. Any purchase order or work order, whether or not signed by the CONSULTANT, will be for the sole purpose of facilitating the CITY's operations.
- E. The headings of the sections and subparagraphs of this Agreement are inserted for the convenience of the Parties and are neither to be taken to any part of the provisions hereof nor to control nor affect their meaning, construction, or effect.
- F. Nothing in this Agreement shall be construed to provide any rights or benefits to anyone other than the CITY and the CONSULTANT.

G This agreement shall be governed by the laws of the state of Kansas.

ARTICLE II – SCOPE OF SERVICES

A. BASIC SERVICES.

The CITY is engaging the CONSULTANT to act as Building Permitting Agent on their behalf for Services which may include but are not limited to the following:

1. Serve as coordinator for the building permit services, including communication with the responsible parties of the Project as well as coordination with the CITY staff and other involved public agencies, such as the CITY Services, Publics Works Department, and other agencies that serve the CITY.
2. Establish procedures to manage the building permit process with the City.
3. Review plans, specifications, and construction documents for compliance with the current building codes, Westwood City Code including Chapter Sixteen - Zoning, and any other adopted codes in order to protect public safety. Current adopted codes include: the International Code Council (ICC) 2018 editions and the 2017 National Electric Code (NFPA 70).
4. Issue Building Permit recommendations for approval.
5. Attend design, pre-construction, and coordination meetings as needed.
6. Review Deferred Submittals
7. Provide Building Inspections
8. Provide Recommendations for Temporary Certificates of Occupancy (TCO)
9. Provide Recommendations for Final Certificates of Occupancy (FCO)
10. Provide assistance and recommendations for code variances, equivalencies, deviations, and interpretations.
11. Keep records, according to the Kansas Municipal Records Retention Schedule, compile and deliver all final electronic documentation including:
 - a. Plan review comments
 - b. Recommendations for Permits
 - c. Rulings on variances, equivalencies, and deviations
 - d. Inspection Reports
 - e. Recommendations for TCO (Temporary Certificates of Occupancy)
 - f. Recommendations for FCO (Final Certificate of Occupancy)
12. Provide assistance and make recommendations on enhancements for code enforcement, existing practices, policies, procedures, and ordinances to improve the code enforcement program.
13. Track, measure, and report on performance standards, as agreed upon.
14. Attend Code Administrator meetings as needed to provide data on projects.
15. Coordinate and participate in necessary enforcement actions with CITY's Code Administrator, Director of Finance, Attorney, and Municipal Court.

B. CLARIFICATION OF SERVICES

1. Any requests for code variances, equivalencies, or deviations will be referred to the CITY. The CONSULTANT will document and provide a recommendation only. If the CITY requires that any deviation, variance, equivalency, assembly, system, product, item of material, or design be included in any project without (or against) the CONSULTANT'S recommendation, the

CONSULTANT shall have no responsibility for such decision by the CITY or for the performance of such items, nor shall the CONSULTANT be required to issue any opinion or certificate with respect to such items.

2. Special Inspections or third-party structural tests, observations, and inspections will be provided and performed by an independent third party as dictated by applicable codes. CONSULTANT will review special inspection tests and reports for verification of compliance and approval.
3. Any specialty permitting, review, or inspections by other regulatory agencies will be the responsibility of the Architect/Engineer of Record, the Owner of the Project, or the Contractor as applicable. The CONSULTANT will advise on when special permitting, review, or inspections are required and will provide recommendations for withholding Certificates of Occupancy, or directly withholding Certificates of Occupancy when granted that authority, until proper documentation is provided by the regulatory agency that the permitting, review, or inspections are approved or complete. Such specialty permitting, review, or inspections include, but are not limited to:
 - a. Any Food Establishments or related occupancies requiring a Health Department permit, review, or inspection.
 - b. Approved representative of the State will be responsible for any related permitting and inspections of any elevators.
 - c. Any project requiring licensing or review by federal or state agencies enforcing environmental regulations.
4. Any plan review or inspection comments from the CITY, the CITY's agents, or the fire department will be incorporated into the plan review and inspection forms of the CONSULTANT.
5. Plan reviews (review for permitting and inspections) are not a substitution for the professional responsibilities of a project Architect or Engineer of record, as required by the professional licensing board of the State of Kansas.
6. No warranty, expressed or implied, is included in this Agreement or in the Instruments of Service produced by CONSULTANT.

C. CONSTRUCTION ISSUES

1. The Parties agree neither CITY or CONSULTANT shall not be responsible for:
 - a. the contractor's construction means, methods, techniques, sequences, procedures, safety precautions, and any programs incidental thereto, which shall remain the sole responsibility of the contractor;
 - b. the contractor's failure to perform the Work in accordance with the Approved Permit Documents;
 - c. acts or omissions of the contractor, its subcontractors or suppliers, or any other persons performing any of the Work.
2. The construction contractor is responsible for means and methods and to ensure

the construction or constructed facility meets the requirements of the permit documents.

3. The construction contractor is responsible for all construction related activities, including job site safety.
4. The CONSULTANT will not have the authority to stop the Work of a contractor, provided, however that CITY may stop the Work of a contractor following consultation with CONSULTANT.
5. CONSULTANT shall not be required to execute any document that would result in CONSULTANT guaranteeing or warranting the existence of any conditions or construction.
6. If applicable, CONSULTANT shall make visits to the project site(s) to observe the executed work. CONSULTANT shall only be required to conduct inspections of a contractor's work to enforce compliance with the applicable code. Beyond such inspections, CONSULTANT shall not be required to make inspections to check the quality or quantity of work and does not assume responsibility for any construction techniques, procedures, sequences, or schedules or for the conduct, action, errors, or omissions of any architect, engineer, designer, construction contractor, subcontractors, or material supplies, their agents, or employees, unless such services are specifically included in the applicable TASK ORDER.

D. COMPLIANCE WITH LAWS

CONSULTANT agrees to comply with applicable federal, state, and local laws; regulatory requirements; and codes. CONSULTANT shall procure the licenses and/or certifications necessary to allow CONSULTANT to perform the Services. The CITY shall likewise comply with such laws to the extent applicable to the CITY's role and performance of this Agreement.

ARTICLE III – SERVICE TASKS

A. TASK ORDERS.

Upon execution of this Agreement by the CITY, the CITY shall issue TASK ORDERS that define the specific services described herein above and requested by the CITY. The TASK ORDER shall ascribe the desired service, schedule, and compensation. The TASK ORDER shall follow the general form in Exhibit B. A fully executed TASK ORDER shall govern the parties' rights and responsibilities specifically incorporating the terms of this Master Agreement, including all exhibits and attachments, and operating within the framework of this Master Agreement.

B. SUBCONTRACTED SERVICES.

Those Services not normally self-performed by the CONSULTANT, but essential to the

successful completion of a TASK ORDER, will be subcontracted by the CONSULTANT to subconsultants, who will be selected by the CONSULTANT and the CITY.

C. TYPICAL RATES AND CHARGES.

Exhibit C contains CONSULTANT's Hourly Rates and Expenses. Rates and charges for specific tasks shall be agreed upon within each TASK ORDER. Charges for ADDITIONAL SERVICES or agreed upon services outside each TASK ORDER will follow these rates and charges or as agreed upon as an amended TASK ORDER. Exhibit C shall be updated periodically by CONSULTANT to reflect its then-current rates.

D. ADDITIONAL SERVICES.

CONSULTANT shall provide the following additional Services ("Additional Services") as agreed upon by the Parties in a TASK ORDER or as requested thereafter:

1. Services resulting from significant changes in the general scope of a TASK ORDER, including a project or its design, including, without limitation, changes in size, complexity, CITY's schedule, Project's schedule, or character of construction; excessive reinspections, plan reviews and meetings beyond those previously approved within a TASK ORDER by CITY including preparation of change orders.
2. Time spent in preparing for and attending public hearings at the request of the CITY.
3. Preparing to serve or serving as a CONSULTANT or witness for the CITY in any litigation or other legal or administrative proceeding involving a Project or TASK ORDER.
4. Full-time construction observation services.

ARTICLE IV - CITY'S RESPONSIBILITIES

In addition to other responsibilities which may be set forth in this agreement:

- A. The CITY shall designate a CITY representative in accordance with Exhibit A.
 - The CITY hereby designates the following CITY representative: Leslie Herring, City Administrator.
 - Leslie Herring, City Administrator may designate other CITY representatives to make decisions concerning project deliverables outlined in the TASK ORDER. A list of designated representatives shall be provided to the CONSULTANT prior to issuance of TASK ORDERS. The CITY shall accept the decisions of the CITY representative as final and definitive project direction. The CITY may employ any process of its choice to inform the CITY representative of desired project outcomes.
 - The CONSULTANT may accept TASK ORDERS executed by a CITY official with a similar title until informed that a new representative is appointed.
- B. The CITY shall furnish approval, consents, and letters of authority as may be necessary for performing the Services in a timely manner.

- C. The CITY shall furnish to the CONSULTANT a certified copy of the legislation, ordinance or resolution authorizing signing of this Agreement and delegation of TASK ORDER signature authority.
- D. The CITY shall provide to the CONSULTANT the following:
- All available procedures, policies, reports, plans, specifications, background information, and other data pertinent to the Services or performance of a TASK ORDER;
 - The names, addresses, and phone numbers of all entities, regulatory agencies or governing authorities required for coordination or performance of Services within a TASK ORDER.

The CONSULTANT shall be entitled to rely on the accuracy and completeness of all information and data provided by the CITY.

- E. The CITY shall arrange for safe access to and make all provisions for CONSULTANT to enter upon public and private property as required to perform services under this Agreement.
- F. The CITY shall report to the CONSULTANT any suspected deficiency in the Services within twenty-one (21) days after the CITY becomes aware of the potential defect. CITY further agrees to impose a similar notification requirement in its agreements with all contractors, design professionals, subcontractors, and CONSULTANTs involved in the Project. The failure of the CITY to notify the CONSULTANT as required herein shall relieve the CONSULTANT of any liability for costs of remedying the defects.
- G. The CITY shall give prompt written notice to CONSULTANT whenever CITY becomes aware of any change, fact or circumstance that is likely to affect the scope or timing of the Services.
- H. The CITY shall obtain advice of an attorney, insurance counselor, or other CONSULTANT as is necessary for the CITY to make decisions within a reasonable time and not delay the Services.
- I. If requested by the CONSULTANT, the CITY shall furnish evidence of financial arrangements that have been made to fulfill CITY's obligations under this Agreement.
- J. The CITY shall provide and pay, if required by the TASK ORDER, for the cost of any mutually-agreed upon subconsultants, testing, or laboratory Services identified in the Article II - Scope of Services.

ARTICLE V - TIME OF PERFORMANCE FOR SERVICES

- A. The services under each TASK ORDER have been agreed to in anticipation of the orderly progress through completion. Unless a specific time of performance for services is

specified in a TASK ORDER, CONSULTANT'S obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. If a specific time of performance is provided in a TASK ORDER, and if the CITY has requested changes in the scope or character of the project, the time of performance shall be adjusted equitably.

ARTICLE VI - PAYMENT PROVISIONS

A. COMPENSATION

1. CITY shall compensate the CONSULTANT for the TASK ORDER in the form agreed to in the TASK ORDER.
2. Services requested by the CITY outside the scope of a TASK ORDER (Additional Services) shall be compensated based on actual hours worked plus direct expenses in accordance with the CONSULTANT's Hourly Rates and Expenses Schedule as shown in attached Exhibit "C", which is incorporated herein, unless another form is agreed to prior to initiating the associated Additional Services.
3. Exhibit C may be updated to reflect changes in hourly rates or expenses. Proposed changes may be included with a TASK ORDER proposal.

B. Payments shall be in accordance with Exhibit A.

ARTICLE VII — INSURANCE

A. CONSULTANT shall purchase and maintain insurance as set forth below:

1. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate.
2. Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
3. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$1,000,000 for each accident.
4. Professional Liability insurance on a claim made basis in the amount of \$5,000,000 per claim and \$10,000,000 annual aggregate.
5. Commercial Umbrella, with a limit of \$5,000,000 each occurrence and aggregate.
6. Technology E&O with a limit of \$1,000,000 each claim and aggregate.

Certificates of insurance, in a form approved by CITY shall be provide to the CITY upon request.

CONSULTANT's obtaining of insurance shall in no way waive the immunities or the limitations of liability provided to the CITY within the Kansas Tort Claims Act and the CONSULTANT's holding of insurance shall not be deemed to be insurance of the CITY for the purposes of increasing the maximum liability of the CITY.

ARTICLE VIII — ALLOCATION OF RISKS

A. N/A.

ARTICLE IX — INDEMNITY

- A. Indemnity by CONSULTANT. The CONSULTANT agrees to indemnify and hold harmless the CITY from and against damages, actually incurred by CITY but only to the extent caused by the negligent performance of the CONSULTANT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statute of repose or statute of limitations.
- B. CONSULTANT will not be required to indemnify the CITY for claims caused or alleged to be caused in whole or in part by the acts or omissions of the CITY or other third parties for whom the CONSULTANT is not responsible.
- C. The CONSULTANT’s obligation to indemnify the CITY is limited by provisions of Article X - Limitation of Liability.

ARTICLE X — LIMITATION OF LIABILITY

- A. LIMITATION OF LIABILITY. CITY agrees to limit the total liability, in the aggregate, of CONSULTANT, and it’s officers, directors, employees, affiliates, agents, insurers, independent professional associates, and subconsultants, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to CONSULTANT’s services under a TASK ORDER(s), the PROJECT or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability, or breach of contract of to the fee established by the applicable TASK ORDER(s) under this Agreement or the amount of available insurance to be provided by CONSULTANT under this Agreement, whichever is greater.
- B. The CITY and CONSULTANT agree that specific and adequate consideration has been given for this limitation of liability.
- C. The CITY shall assert all appropriate defenses when the CONSULTANT is performing a TASK ORDER that can reasonably be defined as a municipal ministerial role.

ARTICLE XI — TERM OF AGREEMENT

- A. The Agreement shall become effective upon signatures by both Parties. The Parties agree that a facsimile or electronic (PDF) copy of a signature to this Agreement or a subsequent TASK ORDER shall be deemed to have the same force and effect as an original signature.
- B. The initial term of the Agreement shall be for a period of two (2) years commencing upon date of the last signature below.
- C. Upon written mutual Agreement, the term maybe extended on a year-to-year basis for up to two (2) additional years.

- D. The Parties agree and understand that hourly rates may be increased on an annual basis upon prior written notice to the CITY, however no written amendment to this Agreement is required for this purpose.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the effective date of which is indicated on page 1. Executed in duplicate with copies to the CITY and CONSULTANT.

CITY
City of Westwood, Kansas

CONSULTANT
George Butler Associates, Inc.

Leslie Herring
City Administrator

Bryan Rasmussen
Vice President

ATTEST:
CITY

CONSULTANT

Abby Schneweis
City Clerk
I certify that sufficient funds of the CITY treasury have been appropriated and are otherwise unencumbered to meet the CITY’s financial obligation under this Agreement.

Joe Kmetz
Building Code Services Lead

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EXHIBIT A
ADDITIONAL PROVISIONS OF MASTER
AGREEMENT FOR BUILDING CODE
SERVICES

The CITY of Westwood, KS (“CITY”) and George Butler Associates Inc. (referred to as the “CONSULTANT”), agree that the following provisions shall be part of this Agreement.

1. Payment. Unless stated otherwise in this Agreement, fees and all other charges will be monthly as the work progresses, and the net amount shall be due at the time of billing. If CITY does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice of the CITY, suspend further work until payments are brought current. The CITY agrees to indemnify and hold CONSULTANT harmless from any claim or liability resulting from such suspension. Interest not exceeding the maximum rate allowable by law will be payable on any amounts not paid within 30 days of the billing date, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. If CITY fails to pay CONSULTANT the amount due under this Agreement in a timely manner pursuant to this section, CITY shall be liable for and shall reimburse CONSULTANT for expenses incurred by CONSULTANT in connection with or in any way relating to CITY’s failure to pay in such instances, that the CITY is found liable for payment. Such expenses shall include, without limitation, reasonable attorneys’ fees, legal expenses, and court costs. In the event CITY fails to pay the CONSULTANT within ninety (90) days after invoices are rendered, then CITY agrees that the CONSULTANT shall have the right to consider such failure as substantial breach of this Agreement and the duties of the CONSULTANT under this Agreement may be terminated at the election of the CONSULTANT upon five (5) days written notice.

2. Taxes. Compensation payable to the CONSULTANT pursuant to this Agreement shall be in addition to taxes that may be assessed against the CONSULTANT by any state or political subdivision directly on services performed or payments for services performed by the CONSULTANT. Such taxes that the CONSULTANT may be required to collect or pay shall be added by the CONSULTANT to invoices submitted to the CITY pursuant to this Agreement.

3. Suspension. In the event all or any portion of the work prepared or partially prepared by the CONSULTANT is suspended, abandoned, or terminated, the CITY shall pay the CONSULTANT for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.

4. Termination. This Agreement may be terminated by either CITY or the CONSULTANT upon thirty (30) days written notice in the event substantial failure of the other party to perform in accordance with the terms of this Agreement. CITY expressly agrees to hold the CONSULTANT harmless from any liability arising out of the CONSULTANT’s termination of its services hereunder due to CITY’s failure to perform and/or pay in accordance with the provisions of this Agreement. In the event of termination of this Agreement, CITY shall then promptly pay the CONSULTANT for all the fees, charges, and services performed by the CONSULTANT in accordance with the compensation arrangements under this Agreement or on an agreed hourly basis.

5. Delay Beyond CONSULTANT’S Control. All agreements on the CONSULTANT’S part are contingent upon, and CONSULTANT shall not be responsible for damages or be in default, or be deemed to be in default, by reasons of delays in performance of others by reason of strikes, lock—outs, accidents, acts of God, and other delays unavoidable or beyond CONSULTANT’s reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of CITY or CITY’s agents to furnish information or to approve or disapprove CONSULTANT’S work promptly, or due to late or slow, or faulty performance by CITY, other contractors, or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of CONSULTANT’S work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

6. Delay Due to CONSULTANT’S Rejection of Work. The Consultant shall reject any work identified that does not meet code, including but not limited to plans, specifications, documents, reports, construction, materials, equipment, or components. Such rejection of work shall not subject the CONSULTANT to any liability or cause of action to or from the project owner, consultants, sub-consultants, contractors, sub-contractors, or construction team, including but not limited to a claim for delay.

7. CITY Changes. In the event that any changes are made in the work to be performed hereunder, by the CITY or persons other than the CONSULTANT, and which affect the CONSULTANT’S work, any and all liability arising out of such changes is waived as against the CONSULTANT and the CITY assumes full responsibility for such changes unless CITY has

given the CONSULTANT prior notice and has received from the CONSULTANT written consent for such changes.

8. Partial Services. If the CONSULTANT is not authorized by a TASK ORDER to perform all required or specific Services for complete execution and closure of a permit for any project, the CITY is responsible for all Services including, without limitation, those Services required for complete execution and closure of a permit. The CITY shall defend, indemnify, and hold harmless the CONSULTANT against all claims, losses, damages, injuries, and expenses arising out of or resulting from the performance of such Services by CITY or others.

9. Instruments of Service. The CONSULTANT's reports and other deliverables, including all documents on electronic media, are instruments of professional service ("Instruments of Service") and shall remain the property of the CONSULTANT which also retains the copyrights. During the Project, and conditioned on the CITY satisfying its payment obligations under this Agreement, CITY shall have a non-exclusive license to use the Instruments of Service with respect to the Project. CITY shall not assign its license to third parties without the written consent of the CONSULTANT. However, CITY may provide copies of the Instruments of Service to contractors and consultants for the purpose of bidding, building, or completing a project and to governmental authorities for the purpose of securing or executing permits, licenses, and approvals.

The Instruments of Service prepared by CONSULTANT are not intended or represented to be suitable for reuse by the CITY or others on extensions to or modifications of a project or on any other project unless such Instruments of Service were specifically developed by a TASK ORDER for the intent of CITY's reuse or modification as identified specifically in the TASK ORDER. Any reuse or modification without the prior written consent of the CONSULTANT will be at the CITY's sole risk and without any liability of CONSULTANT. The CITY agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any claim, liability, or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the Instruments of Service by the CITY or any person or entity that acquires or obtains the Instruments of Service from or through the CITY without the written authorization of the CONSULTANT.

10. Waiver of Consequential Damages. Neither the CITY nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of, or connected in any way to the work performed under this Agreement. This mutual waiver includes but is not limited to: damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings, or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract, and breach of strict or implied warranty. Both CITY and CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Agreement or TASK ORDERS.

11. Dispute Resolution. If a claim, dispute, or other matter in question arises out of or related to this Agreement, the parties shall attempt to resolve the issue through prompt, face-to-face negotiations conducted by an officer authorized to make decisions on behalf of each party.

If direct discussion and negotiation required by the preceding paragraph is not successful, the Parties will submit any claim or dispute arising out of or related to this Agreement to non-binding mediation. Unless the parties mutually agree otherwise, the mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Each Party shall pay their own legal fees associated with the mediation, but shall equally share the mediator's fees. It is agreed that all contractors, design professionals, subcontractors, and consultants who are involved in, and potentially liable for any claim being asserted, may participate in the mediation.

In the event that no resolution of the dispute can be achieved, either party may proceed with a legal claim to be filed in Johnson County District Court. The Johnson County District Court shall be the sole and exclusive venue for all legal disputes between the parties related to the agreement.

12. Waiver of Subrogation. To the extent any damage or claim is covered by property insurance during construction, the CITY and the CONSULTANT waive all rights against each other and against the contractors, designers, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The CITY or the CONSULTANT, as

applicable, shall require of the contractors, designers, and employees of any of them similar waivers in favor of the other parties enumerated herein.

13. Standard of Care. In providing services under this Agreement, CONSULTANT shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The CONSULTANT makes no other representations or any warranties, whether expressed or implied, with respect to the services rendered hereunder. CONSULTANT, when performing a municipal ministerial function, shall perform to the standard of care and function as a municipal official. CONSULTANT shall assume the roles and duties of the municipal official when the TASK ORDER assigns CONSULTANT to that role.

14. Plan Review Immunity. The CONSULTANT shall be entitled to all defenses and municipal immunities that are, or would be, available to the CITY plan reviewers if the same services were provided by a CITY employee.

15. Not a Municipal Advisor. CONSULTANT will not be acting as a fiduciary of the CITY and will not be serving as a “municipal advisor” to the CITY within the meaning of the Dodd–Frank Wall Street Reform and Consumer Protection Act and the rules and regulations of the United States Securities and Exchange Commission.

16. Confidentiality. All information relating to the CITY that is known to be confidential or proprietary, which is clearly marked as such, shall be held in confidence by CONSULTANT and shall not be disclosed or used by CONSULTANT except to the extent that such disclosure or use is reasonably necessary to the performance of CONSULTANT’s work. These provisions shall not apply to disclosure to the Consultant’s employees and subconsultants, the general contractor, subcontractors, and permit authorities. All information relating to CONSULTANT that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by CITY. These obligations of confidentiality shall extend after the termination of this agreement but shall not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

17. Fees. CONSULTANT shall not be responsible to pay or collect the costs of permit fees, checking and inspection fees, zoning and annexation application

fees, assessment fees, soils engineering fees, soils testing fees, aerial photography fees, and all other fees, permits, bond premiums, title company charges, and reproductions, and all other charges not specifically covered by the terms of this Agreement.

18. Hazardous Materials. In the event that CONSULTANT or any other party encounters asbestos or hazardous or toxic materials at the job site, or should become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of CONSULTANT’s services, the CONSULTANT may, at its option and without liability for consequential or any other damages, suspend performance of services on the Project until the CITY retains or enforces others to retain appropriate specialists or contractors to identify, abate, and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations. The CONSULTANT does not provide any Service related to asbestos or hazardous or toxic materials. Hazardous materials permitting, plan/document review, or inspections or related Services are not included or covered under this Agreement.

19. Assignment / Third-Party Reliance / Certification. Neither the CITY nor the CONSULTANT shall assign its interest in this Agreement without the written consent of the other. The services to be provided pursuant to this Agreement are being performed solely for the benefit of the CITY, and no benefit is meant to be conferred upon any person or entity not a party to this Agreement, and no such person or entity should rely upon CONSULTANT’s performance of those services to the CITY; and no claim against CONSULTANT shall accrue to any contractor, subcontractor, designer, architect, engineer, supplier, fabricator, manufacturer, lender, tenant, surety, homeowner’s association, or any other third-party as a result of this Agreement or the performance or non-performance of services on the project(s). CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANT’s having to certify, guaranty, or warrant the existence of conditions that CONSULTANT cannot ascertain.

20. Execution of Subsequent Documents. The CONSULTANT shall have no obligation to the CITY to execute any document subsequent to the signing of this Agreement, including, without limitation, lender consent or certification, requiring knowledge, services, or responsibilities beyond the scope of this Agreement. The proposed language of any such document will be submitted to CONSULTANT at least ten (10) days in advance of the requested date of execution. The

execution of any such document shall not create any rights in favor of a lender or other third party.

21. CITY Representative. The CITY shall designate an individual CITY Representative. The CITY Representative shall have authority to execute TASK ORDERS; shall act on behalf of the CITY as to all aspects of the project(s); shall examine and respond promptly to submissions from the CONSULTANT; shall give prompt written notice to the CONSULTANT if the CITY becomes aware of any defect in the project(s); and shall otherwise fully cooperate as may be required or appropriate in connection with the project(s).

22. Documents Prepared by Others. The CONSULTANT shall not be responsible for any permits, certificates, estimates, reports, surveys, tests, or other documents or instruments, or any part thereof, prepared by the CITY, the CITY’S other consultants, other regulatory agencies or authorities, or project related entities.

23. Equal Opportunity. The CONSULTANT shall abide by the requirements of 41 CFR §§ 60-I.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with

disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.

24. Severability. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

25. Waiver of Breaches of Agreement. A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not affect the waiving Party’s rights with respect to any other or further breach.

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EXHIBIT B
TASK ORDER TEMPLATE

TASK ORDER NUMBER _____

This TASK ORDER is made as of this _____ day of _____, 20__, under the terms and conditions established in the MASTER AGREEMENT, dated the _____ day of _____, 2023, between the City of Westwood, Kansas, (CITY) and George Butler Associates, Inc. (CONSULTANT).

This TASK ORDER is made consistent with the purposes of the MASTER AGREEMENT and for the purposes of the following:

Section A: Scope of Services

The CONSULTANT will furnish to the CITY the following described services:

- a.
- b.
- c.

Clarifications and Exclusions to Services:

- a.
- b.
- c.

Section B: CITY Responsibilities

The CITY will provide or perform the following to facilitate the project described in this TASK ORDER.

- a.
- b.

Section C: Anticipated Schedule

The following is an estimated schedule based on the scope of services and information provided:

Section D: Compensation

1. In return for the performance of the foregoing obligations, the CITY shall pay the CONSULTANT the fee of up to \$_____, payable according to the terms in the Master Agreement and Exhibit C.
2. The CITY shall pay the CONSULTANT in accordance with Exhibit C attached to the Master Agreement for all ADDITIONAL SERVICES not specifically included in Section A of this TASK ORDER.

Section E: Notification and Communication

The following CONSULTANT will be the point(s) of contact for correspondence related to this TASK ORDER:

The following CITY personnel will be the point(s) of contact for correspondence related to this TASK ORDER:

IN WITNESS WHEREOF, the CITY Representative and the CONSULTANT have executed this TASK ORDER.

City of Westwood, Kansas (CITY)

By: _____

Name: _____

Title: _____

Date: _____

George Butler Associates, Inc. (CONSULTANT)

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT C
CONSULTANT'S HOURLY RATES AND EXPENSES SCHEDULE

Employment Classification	Hourly Rate
Senior Associate	260.00
Director of AES	260.00
Associate	238.00
Senior Lead AES	238.00
Senior Specialist	238.00
Project Leader	210.00
Lead AES	210.00
Specialist	165.00
Senior AES	190.00
Senior Technician	160.00
Project AES	165.00
Project Technician	130.00
Design AES	145.00
Design Technician	120.00
Staff AES	130.00
Staff Technician	105.00
Client Management Coordinator	150.00
Project Administrator	110.00
Senior Administrative Assistant	110.00
Administrative Assistant	100.00

Expenses

The following items will be charged as shown:

Company or Personal Vehicles	0.655 per mile
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