

## ENGINEERING/ARCHITECTURAL SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter "City," and **George Butler Associates, Inc.**, hereinafter "Consulting Engineer/Architect." City intends to use the services of Consulting Engineer/Architect for the improvement of Johnson Drive from Lamar Avenue to Nall Avenue, KDOT Project No. 46 N-0554-01, Jo. Co. CARS Project No. 320000940 (hereinafter the "Project"), as follows:

### ***Construction Observation Services (ST-1575) (hereinafter the "Services").***

City hereby contracts with Consulting Engineer/Architect for the furnishing of the Services in connection with the Project. The Services are more particularly described herein in Attachment A, attached hereto and incorporated by reference herein. By executing this Agreement, the Consulting Engineer/Architect represents to City that Consulting Engineer/Architect is professionally qualified to provide these Services for this Project and is licensed to practice engineering/architecture by all public entities having jurisdiction over Consulting Engineer/Architect and the Project.

### **SECTION I - DEFINITIONS**

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

"City" means the City of Overland Park, Kansas.

"Consulting Engineer/Architect" means the company or individual identified above. Consulting Engineer/Architect shall employ for the services rendered, engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

"Contract Documents" means those documents so identified in the Agreement for construction for this Project, including all City Documents and Information. All terms defined in the 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.

"City Documents and Information" means all plans, designs, drawings, specifications, documents, and data in whatever medium or format, originated and prepared by the Consulting Engineer/Architect.

"Engineering/Architectural Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consulting Engineer/Architect under this Agreement together with such

other services as City may require pursuant to the terms of this Agreement.

"Project" is as above described.

"Project Manager" means the person employed by City and designated to act as the City's representative for the Project.

## **SECTION II - COMPENSATION**

### **A. TOTAL FEE**

City agrees to pay Consulting Engineer/Architect an amount not to exceed **Four Hundred Twenty-seven Thousand Forty-two and 00/100 Dollars (\$427,042.00)**, including reimbursables. The fee is based on the performance of the Services outlined in this Agreement, and shall be billed using hourly rates and equipment charges as set forth in Attachment B attached hereto and incorporated by reference herein. The Services shall be performed on an ongoing basis during the Term as determined and directed by the City.

### **B. ADDITIONAL SERVICES**

Consulting Engineer/Architect shall provide, with City's concurrence, services in addition to those listed herein when such services are requested or authorized in writing by City. Prior to commencing any additional services, Consulting Engineer/Architect must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as Attachment B. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by this Agreement, providing services necessitated in the event the Engineering/Architectural Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Engineer/Architect, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Consulting Engineer/Architect, as compensation for these services, shall be in accordance with the hourly rate schedule attached as Attachment B. Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services shall be made available to City, if so requested.

### **C. SPECIAL SERVICES**

Consulting Engineer/Architect may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consulting Engineer/Architect shall not be paid extra by City if its appearance is to defend its professional Engineering/Architectural Services. If Consulting Engineer/Architect is requested, in writing, by City, to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Attachment B.

#### **D. BILLING**

Consulting Engineer/Architect shall bill City monthly for all completed Services. The bill submitted by Consulting Engineer/Architect shall itemize the Services for which payment is requested. City agrees to pay Consulting Engineer/Architect within thirty (30) days of approval by the City of the undisputed invoice.

#### **E. CITY'S RIGHT TO WITHHOLD PAYMENT**

In the event City becomes credibly informed that any representations of Consulting Engineer/Architect provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consulting Engineer/Architect until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Consulting Engineer/Architect immediately. Consulting Engineer/Architect will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Consulting Engineer/Architect in accordance with the contract payment procedures.

#### **F. PROGRESS REPORTS**

A progress report must be submitted with each monthly pay request indicating the percentage of tasks completed to date. This report will serve as support for payment to Consulting Engineer/Architect.

#### **G. CHANGE IN SCOPE**

For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Engineer/Architect, the Consulting Engineer/Architect shall be compensated for time and expense required to incorporate such modifications at Consulting Engineer/Architect's standard hourly rates per Attachment B; provided, however, that any increase in contract price or contract time must be approved through a written change order. Consulting Engineer/Architect shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consulting Engineer/Architect's negligence or other actionable fault.

#### **H. CHANGE ORDERS**

This Agreement may be amended to provide for additions, deletions and revisions in the Engineering/Architectural Services or to modify the terms and conditions thereof by either written amendment or by change order. The contract price and contract time may only be changed by a written change order approved by City, unless it is the result of an emergency situation in which case the Project Manager may give written approval to be followed by a written and approved change order. If notice of any change affecting the general scope of the Engineering/Architectural Services or provisions of this Agreement, including but not limited to,

contract price or contract time, is a requirement of any insurance policy held by Consulting Engineer/Architect as a requirement of this Agreement, the giving of such notice shall be the Consulting Engineer/Architect's responsibility.

### **SECTION III - RESPONSIBILITIES OF CONSULTING ENGINEER/ARCHITECT**

Consulting Engineer/Architect shall furnish and perform the various Services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project which Services shall include:

#### **A. CONSTRUCTION PHASE**

Services: The Services provided during this phase are set out in Attachment A attached hereto and incorporated herein.

#### **B. GENERAL DUTIES AND RESPONSIBILITIES**

1. Acknowledgement of the General Conditions of the Contract for Construction: In addition to the responsibilities herein set forth, Consulting Engineer/Architect specifically acknowledges receipt of a copy of the General Conditions and agrees to provide the Services in conformance with the same.
2. Personnel: Consulting Engineer/Architect shall assign only qualified personnel to perform any Service concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: **Clarence Munsch, P.E.** As principal on this Project, this person shall be the primary contact with the City's Project Manager and shall have authority to bind Consulting Engineer/Architect. So long as the individual named above remains actively employed or retained by Consulting Engineer/Architect, he/she shall perform the function of principal on this Project.
3. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Consulting Engineer/Architect or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Consulting Engineer/Architect which is not defined within the scope of services of Consulting Engineer/Architect. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution of any extra work. Although Consulting Engineer/Architect may assist City in procuring such services of third parties, Consulting Engineer/Architect shall in no way be liable to either City or such third parties in any manner whatsoever for

such services or for payment thereof.

4. Subcontracting of Service: Consulting Engineer/Architect shall not subcontract or assign any of the Engineering/Architectural Services to be performed under this Agreement without first obtaining the written approval of City regarding the Engineering/Architectural Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Any person or firm proposed for subcontracting Engineering/Architectural Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V C (8) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide the City with certification thereof.
5. Inspection of Documents: Consulting Engineer/Architect shall maintain all Project records for inspection by City during the contract period and for three (3) years from the date of final payment.

#### **SECTION IV - CITY OF OVERLAND PARK'S RESPONSIBILITIES**

##### **A. COMMUNICATION**

City shall provide to Consulting Engineer/Architect information and criteria regarding City's requirements for the Project; examine and timely respond to Consulting Engineer/Architect's submissions; and give written notice to Consulting Engineer/Architect, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering/Architectural Services.

##### **B. ACCESS**

City will provide access for Consulting Engineer/Architect to enter public and private property as necessary to provide the Services.

##### **C. PROJECT REPRESENTATIVE**

City shall designate a Project Manager to represent City in coordinating this Project with Consulting Engineer/Architect, with authority to transmit instructions and define policies and decisions of City.

#### **SECTION V - GENERAL PROVISIONS**

##### **A. TERMINATION**

1. Notice: City reserves the right to terminate this Agreement in whole or in part either for cause or for its convenience and without cause or default on the part of Consulting Engineer/Architect, by providing ten (10) days' written notice of such termination to Consulting Engineer/Architect. Upon receipt of such notice from

City, Consulting Engineer/Architect shall, at City's option as contained in the notice: (a) immediately cease all Engineering/Architectural Services; or (b) meet with City and, subject to City's approval, determine what Engineering/Architectural Services shall be required of Consulting Engineer/Architect in order to bring the Project to a reasonable termination in accordance with the request of City. Consulting Engineer/Architect shall also provide to City copies of all drawings and documents completed or partially completed at the date of termination.

If City defaults on its obligation under this Agreement, Consulting Engineer/Architect is entitled to terminate this Agreement by providing ten (10) days' written notice.

2. Termination for Cause: If this Agreement is terminated for cause, after notice to Consulting Engineer/Architect, City may take over the Engineering/Architectural Services and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Consulting Engineer/Architect, and the Consulting Engineer/Architect shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and completion. When Consulting Engineer/Architect's services have been so terminated, such termination shall not affect any rights or remedies of the City against Consulting Engineer/Architect then existing or which may later accrue. Similarly, any retention or payment of monies due Consulting Engineer/Architect shall not release Consulting Engineer/Architect from liability.
3. Compensation for Convenience Termination: If City shall terminate for its convenience as herein provided, City shall compensate Consulting Engineer/Architect for all Engineering/Architectural Services satisfactorily completed to date of its receipt of the termination notice and any additional Engineering/Architectural Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
4. Compensation for Cause Termination: If City shall terminate for cause or default on the part of Consulting Engineer/Architect, City shall compensate Consulting Engineer/Architect for the reasonable cost of Engineering/Architectural Services satisfactorily 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. City also retains all its rights and remedies against Consulting Engineer/Architect including but not limited to its rights to sue

for damages, interest and attorney fees.

5. Incomplete Documents: Neither Consulting Engineer/Architect, nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Consulting Engineer/Architect having been deprived of the opportunity to complete such documents and certify them as ready for construction.

## **B. DISPUTE RESOLUTION**

City and Consulting Engineer/Architect agree that disputes relative to this Agreement should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consulting Engineer/Architect shall proceed with the Engineering/Architectural Services as per this Agreement as if no dispute existed, and the City shall continue to make payment for Consulting Engineer's/Architect's completed Services; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

## **C. INSURANCE**

1. General

The Consulting Engineer/Architect shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Professional Liability may be written on a "claims made" basis. Consulting Engineer/Architect shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Consulting Engineer/Architect at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

2. Notice of Claim Reduction of Policy Limits

The Consulting Engineer/Architect, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consulting Engineer/Architect shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Consulting Engineer/Architect's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The

Consulting Engineer/Architect shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

3. Commercial General Liability

Limits -

General Aggregate:	\$ 1,000,000
Products / Completed Operations:	\$ 1,000,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy MUST include the following conditions:

- a. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- b. **Name City of Overland Park as "Additional Insured"**

4. Automobile Liability

Policy shall protect the Consulting Engineer/Architect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

Limits – (Same as Commercial General Liability)

Combined Single Limits, Bodily Injury and Property Damage - Each Accident

Policy MUST include the following condition:

**Name City of Overland Park as "Additional Insured"**

5. Workers' Compensation

This insurance shall protect the Consulting Engineer/Architect against all claims under applicable state workers' compensation laws. The Consulting Engineer/Architect shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employers Liability -	
Bodily Injury by Accident:	\$ 100,000 Each Accident
Bodily Injury by Disease:	\$ 500,000 Policy Limit
Bodily Injury by Disease:	\$ 100,000 Each Employee

6. Professional Liability

The Consulting Engineer/Architect shall maintain throughout the duration of this Contract, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00).



7. Industry Ratings

The City will only accept coverage from an insurance carrier who offers proof that it:

- a. Is authorized to do business in the State of Kansas;
- b. Carries a Best's policyholder rating of A- or better; and
- c. Carries at least a Class VIII financial rating; or
- d. Is a company mutually agreed upon by the City and Consulting Engineer/Architect.

8. Subcontractors' Insurance

If a part of the Agreement is to be sublet, the Consulting Engineer/Architect shall either:

- a. Cover all subcontractors in its insurance policies, or
- b. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consulting Engineer/Architect shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

**D. INDEMNITY**

1. Definition: For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"Loss" means any and all Loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or Loss of, or Loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Engineering/Architectural Services required hereunder.

2. Indemnity: For purposes of this Agreement, Consulting Engineer/Architect hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Consulting Engineer/Architect, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Consulting Engineer/Architect's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consulting Engineer/Architect is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Consulting Engineer/Architect, its affiliates, subsidiaries, or subcontractor/assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consulting Engineer/Architect, its affiliates, subsidiaries, or subcontractor/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**E. AFFIRMATIVE ACTION/OTHER LAWS**

1. During the performance of this Agreement, the Consulting Engineer/Architect agrees that:
  - a. Consulting Engineer/Architect shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
  - b. in all solicitations or advertisements for employees, the Consulting Engineer/Architect shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
  - c. if the Consulting Engineer/Architect fails to comply with the manner in which the Consulting Engineer/Architect reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consulting Engineer/Architect shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
  - d. if the Consulting Engineer/Architect is found guilty of a violation of the

Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Consulting Engineer/Architect shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and

- e. the Consulting Engineer/Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this Section shall not apply to a contract entered into by a Consulting Engineer/Architect:

- who employs fewer than four employees during the term of such contract; or
- whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

2. The Consulting Engineer/Architect further agrees that the Consulting Engineer/Architect shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

**F. ENTIRE AGREEMENT**

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.

**G. APPLICABLE LAW**

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

**H. ASSIGNMENT OF AGREEMENT**

This Agreement shall not be assigned or transferred by Consulting Engineer/Architect without the written consent of the City.

**I. NO THIRD PARTY BENEFICIARIES**

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

**J. INDEPENDENT CONTRACTOR**

The Consulting Engineer/Architect is an independent contractor and as such is not an agent or employee of the City.

**K. FEDERAL LOBBYING ACTIVITIES**

**(Only applies to projects receiving federal funds via the City)**

31 USCA Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City's Project Manager and should be returned to City with other final contract documents. It is the responsibility of Consulting Engineer/Architect to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

**L. COVENANT AGAINST CONTINGENT FEES**

Consulting Engineer/Architect warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consulting Engineer/Architect, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**M. COMPLIANCE WITH LAWS**

Consulting Engineer/Architect shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Engineering/Architectural Services or the Project at the time Services are rendered. Consulting Engineer/Architect shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

**N. TITLES, SUBHEADS AND CAPITALIZATION**

Title 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 this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**O. SEVERABILITY CLAUSE**

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

**P. TERM**

The initial term of this Agreement is for \_\_\_\_\_ year(s) commencing on the date set forth below. At the end of the initial term, this Agreement will automatically renew for another \_\_\_\_ (\_\_) year period unless either party provides notice to the other party in writing of the intent not to renew the Agreement or unless this Agreement is terminated as provided herein.

**Q. CASH BASIS/BUDGET *(for multi-year agreements)***

Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify contractor of such termination, which shall not constitute a default under the Agreement, at least sixty (60) days prior to the end of the City's then current budget year.

*(The remainder of this page has intentionally been left blank.)*

**EXECUTION OF CONTRACT**

The parties hereto have caused this Agreement to be executed in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF OVERLAND PARK, KANSAS

GEORGE BUTLER ASSOCIATES, INC.

\_\_\_\_\_  
Carl Gerlach, Mayor

By: \_\_\_\_\_  
Clarence D. Munsch, P.E.  
Vice President

ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Tammy M. Owens  
Deputy City Attorney

**ACKNOWLEDGMENT**

STATE OF KANSAS        )  
  ) ss.  
COUNTY OF JOHNSON    )

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, Vice President of George Butler Associates, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of the Corporation, and such person duly acknowledged the execution of the same to be the act and deed of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

## **ATTACHMENT A**

### **SCOPE OF CONSTRUCTION OBSERVATION SERVICES**

**Johnson Drive from Nall Avenue to Lamar Street  
KDOT Project # 46 N-0554-01  
CARS Project # 320000940  
Overland Park Project # ST-1575**

Work under this scope includes the project construction observation, documentation and construction administration of the above-mentioned project. These tasks consist of the following items:

- Pre-construction activities including set up of project documentation.
- Daily construction observation and documentation.
- Daily construction administration and coordination with Cities of Mission and Overland Park and affected business and property owners.
- Post-construction activities.

#### **Part 1 - Pre Construction**

- 1.1. Determine current status of utility relocations. This includes meeting with Olsson Associates to address new locations, remaining conflicts, location of any abandoned facilities and contact information for each utility owner.
- 1.2. Prepare for and attend one (1) pre-construction meeting.
- 1.3. Pre-Construction Engineering
  - 1.3.1. Set up field books for documentation of pay items and daily diaries.
  - 1.3.2. Check computations of major construction items as requested by Overland Park to verify that they meet plan computations. Major items may consist of asphalt and concrete pavements, storm sewer pipe, pavement markings, and excavation.
  - 1.3.3. Prepare an estimate of materials testing required for the project.
  - 1.3.4. Prepare a submittal checklist.
  - 1.3.5. Prepare the monthly pay estimate template.

#### **Part 2 - Construction**

- 2.1. Provide a lead project inspector who will:
  - 2.1.1. Take responsible charge for the daily administration of the project.
  - 2.1.2. Serve as the main point of contact between the business/property owners, the contractor and Cities of Overland Park and Mission.
  - 2.1.3. Be on-site when the contractor is working on contract items that require inspection as designated in the contract documents. It is anticipated that this will include work on items for contract pay and any subsidiary item to that line item.



- 2.1.4. Compile a daily diary that documents the contractor's construction activity, contractor's personnel and equipment on site.
  - 2.1.5. Coordinate necessary materials testing with City's testing consultant to address field and laboratory testing per contract specifications.
  - 2.1.6. Provide daily oversight of the project traffic control.
  - 2.1.7. Prepare change orders and submit to City of Overland Park for their processing and approval.
  - 2.1.8. Meet with contractor personnel monthly to review, prepare and submit monthly pay estimates. It is anticipated that there will be ten (10) pay estimates to process.
  - 2.1.9. Perform wage rate interviews to verify compliance with contract guidelines. This compliance will generally include one interview per sub-contractor and one interview per worker classification, (as defined by the Davis-Bacon Act), of the prime contractor each quarter of the calendar year. Review contractor payrolls.
  - 2.1.10. Provide interpretation of the intent of the specifications and plans as requested by the contractor. In the event the contractor does not agree with the interpretation, forward this request to City of Overland Park for further clarification.
  - 2.1.11. Provide field book and electronic documentation of contract pay items as they are incorporated into the project.
  - 2.1.12. Keep and maintain project files of the contractor's certifications of materials incorporated into the project.
  - 2.1.13. Perform bi-weekly erosion control review to verify contractor's compliance with project SWPPP.
  - 2.1.14. Determine whether or not the contractor is generally adhering to the specifications and plan documents, through on-going observations.
  - 2.1.15. Administer weekly project progress meetings, record and distribute minutes for each.
- 2.2. Provide construction observation assistance with additional staff inspectors who will:
- 2.2.1. Be on-site when the contractor is working on contract items that require inspection as designated in the contract documents. It is anticipated that this will include work on items for contract pay and any subsidiary item to that line item.
  - 2.2.2. Assist the lead inspector with daily tasks as needed. This includes daily diary, documenting pay items, traffic control checks, erosion control compliance, etc.
  - 2.2.3. Provide interpretation of the intent of the specifications and plans as requested by the contractor.

- 2.2.4. Determine whether or not the contractor is generally adhering to the specifications and plan documents, through on-going observations.

### **Part 3 - Post-Construction**

- 3.1. Provide assistance to contractor in preparing one (1) full-size set of As-Constructed plans for the completed project. These plans will consist of red-line comments on the full-size plan sheets. The plan sheets will be plain paper. The completed plans will be forwarded to Olsson Associates for their use in creating final electronic plans.
- 3.2. Attend one (1) final walk-through of the project. Compile notes and distribute the punch list to the prime contractor and City of Overland Park.
- 3.3. Examine to see if the punch list items are completed before winter shutdown. It is anticipated that the observation of the remedial work necessary for the completion of the punch list shall consist of no more than twenty (20) working days.
- 3.4. Complete and submit to City of Overland Park paperwork required by the contract documents.
- 3.5. Attend one (1) final close out meeting with City of Mission and Overland Park to submit items from tasks 3.1 and 3.4.

### **Part 4 - General Assumptions**

- 4.1. This project will be built according to the City of Overland Park Project Procedures Manual.
- 4.2. It is assumed that all utility relocations necessary to construct this project without interruption are complete. Any time required for utility coordination is not included in this scope of services.
- 4.3. The City of Overland Park will provide two (2) full size plan sets, (including cross-sections) and four (4) half-size plan sets to GBA in addition to two (2) sets of the project contract.
- 4.4. The preconstruction conference will be administered by others.
- 4.5. Review of potential project phase changes proposed by the contractor is not included in this scope.
- 4.6. Review of proposed value engineering submittals by the contractor is not included in this scope.
- 4.7. Design engineering services during construction normally performed by the project design team are not included in this scope.
- 4.8. It is expected that the Notice to proceed will be granted to the prime contractor in January, 2014; however, preconstruction work will be started in advance of the project Notice to Proceed date. Construction is expected to be completed in November, 2014. Any work requiring observation performed beyond the dates and hours listed in this contract are not included in this scope.
- 4.9. All materials testing will be performed by others hired directly by the City.

- 4.10. It is anticipated that a lead project observer will work on the project an average of 50 hours per week for 40 weeks. In addition, the lead inspector is anticipated to work for 150 hours on preconstruction activities and 198 hours on post construction activities. Any work required beyond these hours will be considered outside of this scope of services.
- 4.11. It is anticipated that one additional observer will be required full time on the project for 32 weeks at 50 hours per week. In addition this observer will provide assistance during the post construction phase for 28 hours. Any work required beyond these hours will be considered outside of this scope of services.
- 4.12. No staff observation time was estimated to oversee any double shifts by the contractor(s).
- 4.13. Staff mileage was estimated based upon the statements above. It is estimated that the staff members would average approximately 40 miles per day while engaged on the project. This includes mileage to perform traffic control checks during the course of the day.
- 4.14. Shop drawings and mix designs will be reviewed and approved by others.
- 4.15. One hundred-eighty day pavement marking inspection is not included in this scope of services.

**ATTACHMENT B**  
**JOB COST ESTIMATING FORM**  
**Johnson Drive from Nall Avenue to Lamar Street - Mission, KS**  
**KDOT Project # 46 N-0554-01**  
**CARS Project # 320000940**  
**Overland Park Project # ST-1575**  
**Cost Summary**

<b>Preconstruction</b>					
Labor:	Principal	1 @ \$	250.00	\$	250.00
	Associate	16 @ \$	172.00	\$	2,752.00
	CO1	150 @ \$	95.00	\$	14,250.00
	CO2	10 @ \$	85.00	\$	850.00
	Clerical	4 @ \$	85.00	\$	340.00
		<b>TOTAL</b>			\$ 18,442
<b>Construction</b>					
Labor:	Principal	8 @ \$	250.00	\$	2,000.00
	Associate	148 @ \$	172.00	\$	25,456.00
	CO1	2160 @ \$	95.00	\$	205,200.00
	CO2	1640 @ \$	85.00	\$	139,400.00
	Clerical	20 @ \$	85.00	\$	1,700.00
		<b>TOTAL</b>			\$ 373,756
<b>Post-construction</b>					
Labor:	Principal	1 @ \$	250.00	\$	250.00
	Associate	12 @ \$	172.00	\$	2,064.00
	CO1	198 @ \$	95.00	\$	18,810.00
	CO2	28 @ \$	85.00	\$	2,380.00
	Clerical	4 @ \$	85.00	\$	340.00
		<b>TOTAL</b>			\$ 23,844
<b>EXPENSES</b>					
	Mileage - Auto	15000 @ \$	0.56	\$	8,400.00
	Telephone/Internet	20 @ \$	130.00	\$	2,600.00
		<b>TOTAL EXPENSES</b>		\$	11,000.00
<b>TOTAL COST FOR ALL SERVICES</b>					<b>\$ 427,042</b>

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**Johnson Drive from Nall Avenue to Lamar Street - Mission, KS**  
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**Overland Park Project # ST-1575**  
**Tasks/Hours**

	Prin.	Assoc.	CO1	CO2	Admin	Total Hours
<b>PRECONSTRUCTION</b>						
Utility coordination		2	10			12
Preconstruction meeting		2	4	2		8
Set up files/documentation		2	120			122
Review plans		2	16	8		26
Project Management	1	8			4	13
<b>SUBTOTAL</b>	<b>1</b>	<b>16</b>	<b>150</b>	<b>10</b>	<b>4</b>	
<b>CONSTRUCTION</b>						
Daily observation/materials testing			2000	1600		3600
Weekly progress meetings		40	80	40		160
Change orders/ RFI's		8	40			48
Pay Estimates		4	40			44
Project Management	8	96			20	124
<b>SUBTOTAL</b>	<b>8</b>	<b>148</b>	<b>2160</b>	<b>1640</b>	<b>20</b>	
<b>POST-CONSTRUCTION</b>						
Walk-through/Punchlist		2	4	4		10
Remedial work			120			120
Final pay estimate/change order			4			4
Record Drawings			8	8		16
Final paperwork			60	16		76
Close out meeting		2	2			4
Project Management	1	8			4	13
<b>SUBTOTAL</b>	<b>1</b>	<b>12</b>	<b>198</b>	<b>28</b>	<b>4</b>	
<b>TOTAL</b>	<b>10</b>	<b>176</b>	<b>2508</b>	<b>1678</b>	<b>28</b>	<b>4400</b>