

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and Strong Towns, a Minnesota Nonprofit Corporation (CONSULTANT) for the following reasons:

1. The OWNER intends to participate in a Community Action Lab as proposed by Consultant (the PROJECT); and,
2. The OWNER's participation requires certain professional services in connection with the PROJECT (the SERVICES); and,
3. The CONSULTANT is prepared to provide the SERVICES.

In consideration of the promises contained in this AGREEMENT, the OWNER and the CONSULTANT agree as follows:

### ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be \_\_\_\_\_ day of \_\_\_\_\_, 2022.

### ARTICLE 2 - GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Oklahoma.

### ARTICLE 3 - SCOPE OF SERVICES

The CONSULTANT shall provide the SERVICES described in Attachment A, Scope of Services. Further, it is understood by CONSULTANT that OWNER will be engaging the services of consultant(s) regarding the development and implementation of its updated Comprehensive Plan. CONSULTANT hereby agrees that any and all services anticipated by this AGREEMENT, and as set forth in ARTICLE 3 and Attachment A, shall be modified and/or executed as necessary to allow OWNER the flexibility necessary to manage its Comprehensive Plan Update as a priority project.

### ARTICLE 4 - SCHEDULE

The CONSULTANT shall exercise its reasonable efforts to perform the SERVICES described in Attachment A, Scope of Services according to the schedule set forth in Attachment B, Project Schedule.

### ARTICLE 5 - COMPENSATION

The OWNER shall pay the CONSULTANT in accordance with Attachment C, Compensation.

### ARTICLE 6 - OWNER'S RESPONSIBILITIES

The OWNER shall be responsible for all matters described in Attachment D, Owner's Responsibilities. The OWNER hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by the OWNER to the CONSULTANT. If the OWNER does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to the CONSULTANT, the OWNER shall obtain a license or right to use, including the right to sublicense to the CONSULTANT. The OWNER hereby grants the CONSULTANT the right to use the intellectual property associated with plans, documents or other

materials it owns or has the right to use for the limited purpose of performing the SERVICES. The OWNER represents that the CONSULTANT's use of such documents will not infringe upon any third parties' rights.

#### **ARTICLE 7 - STANDARD OF CARE**

The same degree of care, skill, and diligence shall be exercised in the performance of the SERVICES as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this AGREEMENT or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the SERVICES.

#### **ARTICLE 8 - INDEMNIFICATION AND LIABILITY**

Indemnification. To the extent allowed by law, including the Constitution of the State of Oklahoma, the CONSULTANT and the OWNER each hereby agree to defend, indemnify, and hold harmless the other party, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the indemnifying party in the performance of SERVICES under this AGREEMENT. The CONSULTANT and the OWNER each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims. In any and all claims asserted by any employee of the CONSULTANT against any indemnified party, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any of the CONSULTANT's employees under workers' compensation acts, disability benefit acts, or other employee benefit acts. The acceptance by OWNER or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by the CONSULTANT shall in no event be deemed a waiver of any of the provisions of this indemnity provision. None of the foregoing provisions shall deprive the OWNER of any action, right, or remedy otherwise available to the OWNER at common law.

Survival. The terms and conditions of this ARTICLE shall survive completion of the SERVICES, or any termination of this Agreement.

#### **ARTICLE 9 - INSURANCE**

During the performance of the SERVICES under this Agreement, the CONSULTANT shall maintain the following insurance:

- a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

The CONSULTANT shall, upon written request, furnish the OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty

days' written notice to the OWNER. The OWNER shall require all project contractors to include the OWNER, the CONSULTANT, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both the OWNER and the CONSULTANT, each to the same extent.

**ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY**

The CONSULTANT shall not be responsible for the failure of any contractor, subcontractor, vendor, or other PROJECT participant, not under contract to the CONSULTANT, to fulfill contractual responsibilities to the OWNER or to comply with federal, state, or local laws, regulations, and codes.

**ARTICLE 11 – LOCATION OF PROJECT AND JURISDICTION**

The Parties agree that the Project is to be performed within, and relates directly to a geographical area located solely within Cleveland County, State of Oklahoma. The Parties further agree that any action brought on any Party's claims is properly brought in the Oklahoma District Court for Cleveland County or the United States Federal Court for the Western District of Oklahoma.

**ARTICLE 12 - REUSE OF DOCUMENTS**

All documents, including, but not limited to, plans, drawings, and specifications prepared by the CONSULTANT as deliverables pursuant to the Attachment A, Scope of Services are instruments of service in respect to the PROJECT. The Consultant may record, in audio or video, any Strong Towns event or engagements, and may use any of the materials provided during this engagement as the sponsor reasonably sees fit, subject to third-party permissions, copyright and other publicity and intellectual property rights. Nothing in this agreement shall be construed as a representation by OWNER that it has the authority to convey, and does so convey, the permission of any individual or private party for CONSULTANT's use of any such audio or video.

**ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Except as otherwise provided herein, documents, drawings, and specifications prepared by the CONSULTANT and furnished to the OWNER as part of the SERVICES shall become the property of the OWNER; provided, however, that the CONSULTANT shall have the unrestricted right to their use. The CONSULTANT shall retain its copyright and ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the SERVICES shall remain the property of the CONSULTANT.

**ARTICLE 14 - TERMINATION AND SUSPENSION**

This AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this AGREEMENT; provided, however, the nonperforming party shall have thirty (30) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. The OWNER may terminate or suspend performance of this AGREEMENT for the OWNER's convenience upon written notice to the CONSULTANT. The CONSULTANT shall terminate or suspend performance of the SERVICES on a schedule acceptable to the OWNER, and the OWNER shall pay the CONSULTANT for all the SERVICES performed. Upon restart

terminate or suspend performance of the SERVICES on a schedule acceptable to the OWNER, and the OWNER shall pay the CONSULTANT for all the SERVICES performed. Upon restart of suspended SERVICES, an equitable adjustment shall be made to the CONSULTANT's compensation and the project schedule.

#### **ARTICLE 15 - DELAY IN PERFORMANCE**

Neither Party to this agreement shall be liable for any failure or delay in performance of its obligations under this Agreement arising out of circumstances beyond its reasonable control, including, without limitation; acts of God; earthquakes; fires; floods; wars/ civil or military disturbances; acts of terrorism; sabotage, strikes, epidemics; pandemics; quarantine; riots; power failures; computer failure; accidents; labor disputes; or governmental actions. The CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this AGREEMENT.

#### **ARTICLE 16 - NOTICES**

Any notice required by this AGREEMENT shall be made in writing to the address specified below:

##### **OWNER:**

Darrel Pyle  
City Manager  
City of Norman  
P.O. Box 370  
Norman, OK 73070  
(405) 366-5404 Phone  
(405) 366-5389 Facsimile

##### **CONSULTANT:**

Strong Towns  
Charles L. Marohn, Jr.  
President  
1001 Kingwood Street  
Studio 116  
Brainerd, MN 56401  
(844) 218-1681 Phone  
N/A Facsimile

Nothing contained in this ARTICLE shall be construed to restrict the transmission of routine communications between representatives of the OWNER and the CONSULTANT.

#### **ARTICLE 17 - DISPUTES**

In the event of a dispute between the OWNER and the CONSULTANT arising out of or related to this AGREEMENT, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each

negotiation or mediation. If, after 30 days of good faith attempts to resolve the dispute, it is not resolved, then either Party may pursue its remedies at law.

**ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY**

The CONSULTANT hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations. The CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is the CONSULTANT's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. The CONSULTANT further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

**ARTICLE 19 - WAIVER**

A waiver by either the OWNER or the CONSULTANT of any breach of this AGREEMENT shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**ARTICLE 20 - SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if it did not contain the particular portion or provision held to be void.

**ARTICLE 21 - INTEGRATION**

This AGREEMENT, including Attachments A, B, C and D incorporated by this reference, represents the entire and integrated AGREEMENT between the OWNER and the CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

**ARTICLE 22 - SUCCESSORS AND ASSIGNS**

The OWNER and the CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this AGREEMENT and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this AGREEMENT.

**ARTICLE 23 - ASSIGNMENT**

Neither the OWNER nor the CONSULTANT shall assign any rights or duties under this AGREEMENT without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, the CONSULTANT may assign its rights to payment without the OWNER's consent. Unless otherwise stated in the written consent to an assignment,

no assignment will release or discharge the assignor from any obligation under this AGREEMENT. Nothing contained in this ARTICLE shall prevent the CONSULTANT from engaging independent consultants, associates and subcontractors to assist in the performance of the SERVICES.

**ARTICLE 24 - NO THIRD PARTY RIGHTS**

The SERVICES provided for in this AGREEMENT are for the sole use and benefit of the OWNER and the CONSULTANT. Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than the OWNER and the CONSULTANT.

IN WITNESS WHEREOF, THE CITY OF NORMAN and STRONG TOWNS have executed this AGREEMENT.

DATED this \_\_\_th day of \_\_\_\_\_, 2022.

The City of Norman  
(OWNER)

Strong Towns  
(CONSULTANT)

Signature \_\_\_\_\_

Signature *Charles L. Marohn, Jr.*

Name \_\_\_\_\_

Name Charles L. Marohn, Jr.

Title \_\_\_\_\_

Title President

Date \_\_\_\_\_

Date 11/14/22

Attest:

Attest:

\_\_\_\_\_  
City Clerk

*Michelle Eefurt*  
Corporate Secretary

Approved as to form and legality this 17 day of November 2022.

*Elizabeth L. Whelan*  
City Attorney