

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and Johnson & Associates, LLC (CONSULTANT) for the following reasons:

1. OWNER intends update the Center City Infrastructure Report, Create an Urban Design Implementation Guide and provided Landscape Services all within the Center City area of Norman, OK (the Project); and,
2. OWNER requires certain professional design, analysis and engineering/architectural services in connection with the Project (the SERVICES); and,
3. CONSULTANT is prepared to provide the SERVICES.

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

ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be ____ day of _____, 2023.

ARTICLE 2 - GOVERNING LAW

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

ARTICLE 3 - SCOPE OF SERVICES

CONSULTANT shall provide the SERVICES described in Attachment A, Scope of Services.

ARTICLE 4 - SCHEDULE

CONSULTANT shall exercise its reasonable efforts to perform the SERVICES described in Attachment A according to the Schedule set forth in Attachment B.

ARTICLE 5 - COMPENSATION

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

Invoices shall be due and payable upon receipt. OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

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

CONSULTANT shall, upon written request, furnish OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to OWNER. OWNER shall require all Project contractors to include OWNER, 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 OWNER and CONSULTANT, each to the same extent

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the PROJECT that are outside of CONSULTANT's reasonable control and/or Scope of Services set forth in Attachment A; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to, or otherwise under the control of the CONSULTANT, to fulfill contractual responsibilities to OWNER or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services. In the event the OWNER requests the CONSULTANT to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to the CONSULTANT for review at least 15 days prior to the requested date of execution. The CONSULTANT shall not be required to execute any certificates or documents that in any way would, in CONSULTANT's sole judgment, (a) increase the CONSULTANT'S legal or contractual obligations or risks beyond the terms of this agreement; (b) require knowledge, services or responsibilities beyond the scope of this AGREEMENT; or (c) result in the CONSULTANT having to certify, guarantee or warrant the existence of conditions whose existence CONSULTANT cannot reasonably ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because the CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet project schedules, the CONSULTANT's opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. The CONSULTANT does not guarantee that proposals, bids, or actual project costs will not vary from the CONSULTANT'S cost estimates or that actual schedules will not vary from the CONSULTANT'S projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by CONSULTANT as deliverables pursuant to the Attachment A, Scope of Services are instruments of service in respect to the PROJECT. They are not intended or represented to be suitable for reuse by OWNER or others on modifications or extensions of the PROJECT or on any other project. Any reuse without prior written verification or adaptation by the CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by CONSULTANT and furnished to OWNER as part of the SERVICES shall become the property of OWNER; provided, however, that CONSULTANT shall have the unrestricted right to their use. 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 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 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. OWNER may terminate or suspend performance of this AGREEMENT for OWNER'S convenience upon written notice to CONSULTANT. CONSULTANT shall terminate or suspend performance of the SERVICES on a schedule acceptable to OWNER, and OWNER shall pay CONSULTANT for all the SERVICES performed. Upon restart of suspended SERVICES, an equitable adjustment shall be made to CONSULTANT'S compensation and the project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this AGREEMENT, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or CONSULTANT under this AGREEMENT. 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:

Scott Sturtz
City Engineer
City of Norman
225 N. Webster Ave.
Norman, OK 73069

CONSULTANT

Johnson & Associates
Timothy W. Johnson, P.E.
Principal, Managing Member
1 East Sheridan, Suite 200
Oklahoma City, OK, 73104

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

ARTICLE 17 - DISPUTES

In the event of a dispute between OWNER and 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 party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute as allowed by applicable law and regulation. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

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, including the City of Norman's policies and provisions. The CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, gender identity or expression, marital status or familial status, including marriage to a person of the same sex, citizen status, national origin or ancestry, place of birth, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is 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 OWNER or 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 OWNER and 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

OWNER and 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 OWNER nor CONSULTANT shall assign any rights or duties under this AGREEMENT without the prior written consent of the other party,; provided, however, CONSULTANT may assign its rights to payment without 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 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 OWNER and CONSULTANT. Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

IN WITNESS WHEREOF, OWNER and Johnson & Associates, LLC have executed this AGREEMENT.

DATED this ____ day of _____, 2023.

The City of Norman
(OWNER)

Signature _____

Name _____

Title _____

Date _____

Attest:

City Clerk

Johnson & Associates, LLC
(CONSULTANT)

Signature _____

Name Timothy W Johnson

Title Managing Member

Date 11/10/23

Attest:

Secretary

Approved as to form and legality this 20 day of Nov 2023.

Christy Wheeler
City Attorney

ATTACHMENT A SCOPE OF SERVICES

Johnson & Johnson, LLC (CONSULTANT) prepared a Center City Infrastructure Report in 2017 under the authorization of the Center for Economic Development Law in coordination with the City of Norman (the City). This new Scope of Services updates the original report and provides additional Civil Engineering and Urban Design Services within the limits of Center City.

BASIC CONSULTING SERVICES

The following is a list of services to be provided under this agreement.

Civil Engineering and Urban Design Services:

Update to Infrastructure Report

- Maps
- Cost Estimates
- Street Sections
- Utilities
- Updates to previously assembled data

Creation of Urban Design Implementation Guide (including Landscape Services)

- Master Phasing Plan
 - Standards for Engineering
 - Schematic Streetscape Drawings
 - Attendance at all necessary meetings
 - Engagement with stakeholders
 - Creation of Presentation Materials
- Note: Does not include any survey field work

Landscape Services:

- Streetscape Landscape Plan Drawings
- Streetscape Amenities Palette Images
- Streetscape Planting Palette Images
- 3D Perspective Images
- Typical Streetscape Sections
- Opinion of Probable Construction Costs
- Standard Details for Pedestrian Hardscape Surfaces & Landscape
- Meetings
- Phasing Plan
- Schematic Irrigation Plan

**ATTACHMENT B
PROJECT SCHEDULE**

Article 4 of the AGREEMENT is amended and supplemented to include the following agreement of the parties.

It is understood and agreed that the date of beginning, rate of progress, and the time of completion of SERVICES under this AGREEMENT are essential provisions of this AGREEMENT. It is further understood and agreed that the services under this AGREEMENT shall commence upon execution of the AGREEMENT between OWNER & CONSULTANT and after receipt of a written Notice to Proceed from CONSULTANT. The parties mutually agree that time is of the essence in the performance of this AGREEMENT in order for OWNER to have advantage of existing funding. SUBCONSULTANT agrees to provide SERVICES for each phase of PROJECT as stated in Attachment A – Scope of Services, in accordance with the time frame as stated below:

TASK/MILESTONE	ANTICIPATED COMPLETION DATE*
Notice to Proceed	November 29, 2023
Kick off meeting (review sections/design details/ committee meeting schedule)	Dec (final date to be determined)
Background and due diligence	Dec/Jan
Schem. Design	March 4 th
Owner review of SD	March 18 th
Design Development (40%)	April 29 th
Owner review of DD	May 13 th
Update Infrastructure Report Draft	June 17 th
Urban Design Implementation Guide Draft	June 17 th
Owner review of final drafts	July 1 st
Update Infrastructure Report	July 12 th
Urban Design Implementation Guide	July 12 th

*assumes comments and necessary revisions resubmitted to consultants within two weeks of original submission

The parties further agree that CONSULTANT will meet this schedule using standards and procedures for their submissions consistent with those currently used by Engineers/Surveyors practicing in Oklahoma. This schedule excludes the governing agency review time (except as provided above) and any time lost while CONSULTANT is waiting for direction either by government agency or OWNER, and any excusable delays as described in Article 15 of the AGREEMENT.

Dates indicated are dependent upon timely review by OWNER & ODOT, Environmental Clearance, Right-of-Way Acquisition, Utility Relocations, and other factors beyond direct control of CONSULTANT.

**ATTACHMENT C
COMPENSATION**

Article 5 of the AGREEMENT is amended and supplemented to include the following agreement of the parties.

The CONSULTANT agrees to perform the SERVICES identified in **Attachment A – Scope of Services**, in accordance with the limitations and conditions set forth in the AGREEMENT to pay an amount not to exceed \$218,600.00 unless changed or modified by a manually executed contract amendment between the OWNER and the CONSULTANT.

The OWNER shall pay the CONSULTANT for completion of the SERVICES of each task identified in **Attachment A – Scope of Services**, in accordance with the amounts stated below:

DESIGN TASK	COMPENSATION
Civil Engineering and Urban Design Services	\$120,000.00
Landscape Services:	
Streetscape Landscape Plan Drawings	\$42,000.00
Streetscape Amenities Palette Images	\$4,200.00
Streetscape Planting Palette Images	\$4,200.00
3D Perspective Images	\$7,000.00
Typical Streetscape Sections	\$5,600.00
Opinion of Probable Construction Costs	\$4,900.00
Standard Details for Pedestrian Hardscape Surfaces & Landscape	\$10,500.00
Meetings	\$4,200.00
Phasing Plan	\$4,200.00
Plan Enlargements	\$7,000.00
Schematic Irrigation Plan	\$4,800.00
Total	\$218,600.00

ATTACHMENT D
OWNER'S RESPONSIBILITIES

Article 6 of the AGREEMENT is amended and supplemented to include the following agreement of the parties.

I. OWNER RESPONSIBILITIES

1. Owner shall furnish to CONSULTANT all available information pertinent to PROJECT including previous reports, and any other data relative to design and construction of PROJECT.
2. OWNER shall be responsible for all permit fees.
3. OWNER shall examine all studies, reports, sketches, estimate specifications, plan drawings, proposals and any other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay SERVICES of CONSULTANT.
4. OWNER shall designate in writing a person to act as its representative in respect to the work to be performed under this AGREEMENT, and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the services covered by this AGREEMENT.
5. OWNER shall furnish assistance in locating existing OWNER-owned underground utilities.
6. OWNER shall provide for meeting facilities (or arrange for meeting facilities) for all PROJECT meetings with OWNER or Public Meetings in connection with PROJECT.