

# Professional Services Agreement

Mainstreet Architects Inc

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This Professional Services Agreement is undertaken as of the Effective Date between the City of Norman, Oklahoma (City), and the Consultant designated below.

**Consultant:** Mainstreet Architects Inc

**Consultant's Address:** 709 Avenue E  
San Antonio, TX 78215

**Date After Which Consultant  
May Begin Work:** Notice to Proceed

**Deadline for Completion:** August 15, 2020

## 1. Definitions.

“Officer” means the Historic Preservation Officer of the Department of Planning and Community Development.

“Satisfactory Completion” means completion to the satisfaction of the Officer. The Officer’s determination is final, binding, and conclusive.

## 2. Scope of Services.

Consultant must provide the services defined in the Scope of Work incorporated herein as **Exhibit A**. Consultant must perform all required services to the point of Satisfactory Completion and must perform them according to the schedule contained in Exhibit A.

## 3. Payment.

3.01. First payment of 20% of the total fee to the Consultant upon signing of professional services agreement.

3.02. Second payment of 20% of the total fee to the Consultant upon submission of outline draft of deliverables. Consultant must submit an invoice to City.

3.02. Third payment of 30% of the total fee to the Consultant upon submission of draft deliverables. Consultant must submit an invoice to City.

3.03. Final payment of 30% within 30 calendar days after Satisfactory Completion or other termination of this agreement. Consultant must submit an invoice to City.

3.04. The Officer's determination of Satisfactory Completion must be in writing. The Officer has two weeks to review and provide comments to the final draft Plan. The final Plan document must address these comments.

3.05. If Consultant is seeking payment other than for Satisfactory Completion, the invoice must detail the work performed and the basis of the claim. Consultant's right to payment other than for Satisfactory Completion is based solely on quantum merit and is reduced by City's cost in getting someone else to perform the work contracted for in the Scope of Work.

#### **4. Record Retention.**

4.01. Consultant must accurately and completely maintain all documents, papers, and records, whether paper, digital, or otherwise, used or generated in the course of performing this Agreement (Documents). Documents specifically include all survey-related documents. Consultant must make the Documents available to City at its offices during normal City business hours as often as City may deem necessary throughout the period of performance and the Retention Period. City may audit, inspect, examine, and make excerpts or copies of the Documents.

4.02. Consultant must retain all Documents for four years after Satisfactory Completion (Retention Period). If, at the end of the Retention Period, there is litigation or other questions arising from, involving, or concerning the Documents or the services provided hereunder, Consultant must retain the records until resolution of the litigation or other questions. City may require Consultant to deliver the Documents to City before or at the end of the Retention Period.

4.03. Consultant must notify City immediately if Consultant receives a request for Documents from a third party. City must be given the opportunity to assert any proprietary interest it may have.

4.04. Consultant must impose on its sub-consultants, if any, all Record Retention obligations of this agreement.

#### **5. Ownership of Documents.**

5.01 City has the right to use all Documents as it desires, without restriction.

#### **6. Default.**

6.01. City defaults if, when appropriated funds are available, it fails to pay timely when payment is due hereunder.

6.02. Consultant defaults if:

6.02.01. Consultant does not timely achieve Satisfactory Completion.

6.02.02. Consultant fails to timely perform any other obligation imposed on it by this agreement or breaches any covenant or warranty made hereunder.

## **7. Remedies for Default.**

7.01. If City defaults and if Consultant has achieved Satisfactory Completion, after 15 days' notice and opportunity to cure, Consultant may seek to recover the Fee to Consultant. If it will reasonably take more than 15 days to cure the default, City is not in default if it begins the cure within 15 days and diligently pursues it to completion, but no cure may take more than 30 days. If for any reason Consultant has not achieved Satisfactory Completion, Consultant's sole remedy, after the prescribed notice and opportunity to cure, is to seek quantum meruit for the work completed.

7.02. If Consultant defaults, City may terminate this agreement if Consultant fails to cure the default after 15 days' notice. If it will reasonably take more than 15 days to cure the default, Consultant is not in default if it begins the cure within 15 days and diligently pursues it to completion, but no cure may take more than 30 days.

7.03. City may terminate in whole or in part. City's failure to terminate does not waive Consultant's default, and City may seek all other appropriate remedies allowed by law. City's termination does not prevent City from seeking other remedies. City may offset the cost of retaining a new consultant against Consultant's future or unpaid invoice(s).

7.04. City's termination of this Agreement is not an election of remedies. No termination limits City's right to seek damages from or otherwise pursue Consultant for any default. All remedies are cumulative.

## **8. Other Termination.**

8.01. City may terminate this agreement without opportunity to cure if Consultant sells, transfers, pledges, conveys, or assigns this Agreement without prior written approval.

8.02. City may terminate this agreement without opportunity to cure if Consultant becomes subject to voluntary or involuntary proceedings under the Bankruptcy Code, enters into a composition with its creditors, or sells substantially all of its assets.

8.03. City may terminate this agreement without opportunity to cure if any state or federal law or regulation is enacted or promulgated that prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance.

## **9. Post-Termination Procedures.**

Regardless how this Agreement is terminated, if requested by City, Consultant must transfer to City or to such person(s) or firm(s) as the City may designate, in an orderly manner at no additional cost to City, all completed or partially completed Documents. Consultant must complete the record transfer within 30 calendar days of City's written request. The transfer is at Consultant's sole cost and expense. City's payment to

Consultant is conditioned on Consultant's timely compliance with a Document transfer request.

## **10. Insurance.**

Consultant shall provide Certificates of Insurance for Comprehensive General Liability and Worker's Compensation if requested.

## **11. Indemnity.**

### 11.01 General.

CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subConsultant of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT'S activities under this MEMORANDUM and shall see to the investigation and defense of such claim or demand at CONSULTANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

### 11.02 Intellectual Property Indemnity

Consultant shall pay all license fees and royalties and assume all costs incident to the use of the performance of the services performed hereto or the incorporation in any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

## **12. Assignment and Subcontracting.**

12.01. Consultant must personally perform actions necessary to complete the work under this Agreement. Except as otherwise provided above, Consultant must not sell, assign, pledge, transfer, or convey any interest in this Agreement or delegate the

performance of any duties hereunder, without the consent of City. Even if consent is given, Consultant remains liable for completion of the services required hereunder.

12.02. Any attempt to transfer, pledge, or otherwise assign this Agreement or any part thereof without City's written approval, is void *ab initio* and confers no rights.

### **13. Independent Contractor.**

Consultant is an independent contractor and not an officer, agent, servant, or employee of City. Consultant has exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing it. Consultant is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants. The doctrine of respondent superior does not apply as between City and Consultant or those working under consultant. Nothing in this agreement creates a relationship of employer-employee, principal-agent, partnership, or joint venture between City and Consultant. City is not liable for injury to others arising from or relating to acts of omissions of Consultant or those acting under Consultant under this Agreement. Consultant cannot bind City.

### **14. Licenses and Certifications.**

Consultant warrants and certifies that it, its employees, and its subcontractors:

- (a) have the requisite training, licenses, and certifications to provide the services required hereunder, and
- (b) meet all competence standards promulgated by all regulatory bodies relevant to the work to be performed hereunder.

### **15. Compliance.**

Consultant must comply with all applicable federal, state, and local laws, rules, and regulations in the course of the work required hereunder.

### **16. Authority to Bind.**

The person who signs on behalf of Consultant individually represents and warrants that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to the terms and conditions of this agreement.

### **17. Incorporation of Exhibits.**

Each exhibit referenced in this agreement is incorporated herein by reference for all purposes as if it were fully set forth.

### **18. Contrary Terms in Exhibits.**

The terms of this document prevail over any contrary terms in letters of intent, proposals, or other materials produced by or for Consultant, even if incorporated herein as exhibits.

## **19. Miscellaneous.**

19.01. *Applicable Law.* The Construction of This Agreement and The Rights, Remedies, And Obligations Arising Thereunder Are Governed by The Laws of The State of Oklahoma.

19.02. *Severability.* If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

19.03. *Successors.* This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

19.04. *Integration.* This Written Agreement Represents the Final Agreement Between the Parties and May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between the Parties.

19.05. *Modification.* This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought.

19.06. *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. It has no third-party beneficiaries.

19.07. *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth below. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Notice other than by certified mail, return receipt requested, is effective only on actual receipt. Address for notice may be changed by giving notice hereunder. The initial address for notice to Consultant is Consultant's Address as specified at the beginning of this agreement. The initial address for notice to City is:

Historic Preservation Officer  
City of Norman  
P.O. Box 370  
Norman, Oklahoma 73070

19.08. *Pronouns.* In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance shall be attached to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

19.09. *Captions.* Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

19.10. *Mediation.* As a condition precedent to bringing any arbitration to enforce or interpret this agreement or any aspect thereof, including an action for declaratory relief, the disputants must first submit in good faith to mediation by a qualified mediator. Arbitration may be filed only after the sooner to occur of (i) a full day of mediation by a mediator qualified as provided above or (ii) certification by the mediator that further attempts to mediate would be fruitless. Laches, waiver, and estoppel based upon any reasonable delay relating to attempts to mediate as herein provided may not be asserted by either party hereto.

19.11. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, the counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

19.12. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to affect fully the provisions hereof. No such additional document(s), however, can alter the rights or obligations of the parties as contained in this agreement

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

**City**

**City of Norman, Oklahoma**

**Consultant**

**Mainstreet Architects Inc**

By: \_\_\_\_\_

Printed  
Name:

Title:

Date: \_\_\_\_\_

By:



Printed

Name: Sue Ann Pemberton, FAIA, FAPT

Title: Principal, Mainstreet Architects Inc.

Date: \_\_\_\_\_

**Scope of Services**

Mainstreet Architects Inc. is prepared to complete the Scope of Services outlined:

- Mainstreet Architects will identify a systematic layout in the Handbook of required standards and preservation design guidelines that are clear and user-friendly.
- Mainstreet Architects will revise the current Handbook to identify errors, unclear and conflicting guidelines and will create new design guidelines that reflect these revisions.
- Mainstreet Architects will revise the current Handbook to identify omitted proposed work items (such as request for the addition of solar panels) and will create new design guidelines to address these omissions.
- Mainstreet Architects will create a historic overview description of Norman that will allow for the addition of future historic districts to incorporate into the Handbook.
- Mainstreet Architects will revise the current historic district descriptions in the Historic Preservation Handbook for accuracy and will create a description for the recently created Southridge Historic District to be incorporated into the Handbook.
- Mainstreet Architects will review and revise the repair and maintenance sections of the Handbook to ensure that best practices based upon the Secretary of the Interior Guidelines for Rehabilitation are incorporated.
- Mainstreet Architects will review the Historic District Ordinance and the Historic Preservation Handbook to ensure coordination between the two documents.
- With guidance from the City Staff and Historic District Commission, Mainstreet Architects will identify applications suited for staff review through the Administrative Bypass process and will develop clear standards to be incorporated into the Historic Preservation Ordinance and/or Historic Preservation Design Guidelines for those items.
- With guidance from the City Staff and Historic District Commission, Mainstreet Architects will identify proposed work that may be considered routine maintenance and repair and incorporate into the existing Historic Preservation Ordinance and/or the revised Preservation Design Guidelines.

- Mainstreet Architects will attend meetings during the project, in-person with the Historic District Commission, as well as additional meetings which may occur in-person or via conference calls, with City Staff/Historic District Commission.
- Mainstreet Architects will make two to four trips to Norman to complete the project; two meetings will be with the Historic District Commission.
- Mainstreet Architects will develop the revised draft of the Historic Preservation Handbook utilizing Word and/or Adobe InDesign.
- Mainstreet Architects will provide a digital version in Word and/or Adobe InDesign and five (5) copies of the revised version design guidelines.
- The project will be completed according to the National Parks Service's Secretary of Interior's Standards for Rehabilitation and the Secretary of the Interiors Standards for the Treatment of Historic Properties and will meet the requirements of the Oklahoma State Historic Preservation Office.

**Project Deliverables:**

1. Mainstreet will develop a revised version of the Historic Preservation Handbook utilizing Word and/or Adobe InDesign.
2. Mainstreet will provide a digital version in Word and/or Adobe InDesign and five (5) copies of the revised version design guidelines.

**Project Schedule**

This timeline may shift dependent upon the determined Phase I scope of services:

- A. In accordance with instructions in the OK/SHPO's Guidelines for Consultants, Mainstreet Architects Inc. will submit Progress Reports to the City as specified in the Project Schedule below. Attached to each report will be the specific documents and/or evidence on project products and tasks as specified:

**Report Period:****Task:****Report Period: September 24 - October 8, 2019**

- Task:** 1. Revised Request for Preservation Design Guidelines update issued.

**October 8 - 23, 2019****Report Period:** 1. Consultant selected, and contract executed.

- Task:** 2. City Submit Progress Report to SHPO by the 10<sup>th</sup> of month.

**October 24 – November 4, 2019****Report Period:** 1. Will begin work on Preservation Design Guidelines updates.

- Task:** 2. Will meet with Historic District Commission.  
3. Will submit Progress Report to City on the first of the month.

**November 5 – January 31, 2020**

1. Will continue developing guidelines.  
2. Will submit a outline of revisions the Preservation Design Guidelines for a review by the City Staff and Historic District Commission.

**Report Period:****Task: February 1-29, 2020**

1. Meeting with Historic District Commission for presentation of proposed revision.

2. Will submit Progress Report to City on the first of the month.

**Report Period:****Task: March 1-May 31, 2020**

1. Will revise Draft based upon revisions requested by Commission.
2. Will submit Progress Report to City on the first of the month.

**Report Period:****Task: June 1-June 30, 2020**

1. Will submit a draft copy of the preservation Design Guidelines for a thirty (30) day review by the City and OK/SHPO.
2. Will submit Progress Report to City on the first of the month.

**Report Period:****Task: July 1-August 15, 2020**

1. Will make changes per OK/SHPO comments and City of Norman.
  2. Will submit final draft design guidelines for a fifteen-day review.
  3. Will submit five (5) copies of the final design guidelines to City.
  4. Will submit electronic versions in Word/Adobe InDesign.
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EXHIBIT "C"

MAINSTREET ARCHITECTS INC.

COST FOR COMPLETION OF PHASE I

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Cost of Completion for Phase I as outlined in RFP 19920-29

Phase I of the Design Guideline revisions will consist of a thorough evaluation and analysis of the existing document, the preparation of new sections and revisions to others. Stakeholder discussions will include city staff, commission, and users of the guidelines as well as the OK-SHPO. Phase I will produce a user-friendly document.

Based on current experience with the preparation of Design Guidelines, we anticipate 4-5 site visits and coordinated meetings from the time of the Notice to Proceed to the Delivery and Presentation of the Guidelines to the City of Norman.

Proposed Fee for	\$44,925.00
<u>Expenses to include mileage, room nights, printing, shipping</u>	<u>\$ 4,575.00</u>
Total Fee Proposal for Phase I	\$49,500.00