

**AGREEMENT
FOR
ARCHITECTURAL & ENGINEERING SERVICES**

This AGREEMENT, between the Norman Municipal Authority (OWNER)
and
The McKinney Partnership Architects, PC (CONSULTANT, "TMP").

WITNESSETH

WHEREAS OWNER intends to design and construct the PROJECT consisting of a new **Sanitation Office Building.**

WHEREAS, CONSULTANT is prepared to provide said SERVICES; and

NOW THEREFORE, 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 _____ **January 2021.**

ARTICLE 2 - COMPLETION DATE

CONSULTANT shall complete the SERVICES in accordance with **Attachment A, Project Schedule.**

ARTICLE 3 - GOVERNING LAW

The laws of the state of Oklahoma shall govern this AGREEMENT.

ARTICLE 4 - SERVICES TO BE PERFORMED BY ENGINEER

CONSULTANT shall perform the SERVICES described in **Attachment B, Scope of Services.**

ARTICLE 5 - COMPENSATION

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

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1. OWNER-Furnished Data: Upon request, OWNER will provide to CONSULTANT all data in OWNER's possession relating to CONSULTANT 's SERVICES on the PROJECT. Such data may include operations reports, record drawings, and equipment manuals for the Sanitation Office Building. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by OWNER. OWNER's data is provided for temporary use or copying by CONSULTANT.
- 6.2. Access to Facilities and Property: OWNER will make its facilities accessible to CONSULTANT as required for ENGINEER's performance of its SERVICES
- 6.3. Timely Review: OWNER will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; and transmit OWNER comments or other decisions to CONSULTANT in a timely manner.
- 6.4. Meetings and Workshops: OWNER will participate in progress meetings and workshops with CONSULTANT or contractor(s) defined in Attachment B, Scope of Services.
- 6.5. Advertisements, Permits, and Access: Unless otherwise agreed to in the Scope of Services, OWNER will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CONSULTANT 's SERVICES or PROJECT construction.

- 6.6. Hazardous Substances: If hazardous substances in any form are encountered or suspected, CONSULTANT will stop its own work in the affected portions of the PROJECT to permit testing and evaluation. CONSULTANT will, if requested by OWNER, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend necessary remedial measures at an additional fee with contract terms to be negotiated. CONSULTANT shall not assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any hazardous substance or waste.

ARTICLE 7 - STANDARD OF CARE

CONSULTANT shall exercise the same degree of care skill and diligence in the performance of the SERVICES as is ordinarily possessed and exercised by a professional engineer under similar circumstances. CONSULTANT shall correct the SERVICES that fail to satisfy this standard of care. No warranty, express or implied is included in this AGREEMENT or in any drawing, specifications, report, or opinion produced pursuant to this AGREEMENT.

ARTICLE 8 - LIABILITY AND INDEMNIFICATION

- 8.1 General. Having considered the potential liabilities that may exist during the performance of the SERVICES, the benefits of the PROJECT, CONSULTANT's fee for the SERVICES and in consideration of the promises contained in this AGREEMENT, OWNER and CONSULTANT agree to allocate and limit such liabilities in accordance with this Article.
- 8.2 Indemnification and Liability. CONSULTANT agrees to indemnify, and hold harmless the OWNER, its officers, servants, and employees, from and against legal liability for all third-party tort claims, losses, damage, cost, and expense (including reasonable attorneys' fees and accountants' fees recoverable under applicable law) from bodily injury (including death) or tangible property damage caused by a negligent act, error, or omission of CONSULTANT in the performance of services under this Agreement. OWNER agrees to indemnify, and hold harmless CONSULTANT, its officers, servants, and employees, from and against legal liability for all claims, losses, damage, cost, and expense (including reasonable attorneys' fees and accountants' fees recoverable under applicable law) caused by a negligent act, error, or omission of the OWNER in the performance of services under this Agreement, provided such indemnification shall be applicable only to the extent sovereign immunity has been waived pursuant to Oklahoma law. CONSULTANT and the OWNER each agree to promptly service notice on the other party of any claims arising hereunder and shall cooperate in the defense of such claims. 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 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 OWNER at common law.
- 8.3 Employee Claims. CONSULTANT shall indemnify OWNER against legal liability for damages arising out of claims by CONSULTANT's employees. OWNER shall indemnify CONSULTANT against legal liability for damages arising out of claims by OWNER's employees.
- 8.4 Consequential Damages. To the fullest extent permitted by law, CONSULTANT shall not be liable to OWNER for any special, indirect, or consequential damages resulting in any way from the performance of the SERVICES.
- 8.5 Survival. Upon completion of all SERVICES obligations and duties provided for in this AGREEMENT or if this AGREEMENT is terminated for any reason the terms and conditions of this Article shall survive.

ARTICLE 9 - INSURANCE

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

- 9.1 Worker's compensation insurance for CONSULTANT's employees as required by Oklahoma Workers Compensation Statutes.

- 9.2 Comprehensive general liability insurance with a minimum of \$125,000 per accident for bodily injury or death and \$25,000 per occurrence for property damage.
- 9.3 Comprehensive automobile liability insurance with a minimum of \$125,000 per accident for bodily injury or death and \$25,000 for property damage.
- 9.4 Professional Liability (errors and omissions) insurance with a minimum policy value of \$1,000,000.

CONSULTANT shall furnish OWNER certificates of insurance that shall include a provision that such insurance shall not be canceled without at least thirty days written notice to OWNER. All PROJECT contractors shall be required to include OWNER and CONSULTANT as additional insured on their General Liability Insurance policies.

CONSULTANT and OWNER each shall require its insurance carriers to waive all rights of subrogation against the other and its directors, officers, partners, commissioners, officials, agents, and employees for damages covered by property insurance during and after the SERVICES. A similar provision shall be incorporated into all contractual arrangements entered into by OWNER and shall protect OWNER and CONSULTANT to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures or safety and security precautions and programs in connection with the PROJECT; (2) the failure of any contractor, subcontractor, vendor or other PROJECT participant, not under contract to CONSULTANT, to fulfill contractual responsibilities to the OWNER or to comply with federal, state or local laws, regulations, and codes; or (3) procuring permits, certificates and licenses required for any construction unless such responsibilities are specifically assigned to CONSULTANT in Attachment B, Scope of Services.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Since 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, CONSULTANT's opinion of probable costs and of PROJECT schedules shall be made on the basis of experience and qualifications as a professional engineer. CONSULTANT does not guarantee that proposals, bids, or actual PROJECT costs will not vary from CONSULTANT's cost estimates.

ARTICLE 12 - REUSE OF DOCUMENTS

Upon OWNER's request CONSULTANT shall furnish OWNER with deliverables and/or other data on electronic media. All documents, including but not limited to, drawings, specifications and computer software prepared by CONSULTANT pursuant to this AGREEMENT are instruments of Service in respect to the PROJECT. Said documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other PROJECT.

ARTICLE 13 - TERMINATION

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. The non-performing party shall have fifteen (15) calendar days from the date 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. If termination or suspension is for OWNER's convenience, OWNER shall pay CONSULTANT for all the SERVICES performed to date, amount not to exceed the normal fee amount due for the SERVICES rendered and termination or suspension expenses. Upon restart, an equitable adjustment shall be made to CONSULTANT's compensation.

ARTICLE 14 - 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 non-performing party. For purposes of this AGREEMENT, such circumstances include, but are not limited to abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riot and other civil disturbances; strikes, work slowdowns and other labor disturbances; sabotage; judicial restraint; and 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.

Should such circumstances occur the non-performing party shall, within a reasonable period after 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 15 - COMMUNICATIONS

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

CONSULTANT: **Toni M. Bragg, AIA, Project Manager**
The McKinney Partnership Architects, PC
3600 W. Main, Suite 200
Norman, OK 73072
405-360-1400
tbragg@tmparch.com

OWNER: **Kenneth Giannone, P.E.**
Norman Municipal Authority (NMA)
201-C West Gray
P.O. Box 370
Norman OK 73070
405-366-5377
Kenneth.Giannone@normanok.gov

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

ARTICLE 16 - 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 17 - 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 this AGREEMENT did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid Provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire AGREEMENT from being void should a provision, which is of the essence of this AGREEMENT, be determined void.

ARTICLE 18 - INTEGRATION

This AGREEMENT 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. This AGREEMENT, including its attachments and

schedules, may only be changed by a written amendment executed by both parties. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A – Schedule

Attachment B – Scope of Services

Attachment C – Compensation

ARTICLE 19 - SUCCESSORS AND ASSIGNS

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

IN WITNESS WHEREOF, OWNER and CONSULTANT have executed this AGREEMENT.

DATED this 5th day of January 20 21.

The McKinney Partnership Architects, PC – CONSULTANT

ATTEST

By:



Printed Name:

Richard S. McKinney, Jr, AIA

Title:

President



Kathy A. Hooper

Manager

Norman Municipal Authority - OWNER

APPROVED as to form and legality this _____ day of _____, 2021

City Attorney

APPROVED by the Trustees of the Norman Municipal Authority this _____ day of January 2021.

ATTEST

By:

Printed Name:

Brea Clark

Brenda Hall

Title:

Chairman

Secretary

ATTACHMENT A**SCHEDULE**

CONSULTANT shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

Phase/Task	Description	Required Time (Months)	Cumulative Time (Months)
1	Schematic Design	1.0	1.0
2	Design Development	2.0	3.0
3	Construction Documents	2.0	5.0
4	Bidding / RFP (if no CMaR is used)	1.0	6.0
5	Construction Administration	12.0	18.0
6	As-Built Records	1.0	19.0

ATTACHMENT B**SCOPE OF SERVICES****Project Scope:**

The project is to be located on an approximate 1.6-acre site within the existing Sanitation Department site. The building shall contain approximately 7,200 SF of administrative and operational office space within one or two levels. Also included in the work are the design of related site amenities and parking as required to support the building.

Schematic Design Phase:

- a. Consult with Owner about the overall vision, function, size, configuration, and aesthetic intent for the project.
- b. Prepare program of design requirements and needs for the overall building and site.
- c. Compile site information applicable to the design including site survey, platting, easements, allowable lot coverage, required impervious area, zoning, and any restrictive covenants.
- d. Prepare Schematic Site Plan Options including building location, circulation, parking, and site usage for Owner review. Plan shall also reflect potential areas for future expansion of parking and building.
- e. Conduct code research based on current City of Norman adopted codes. Architect shall verify compliance with platting procedures, site constraints, or code requirements.
- f. Develop floor plans and "SketchUp" 3D model of the exterior design concept for Owner review incorporating program, code requirements, and Owner comments on the Schematic Site Plan.
- g. Revise floor plan and exterior elevations to reflect comments from Owner.
- h. Prepare initial cost estimate of Schematic Design.
- i. Participate in the selection of the CMAA. Tasks will include review and comment on RFQ before issuance, review of RFQ submittals, participate in selection of shortlisted companies, participate on interview panel of short-listed companies, and assist with contract negotiation.

Design Development Phase:

- a. Prepare Design Development Documents including Site Plan, Floor Plan, Reflected Ceiling Plan, Exterior Elevations, Interior Elevations, Building Sections, Basic Structural System, Basic Mechanical and Electrical and Plumbing Systems, Audio / Visual Systems, Technology Design, Low Voltage (Security and other) Design, and Outline Specifications.
- b. Incorporate Furniture, Fixture, and Equipment (FF&E) into the Design Development documents. The required FF&E program shall be defined with the Owner and the end users and shall include but not limited to Office and Common Area furniture, white boards, lockers for drivers, Break Room appliances, laundry equipment (washer and dryer), and interior room signage.
- c. Provide input as needed on the 100% Design Development cost estimate to be prepared by CMAr.
- d. Review Design Development Documents and cost estimate with Owner and make any revisions as required.

Construction Documents Phase:

- a. Prepare Construction Documents for permitting, pricing, and construction including Site Plan with Details, Foundation Plan, Floor Plans, Elevations, Interior and Millwork Elevations, Building Sections, Interior Finishes, Landscape, Schedules, Details and Specifications as required to fully construct the project.
- b. Coordinate and provide Civil / Off-Site Water Loop / Structural / Mechanical / Electrical / Plumbing / AV / Telecommunications / Access Control / and FF&E. Landscape and Irrigation Design and all other approved Additional Services shall be provided if requested by the Owner.
- c. Review Construction Documents with Owner and CMAr for constructability and make any revisions as required.
- d. Provide input for and review as needed on the 50% Construction Document budget to be prepared by CMAR. Consultant shall further review CMAr's Guaranteed Maximum Price of Construction (GMP) cost estimate, provide comments, and assist in negotiating contractual GMP.
- e. Review CMAr's GMP cost estimate, provide comments and assist in negotiating contractual GMP.

- f. Submit digital and hard copy Construction Documents and Building Permit Application Form to the appropriate Departments at City of Norman and respond to any comments relating to approval and issuance of a construction permit.

Bidding & Negotiation Phase:

- a. Participate in the selection of the CMaR. Tasks will include review and comment on RFP before issuance, review of submittals, selection of shortlist, interview panel of short-listed companies and assistance with contract negotiation.
- b. Provide digital documents to the CMaR as required for bidding. Attend and participate in Pre-Bid/Pre-Proposal Meeting. Coordinate with the CMaR on any hard copy printing required for bidding / RFP purposes.
- c. Respond to written questions and any Substitution Requests during bidding and prepare and issue all addenda as required.

Construction Observation Phase:

- a. Respond to written Request for Information (RFIs) from CMaR and render decisions relating to matters of compliance or interpretation of the documents in conjunction with the Owner.
- b. Review material submittals and shop drawings and provide recommendations or exceptions.
- c. Convene Pre-Construction Meeting with Owner and CMaR and coordinate with the CMaR on recording and issuing of all Meeting Minutes.
- d. Observe the construction at intervals appropriate to the level of construction to confirm general compliance with the contract . Prepare electronic field reports with photographs documenting each site visit.
- e. Review CMaR baseline schedule and monthly schedule updates and advise Owner if (a). schedule is realistic; and (b). whether it shows them completing project on schedule. If the answer to either (a) or (b) is no, Consultant shall furnish written notice to CMaR and evaluated CMaR's efforts to get project back on schedule.
- f. Review material testing reports (based on tests completed and submitted by independent testing laboratory contracted and paid by Owner) for compliance with Contract Documents and, in case of any tests that do not meet Contract Document requirements, make recommendation to Owner on course of action.

- g. Coordinate with CMaR / on Progress Meetings with Owner, Consultant, CMaR, and other appropriate stakeholders on a regular basis (but no less than twice per month), and coordinate with CMaR on recording and issuing all Meeting Minutes.
- h. Review and certification of monthly CMaR's Applications for Payment.
- i. If/When Change Orders are required, assist in negotiations with CMAR on fair and reasonable price for work; prepare change order documents and make recommendations on whether to pay.
- j. Prepare final punch list / review for Substantial Completion with Owner and CMaR for completion of the work with one (1) follow-up site visit to verify work was completed. Furnish written confirmation that project is ready for final acceptance and recommend that final payment be made.
- k. Review CMaR's submission of all close-out documents and warranties which include all O&M Manuals and Documents for all major equipment incorporated into the project. Consultant shall provide written narrative for O&M Manuals and Documents.
- l. Confirm that all major equipment incorporated into project has been satisfactorily tested.
- m. Issuance of Certificate of Substantial Completion.
- n. Conduct warranty observation of the building and site with Owner and CMaR eleven months after substantial completion and issue electronic report of any issues requiring remedial work or attention.

As-Built Record Document Phase:

- a. Prepare record documents of the project from all field records and documents as prepared by the CMaR and other subcontractors. Architect and consultants shall require documentation of site utilities using GPS coordinates.

Possible Additional Service Scope:

Note: The services / items listed below will only be added to the Contract upon execution of an Amendment to this Contract and per written direction by the Owner.

- a. Platting as required by the City of Norman at \$3,000.
- b. Structural Engineering Design and construction inspections specific to Storm Shelter is estimated at \$6,500. This fee amount shall be confirmed after further discussion of scope during the Schematic Design Phase.
- c. Enhanced Construction Observation (in addition to the contracted amount) including two additional site visits per month at \$13,800.
- d. Preparation of Cost Estimates (beyond the initial Schematic Design estimate) at \$8,160 for a total of two additional estimates at Design Development and Construction Document Phases if CMAA is not selected.
- e. Landscape and Irrigation Design provided (If required by City of Norman) by a professional consultant at \$6,500.

ATTACHMENT C**COMPENSATION**

The OWNER will compensate CONSULTANT on a lump sum basis for the SERVICES rendered. The lump sum fee is broken down below by task and type of fee as defined in the Scope of Services:

Detailed description of Basic, Supplemental, and Additional Services :

Basic Services				
Phase/Task	Description	Fee	Cumulative Fee	
1	Schematic Design	\$21,000	\$21,000	
2	Design Development	\$35,000	\$56,000	
3	Construction Documents	\$42,000	\$98,000	
4	Bidding	\$7,000	\$105,000	
5	Construction Administration	\$30,800	\$135,800	
6	Record Drawings	\$4,200	\$140,000	

Supplemental Services	Description	Fee	Cumulative Fee	
S1	FF & E Design	\$6,030	\$6,030	
S2	AV / Tele. / Access Controls	\$4,000	\$10,030	
S3	Off Site Water Line Design	\$3,000*	\$13,030	
S4	Geotech	\$4,000	\$17,030	
S5	Design Ready Land Survey	\$3,500	\$20,530	

Additional Services	Description	Fee	Cumulative Fee	
A1	Platting	\$3,000	\$3,000	
A2	Storm Shelter Design	\$6,500	\$9,500	
A3	Expanded Constr. Observation	\$13,800	\$23,300	
A4	Additional Cost Estimates	\$8,160	\$31,460	
A5	Landscape / Irrigation Design (If Required by City)	\$6,500	\$37,960	

CONSULTANT may submit interim statements, not to exceed one per month, for partial payment for SERVICES rendered. The statements to OWNER will be by task for the percentage of work completed. The OWNER shall make interim payments within 30 calendar days in response to CONSULTANT's interim statements.

*CORRECT FEE FROM CIVIL ENGINEER