

**AGREEMENT SUMMARY
CITY OF BROKEN ARROW
VETERAN'S PARK IMPROVEMENTS – PHASE II
PROFESSIONAL CONSULTANT AGREEMENT**

1.0 Professional Consulting Firm:

- 1.1 Name: R.L. Shears Company, P.C.
- 1.2 Telephone No.: 918-582-0612
- 1.3 Address: 1522 South Carson Avenue, Tulsa, OK 74119

2.0 Project Name/Location: Veteran's Park Improvements – Phase II (Relocation of Vietnam War Memorial currently in Central Park and update the plans to be consistent with the Rose District Theme). Veteran's Park on Main Street between Houston and Washington Streets.

3.0 Statement of Purpose: Development of the construction documents to move the Vietnam War Memorial from Central Park to Veteran's Park and improve the irrigation system at Veteran's Park. It will include the preparation of Preliminary Plans (65%), Final Plans (90%) and Construction Plans and Documents (100%). The base bid will consist of drawings associated with the relocated Vietnam Memorial and diagonal sidewalks to the existing memorials and the overall irrigation plan will be added as an alternative.

4.0 Agreement Summary:

- 4.1 Agreement Amount: \$17,265.00
- 4.2 Agreement Time: 120 calendar days
- 4.3 Estimated Construction Cost: \$100,000.00

5.0 Contract Documents and Priority: The City of Broken Arrow (OWNER), represented by the City Manager, and the Professional Consulting firm, (CONSULTANT), identified in paragraph 1.0 agree to perform this AGREEMENT in strict accordance with the clauses, provisions, and the documents identified as below, all of which are made part of this Contract. In the event of conflict, these documents shall be interpreted in the following order:

- 5.1 AGREEMENT with corresponding Attachments;
- 5.2 Duly authorized Amendments to the AGREEMENT;
- 5.3 AGREEMENT Summary;
- 5.4 Specific project written correspondence mutually recognized; and
- 5.5 Specific project verbal instructions mutually recognized.

6.0 Agreement Approved by the Owner on: _____

**AGREEMENT
FOR
PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW
AND
R.L. SHEARS COMPANY, P.C.**

This AGREEMENT, including Attachment A through E, between the City of Broken Arrow (OWNER) and R.L. Shears Company, P.C. (CONSULTANT);

WITNESSETH:

WHEREAS, OWNER intends to construct the Veteran's Park Improvements – Phase II (PROJECT) for which OWNER has requested that CONSULTANT provide certain professional services as required and,

WHEREAS, CONSULTANT is qualified and capable to provide the professional services required;

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 the ___ day of August 2017.

ARTICLE 2 - GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Oklahoma and venue for any action concerning this Agreement shall be in the District Court of Tulsa County, Oklahoma.

ARTICLE 3 - SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT shall perform the SERVICES described in Attachment A, Scope of Services. If construction phase services are included, the CONSULTANT shall be the OWNER'S agent and representative to observe, record, and report with respect to all services that are required or authorized by the construction documents.

ARTICLE 4 - COMPENSATION

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

ARTICLE 5 - OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment C, OWNER'S Responsibilities and Special Conditions.

ARTICLE 6 - STANDARD OF CARE

CONSULTANT shall perform the SERVICES undertaken in a manner consistent with the prevailing accepted standard for similar services with respect to projects of comparable function and complexity, and with the applicable state laws, as well as the specific codes, regulations, design criteria and construction specifications adopted by the owner and other governing policies published and generally considered authoritative by CONSULTANT'S profession that are in effect at the time of performance of these SERVICES. CONSULTANT is obligated to perform professional services in accordance with the foregoing standard with respect to the laws, codes, regulations, design criteria and construction specifications that are applicable pursuant to this AGREEMENT.

ARTICLE 7 - LIABILITY

7.1 General. Having considered the potential liabilities that may exist during the performance of these SERVICES, the benefits of the PROJECT, and 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 Article 8.

7.2 Indemnification. CONSULTANT agrees to indemnify, and hold harmless OWNER's agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by the CONSULTANT's negligent or intentional acts, errors, or omissions under this AGREEMENT. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of OWNER and CONSULTANT, then such negligent acts, errors or omissions shall be borne by each party in proportion to each entity's own negligence under this AGREEMENT.

7.3 Consequential Damages. Neither party shall be liable to the other party for any special, indirect, or consequential damages resulting in any way from the performance of the SERVICES such as, but not limited to, loss of use, loss of revenue, or loss of anticipated profits.

7.4 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 7 shall survive.

ARTICLE 8 - INSURANCE

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

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate;
- (2) Automobile Liability Insurance, with a combined single limit of not less than \$1,000,000 for each person, not less than \$1,000,000 for each accident and not less than \$1,000,000 for property damage; and
- (3) Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

CONSULTANT shall furnish OWNER certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days written notice to OWNER. All PROJECT sub-consultants shall be required to name OWNER and CONSULTANT as certificate holders on their certificate of insurance for the PROJECT, and shall be required to indemnify OWNER and CONSULTANT to the same extent. CONSULTANT shall be held responsible to submit certificates of insurance for sub-consultants to OWNER prior to the sub-consultant's release to commence work.

ARTICLE 9 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the construction of the PROJECT; or (2) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITIES FOR ACTS OF OTHERS

Provided that the CONSULTANT has acted in good faith and performed his duties in accordance with this AGREEMENT, CONSULTANT shall not be liable to OWNER for breach of contract or for negligent error or omission in failing to detect, prevent, or report the failure of any contractor, subcontractor, vendor, or other PROJECT participant to fulfill contractual or other responsibilities to the OWNER, failure to finish or construct the PROJECT in accordance with the plans and

specifications, or failure to comply with federal, state, or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards.

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. CONSULTANT does not guarantee that proposals, bids, or actual PROJECT costs will conform to OWNER'S cost estimates or that actual schedules will conform to OWNER'S projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and details, reports, etc. prepared by CONSULTANT pursuant to this AGREEMENT are instruments of service in respect to the PROJECT. They are not intended or represented to be suitable for reuse by CONSULTANT or others on extensions of the PROJECT or on any other project. Any reuse or adaptation without prior written verification by the OWNER for the specific purpose intended will be at CONSULTANT'S sole risk and without liability or legal exposure to the OWNER. CONSULTANT shall defend, indemnify, and hold harmless the OWNER against all claims, losses, damages, injuries, and expenses, including reasonable attorney's fees, arising out of or resulting from such unauthorized reuse.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by CONSULTANT as part of the SERVICES shall become the property of OWNER. CONSULTANT shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the SERVICES shall remain the property of CONSULTANT, but shall be provided to the OWNER, at no additional expense to the OWNER.

ARTICLE 14 - TERMINATION

This AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the either 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 suspend performance of this AGREEMENT for OWNER'S convenience upon 24 hours written notice to CONSULTANT. Upon restart, an equitable adjustment may be made to CONSULTANT'S compensation.

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 non-performing party. For purposes of this AGREEMENT, such circumstances include, but are not limited to, abnormal weather conditions such as floods, earthquakes, fire; civil disturbances such as war, riots, or other civil epidemic; power outages, strikes, lockouts, work slowdowns, or 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.

ARTICLE 15 - DELAY IN PERFORMANCE – continued

Should such circumstances occur, the non-performing 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 - COMMUNICATIONS

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

OWNER: City of Broken Arrow
485 North Poplar Avenue
Broken Arrow, OK 74012-2336
Contact: Mr. Roger D. Hughes, P.E.
Engineering Division Manager/City Engineer

CONSULTANT: R.L. Shears Company, P.C.
1522 South Carson Avenue, Tulsa, OK
Tulsa, Oklahoma 74119-3820
Contact: Mr. Robert Shears, A.S.L.A., CLARB
President

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

ARTICLE 17 - 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 18 - 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 19 - 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.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

To the extent permitted by Article 21, OWNER and CONSULTANT each binds itself and its successors and assigns to the other party to this AGREEMENT.

ARTICLE 21 - ASSIGNMENT

Neither OWNER nor CONSULTANT shall assign its duties under this AGREEMENT without the prior written consent of the other party. 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 employing independent sub-consultants, associates, and sub-contractors to assist in the performance of the SERVICES. However, third party entities must comply with Article 8.

ARTICLE 22 - THIRD PARTY RIGHTS

Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

ARTICLE 23 - COMPLETION

CONSULTANT shall complete the services within the time frame outlined on Attachment E, Schedule, subject to conditions which are beyond the control of the CONSULTANT.

ARTICLE 24 - IMMIGRATION COMPLIANCE

24.1 Consultant shall demonstrate that he:

24.1.1 Has complied, and shall at all times during the term of this Contract, comply in all respects with all immigration-related laws, statutes, ordinances and regulations including without limitation, the Immigration and Nationality Act, as amended, the Immigration Reform and Control Act of 1986, as amended, and the Oklahoma Taxpayer and Citizen Protection Act of 2007 (Oklahoma HB 1804) and any successor laws, ordinances or regulations (collectively, the Immigration Laws"); and

24.1.2 Has properly maintained, and shall at all times during the term of this Contract, maintain any and all employee records required by the U.S. Department of Homeland Security ("DHS"), including, without limitation, properly completed and maintained Form I-9s for each of the Consultants employees; and

24.1.3 Has verified the employment eligibility for all employees hired on or after July 1, 2008 through DHS's E-Verify system, and shall at all times continue to verify the employment eligibility of all employees hired during the term of this Contract; and

24.1.4 Has required, and will at all times during the term of this Contract, require any sub-contractor utilized, hired or sub-contracted for by Consultant for the completion or undertaking of any duties, tasks or responsibilities under this Contract, to comply the requirements and obligations imposed by the Immigration Laws and set forth in Paragraph (l), parts (a), (b) and (c), above, with regards to each of the sub-contractor's employees.

24.2 Consultant will indemnify and hold harmless City against any loss, cost, liability, expense (including, without limitation, costs and expenses of litigation and reasonable attorney's fees) demands, claims, actions, causes of action, liabilities, suits, damages, that arise from or in connection with, directly or indirectly, Consultants failure, deliberate or negligent, to fulfill its obligations and representations regarding verifying the employment eligibility of its employees and its Sub-consultants as set forth more fully in Paragraph 24.1 above.

**ATTACHMENT A
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
R.L. SHEARS COMPANY, P.C. (CONSULTANT)
FOR
VETERAN'S PARK IMPROVEMENTS – PHASE II**

SCOPE OF SERVICES

The following scope of services shall be made a part of the AGREEMENT dated the ___ day of August, 2017.

1.0 PROJECT UNDERSTANDING

CONSULTANT understands that the OWNER has retained their professional services in order to prepare construction documents for the Veteran's Park Improvements – Phase II project. Project efforts shall include, but not be limited to, the following: Preliminary Plans (65%), Final Plans (90%), and Construction Plans and Documents (100%).

In addition, the CONSULTANT understands that the OWNER has \$115,840.00 budgeted for this PROJECT that includes all professional consultant fees and project construction monies. The CONSULTANT is required to keep the OWNER apprised of the PROJECT costs and advise the OWNER of necessary cost reduction measures, if required, during the course of the PROJECT.

2.0 PROJECT SCOPE

CONSULTANT shall provide consulting services as follows:

Preliminary, Final & Construction Plans and documents.

3.0 SCOPE OF SERVICES

3.1 ADMINISTRATIVE/MANAGERIAL DUTIES: CONSULTANT shall be responsible to perform the following tasks throughout the course of the PROJECT:

3.1.1 Document all meetings, conferences, coordination, phone conversations, etc. and send documentation to OWNER within three (3) calendar days.

3.1.2 Meet with the Owner to discuss review comments on each phase of the project, and incorporate appropriate comments into following phase.

3.2 DESIGN PHASE SERVICES: Upon receiving the written Notice to Proceed, the Consultant shall perform the following tasks in accordance with the schedule provided in Attachment E:

3.2.1 Prepare Preliminary Plans (65%) after meeting with City of Broken Arrow Staff. Including an estimated cost of the project. Submit

eight (8) bound sets of ½ size prints of the Preliminary Plans to the City for a review meeting. Plan sheets will include the following:

- Cover Sheet.
- General Pay Items and Notes
- Site Plan
- Grading Plan.
- Layout Plan.
- Lighting Plan.
- Utility Site Plan.

3.2.2 Prepare Final Plans (90%) after a Preliminary Plan review meeting with the City. Include an updated cost estimate of the project. Submit eight (8) bound sets of ½ size prints of the Final Plans to the City for a review meeting. Submit five (5) bound sets of ½ size prints of the Final Plans to the City for review by Utility companies. Submit three (3) sets of final contract bid documents to the City for review. Plan sheets will include the following:

- Cover Sheet.
- General Pay Items and Notes
- Site Plan.
- Grading Plan.
- Layout Plan.
- Detail Site and Layout Plans.
- Lighting Plan.
- Utility Site Plan.
- Construction Details.

3.2.3 Prepare Construction Plans (100%) after a Final Plans review meeting with the City. Include an updated cost estimate of the project. Submit one set of signed Construction Plans and Documents to the City to aid in the preparation of the bid package by the City. Include an updated cost estimate of the project. Plan sheets will include the following:

- Cover Sheet.
- General Pay Items and Notes
- Site Plan
- Grading Plan
- Layout Plan
- Detail Site and Layout Plans
- Lighting Plan
- Utility Site Plan
- Construction Details.
- Specifications.

3.2.4 During the bidding phase, aid the City with the following:

- Prepare any special provisions or specifications for the proposal
- Attend the Pre-bid meeting
- Prepare any addenda
- Prepare a recommendation to award the Construction Contract.

3.2.5 Answer any questions or requests for information during the Construction process. Prepare record plans once the construction is complete.

ATTACHMENT B
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
R.L. SHEARS COMPANY, P.C. (CONSULTANT)
FOR
VETERAN'S PARK IMPROVEMENTS – PHASE II

ORGANIZATION OF SUBMITTAL DOCUMENTS

- 1.0 DESIGN DOCUMENTS:** The CONSULTANT shall submit in-full, in accordance with this AGREEMENT, the following documents:
- 1.1 Preliminary Plans (65%);
 - 1.2 Final Plans (90%);
 - 1.3 Construction Plans (100%);
 - 1.4 Construction Documents;
 - 1.5 Estimate of probable construction cost with a 20% contingency at the Preliminary Plan phase, a 10% contingency at the Final Plan phase and no contingency at the Construction Plan phase.

**ATTACHMENT C
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
R.L. SHEARS COMPANY, P.C. (CONSULTANT)
FOR
VETERAN'S PARK IMPROVEMENTS – PHASE II**

OWNER'S RESPONSIBILITIES AND SPECIAL CONDITIONS

The following list of special OWNER'S responsibilities and contract special conditions shall be made a part of this AGREEMENT dated the ____ day of August, 2017.

1.0 OWNER'S RESPONSIBILITIES

- 1.1 OWNER shall furnish to CONSULTANT all available information pertinent to the PROJECT including previous reports and any other data relative to design and construction of the PROJECT;
- 1.2 OWNER shall furnish to CONSULTANT all public utility information available relative to the design and construction of the PROJECT;
- 1.3 OWNER shall furnish to CONSULTANT list of codes adopted by the municipality as well as subdivision regulations, design criteria and construction standards and specifications that may be pertinent to the design and construction of the PROJECT;
- 1.4 OWNER shall be responsible for all permit fees and for all reproduction costs associated with the bidding of the final approved construction documents required for the construction of this PROJECT;
- 1.5 OWNER shall be responsible for all land/easement acquisition costs and filing of the required legal documents, if necessary; and
- 1.6 OWNER shall examine all studies, reports, sketches, estimates, specifications, plan drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the SERVICES of the CONSULTANT.

2.0 SPECIAL CONDITIONS

- 2.1 None

**ATTACHMENT D
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
R.L. SHEARS COMPANY, P.C. (CONSULTANT)
FOR
VETERAN'S PARK IMPROVEMENTS – PHASE II**

COMPENSATION AND ADDITIONAL SERVICES

The following compensation and hourly rates shall apply as described in Attachment D and shall be made a part of the AGREEMENT dated the ___ day of August, 2017.

1.0 BASIC COMPENSATION

The basic compensation for the Professional Consultant to perform all duties and responsibilities associated with the Scope of Services as described in Attachment A shall be in accordance with the following payment breakdown:

- 1.1 Design Services Phase Payment: The OWNER shall pay the CONSULTANT a lump sum amount of \$17,265.00 for the completion of the Design Services Phase. This amount includes all labor, material, overhead and profit associated with the Scope of Services.

2.0 ADDITIONAL SERVICES BASED ON TIME

Additional services are those services not included under Basic Services, but otherwise listed or requested in writing. Compensation for additional services will be negotiated on an as needed basis.

3.0 REPRODUCTION

All charges for reproduction shall be included in Basic Compensation Fee of the Professional Consultant. No separate payment will be made for these expenses.

4.0 MILEAGE

All direct costs shall be included in the Basic Compensation of the Professional Consultant. No separate payment will be made for these expenses.

5.0 DIRECT COSTS

All direct costs shall be included in the Basic Compensation of the Professional Consultant. No separate payment will be made for these expenses.

6.0 ADJUSTMENT CLAUSE

The rates and costs described in this AGREEMENT shall not be revised annually, unless mutually agreed upon by both parties.

**ATTACHMENT E
TO
AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
R.L. SHEARS COMPANY, P.C. (CONSULTANT)
FOR
VETERAN'S PARK IMPROVEMENTS- PHASE II**

PROJECT SCHEDULE

The following Consultant schedule shall be made a part of the AGREEMENT dated the ____ day of August, 2017.

Notice to Proceed	August 4, 2017
Preliminary Plan Submittal	September 18, 2017
Preliminary Plan Review Meeting	September 29, 2017
Final Plan Submittal	November 13, 2017
Final Plan Review Meeting	November 28, 2017
Construction Plan Submittal	December 18, 2017
Advertise for Bid	January 5, 2018
Receive Bids	January 30, 2018
Award Contract	February 6, 2018
Notice to Proceed w/Construction	March 5, 2018
Substantial Completion (60 day Contract)	May 4, 2018
Final Completion	May 18, 2018