

AGREEMENT FOR PROFESSIONAL SERVICES

**CONTRACT
CITY OF BROKEN ARROW
REVITALIZATION STRATEGY, ELM & NEW ORLEANS**

This Agreement for Professional Services (“Agreement”) is made by and between the City of Broken Arrow, Oklahoma (“City”) and Catalyst Commercial, Inc., a Texas corporation (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to assist the City in **revitalization strategy of the Elm/101 commercial shopping centers and adjacent properties** (the “Project”); and

WHEREAS, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I
Term**

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all market ready versions of: final documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items completed by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed, or portion thereof, in accordance with this Agreement prior to such termination. Professional may maintain copies of all work product produced in the performance of this Agreement for purposes of its marketing and advertising.

**Article II
Scope of Service**

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services.

2.2 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable to the services performed hereunder.

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in Exhibit "A".

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services, not to exceed a total amount of _____ Dollars (\$ _____). Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charged for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt unless otherwise provided herein.

4.2 Unless otherwise provided in the Scope of Services the City shall be responsible for all direct expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

Article V Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be

paid Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 The City shall provide facilities, equipment and personnel necessary to enable Professional to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend progress calls as may be reasonably required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Oklahoma shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Tulsa County, Oklahoma. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions.

All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Michael L. Spurgeon,
City Manager
City of Broken Arrow, Oklahoma
PO Box 610
Broken Arrow, OK 74013

With a copy to:

Farhad K. Daroga
Special Projects Manager
City of Broken Arrow
P.O. Box 610
Broken Arrow, OK 74013

If intended for Professional:

Catalyst Commercial, Inc.
Attn: Jason Claunch
8750 N Central Expressway,
Suite 1020
Dallas, Texas 75231

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) if applicable, statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate. The Professional shall provide written notice to the City of any material change of or to the insurance required herein.

- (b) A certificate of insurance evidencing the required insurance shall be submitted prior to commencement of services and upon request by the City.

6.10 Debarment and Suspension.

- (a) Professional certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Oklahoma or any of its departments or agencies.
- (b) If during the contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City.
- (c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors, and will inform the City of any violations of this section by subcontractors to the contract.
- (d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.11 Indemnification. **NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTIONS AND OMISSIONS OF THE OTHER PARTY PURSUANT TO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ALL CLAIMS AGAINST THE OTHER PARTY, ITS OFFICERS, AGENTS AND EMPLOYEES FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PARTY OR BREACH OF SUCH PARTY'S OBLIGATIONS HEREUNDER.**

6.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.13 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives on the dates set forth below.

Approved as to form:

City of Broken Arrow, Oklahoma
A Municipal Corporation

Assistant City Attorney

By: _____
Michael L. Spurgeon
City Manager

Attest:

Date _____

City Clerk [Seal]

Catalyst Commercial, Inc.
8750 North Central Expressway, Suite 1020
Dallas, Texas 75231

By: _____
Jason Claunch

Attest:

Corporate Secretary (Seal)
Date: _____

VERIFICATIONS

State of Oklahoma)
County of Oklahoma)

Before me, a Notary Public, on this __day of February 2018, personally appeared _____ known to me to be the (Corporate Officer, or Other: _____) (Please circle or specify) of Catalyst Commercial, Inc. and to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires: _____ Notary Public _____
Commission #: _____

EXHIBIT "A"
Scope of Services
and Budget

(Attached/Following)