

**AGREEMENT SUMMARY  
CITY OF BROKEN ARROW  
ROSE DISTRICT FARMERS MARKET WATER FEATURE  
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 74119-3820

**2.0 Project Name/Location:** Rose District Farmers Market Water Feature, Broken Arrow, Oklahoma

**3.0 Statement of Purpose:** Prepare Final Construction Documents and provide Bidding and Construction Observation Services for the Rose District Farmers Market Water Feature

**4.0 Agreement Summary:**

- 4.1 Agreement Amount: \$148,505.50
- 4.2 Agreement Time: 248 calendar days
- 4.3 Estimated Construction Cost: \$1,000,000.00

**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 install a water feature in the Farmers Market area of the Rose District (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 9th day of November 2015.

**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. Thomas D. Hendrix, 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 (I), 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 Subconsultants as set forth more fully in Paragraph 24.1 above.

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

**OWNER:**

City of Broken Arrow

Approved as to form:

By *Lesli Myers*  
Assistant City Attorney

**CONSULTANT:**

R.L. Shears Company, P.C.

By *Robert L. Shears II*  
President

By \_\_\_\_\_  
Michael L. Spurgeon, City Manager

(CORPORATE SEAL) if applicable

Date \_\_\_\_\_

ATTEST: *Robert L. Shears II*  
Secretary

Attest:

Date: 11.3.15

\_\_\_\_\_  
Secretary

**VERIFICATIONS** (If not a corporation)

State of Oklahoma )  
                                  ) §  
County of Tulsa     )

Before me, a Notary Public, on this Third day of November, 2015, personally appeared Robert L. Shears II, known to be to be the (President, Vice-President, Corporate Officer, Member, Partner, or Other: \_\_\_\_\_ of CONSULTANT, 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:  
05-21-2019

*Levi Hough*  
Notary Public



**ATTACHMENT A  
TO  
PROFESSIONAL CONSULTANT AGREEMENT  
BETWEEN  
CITY OF BROKEN ARROW (OWNER)  
AND  
R.L. SHEARS COMPANY, P.C. (CONSULTANT)  
FOR  
ROSE DISTRICT FARMERS MARKET WATER FEATURE**

**SCOPE OF SERVICES**

The following scope of services shall be made a part of the AGREEMENT dated the 9th day of November, 2015.

**1.0 PROJECT UNDERSTANDING**

CONSULTANT understands that the OWNER has retained their professional services in order to prepare construction documents for bidding purposes for the construction of the Rose District Farmers Market Water Feature. These documents shall include, but not be limited to, the following: a design manual including all numerical calculations supporting the intent of the design, as well as providing the basis for bid document quantities; construction plans detailing the intent of the project; standard details and standard drawings associated with the project specifics; construction specifications; general conditions, and special conditions.

In addition, the CONSULTANT understands that the OWNER has \$1,000,000 budgeted for this PROJECT that includes all professional consultant fees, utility relocation, 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 coordinate the subsurface exploration and design the Rose District Farmers Market Water Feature; perform civil design including any required water, sanitary sewer lines, storm sewer lines, and grading; perform electrical and control design, and prepare the stormwater pollution prevention plan. CONSULTANT shall also coordinate gas, electric and other utility locations service with private utility companies.

CONSULTANT shall provide consulting services as follows:

- Topographical Survey Coordination
- Storm Water Drainage Analysis
- Site Utility Relocation Design
- Water, Sanitary Sewer, Electrical and Control, and Water Feature Construction Drawings

**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 in a Pre-Design Conference in order to determine design criteria, requirements and codes and other critical design features of the Project such as preferred alignment as well as project schedule and milestone dates.
  - 3.1.3 Provide Owner with a list of all proposed sub-consultants and tasks sub-consultants are responsible to perform.
  - 3.1.4 Meet with the Owner to discuss review comments on each phase of the project, and incorporate appropriate comments into following phase.
- 3.2 SCHEMATIC DESIGN/DESIGN DEVELOPMENT AND FINAL DESIGN/CONSTRUCTION DOCUMENTS 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 Attend Kick-Off Meeting with City of Broken Arrow Staff.
    - 3.2.1.1 Identify Key Objectives and Considerations.
    - 3.2.1.2 Review Scope of Services presented in Aquatic Design and Engineering's Proposal.
    - 3.2.1.3 Review Project Schedule.
  - 3.2.2 Topographic Survey.
  - 3.2.3 Geotechnical Investigation and Report.
  - 3.2.4 Prepare Base Plan from Topographic Survey.
  - 3.2.5 Evaluate the existing utility and site conditions.
  - 3.2.6 Prepare General Pay Quantity Items and Notes.
  - 3.2.7 Prepare Preliminary Site Plan.
  - 3.2.8 Prepare Preliminary Grading and Layout Plan.
  - 3.2.9 Prepare Demolition Plan.
  - 3.2.10 Prepare Construction Details.
  - 3.2.11 Prepare Preliminary Storm Water Plan and Profile sheets.
  - 3.2.12 Water Feature Plans and Details
  - 3.2.13 Prepare Water, Sewer, and Electrical Plans.
  - 3.2.14 Prepare Site Utility Relocation plan.
  - 3.2.15 Prepare estimate of probable cost with a 20% contingency.
  - 3.2.16 Attend review meetings with City Staff.
  - 3.2.17 Furnish seven (7) half-size copies of the preliminary (65%) completion level design documents including project specifications to City for review. Furnish pdf file(s) of all submitted documents.
  - 3.2.18 Respond to City's comments in writing detailing the disposition of each comment.
  - 3.2.19 Furnish seven (7) half-size copies of the final (95%) completion level design documents including project specifications to City for review. Furnish pdf file(s) of all submitted documents.
  - 3.2.20 Respond to City's comments in writing detailing the disposition of each comment
  - 3.2.21 Submit the engineering report form, permit to construct form, and construction documents to ODEQ for approval (if required). All fees and costs associated with such submittals shall be paid by the City of Broken Arrow.

- 3.2.22 Furnish 100% design completion level construction documents including project specifications to include seven (7) half-size printed copies and one electronic version (AutoCAD 2013 or earlier version and pdf) on CD-ROM or DVD of final plans and specifications, and final estimate of probable construction cost.
- 3.3 BID ASSISTANCE 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:
- 3.3.1 Assist the Owner, as requested, in advertising the Project for bids for construction.
  - 3.3.2 Attend a pre-bid conference, if requested by Owner.
  - 3.3.3 Serve as the technical question point of contact during bidding and if required, draft any necessary addenda to clarify Contract documents.
  - 3.3.4 If requested, provide recommendation for award based on bid results.
- 3.4 CONSTRUCTION ASSISTANCE AND PROJECT CLOSE-OUT 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:
- 3.4.1 Attend pre-construction conference with the contractor and OWNER.
  - 3.4.2 Review material submittals and shop drawings.
  - 3.4.3 Respond to contractor's questions and RFIs during construction.
  - 3.4.4 Attend weekly construction progress meetings.
  - 3.4.5 Make periodic site visits during construction.
  - 3.4.6 Interpret the plans and specifications.
  - 3.4.7 Review and approval of O&M Manual.
  - 3.4.8 Perform periodic site visits (if requested by City) to verify that the project is being constructed in accordance with Plans and Specifications.
  - 3.4.9 Conduct final inspection and assist City in developing a punch list.
  - 3.4.10 Provide record drawings of final plans on reproducible media, and electronic files (AutoCAD 2013 or earlier version and a pdf file) on CD or DVD media, based on information provided by the City reflecting field changes.

**ATTACHMENT B  
TO  
PROFESSIONAL CONSULTANT AGREEMENT  
BETWEEN  
CITY OF BROKEN ARROW (OWNER)  
AND  
R.L. SHEARS COMPANY, P.C. (CONSULTANT)  
FOR  
ROSE DISTRICT FARMERS MARKET WATER FEATURE**

**ORGANIZATION OF SUBMITTAL DOCUMENTS**

**1.0 CONSTRUCTION PLANS:** The CONSULTANT shall submit in-full, in accordance with this AGREEMENT, the following plan sheets:

- 1.1 Title Sheet;
- 1.2 Pay Quantities and Pay Item/General Notes;
- 1.3 Typical Sections;
- 1.4 General Plan and Profiles;
- 1.5 Required Cross Sections;
- 1.6 Standard Construction Details; and
- 1.7 Standard Construction Drawings.

**2.0 DESIGN CALCULATIONS:** The CONSULTANT shall submit in-full, in accordance with this AGREEMENT, the following documents:

- 2.1 Engineer Design Calculations for Water, Sanitary Sewer, Grading and Stormwater, and the Water Feature including Electrical and Controls.

**3.0 CONTRACT DOCUMENTS:** The CONSULTANT shall submit in-full, in accordance with this AGREEMENT, the following documents:

- 3.1 Advertisement Documents:
  - 3.1.1 Advertisement for bids;
  - 3.1.2 Notice to Bidders;
  - 3.1.3 Information for Bidders;
- 3.2 Bid Documents:
  - 3.2.1 Bid Proposal;
- 3.3 Project Conditions:
  - 3.3.1 General Conditions;
  - 3.3.2 Special Conditions;
- 3.4 Construction Specifications

**ATTACHMENT C  
TO  
PROFESSIONAL CONSULTANT AGREEMENT  
BETWEEN  
CITY OF BROKEN ARROW (OWNER)  
AND  
R.L. SHEARS COMPANY, P.C. (CONSULTANT)  
FOR  
ROSE DISTRICT FARMERS MARKET WATER FEATURE**

**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 9th day of November, 2015.

**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. Consultant topographical survey shall locate all utilities above and below ground for exact location;
- 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  
PROFESSIONAL CONSULTANT AGREEMENT  
BETWEEN  
CITY OF BROKEN ARROW (OWNER)  
AND  
R.L. SHEARS COMPANY, P.C. (CONSULTANT)  
FOR  
ROSE DISTRICT FARMERS MARKET WATER FEATURE**

**COMPENSATION AND ADDITIONAL SERVICES**

The following compensation and hourly rates shall apply as described in the attached Landscape Architectural Fees and Services and shall be made a part of the AGREEMENT dated the 9th day of November, 2015.

**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 Schematic Design/Design Development and Final Design/Construction Documents Phase Payment: The OWNER shall pay the CONSULTANT a lump sum amount of \$120,617.50 for the completion of the Schematic Design/Design Development and Final Design/Construction Documents Phase. This amount includes all labor, material, overhead and profit associated with the Scope of Services.
- 1.2 Bid Assistance Phase Payment: The OWNER shall pay the CONSULTANT a not-to-exceed amount of \$2,880.00 for the completion of the Bid Assistance Phase. This amount includes all labor, material, overhead and profit associated with the Scope of Services. Payment shall be based on the actual hours expended in accordance with the attached Consultant hourly labor rates.
- 1.3 Construction Assistance and Project Close-Out Phase Payment: The OWNER shall pay the CONSULTANT a not-to-exceed amount of \$25,008.00 for the completion of the Construction Assistance and Project Close-Out Phase. This amount includes all labor, material, overhead and profit associated with the Scope of Services. Payment shall be based on the actual hours expended in accordance with the attached Consultant hourly labor rates.

**2.0 ADDITIONAL SERVICES BASED ON TIME**

The hourly rates set forth in the attached Consultant hourly labor rates include all salaries, benefits, overhead and other indirect costs including federal, state, and local taxes, plus profit. No work will be undertaken on any additional services without specific written authorization from the OWNER.

**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  
PROFESSIONAL CONSULTANT AGREEMENT  
BETWEEN  
CITY OF BROKEN ARROW (OWNER)  
AND  
R.L. SHEARS COMPANY, P.C. (CONSULTANT)  
FOR  
ROSE DISTRICT FARMERS MARKET WATER FEATURE**

**PROJECT SCHEDULE**

The attached Consultant schedule shall be made a part of the AGREEMENT dated the 9th day of November, 2015.

CITY OF BROKEN ARROW ROSE DISTRICT INTERACTIVE WATER FEAT URF				MAN HOURS			HOURLY RATE	HOURLY RATE	HOURLY RATE	FEE
LANDSCAPE ARCHITECTURAL FEES AND SERVICES				Principal Landscape Architect	Landscape Architect	Landscape Architect Tech II	Principal Landscape Architect	Landscape Architect	Landscape Architect Tech II	
<b>SCHEMATIC DESIGN / DESIGN DEVELOPMENT PHASE</b>										
Attend Kick-Off Meeting with City of Broken Arrow Staff	3.00		3.00	105.00	85.00	75.00				\$540.00
Consultant Coordination / Project Management	32.00			105.00	85.00	75.00				\$3,360.00
Evaluate Existing Utility and Site Conditions	8.00	6.00	6.00	105.00	85.00	75.00				\$1,800.00
Prepare Base Plan from Topographic Survey	4.00		12.00	105.00	85.00	75.00				\$1,320.00
General Pay Quantities and Notes	8.00	16.00	8.00	105.00	85.00	75.00				\$2,800.00
Preliminary Site Plan	16.00	2.00	40.00	105.00	85.00	75.00				\$4,850.00
Preliminary Layout and Grading Plan	8.00	8.00	24.00	105.00	85.00	75.00				\$3,320.00
Demolition Plan	4.00	8.00	24.00	105.00	85.00	75.00				\$2,900.00
Existing Site Utility Relocation Plan	6.00	8.00	8.00	105.00	85.00	75.00				\$1,910.00
Construction Details	4.00	8.00	24.00	105.00	85.00	75.00				\$2,900.00
Cost Estimate	12.00	8.00		105.00	85.00	75.00				\$1,940.00
Review meeting with City Staff	3.00		3.00	105.00	85.00	75.00				\$540.00
Aquatic Design & Engineering - Water Feature Design Plans										\$38,600.00
Cowan - Stormwater Drainage, Water and Sewer Services										\$4,500.00
MKEC - Topographic Survey and Electrical Engineering										\$4,500.00
Geotechnical Report										\$3,000.00
	108.00	64.00	152.00	Sub-Consultant Subtotal						\$50,600.00
				5% Sub-Consultant Mark Up						\$2,530.00
				Sub-Consultant Total						\$53,130.00
<b>TOTAL SCHEMATIC DESIGN / DESIGN DEVELOPMENT</b>										<b>\$81,310.00</b>
<b>FINAL DESIGN / CONSTRUCTION DOCUMENTS</b>										
Title Sheet	1.00	-	8.00	105.00	85.00	75.00				\$705.00
Consultant Coordination / Project Management	32.00			105.00	85.00	75.00				\$3,360.00
General Pay Quantities and Notes	8.00	8.00		105.00	85.00	75.00				\$1,520.00
Construction Details and Typical Sections	8.00	16.00	24.00	105.00	85.00	75.00				\$4,000.00
Demolition Plan	4.00	8.00	8.00	105.00	85.00	75.00				\$1,700.00
Site Plan	4.00	8.00	16.00	105.00	85.00	75.00				\$2,300.00
Grading and Layout Plan	4.00	8.00	24.00	105.00	85.00	75.00				\$2,900.00
Existing Site Utility Relocation Plan	1.00		8.00	105.00	85.00	75.00				\$705.00
Bid Form	2.00	8.00		105.00	85.00	75.00				\$890.00
Prepare Cost Estimate	4.00	4.00	4.00	105.00	85.00	75.00				\$1,060.00
Review Meeting with City Staff	3.00	3.00	3.00	105.00	85.00	75.00				\$795.00
Aquatic Design & Engineering - Water Feature Design Plans										\$13,350.00
Cowan - Stormwater Drainage, Water and Sewer Services										\$4,000.00
MKEC - Electrical Engineering										\$1,100.00
				Sub-Consultant Subtotal						\$18,450.00
				5% Sub-Consultant Mark Up						\$922.50
				Sub-Consultant Total						\$19,372.50
<b>TOTAL FINAL DESIGN</b>										<b>\$39,307.50</b>
<b>BIDDING</b>										
Assist City Staff with Bid Advertisement	2.00	2.00	-	105.00	85.00	75.00				\$380.00
Attend Pre-Bid Meeting	2.00	2.00	-	105.00	85.00	75.00				\$380.00
Prepare and Issue Addenda as required	8.00	8.00	8.00	105.00	85.00	75.00				\$2,120.00
<b>TOTAL BIDDING</b>										<b>\$2,880.00</b>
<b>CONSTRUCTION OBSERVATION (Based on 60 Calendar Day Substantial Completion)</b>										
Attend Pre-Construction Meeting	3.00		3.00	105.00	85.00	75.00				\$540.00
Review and approve Contractor's submittals	12.00		20.00	105.00	85.00	75.00				\$2,760.00
Respond to RFI's	12.00		12.00	105.00	85.00	75.00				\$2,160.00
Attend weekly construction progress meetings	3.00		3.00	105.00	85.00	75.00				\$540.00
Site visits based on specification requirements	16.00		40.00	105.00	85.00	75.00				\$4,680.00
Substantial Completion Walk Through and Punch List	3.00		8.00	105.00	85.00	75.00				\$915.00
Final Completion Walk Through	3.00		3.00	105.00	85.00	75.00				\$540.00
Aquatic Design & Engineering - Water Feature Design Plans										\$12,260.00
				Sub-Consultant Subtotal						\$12,260.00
				5% Sub-Consultant Mark Up						\$613.00
				Sub-Consultant Total						\$12,873.00
<b>TOTAL CONSTRUCTION OBSERVATION</b>										<b>\$25,008.00</b>
<b>GRAND TOTAL</b>										<b>\$148,505.50</b>

# Memo

To: Design Team

From: Robert Shears, ASLA

Date: October 20, 2015

Subject: City of Broken – Farmer’s Market Water Feature Design Schedule

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The following timeline includes design, bidding, and construction for the Farmer’s Market Water Feature. Key Milestones include 11/10/2015 NTP with design, 12/18/2015 Preliminary Plans due, 02/10/2015 Final Plans due, and 06/15/2015. These are hard dates that we have to meet to keep the project on schedule.

November 9 2015 – City Council approval of Contract  
November 10 2015 – Design Notice to Proceed (90 Days)  
November 11 2015 – Scoping Meeting  
December 18 2015 – Schematic/Design Development Plans Due (40 Days)  
December 18-23 2015 – City Review (5 days)  
December 23 2015 – Review Meeting  
February 10 2016 – Construction Documents Due (45 Days)  
February 23 2016 – Advertise for Bids  
March 15 2016 – Bid Opening and Award Contract  
April 15 2016 – Construction Notice to Proceed (60 Day Construction)  
June 15 2016 – Substantial Completion  
July 15 2016 – Final Completion

cc: file