

**THIRD AMENDED
CONTRACT FOR**

CITY OF BROKEN ARROW, OKLAHOMA

CITY HALL RENOVATION

PROGRAM MANAGEMENT SERVICES

Magnum Construction, Inc.

AMENDED CONTRACT FOR PROGRAM MANAGEMENT SERVICES

This Third Amended Contract for Program Management Services (“Contract”) is entered into this 6th day of September, 2016, by and between the City of Broken Arrow, Oklahoma, a municipal corporation, hereinafter referred to as the “City,” and Magnum Construction, Inc. (“Program Manager”).

PROGRAM MANAGER SERVICES

WHEREAS, the City is in the process of renovating several areas of City Hall, located at 220 South First Street, in Broken Arrow, for the purposes of updating and making the useable space more functional for City Staff and the General public (the “Renovation”); and

WHEREAS, there is a need to control cost for the Renovation and due to the unique nature of the Renovation there is a need for complex construction methods; and

WHEREAS, program management services are desirable for the successful implementation of the Renovation and include a variety of services including but not limited to facilities assessment, planning and programming, architectural and engineering plan review, design and construction coordination and construction observation services (“collectively, Program Management Services”); and

WHEREAS, City Staff initiated a Request for Proposals in the Fall of 2015 to qualified firms including Magnum Construction, Inc. to perform the Program Management Services; and

WHEREAS, Magnum Construction, Inc. is recognized as qualified Construction Managers at Risk by the Department of Real Estate Services of the Office of Management and Enterprise Services; and

WHEREAS, the City has interviewed and negotiated with Magnum Construction, Inc. (“Program Manager”) with the result being this Contract to provide the necessary Program Management Services for the City.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter the Parties agree to the following:

1. **Definitions.** All terms not expressly defined herein shall have their ordinary meanings:

1.1 “Additional Services”

Those services listed in Exhibit “B” of this Contract, which may or may not be required in the future, depending upon conditions existing during the Term of this Contract.

1.2	“Basic Services”	Those services listed in Exhibit “A” of this Contract and which are considered essential to the Program.
1.3	“Contract”	The written agreement between the City and the Program Manager covering the services to be performed by the Program Manager, and covering the duties, obligations and rights of the Parties.
1.4	“Parties”	The City and the Program Manager.
1.5	“Program”	The scope of work defined by this Contract.
1.6	“Program Budget”	The estimated cost to implement the Program.
1.7	“Program Coordinator”	The Assistant City Manager over Operations.
1.8	“Program Manager”	Construction Manager at Risk in accordance with Oklahoma State Statutes
1.9	“Program Schedule”	Program Manager’s estimated schedule, taking into consideration sequencing of the Project, architect and/or engineering services, Program Manager’s services and construction of all Projects.
1.10	“Project”	An individual project or projects, identified in the Program as specified in the attachments
1.11	“Project Requirements”	A document developed by the Program Manager with the assistance of the Program Coordinator and in compliance with the bid documents.

2. **Basic Services.** The Program Manager's scope or work shall include construction management services as defined by Title 61, Section 202 of the Oklahoma Statutes. Program Manager will assist the Program Coordinator in the implementation of the Program, as described in Exhibit "A," which is attached hereto and made a part hereof. Except as otherwise provided in

Exhibit "C," or approved in writing by the Program Coordinator prior to commencement of services, the Program Manager shall not self-perform any of the construction work to be performed

3. **Additional Services.** Additional Services are Program related services as enumerated in Exhibit "B," attached hereto and made a part hereof, and are not included as Basic Services. Additional Services shall only be provided upon prior written and clearly detailed direction from the Program Coordinator, acting within the limits of State law, and policies established by the City, and upon acceptance by the Program Manager. Any Additional Services performed pursuant to the above written direction shall be paid in accordance with the Compensation and Payment paragraph of this Contract.

4. **Authorization of Work and Services.** This Contract represents an agreement for the Program Manager to provide Basic Services to be compensated through authorization upon the execution of this Contract with the City, and for processing and payment of construction services as set forth in the Preliminary Budget attached as Exhibit "C."

5. **Standard of Care.** In providing the services herein, the Program Manager agrees to perform such services with a reasonable standard of care, skill, diligence and professional competency normally employed by professionals performing the same or similar services situated in the same community. The Program Manager further agrees to furnish its professional skill and judgment with due care and in accordance with any specific requirements of this Contract. The services to be provided by the Program Manager are to be performed in cooperation with and in reliance upon the work and services to be performed by City staff. The Program Manager agrees to furnish efficient business administration and management services pursuant to the terms of this Contract and to use its professional efforts at all times in an expeditious and economical manner consistent with the interests of the City.

6. **Corrections in Services and Deliverables.** The Program Manager agrees to make any necessary corrections to services or deliverables furnished under this Contract, when such services or deliverables contain any errors, deficiencies or inadequacies, which Program Manager could have reasonably foreseen, and which were caused by the negligence or willful acts or omissions of the Program Manager, at no cost to The City. Program Manager shall not be liable for the failures or deficiencies of Architects, Third Party Consultants, Contractors or Construction Managers hired directly by the City or the City's contractors or sub-consultants.

7. **Ownership of Work Product.** Upon payment for services involved in its production, creation or accumulation, title to the work product produced, created or accumulated in performing this Contract shall pass to and remain the property of t City, including but not limited to the work product reflected in or contained in any and all documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials ("Intellectual Property"). All Intellectual Property shall be considered to be "Work for Hire" and may be reproduced, distributed and published by the City in whole or in part without permission or any additional payments or fees to the Program Manager. Any reuse of said Intellectual Property by the City shall be at The City' own risk and responsibility and not that of

the Program Manager. the City hereby authorizes the Program Manager to use and reproduce Intellectual Property so long as such use does not include data developed which is specific to the City.

8. **Hazardous Materials.** The Program Manager shall have no responsibility for the discovery, presence, handling, removal, disposal of or exposure of persons to hazardous materials of any type or in any form at the Project sites. However, the Program Manager agrees to notify the Program Coordinator of any hazardous materials identified during the performance of the work.

9. **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the City unless such work or service is in accordance with the Oklahoma Public Competitive Bidding Act, the Broken Arrow City Code of Ordinances and is first approved in writing by The City.

10. **Stop Work Order.** Upon notice to the Program Manager, the Program Coordinator may issue a Stop Work Order suspending the performance of work and/or services under this Contract. The Stop Work Order shall not terminate or suspend any of the required provisions of the Indemnity and Insurance paragraph of this Contract.

11. **Independent Contractor.** The Parties agree that the Program Manager is an independent contractor and not an employee of The City. No third party beneficiary relationship is hereby established. All contracts relating to the design, and engineering of the Project shall be entered into by the City, and not Project Manager.

12. **Sub-consultants and Conflicts of Interest.** The Program Manager agrees to provide to the Program Coordinator, for pre-engagement approval, a list of any sub-consultants the Program Manager intends to engage to perform services related to this Contract. Such approval may not be unreasonably withheld by the Program Coordinator. The Program Manager will fully inform and advise all sub-consultants hired of the provisions contained in this Contract and of The City requirements hereunder, and will not enter into any contracts inconsistent with the provisions hereof, and will secure performance of the services to be rendered by such sub-consultants in accordance with and as required by the provisions of this Contract. Notwithstanding the approval of any sub-consultant hired by the Program Manager, the Program Manager shall be solely responsible for the fees of such sub-consultant, the services performed by such sub-consultant, and directing and supervising such sub-consultant.

Upon approval in writing by the Program Coordinator, the Program Manager and any of its sub-consultants shall be permitted to provide Additional Services to the City.

The Program Manager shall require all employees, and sub-consultants engaged by the Program Manager to advise the Program Coordinator of any business relationships, formal or otherwise, which may pertain directly or indirectly to the Program and which may, in any way, be construed to be a conflict of interest.

13. **Compensation and Payment.**

13.1 **Basic Services Compensation.** The Program Manager shall be compensated for Basic Services in the amount of as described in Exhibit "C". The Program Manager shall present invoices, properly certified, to the Program Coordinator.

13.2 **Additional Services Compensation.** Additional Services, as set forth in Exhibit "B", are to be provided by the Program Manager only with the prior written authorization of the City. Program Manager Compensation for Additional Services shall be agreed to in writing by Program Coordinator and shall be negotiated jointly by the parties.

13.3 **Payment of Pay Applications.** The Program Manager shall present invoices for Pay Applications and Change Orders submitted by the subcontractors and paid by the Program Manager. All invoices and supporting documentation shall be properly verified and in conformance with the provisions of the Oklahoma Public Competitive Bidding Act.

13.4 **Processing of Invoice Payments.** Invoices submitted by the Program Manager shall meet the standards of quality established under this Contract for the construction materials and work set forth in Exhibit "C". The City agrees to pay the Program Manager through the normal invoice payment processes to be initiated within ten (10) business days after the receipt and approval of the invoice. Payment of any invoice for any work or services shall not be deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the City or any obligation of the Program Manager should it be determined later that said work or services were not performed or provided in accordance with the standards required by the Contract. Final payment shall not be deemed to waive any rights or obligations of the Parties to this Contract.

14. **Indemnity and Insurance.**

14.1 **Indemnity.** The Program Manager hereby agrees to release, defend, indemnify, and save harmless The City, and its officers, agents, and employees, (i) from and against any and all loss of, or damage to, property, or injuries to, or death of, any person or persons, as well as, (ii) from and against any and all claims, damages, suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever arising out of or resulting from loss of, or damage to, property, or injuries to, or death of, any person or persons but only to the extent caused by the negligence or omissions of the Program Manager, including, without limiting the generality of the foregoing, negligence or willful acts and omissions of Program Manager's officers, employees, representatives, suppliers, invitees, contractors, or agents in connection with this Contract. Provided, however, the Program Manager shall not be liable hereunder for any loss solely occasioned by the wrongful acts of The City or its officers, agents, and employees or any one for whom Program Manager is not legally responsible. This Indemnity provision does not apply to Workers' Compensation claims by City employees. Each party agrees to give the other party(s) hereto prompt notice of any claims, suits, actions or proceedings.

In the event The City determines there is a conflict of interest between the Program

Manager and The City with respect to legal representation in the defense of third party claims, the Program Manager will provide and pay for separate legal counsel to the interests of The City. The minimum insurance requirements set forth below shall not be deemed to limit or define the obligations of the Program Manager hereunder.

14.2 **Insurance.** Prior to beginning work, the Program Manager shall obtain and furnish to the Program Coordinator current copies of certificates of insurance required below. The required insurance shall be maintained in full force and effect until completion and acceptance by The City of the Program. The Program Manager shall maintain insurance, written with an insurance company acceptable to the City, for the coverages and amounts of coverages not less than those set forth below. Except for professional liability insurance, no claims made policy shall be accepted. Certification of insurance shall be provided by the Program Manager. Said insurance certificates shall provide that there may be no termination, non-renewal by the Insurer or reduction of the policy limits by endorsement of such coverage without thirty (30) days prior written notice to the City, in conformance with the provisions of this Contract. The amounts of such coverage shall be:

- A. Adequate workers' compensation coverage to comply with state laws and employer's liability coverage in the minimum amount of \$125,000.
- B. Commercial general liability coverage sufficient to meet The City maximum liability under the Governmental Tort Claims Act (51 O.S. § 151 *et seq.*) and any amendment or addition thereto. The current required minimum commercial general liability coverage is \$125,000 per person for bodily injury or death, \$25,000 for property damage and \$1,000,000 for any number of claims arising out of a single accident or occurrence. All insurance provided hereunder shall name The City as additional insured.
- C. Comprehensive automobile liability coverage sufficient to meet The City' maximum liability under the Governmental Tort Claims Act (51 O.S. § 151 *et seq.*) and any amendment or addition thereto. The current required minimum comprehensive automobile liability coverage is: \$125,000 per person for bodily injury or death, \$25,000 for property damage, and \$1,000,000 for any number of claims arising out of a single accident or occurrence. All insurance provided hereunder shall name The City as additional insured.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract. All policies, unless specified otherwise, shall remain in full force and effect until the completion of the Program or one (1) year after the termination of the Program Manager's services under this Contract.

The lapse of any of the insurance coverages required above is deemed to be a breach of this Contract. The City may at its option suspend, cancel or terminate this Contract until there is full compliance with this paragraph, or cancel and/or seek damages for the breach of this Contract.

15. **Prohibition Against Collusion.** The Program Manager warrants it has not employed or retained any company or person other than a bona fide employee working solely for the Program Manager to solicit or secure this Contract, and the Program Manager further warrants it has not paid nor agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Program Manager, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

16. **Nondiscrimination.** In connection with the performance of work under this Contract the Program Manager agrees as follows:

16.1 The Program Manager agrees not to discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry, or disability. The Program Manager shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry, or disability as defined by the Americans with Disabilities Act. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruiting or recruitment, advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

16.2 In the event of the Program Manager's non-compliance with this nondiscrimination clause, the Contract may be canceled or terminated by the City. The Program Manager may be declared by the City ineligible for further contracts with The City until satisfactory proof of intent to comply shall be made by the Program Manager.

16.3 The Program Manager agrees to include this nondiscrimination clause in any subcontracts connected with the performance of the Contract.

17. **Reporting to The City.** The Program Manager shall report to the City through the Program Coordinator on a regular basis as further described in Attachment "A" and as reasonably requested by Program Coordinator.

18. **Notices.** All notices and orders given pursuant to this Contract shall be in writing and may be delivered (a) by deposit in the U.S. Mail, marked certified or registered mail, return receipt requested, with postage prepaid; or (b) by delivery to a reputable national overnight courier service addressed to the parties at the addresses set forth below in accordance with this Section:

To The City:

Michael L. Spurgeon, City Manager
220 South First Street
P.O. Box 610
Broken Arrow, Oklahoma 74012
(Telephone) 918-251-5311

and

To the Program Manager:

Clinton Redwine, President
Magnum Construction, Inc.
P. O. Box 707
Broken Arrow, Oklahoma 74012
(Telephone) 918-251-8667

The address of any person or party may be changed by notice to the other party given in the manner described above. All such notices and orders shall be deemed received when delivered or when deposited in the United States mail.

19. **Compliance with Law, Ordinances, Specifications and Regulations.** The Program Manager shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations, and all amendments and additions thereto, pertaining in any manner to the services provided under the provisions of this Contract.

20. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.

21. **Records and Accounts.** During the Term of this Contract and continuing for a period of the longer of three (3) years after the final completion of this Contract, or until the final resolution of any outstanding disputes between the City and Program Manager, the Program Manager shall maintain its internal accounting records and other supporting documents pertaining to the invoicing for costs of all services for this Contract. The Program Manager shall maintain its records in accordance with generally accepted accounting principles consistently applied, and shall permit periodic audits by the City and the City authorized representative. The periodic audits of the records in support of invoices for the Contract shall be performed at times and places mutually agreed upon by the Program Coordinator and the Program Manager.

22. **Entire Contract; Modification.** This Contract expresses the entire understanding of The City and the Program Manager concerning the Contract, and neither the City nor the Program Manager has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein. This Contract may be modified only by a written amendment of subsequent date hereto, approved by the City and the Program Manager.

23. **Amendment.** This Contract may be amended, as needed, to provide for additional Program Management Services. Any amendment to the Contract must be in writing and be approved by the Parties.

24. **Termination of Contract.**

24.1 **Discretionary Termination.** This Contract may be terminated in whole or in part by The City, in its sole discretion, with or without cause, upon thirty (30) days written notice to the Program Manager. Such notice of termination shall be effectuated by delivery of a Notice to the Program Manager pursuant to the Notices paragraph hereof.

24.2 **Termination for Default.** This Contract may be terminated by either party upon fourteen (14) days written notice should the other party fail substantially to perform in accordance with the Contract terms after due notice and thirty (30) days within which to correct the default.

24.3 **Payment upon Termination.** In the event of the termination of this Contract, not the fault of the Program Manager, the Program Manager shall be compensated for all services performed to the date of termination. The rights and remedies of The City provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract. Termination herein shall not terminate or suspend any of the required provisions of the Indemnity and Insurance paragraph of this Contract.

24.4 **Method of Termination.** Upon receipt of the notice of termination, the Program Manager shall (i) immediately discontinue all work and services affected unless the notice directs otherwise, and (ii) within seven (7) days following Program Manager's receipt of payment as provided in the Payment upon Termination paragraph of this Contract, deliver to the Program Coordinator copies of all documents, data, drawings, specifications, reports, calculations, field notes, computer files, and other information and materials accumulated in performing this Contract, whether complete or incomplete, unless the notice directs otherwise.

24.5 **Assignment upon Termination.** In the event of the termination of this Contract prior to completion of the Program, regardless of the reason for said termination, the Program Manager shall immediately assign to the City those contracts between Program Manager and the Program Manager's sub-consultants, as the City may designate in writing. With respect to those contracts assigned to and accepted by the City, the City shall only be required to compensate such Program Manager's sub-consultants for compensation accruing to such parties under the terms of their agreements with the Program Manager from and after the date of such assignment to and acceptance by the

City. All sums claimed by such Program Manager's sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the City shall not constitute a debt of the City, and the City shall in no way be deemed liable for such sums. The Program Manager shall include this provision and the City's rights and obligations hereunder in all agreements or contracts entered into with the Program Manager's sub-consultants.

25. **Assignment.** Inasmuch as this Contract is a personal service agreement which relies on the personal integrity, financial standing and unique ability and expertise of the Program Manager to assist in the development and management of all phases of the Program, it has been agreed by both The City and the Program Manager that the Program Manager may not assign its interest in said Contract without prior written consent of the City.

The Program Manager may not assign this Contract or any interest therein by operation of law, process, or proceeding of any court or otherwise; or assign any portion thereof without first obtaining the prior written approval of the City; moreover, at least thirty (30) days prior to any contemplated assignment of this Contract by any operation of law, process, or proceeding of any court or otherwise, the Program Manager shall submit a written request to the City, and the Program Manager shall submit evidence showing good and sufficient financial worth and adequate experience in the operation of the Program on the part of the contemplated assignee. In any event, no assignment shall be made or shall be effective unless the Program Manager shall not be in default on any of the terms, provisions, covenants and conditions herein contained. Further, in no event shall any assignment be effective, regardless of any submissions to the City, without the prior written approval of the City. The party to whom such assignment is made shall expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations, and agreements contained in this Contract.

Moreover, no assignment shall release the Program Manager from any of the terms, covenants, or conditions herein contained on the part of the Program Manager to be performed, kept and observed. Further, in the event of an approved assignment, the assignee shall not assign any portion of the Contract except with the prior approval of the City and the Program Manager herein, and any assignment by the Program Manager shall contain a clause to this effect.

26. **Relationship to Contractor and Construction Manager.** Program Manager shall be responsible for construction means, methods, techniques, and sequences of operations. Program Manager shall have charge over, or responsibility for, safety precautions connected with any Project or the Program.

27. **Time is of the Essence.** Both the City and the Program Manager expressly agree that time is of the essence with respect to this Contract.

28. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity shall not affect the enforceability or validity of the remainder of this Contract.

29. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

30. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and do not constitute a part of this Contract, and shall not affect the meaning, construction, interpretation or effect hereof.

31. **Survival of Representations.** All representations and covenants of the Parties shall survive the expiration of the Term of the Contract.

32. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of the City and Program Manager and their respective successors and permitted assigns. This Contract is solely for the benefit of the Parties, and none of the provisions hereof are intended to benefit third parties.

33. **Venue of Actions.** The Parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the district court of Tulsa County.

34. **Effective Date.** The effective date of this Contract shall be the date of execution of this Contract by The City.

35. **Term.** It is understood and agreed by and between the parties that the initial term of this agreement is twelve (12) months subject to Section 25 of the Contract. If services authorized pursuant to this Contract have not been completed at the completion of the initial term and the contract has not been terminated, the Parties agree to negotiate in good faith for an extension so that such authorized services may be completed.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract the day and year first written above.

MAGNUM CONSTRUCTION, INC.

Clinton Redwine, President

ATTEST:

CITY OF BROKEN ARROW, OKLAHOMA

City Clerk

Craig Thurmond, Mayor

APPROVED AS TO FORM:

City Attorney

State of Oklahoma)
) ss.
County of Tulsa)

Before me, a Notary Public, on this _____ day of _____, 2016, personally appeared Craig Thurmond, Mayor of the City of Broken Arrow, Oklahoma, known to me 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.

Notary Public

My Commission Expires: _____

State of Oklahoma)
) ss.
County of Tulsa)

Before me, a Notary Public, on this _____ day of _____, 2016, personally appeared Clinton Redwine, President of Magnum Construction, Inc., known to me 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.

Notary Public

My Commission Expires: _____

EXHIBIT “A”

BASIC SERVICES for Program Manager for the City of Broken Arrow, Oklahoma

Upon written direction by the Program Coordinator, the Program Manager hereby agrees that it will perform in accordance with the standard of care as identified in the Standard of Care paragraph of the Contract, the following Basic Services required for the development and implementation of the Program.

A. Program Management Services

- a. **Oversight**
- b. **Cashflow Reporting** – work with City’s Finance team to develop a parallel method to track cash flow for the overall program that is intended to supplement City procedures.
- c. **Budget Management** – review the overall program budget items and issues with the City as appropriate or as requested during the program schedule.
- d. **Schedule Management** – review overall program schedule items and issues with the City as appropriate during the program timeline and report findings as necessary or as requested by the City.
- e. **Monthly Reporting** – prepare an overall program progress report monthly identifying status, various Project issues, program schedule status and issues, and program budget status and issues for review with the City.

B. Specific Project Scope items

- a. **Programming**
 - i. **Review Project Requirements** - assist in the development and or review of the City’s Project requirements.
 - ii. **Review Project Schedule and Budget** - review the design team’s development schedule and budget for readily observable errors and omissions and will review the schedule and budget based on construction techniques and costs common to the area.
 - iii. **Incorporate into the Overall Implementation Plan** - analyze, review, and incorporate the Project’s specifics into the overall Program Schedule then update this information for the period of performance of the contract.
- b. **Pre Design/Design**
 - i. **Constructability Reviews** - review the submittals on behalf of the City for readily observable omissions, code issues, ADA issues, etc., and review the documents to make sure that consultants and subcontractors are picking up specific items the City wants addressed. Additionally, Program Manager will review the documents for constructability noting issues and concerns from a contractor’s point of view.
 - ii. **Value Reviews** - at the end of each review, will assemble comments and suggestions from the review team to identify areas

where better value may exist by using different manufacturers/materials and/or different construction techniques.

iii. Procure necessary materials – procure necessary materials for the Project as set forth in the Preliminary Budget.

c. Bid Assistance - Review RFQ, RFP and Bid Documents: prepare RFQ's, RFP's and bid documents for construction services as appropriate for the Project. RFQ's, RFP's and bid documents are the basis for complete and quality work provided by qualified contractors. Advertise and award RFQ's and RFP's in compliance with all provisions of the Oklahoma Public Competitive Bidding Act.

d. Construction

i. Pay Application Review and Payment – review Pay Applications from subcontractors in conjunction with the Preliminary Budget, known current local market cost information, and quantities. Program Manager will assume all responsibility for payment of subcontractors and will submit invoices to the City in accordance with the provisions of Section 14 of this Contract.

ii. Change Orders - review, process and pay Change Orders in compliance with the provisions of the Oklahoma Public Competitive Bidding Act.

iii. Monitor Progress and Pay Application Review - attend weekly construction meetings and determine if the Work is being completed in conformance with the Contract Documents. Program Manager will document field observations at each site visit in order to determine in general if Pay Applications are representative of the Work performed for the specified period.

iv. Punchlist Preparation and Review - prepare a Punchlist for Substantial Completion and back-check the Punchlist items as they are completed.

v. Prepare Monthly Report - prepare a progress report monthly identifying the status of the Project, the Project schedule, and the Project budget for review with the City.

vi. General Conditions – provide for construction and final clean-up of Project area, safety expertise, and general supervision of subcontractors.

EXHIBIT “B”

ADDITIONAL SERVICES for Program Manager for the City of Broken Arrow, Oklahoma

Additional Services will only be provided upon prior written and clearly detailed direction of The City. The Program Manager may be directed to perform any, all, or none of the following Additional Services:

1. Provide analysis and services related to future facilities, systems improvements and equipment, which are not intended to be designed or constructed as a part of the Program.
2. Gathering, reviewing or analyzing data not directly related to the physical part of any Project, such as demographic information, Information Technology, security or transportation.
3. Make revisions due to deficiencies or conflicts in documents prepared by The City, third party architects and/or engineer of record for any Project, if required, in which case the Program Manager agrees to perform the revisions according to reasonable professional standards and accepts responsibility for the work performed.
4. Produce miscellaneous presentation materials not originally anticipated as a part of the Program.
5. Provide extraordinary and continuing alternative dispute resolution services.
6. Prepare to serve or serve as expert witness in connection with any legal proceeding.
7. Provide assistance in public relations or marketing efforts either with Program Manager’s employees directly or through a sub-consultant of Program Manager, which sub-consultant will be submitted to Program Coordinator for approval.