

BROKEN ARROW URBAN PLANNING CONSULTING AGREEMENT

This Consulting Agreement (the “Agreement”) is entered into as of the last date shown below by and between ADG, Inc. (“Consultant”), and the City of Broken Arrow, Oklahoma, a municipal corporation of the State of Oklahoma (“Client”).

WHEREAS, the Client desires to retain Consultant to conduct the attached scope of services; and

WHEREAS, the Consultant agrees to provide certain consulting services to the Client to assist with such endeavors; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which are hereby acknowledged, the parties agree to the following; and

1) Consultant agrees to provide the services set forth in the Scope of Work attached hereto as **Exhibit A**.

2) Client agrees to pay Consultant for the amount and for the services outlined in **Exhibit A**. Reimbursement payments will be made by the City to the Consultant based on the completion of the pre-determined phases and percentages identified in **Exhibit A**. Payment shall be provided within thirty (30) days of invoice.

3) This agreement may be terminated upon thirty (30) days written notice of either party. Consultant shall be compensated for all work completed through the termination date.

4) This Agreement shall be governed by Oklahoma law. Should any lawsuit be commenced which is related to this Agreement, it is agreed that such suit will be commenced in Tulsa County.

5) To the fullest extent permitted by law, the Consultant agrees to release, indemnify and save harmless the Client, their officers and employees from and against any and all loss of or damage to property, bodily injuries to or death of any person or persons and/or all damages, suits, costs, or expenses, including, without limitation, Worker's Compensation claims of or by anyone whomever, in any way resulting from or arising out of, but only to the extent caused by, the Consultant's negligent acts, operations, errors and/or omissions under or in connection with this Contract. The Consultant shall promptly advise the Client, in writing, of any action, administrative or legal proceeding or investigation as to which this indemnification may apply. This section shall survive the expiration of the Contract. Provided, however, the Consultant need not release, defend, indemnify or save harmless the Client, or their officers, agents and employees, from damages or injuries resulting from the negligence of the Client, their officers, agents or employees or the independent acts, operations, errors and/or omissions of architects and engineers who are not officers, employees, representatives, suppliers, invitees, contractors, subcontractors, or agents of Consultant. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under the provisions hereof.

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

7) In providing the work and services herein, the Consultant shall maintain during the course of the Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services applied by members of Consultant's professionals at the time and in the place the services are performed. The Consultant agrees to require all its consultants, by the terms of its consultants' contracts, to provide services at the same standard of reasonable care, skill, diligence and professional competence required of the Consultant.

8) If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall remain valid and enforceable to the fullest extent permitted by law.

9) Consultant, for themselves and their successors, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, age, sex, handicap, or national origin shall be excluded from participation in, denied the benefit of, this Contract; and (2) that in carrying out the terms and conditions of this Contract, no otherwise qualified person, with or without reasonable accommodation, shall be subjected to discrimination on the grounds of handicap.

10) All notices and/or payments required by this Agreement must be in writing and sent to the addresses set forth below or such other address as either party may designate in writing as the address for such notices. Notices shall be deemed to have been duly given on the date of receipt.

11) Each party represents to the other party that it has (a) fully read and understood the terms of this Agreement, (b) had the opportunity to seek the assistance of its own legal advisor regarding this Agreement and its terms, (c) full legal authority to enter into this Agreement and has taken all necessary legal steps to obtain such authority, (d) equally participated in the negotiation and drafting of this Agreement, and (e) not relied upon any statement, representation or warranty not contained in this Agreement and/or the exhibits attached hereto.

12) This Agreement, including the attached exhibits listed herein, constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified, amended or rescinded except by a written agreement signed by both parties. No oral agreements, representations or warranties have been made and/or relied upon.

MISCELLANEOUS PROVISIONS

Term of Contract. This agreement shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this agreement and shall remain in full force and effect until terminated by final payment from the Client to the Consultant or as otherwise provided herein.

Additional Services. Client may, in writing, request that Consultant provide services in addition to those defined in Exhibit A. Such services may be performed at a fixed fee mutually agreed upon in writing by the Client and Consultant. Additional Services may include the following:

1. Expanding the geographic area
2. Providing architectural or engineering services
3. Hiring other consultants at the request of the Client
4. Creation of additional design management tools
5. Other services as directed by Client

Instruments of Service. The Consultant and the Consultant's sub-consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Reports, Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Consultant and the Consultant's sub-consultants.

Binding Effect. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns.

“CONSULTANT”: ADG, Inc.

By: _____
Name: _____
Title: _____
Dated: _____

“CLIENT”:

CITY OF BROKEN ARROW, OKLAHOMA

By: _____
Craig Thurmond, Mayor

ATTEST:

City Clerk

ADDRESS FOR NOTICE AND PAYMENT:

ADG, Inc.
116 E. Sheridan
Suite 100
Oklahoma City, Ok 73104
Email: lmoody@adgokc.com
Tel: 405 232-5700

City of Broken Arrow, Oklahoma
P. O. Box 610
Broken Arrow, Oklahoma 74012
Email: mspurgeon@brokenarrowok.gov
Tel. 918-259-5311, Ext. 5332

EXHIBIT "A"

SCOPE OF WORK

For the proposed fee of **\$95,000**, ADG will provide Prescriptive Standards (i.e. an overlay district with specialized development standards) for the entire Rose District

This effort will create the preferred design management tool for the whole of the Rose District, but will primarily focus on higher density development types around the commercial core of the Rose District.

Phase One: Kick-off and Engagement (6 weeks) 30%

- Consultant team will collect and review background materials.
- Consultant team will travel to Broken Arrow for a two-day workshop and/or series of meetings with key stakeholders, as identified by City of Broken Arrow to tour the project area and to identify current issues and project goals.
- ADG staff will also be available for any additional stakeholder engagement needed before or after the two-day workshop.

Phase Two: Creation of Preferred Character Management Tool (8 weeks) 20%

- Using feedback from the two-day workshop, consultant team will draft the Prescriptive Standards.

Phase Three: Public Review of Draft Management Tool (8 weeks) 30%

- The consultant team will return to Broken Arrow for another two-day trip to assist City of Broken Arrow staff in public presentation of the draft design management tool and in collecting feedback to be incorporated in a final draft.
- Consultant team will also prepare any necessary materials and handouts needed for the public presentations.
- Consultant team will finalize the design management tool in preparation for the adoption hearings.

Phase Four: Adoption Hearings and Final Deliverables (10 weeks) 20%

- ADG will be available to attend any Planning Commission or City Council meetings necessary to officially approve the preferred design management tool.
- This fee will allow for one re-write of the design management tool, in this phase, based on changes requested during the Planning Commission or City Council approval process.

Summary

This proposal will allow for the following:

- 10 trips by ADG
- 2 trips by Winter and Company (Phases 1 and 3)
- The sole deliverable of the Prescriptive Standards