

AGREEMENT BETWEEN CITY OF BROKEN ARROW AND
BERRY DUNN MCNEIL & PARKER, LLC dba BERRYDUNN

This AGREEMENT, made and entered into this, the ___ day of December, 2017, by and between the City of Broken Arrow, a State of Oklahoma City, whose location is 220 South First St., Broken Arrow, OK, 74012, hereinafter referred to as the "CITY," party of the first part, and Berry Dunn McNeil & Parker, LLC dba BerryDunn, with an office located at 100 Middle Street, Portland, ME 04101, hereinafter referred to as the "CONSULTANT," party of the second part.

WITNESSETH: That the CONSULTANT does hereby agree with the CITY for the consideration named herein, to perform the services stipulated in this AGREEMENT.

1. CONSULTANT'S SERVICES

A. The CONSULTANT, on behalf of the CITY, shall perform and carry out in a professional manner components essential for Enterprise Resource Planning System Consultant Services.

B. The Scope of Work shall be defined by the CITY'S Request for Proposal No. 18.107, and CONSULTANT'S proposal submitted in response dated August 18, 2017. The RFP and CONSULTANT'S proposal are incorporated herein by reference.

C. Compensation for work provided by CONSULTANT will be as follows:

Rates are fully loaded, all costs, including travel costs are included:

Cost per phase/time frame:

Phase I \$34,860

Estimated Hours & Duration 200 hours, 8 weeks

Phase II \$24,680

Estimated Hours & Duration 140 hours, 9 weeks

Phase III \$39,860

Estimated Hours & Duration 230 hours, 15 weeks

Total Cost of all Phases: \$99,400

Firm, Fixed Hourly Fee for Additional Services performed outside the RFP Scope of work:
\$190/hour*

* Rate is exclusive of expenses.

2. THE CITY SHALL PROVIDE

A. Access to pertinent information and available data requested by the CONSULTANT.

B. Certain assumptions that may be necessary to the CONSULTANT.

C. Attendance and participation at all scheduled meetings and work sessions.

D. Timely review of draft and preliminary materials submitted by the CONSULTANT.

3. DOCUMENTS

All documents and services provided by the CONSULTANT pursuant to this AGREEMENT are instruments of service with respect to this project. Upon receipt of payment for services due, the CONSULTANT'S documents and material developed by the CONSULTANT under this AGREEMENT are the property of the CITY. The CITY shall have the right to re-use documents and computer software on extensions of the project or for other projects; such re-use shall be at the CITY'S sole risk and without liability or legal exposure to the CONSULTANT.

4. NONDISCLOSURE OF PROPRIETARY INFORMATION

The CONSULTANT shall consider all information provided by the CITY and all reports, studies, and other documents resulting from the CONSULTANT'S performance of this service to be proprietary unless such information is available from public sources. The CONSULTANT shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of the CITY or in response to legal process. The CONSULTANT shall maintain all originals in the CONSULTANT'S files for a period of not less than seven years from the final report and shall provide the CITY access to and the right to examine and copy information contained in the files pertaining to the services. The rights of access, examination, and copying thereunder shall continue until any litigation, appeals, claims, or arbitration shall have been finally disposed of.

5. CHANGES AND ADDITIONS

A. It shall be the responsibility of the CONSULTANT to notify the CITY, in writing, of any necessary modifications or additions in the Scope of this AGREEMENT. Compensation for changes or additions in the Scope of this AGREEMENT will be negotiated and approved by the CITY and CONSULTANT in writing.

B. It is understood and agreed to by both the CITY and the CONSULTANT that such modifications or additions to this AGREEMENT shall be made only by the full execution of the CONSULTANT'S standard contract change order form.

6. ADDITIONAL SERVICES

The CITY, at its discretion, may request additional services. When requested by the CITY, in writing, the CONSULTANT may perform additional services, associated with this project, which are outside the original scope of services. Compensation for these additional services will be based on current billing rates plus reasonable travel expenses. The CITY shall approve the scope, number of hours, and fee schedule for such services with the CONSULTANT before any additional work commences.

7. NOTICE

Any notice, demand, or request required by or made pursuant to this AGREEMENT shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the representative specified below or as otherwise designated in writing and mutually agreed. However, any notice of suspension or termination pursuant to paragraph 9 hereof, if mailed, shall be sent by United States certified mail, postage prepaid, return receipt requested and shall not become effective until the date of receipt. Nothing contained in this Article shall be construed to restrict the transmission or routine communications between representatives of the CONSULTANT and the CITY.

A. The CITY'S Representative's will be the "Information Technology Director", as otherwise designated in writing: Mr. Stephen Steward, Information Technology Director, City of Broken Arrow, 220 South First St, Broken Arrow, OK 74012.

B. The CONSULTANT'S Representative shall be Charles (Chad) Snow, Principal, or as otherwise designated in writing and accepted by the CITY in writing: Nothing contained in this Article shall be construed to restrict the transmission or routine communications between representative(s) of the CONSULTANT and the CITY.

8. MANNER OF PAYMENT

A. The CONSULTANT shall furnish the CITY with timely progress invoices each month for services rendered to date for each project phase. The terms of payment will be net thirty (30) days.

B. Late payment charge can be assessed at the rate of one percent (1%) per month for any past due payments.

C. Should any statement be the subject of a legitimate dispute between the parties, no late payment charge shall apply to any amounts not paid by the CITY because of said dispute; CITY shall pay all amounts not reasonably deemed to be included in the dispute.

9. TERMINATION OR SUSPENSION OF CONTRACT

A. The obligation to continue services under this AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, that the terminating party has first given the other party written notice of the reason for such termination and the other party has failed to cure or rectify the issue or matter within fifteen(15) days of receipt of such notice.

B. In the event the CITY terminates the CONSULTANT'S services as permitted under Section 9.A of this AGREEMENT, the CITY shall pay the CONSULTANT for all services performed to the effective date of termination. The CONSULTANT shall be entitled to receive only the fair value of services rendered and direct out of pocket expenses incurred hereunder prior to the effective date of such termination. Upon restart of a project previously terminated, equitable adjustment may be made to compensation for remobilization of the project.

10. ASSIGNMENT

Neither the CITY nor the CONSULTANT shall assign or transfer their rights or obligations in the AGREEMENT without consent of the other; such consent shall not be unreasonably withheld.

11. INSURANCE

The CONSULTANT shall purchase and maintain insurance coverage. Insurances shall cover all employees while performing any work incidental to the performance of the agreement between the CITY and the CONSULTANT.

12. ETHICS IN PUBLIC CONTRACTING

The CONSULTANT certifies that its proposal is made without collusion or fraud and that CONSULTANT has not offered or received any kickbacks or inducements from any other contractor, supplier, manufacturer or subcontractor in connection with CONSULTANT'S proposal, and that CONSULTANT has not conferred with any public employee having official responsibility for this procurement transaction nor has CONSULTANT received any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

13. SEVERABILITY

If any part, term, or provision of this AGREEMENT shall be found by the Court to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws to the extent possible. The invalidity or unenforceability of any provision or portion of this AGREEMENT or any contract document shall not affect the validity of any other provision or portion of this AGREEMENT or any contract document.

14. AGREEMENT CONSTRUED UNDER OKLAHOMA LAWS

The AGREEMENT is deemed to be executed and performed in the State of Oklahoma and shall be construed in accordance with the laws of Oklahoma.

15. ENTIRE UNDERSTANDING

This AGREEMENT comprises the entire understanding between the parties and cannot be modified, altered or amended, except in writing and signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this AGREEMENT as of the day and year first above written.

CITY OF BROKEN ARROW

**BERRY, DUNN, MCNEIL &
PARKER, LLC dba
BERRYDUNN**

BY: _____

Michael L. Spurgeon, City Manager

ATTEST:

BY: _____

Dated: _____

BY: _____

Charles Snow, Principal

ATTEST:

BY: _____

Dated: _____

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY