

**AGREEMENT FOR PROFESSIONAL SERVICES CONTRACT
BETWEEN THE CITY OF BROKEN ARROW AND CATALYST COMMERCIAL, INC.
FOR DEVELOPING AN ACTIVATION STRATEGY, ELM & NEW ORLEANS**

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

RECITALS:

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

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

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

**Article I
Term**

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

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

**Article II
Scope of Service**

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services. Any and all changes in the cost, scope of services, deliverables and their delivery dates will be introduced as a Change Order to this Agreement that will be executed by Professional and by the City before such changes are binding. If there is no such execution, any such changes are and may be held to be invalid by Professional or the City. In the case where both

parties have not executed the Change Order, Professional shall not be bound to provide any services outside the scope of this Agreement and any increased cost necessary to perform such additional work and the resultant deliverables will be solely borne by the City. All rates for the term of this Agreement and all change orders referencing this Agreement will not increase unless specifically addressed in a mutually agreed to change order to this Agreement.

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

Article III Schedule of Work

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

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services, not to exceed a total amount of Thirty Thousand Dollars and 00/100 (\$30,000.00). Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charged for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt unless otherwise provided herein.

4.2 In addition to the fee for Scope of Services the City shall be responsible for all direct expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, and telephone, not to exceed rates as set forth in Exhibit "B".

Article V Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such

additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

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

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

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

Article VI Miscellaneous

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

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

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

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

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

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

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

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

If intended for City:

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

With a copy to:

Farhad K. Daroga
Placemaking Manager
Department of Community Development
City of Broken Arrow
P.O. Box 610
Broken Arrow, OK 74013

If intended for Professional:

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

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the

performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) if applicable, statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate. The Professional shall provide written notice to the City of any material change of or to the insurance required herein.

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

6.10 Debarment and Suspension.

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

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

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

of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

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

6.14. ENTIRE AGREEMENT/ MODIFICATION. This Agreement, including **Exhibit “A”**, attached, is the entire agreement between the parties and supersedes all prior negotiations, agreements and understanding relating to the subject matter of this Agreement. This Agreement may only be modified or amended in writing. Email communication constitutes a writing if intended by both parties to be a writing under this paragraph.

6.15. ASSIGNMENT. City understands that it may not assign this Agreement or its rights hereunder, or delegate any or all of its duties under this Agreement without written authorization from Professional. Except for the use of sub-contractors to perform services, Professional understands that it may not assign this Agreement or its rights hereunder, without written authorization from City.

6.16. LEGAL EXPENSES. In the event that legal action is taken by either party to enforce any rights or remedies under this Agreement, it is hereby agreed that the successful or prevailing party shall be entitled to receive any costs, disbursements and reasonable attorney’s fees.

6.17. SEVERABILITY. In the event that any one or more of the provisions contained in this Agreement shall be held invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, and the enforceability of the remaining provisions contained herein shall not be impaired thereby.

6.18. BINDING EFFECT. The parties to this Agreement further agree that the promises, covenants, and conditions herein shall be binding upon the parties to this Agreement, their heirs, assigns, successors, administrators, and representatives.

6.19. LIMITATION OF LIABILITY. Contractor’s liability for any cause or combination of causes is, in the aggregate, limited to an amount no greater than the fee paid to Contractor hereunder or available insurance coverage delineated herein, whichever is greater.

6.20. GOVERNING LAW. It is understood and agreed by the parties that this Agreement shall be governed by and enforced in accordance with the laws of the State of Oklahoma.

6.21. RELATIONSHIP OF PARTIES. It is understood by the parties that Professional is an independent Professional with respect to City, and not an employee of City. Professional will be responsible for reporting and payment of all of its tax obligations related to the payments hereunder.

6.22. AMENDMENTS. This Agreement may be amended only by an instrument in writing and signed by the parties hereto.

6.23. NOTICES. Any notices required or permitted to be given under this Agreement shall be in writing and may be given by personal service or by depositing a copy thereof in the United States mail, registered or certified, postage prepaid, to the last known address of such party, or via electronic communication (including e-mail and Internet or intranet websites) under the following provisions, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

6.24. COUNTERPARTS. This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which constitute one and the same instrument. Any counterpart transmitted by facsimile or electronic mail shall have the same force and effect as an original.

6.25. WAIVER OF CONTRACTUAL RIGHTS. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

6.26. NO PREDJUDICE. Professional, and its sub Professionals (if any) shall not be barred from representing or providing services to the private sector for additional services during or after the termination of this Agreement for any engagements related to this work. Furthermore, City acknowledges that Jason Claunch, principal for Professional is a licensed real estate broker (TREC #0456163). No additional fees shall be due to Professional, from City, except according to the fees set forth herein in connection with any intermediary services provided by Professional.

[Signature Page to Follow]

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

Approved as to form:

City of Broken Arrow, Oklahoma
A Municipal Corporation

Assistant City Attorney

By: _____
Michael L. Spurgeon
City Manager

Attest:

Date _____

City Clerk [Seal]

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

By: _____
Jason Claunch

Attest:

Corporate Secretary (Seal)
Date: _____

VERIFICATIONS

State of Oklahoma)
County of Oklahoma)

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

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

EXHIBIT “A”
(SCOPE OF SERVICES)

1. Catalyst shall prepare for and participate in bi-monthly meetings (Estimated 12 meetings) with the City of Broken Arrow and the Elm and New Orleans Advisory Committee to facilitate discussions and develop a market-based action plan for the Elm and New Orleans district. This shall include Principal and support staff for facilitating meetings and post-meeting follow up (140 hrs.).

EXHIBIT "B"

Other Direct Expenses for Prime and All Subcontractors			
Type	Unit	Fixed Cost	Maximum Cost
Travel			
Lodging/Hotel	day/person		Current State Rate
Lodging/Hotel Taxes/Fees	day/person		Current State Rate
Meals	day/person		Current State Rate
Mileage	mile	\$ 0.56	
Rental Car (Includes taxes and fees)	day		\$ 75.00
SUV or Van Rental (includes taxes and fees)	day		\$ 125.00
Lease Vehicle	month		\$ 1,500.00
Rental Car Fuel	gallon		\$ 4.99
Toll Charges	each		\$ 5.00
Air Travel (Coach)	Rd Trip/person		\$ 800.00
Air Travel - In State - Short Notice (Coach)	Rd Trip/person		\$ 700.00
Air Travel - 2-Wks Notice (Coach)	Rd Trip/person		\$ 400.00
Air Travel - Out of State - Short Notice (Coach)	Rd Trip/person		\$ 1,400.00
Air Travel - Out of State 2 Wks+ Notice (Coach)	Rd Trip/person		\$ 850.00
Luggage (with air travel)	One-way trip/person		\$ 50.00
Parking	day		\$ 20.00
Parking	week		\$ 100.00
Taxi/Cab fare	each/person		\$ 40.00
Airport Shuttle	each/person		\$ 60.00
Shipping/Postage			
Postage & shipping	month		\$ 250.00
Shipping (Standard)	each		\$ 1,000.00
Standard Postage	letter	Current Postal Rate	
Overnight Mail - letter	each		\$ 25.00
Overnight Mail - oversized box	each		\$ 30.00
Courier	each		\$ 40.00
Certified Mailings	each	Current Postal Rate	
Copying/Printing			
Photocopies (B/W) (8.5"x11")	each		\$ 0.15
Photocopies (B/W) (11"x17")	each		\$ 0.30

EXHIBIT "B"

PROFESSIONAL SERVICES AGREEMENT, ELM & NEW ORLEANS

PAGE 10 OF 11

EXHIBIT "B"

Photocopies Color (8.5"x11")	each		\$ 1.00
Photocopies Color (11"x17")	each		\$ 2.00
Plots (Color on Bond)	square foot		\$ 8.00
Color Graphics on Foam Core	each		\$ 100.00
Report Binding	each		\$ 100.00
Flyer Printing	each		\$ 1.00
Postcard Printing	each		\$ 1.00
Public Notices	\$500		\$500
Public Notices - Mass mailing	each		\$ 8,250
Meeting signage	each		\$ 75.00
Mailing list	each		\$1,500
Photographer	each		\$1,500
Labor			
Principal	hour		\$300
Sr. Consultant	hour		\$180
Consultant	hour		\$125
Admin	hour		\$80