

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification.

**STANDARD
FORM OF AGREEMENT
BETWEEN CITY OF LAWTON
AND
HALFF ASSOCIATES, INC.
FOR
PROFESSIONAL SERVICES**



Issued By
CITY ENGINEERING DIVISION
In conjunction with the
CITY'S LEGAL SERVICES DEPARTMENT

CITY HALL, 212 SW 9th Street

Lawton, Oklahoma

AGREEMENT

BETWEEN

**CITY OF LAWTON
AND
HALFF ASSOCIATES, INC.**

FOR

PROFESSIONAL SERVICES

FOR

Elmer Thomas Park Conceptual Park Plan

CITY OF LAWTON

COMANCHE COUNTY, OKLAHOMA

**PREPARED BY:
City of Lawton**

Engineering Division

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AGREEMENT
BETWEEN
CITY OF LAWTON AND CONSULTANT
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of the ____ day of _____, 2022 by and between the City of Lawton, A Municipal Corporation in the State of Oklahoma (hereinafter called OWNER), and Halff Associates. Inc. (hereinafter called CONSULTANT). OWNER intends to employ a professional CONSULTANT to provide professional Consultant services and prepare contract documents for the Elmer Thomas Park Conceptual Park Plan, hereinafter referred to as the PROJECT.

The OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional Consulting services by CONSULTANT and the payment for those services by OWNER, as set forth below.

CONSULTANT shall serve as OWNER's professional Consultant representative in those phases of the Project to which this Agreement applies, and will give consideration and advice to OWNER during the performance of his services.

I. SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1. General

- 1.1.1.** CONSULTANT shall perform professional services as hereinafter stated which include normal civil and surveying activities.
- 1.1.2.** Laws, Licenses and Permits. The CONSULTANT shall comply with all Federal, State and local laws, regulations and ordinances applicable to the contract.

- 1.1.3. Worker's Compensation Law. The CONSULTANT shall comply with the Oklahoma Worker's Compensation Law and file a copy of his Worker's Compensation Insurance Policy, or, if a self-insurer, a copy of the Industrial Commission's Order of Authorization with the OWNER.
- 1.1.4. CONSULTANT's Liability. The CONSULTANT shall assume responsibility for and save the OWNER harmless from claims for injury to, or death of persons, or damage to property arising from the CONSULTANT's negligent acts, errors, or omissions, or those of his agents or employees, to the extent arising out of performance of the work.
- 1.1.5. Non-collusion. The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this contract, and that he has not paid or agreed to pay any company, political group, or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of this contract. For breach of violation of this warranty, the OWNER shall have the right to annul this contract without liability, or at its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- 1.1.6. Services Furnished, Performed and Submitted. The CONSULTANT shall furnish all Consultant services, labor and equipment as may be required in the performance of the contract, except as otherwise provided herein, and all work performed and submitted under the contract shall be done in a manner acceptable to the OWNER, and the CONSULTANT, if applicable, shall sign the plans submitted to the OWNER and affix his/her Oklahoma seal thereto as proof that he/she is a Registered Professional Engineer/Landscape Architect in the State of Oklahoma.
- 1.1.7. Coordination of Work. The CONSULTANT will coordinate his Consultant work with other Consultants, if any, performing the immediately adjoining Consultant work, and shall furnish and share survey and plan data in such a manner as will facilitate and expedite the completion of contracts in adjacent Consultant work.
- 1.1.8. Maintaining All Records. The CONSULTANT shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred in the performance of this contract and to make such materials available to their respective offices at all reasonable times, during the contract period and for three (3) years from the date of final payment under the contract, for inspection by authorized representatives of the OWNER.

Copies thereof shall be furnished if requested and the OWNER shall pay a reasonable cost of reproduction.

- 1.1.9.** Responsibility for Accuracy. The CONSULTANT will be held responsible for accuracy of CONSULTANT's details and quantities of work to be performed. Plans received for review by the OWNER shall be accompanied by a written statement that a prior detailed check has been made. Frequent occurrence of irregularities in CONSULTANT'S details or quantities will be basis for withholding future Engineering/Consultant contracts from said CONSULTANT, or terminate this agreement upon failure to remedy the problem within a reasonable period of time. The CONSULTANT shall furnish design data with computations for all improvements involved in this contract. CONSULTANT will provide OWNER with Instruments of Service in electronic readable format. These Instruments of Service will be in addition to any other deliverables expressed in any part of this agreement, its exhibits, and attachments. The Instruments of Service consists of any and all project data to include, but not limited to, building information modeling (BIM) data; all partial, intermediate, and final versions of BIM models, AutoCad renderings, or similar 2-D or 3-D computer-aided designs or drafts; any and all AutoCad data and the like; all files, drawings, specifications, models, sketches, digital representations, and design documents. All aforementioned files, renderings, and data remain the OWNER's property to be delivered at the completion of each task and phase of the project, and at any time upon OWNER'S request. The Instruments of Service will be provided to Owner in dgn format, or with the approval of the OWNER, in a similar format translatable to .dxf and .dwg formats. The CONSULTANT also grants the OWNER an unlimited license to use this data for the operations, maintenance, marketing, and any other purpose related to the effective implementation of the project, but not to be used for any other future projects. OWNER retains ownership of all copyrights relating to all drawings, models, and data. The OWNER'S rights as described herein to the Instruments of Service supersedes all prior or contemporaneous negotiations, commitments, agreements, and writings with respect to the subject matter, and all such other negotiations, commitments, agreements, exhibits, attachments, and writings will have no further force or effect. The CONSULTANT will be held responsible for any mistakes or omissions in the work of the CONSULTANT, which appear during the final review by the OWNER or during construction and will be required to do any work necessary to correct the mistakes or omissions in his work, without additional compensation.
- 1.1.10.** Major Revisions. For any major revisions ordered in writing by the OWNER in the PROJECT after the final survey has been completed, a supplemental agreement for additional payment shall be entered into between the parties hereto. For any major revision in the character or scope of the work in design ordered in writing by the OWNER after performance of a substantial amount of work on the plans, a Supplemental Agreement will be negotiated on the basis of all costs related to the salaries of employees for the time directly chargeable to the agreement, the salaries of principals for the time they are productively engaged in work necessary to fulfill the term of the agreement, direct non-salary cost incurred in fulfilling the terms of the agreement and the CONSULTANTS overhead or indirect costs to the extent they are properly

allowable to the agreement plus a lump sum for profit.

- 1.1.11.** Right to Terminate. The OWNER reserves the right to terminate the contract at any time, and if this project should be abandoned, or the processing of same indefinitely postponed, or contract terminated for any other reasons, the CONSULTANT shall be paid the reasonable value by the OWNER for the data delivered or ready for delivery upon receipt thereof based upon availability of funds for this work, and such determination by the OWNER shall be conclusive and binding. Prior to the award of the contract to the CONSULTANT, the OWNER shall confirm to the CONSULTANT and provide satisfactory proof that funds for the amount of the contract have been authorized, allocated, and reserved for payment of the CONSULTANT's fee.
- 1.1.12.** Right to Delete. The OWNER reserves the right to delete any portion of the contract at any time, and if such is done the total Consultant fee shall be reduced in the same ratio as the estimated cost of the work deleted compares to the estimated cost of the work as originally planned, or when appropriate, the Consultant fee shall be recomputed for the reduced scope of work in the same manner used for determining the original contract fee, provided that if work has already been accomplished on that portion of the contract to be deleted the CONSULTANT shall be paid for the deleted portion on the basis of the estimated percentage of completion of such portion.
- 1.1.13.** Non-Discrimination. The CONSULTANT will comply with all the requirements pertaining to the Section 3 Clause of the 1968 Housing and Urban Development Act (Affirmative Action Plan) as defined in attached Exhibit "A", which is hereby incorporated into this contract.
- 1.1.14.** Assignments and Subleases. CONSULTANT shall not assign, sublease, subcontract, transfer or convey any interest in this Agreement without the express and prior written consent of the OWNER. The CONSULTANT's interest hereunder shall not be assignable in bankruptcy or by operation of law. In the event a transfer is approved by OWNER, any document by which an interest is granted shall indicate that the person acquiring the interest takes subject to the terms of this Agreement. OWNER may prescribe any conditions to such an assignment or transfer.
- 1.1.15.** Waiver. No waiver of default by OWNER or CONSULTANT of any terms, covenants or conditions herein to be performed, kept or observed by CONSULTANT or OWNER shall be construed to be or act as a waiver of any subsequent default of any terms, covenants or conditions herein contained.
- 1.1.16.** Merger. It is mutually understood and agreed by the parties hereto that this Agreement contains all the covenants, agreements, stipulations and provisions agreed upon by said parties, and no agent or employee of either party to this Agreement has any authority to alter or change the terms hereof, except as provided herein, and neither party is or shall be bound by any statement or representation not in conformity herewith.

If in the event that any portion or portions of this Agreement are adjudged unlawful by a court of competent jurisdiction, the judgment of such court shall not affect the validity of the remaining portions hereof, which shall be and remain in full force and effect during the term of this Agreement.

- 1.1.17.** Enforceability; Choice of Law; Choice of Forum. Litigation arising out of or connected with this Agreement may be instituted and maintained in the District Court of Comanche County, Oklahoma, or the Federal Court for the Western District of Oklahoma, and the parties' consent to jurisdiction over their person and over the subject matter of any such litigation.
- 1.1.18.** Key Personnel. The CONSULTANT shall have designated certain key personnel to be assigned specifically to the performance of this work (such as project manager, lead designer, operations specialist, etc.). At the time of Agreement ratification, the OWNER shall have the right to specify those project key personnel for whom the CONSULTANT shall not be allowed to substitute other personnel without prior written permission of the OWNER.
- 1.1.19.** Detailed Scope of Services. A detailed scope of services is attached as Exhibit "B", which is hereby incorporated into this contract.
- 1.1.20.** Insurance. The CONSULTANT shall procure and maintain during the life of this agreement insurance of the types of minimum amounts as follows:

Worker's Compensation in full compliance with statutory requirements of Federal and State of Oklahoma law and Employer's Liability coverage in the amount of \$500,000.

Commercial General Liability and Bodily Injury:

Bodily Injury	\$ <u>125,000</u> each occurrence
Property Damage	\$ <u>100,000</u> each occurrence
Combined Single Limit	\$1,000,000 aggregate

Comprehensive Automobile:

Liability, Bodily Injury	\$ <u>125,000</u> each occurrence
Property Damage	\$ <u>100,000</u> each occurrence
Combined Single Limit	\$1,000,000 aggregate

<u>Professional Liability:</u>	\$ <u>500,000</u> per claim
<u>(Errors and Omissions):</u>	<u>\$1,000,000</u> aggregate

Certificate evidencing such insurance shall be furnished to the OWNER and shall contain the following statement: "The insurance evidenced by this certificate will not be canceled or altered except after ten (10) calendar days from receipt by the OWNER of written notice thereof." Should the insurance outlined above be canceled for any reason, and the Consultant fails to procure additional insurance, the OWNER shall have the right to purchase equivalent insurance coverage and charge the cost of that insurance against any amounts due the CONSULTANT under the terms of this Agreement.

Said insurance shall be written by a company or companies licensed to do business in the State of Oklahoma and satisfactory to the OWNER.

1.1.21. Drug-Free Workplace

Definitions. As used in this clause, "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substance Act (21 U.S.C. 812) and as further defined in regulation 21 CFR 1308.11-1308.15. "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes. "Criminal drug statute" means a Federal or non-Federal criminal statute involving manufacture, distribution, dispensing, possession or use of any controlled substance.

1.1.21.1 "Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

"Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one (1) employee including the offeror/contractor.

1.1.21.2. The contractor, if other than an individual, shall within thirty (30) calendar days after award (unless a longer period is agreed to in writing) for contracts of thirty (30) calendar days or more performance duration; or as soon as possible for contracts of less than thirty (30) calendar days of performance duration

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establish an ongoing drug-free awareness program to inform such employees about -
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph 1.1.21.2.1. of this clause:
4. Notify such employees in writing of the statement required by subparagraph 1.1.21.2. 1. of this clause, that as a condition of continued employment of this contract, the employee will
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Notify the contracting officer in writing within ten (10) days after receiving notice under subdivision 1.1.21.2.4. (ii) of this clause from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
6. Within thirty (30) calendar days after receiving notice under subdivision 1.1.21.2.4. (ii) of this clause of a conviction, take one (1) of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace;
 - (i) Take appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
7. Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs I.1.2 I .2.1. through 1.1.21.2.6. of this clause.

1.1.21.3. The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

1.1.2.1.4. In addition to other remedies available to the Owner, the Contractor's failure to comply with the requirements of paragraphs 1.1.21.2. and 1.1.21.3. of this clause may, pursuant to FAR 23.506, render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

2. SECTION 2 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 2.1. Provide full information as to his requirements for the project.
- 2.2. Assist the CONSULTANT by placing at his disposal all available information pertinent to the project including previous reports and any other data relative to design and construction of the project.
- 2.3. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining within a reasonable time so as not to delay the services of the CONSULTANT.
- 2.4. Pay all advertising costs incident to obtaining bids or proposals from Contractor(s).
- 2.5. Return to the CONSULTANT submitted project documents for OWNER's review on which the CONSULTANT has not substantially addressed previously noted provisions and comments. The CONSULTANT's contract time will not be suspended for submission of project documents which do not contain substantial revisions.
- 2.6. Designate in writing a person to act as OWNER's representative with respect to the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information and interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONSULTANT's services.
- 2.7. Issue all instructions to the CONSULTANT; act as interpreter of the requirements of the Contract Documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of the CONSULTANT relating to the execution and progress of the work and all other matters and questions related thereto.
- 2.8. In consultation with the CONSULTANT, issue all instructions to Contractor(s); prepare routine change orders as required; require, if deemed appropriate, special inspection or testing of the work; act as interpreter of the requirements of the

Contract Documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of OWNER and Contractor(s) relating to the execution and progress of the work and all other matters and questions related thereto.

- 2.9. Have the City Engineer, based on his on-site observations and project inspection reports, determine the amounts owing to Contractor(s).
- 2.10. Conduct an inspection to determine if the project is substantially complete and a final inspection to determine if the project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that OWNER may approve, in writing, final payment to each Contractor.

3. SECTION 3 - PERIOD OF SERVICES

- 3.1. The provisions of 3.2. through 3.11. inclusive, and the various rates of compensation for CONSULTANT's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the project. CONSULTANT's obligation to render services hereunder will extend for a period which may be reasonably required for the Project.
- 3.2. The Elmer Thomas Park Conceptual Park Plan scope of services shall be completed within 180 calendar days following authorization to proceed. Specific time frames and requirements for completion of various items within the basic scope of services are described in Attachment A, PLANNING & LANDSCAPE ARCHITECTURE SERVICES FOR ELMER THOMAS PARK, referenced in Exhibit B of this agreement.
- 3.3. If OWNER has requested significant modifications or changes in the Project, the time of performance of CONSULTANT's services shall be adjusted appropriately.
- 3.4. If CONSULTANT is delayed at any time in the progress of any phase of the project by any act or neglect of the OWNER, or by any separate contractor employed by the OWNER, or by any act or neglect of regulatory agencies, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the CONSULTANT's control, then the Contract completion date shall be extended by Supplemental Agreement (Amendment) for a reasonable time equaling the amount of delay.
- 3.5. Waiver in Case of Delay. In the event of delay in proceeding with the work hereunder or any portion thereof, whether such delay be caused by the OWNER or any other agency, the CONSULTANT hereby agrees that he will not exert any claim against the OWNER by reason of such delay, and all such claims are hereby waived.

4. SECTION 4- PAYMENTS TO CONSULTANT

4.1. Methods of Payment for Services of Consultant.

4.1.1. For services described herewith, the CONSULTANT will be paid the fee(s) as outlined in the fee schedule within Attachment A, PLANNING & LANDSCAPE ARCHITECTURE SERVICES FOR ELMER THOMAS PARK, as described in Exhibit B of this agreement.

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

On Behalf of CONSULTANT:

(FOR CORPORATIONS ONLY)

COUNTY OF _____ }
STATE OF OKLAHOMA }

By _____

Title _____

My Commission Expires _____

My Commission Number _____

Notary Public

CITY APPROVAL

Acceptance and entry into this agreement by and on behalf of the City of Lawton is made the day and year first written above.

City of Lawton, Oklahoma
A Municipal Corporation

Stanley Booker, Mayor

ATTEST:

Traci Hushbeck, City Clerk

LEGAL REVIEW

APPROVED, as to form and legality on behalf of the City of Lawton on the 23rd day of May, 2022.

John Ratliff, City Attorney

EXHIBIT "A"

SUPPLEMENTAL AGREEMENT
BETWEEN
OWNER AND CONSULTANT
FOR
PROFESSIONAL SERVICES

During the performance of this contract, the CONSULTANT agrees as follows:

The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, or physical handicap. The CONSULTANT will take affirmative action to ensure that the applicants are employed and that the employees are treated during employment without regard to their race, religion, sex, color, national origin or physical handicap.

In the event of the CONSULTANT's non-compliance with this non-compliance clause, the contract may be canceled or terminated by the OWNER. The CONSULTANT may be declared by the OWNER ineligible for further contracts with the said agency until satisfactory proof of intent to comply shall be made by the CONSULTANT.

The CONSULTANT agrees to include this non-discrimination clause in any subcontracts connected with the performance of this agreement.

The Section 3 Clause as set forth in 24 CFR 135.20(b) is incorporated herein is required.

- A. The work to be performed under this contract may be on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135.20, and all applicable rules and order of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The contractor will include this Section 3 Clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient

of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Developments, 24 CFR 135.20. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135.20 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- E. Compliance with the provisions of Section 3, the regulations set for in 24 CFR 135.20, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.20.

I have read the above stated clause and agree to abide by its requirements.

By: _____

ATTEST:

Secretary

EXHIBIT "B" – SCOPE AND FEE PROPOSAL LETTER

ATTACHMENT A – SCOPE OF SERVICES AND FEE PROPOSAL

ATTACHMENT B – AVAILABLE ADDITIONAL SERVICES

ATTACHMENT C – LIMITS OF WORK

(ATTACHED)