

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and C. H. Guernsey & Company (CONSULTANT) for the following reasons:

1. OWNER intends to construct Wayfinding Plan Elements and a Wayfinding Pilot Project (the Project); and,
2. OWNER requires certain professional survey, design, analysis and engineering services in connection with the Project (the Services); and,
3. CONSULTANT is prepared to provide the Services.

In consideration of the promises contained in this Agreement, OWNER and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be ____ day of _____, 2015.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oklahoma.

ARTICLE 3 - SCOPE OF SERVICES

CONSULTANT shall provide the Services described in Attachment A, Scope of Services.

ARTICLE 4 - SCHEDULE

CONSULTANT shall exercise its reasonable efforts to perform the Services described in Attachment A according to the Schedule set forth in Attachment B.

ARTICLE 5 - COMPENSATION

OWNER shall pay CONSULTANT in accordance with Attachment C, Compensation. Invoices shall be due and payable upon receipt. OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment D, OWNER'S Responsibilities. OWNER hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by OWNER to CONSULTANT. If OWNER does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to CONSULTANT, OWNER shall obtain a license or right to use, including the right to sublicense to CONSULTANT. OWNER hereby grants CONSULTANT the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. OWNER represents that CONSULTANT'S use of such documents will not infringe upon any third parties' rights.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 -INDEMNIFICATION AND LIABILITY

Indemnification. The CONSULTANT and the OWNER each hereby agree to indemnify, and hold harmless the other party, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees recoverable under applicable law on account of negligence) caused by an error, omission, or negligent act of the indemnifying party in the performance of this Agreement. The CONSULTANT and the OWNER each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims. In any and all claims asserted by any employee of the CONSULTANT against any indemnified party, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any of the CONSULTANT'S employees under workers' compensation acts, disability benefit acts, or other employee benefit acts. The acceptance by OWNER or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by the CONSULTANT shall in no event be deemed a waiver of any of the provisions of this indemnity provision. None of the foregoing provisions shall deprive the OWNER of any action, right, or remedy otherwise available to the OWNER at common law.

Survival. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance:

- (a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- (b) Automobile Liability Insurance, with a combined single limit of \$1 ,000,000 for each person and \$1,000,000 for each accident.
- (c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- (d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

CONSULTANT shall, upon written request, furnish OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled by the Insurer without at least thirty days' written notice to OWNER. If CONSULTANT cancels such insurance, CONSULTANT shall provide OWNER with a new, valid certificate of insurance that meets the above requirements within five days of cancellation. OWNER shall require all Project contractors to include OWNER, CONSULTANT, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both OWNER and CONSULTANT, each to the same extent

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to CONSULTANT, to fulfill contractual responsibilities to OWNER or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services; or (d) for the discovery, identification, remediation or removal of hazardous materials or toxic substances on or around the Project.. In the event the OWNER requests CONSULTANT to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to CONSULTANT for review at least 15 days prior to the requested date of execution. CONSULTANT shall not be required to execute any certificates or documents that in any way would, in CONSULTANT's sole judgment, (a) increase CONSULTANT'S legal or contractual obligations or risks; (b) require knowledge, services or responsibilities beyond the scope of this Agreement; or (c) result in CONSULTANT having to certify the existence of conditions whose existence CONSULTANT cannot ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, CONSULTANT's opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. CONSULTANT does not guarantee that proposals, bids, or actual Project costs will not vary from CONSULTANT'S cost estimates or that actual schedules will not vary from CONSULTANT'S projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by CONSULTANT as deliverables pursuant to the Scope of Services are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT. OWNER shall indemnify and hold harmless CONSULTANT and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle CONSULTANT to additional compensation at rates to be agreed upon by OWNER and CONSULTANT.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by CONSULTANT and furnished to OWNER as part of the Services shall become the property of OWNER; provided, however, that CONSULTANT shall have the unrestricted right to their use. CONSULTANT shall retain its copyright and Ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of CONSULTANT.

ARTICLE 14 - TERMINATION AND SUSPENSION

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 of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. OWNER may terminate or suspend performance of this Agreement for OWNER'S convenience upon written notice to CONSULTANT. CONSULTANT shall terminate or suspend performance of the Services on a schedule acceptable to OWNER, and OWNER shall pay CONSULTANT for all the Services performed. Upon restart of suspended Services, an equitable adjustment shall be made to CONSULTANT'S compensation and the Project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or CONSULTANT under this Agreement. CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 16 - NOTICES

Any notice required by this Agreement shall be made in writing to the address specified below:
OWNER:

David R. Riesland, P.E.
City Traffic Engineer
City of Norman
P.O. Box 370
Norman, OK 73070

C. H. Guernsey & Company:

Darran Scott
Project Manager
5555 North Grand Boulevard
Oklahoma City, OK 73112

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of OWNER and CONSULTANT.

ARTICLE 17 - DISPUTES

In the event of a dispute between OWNER and CONSULTANT arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

In the event the parties are unable to reach agreement, under terms reasonably acceptable to both parties, either party may pursue resolution in the District Court of Cleveland County, Oklahoma pursuant to the laws of the State of Oklahoma. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations. CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is CONSULTANT'S policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. CONSULTANT further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

A waiver by either OWNER or CONSULTANT of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, including Attachments A, B, C, and D incorporated by this reference, represents the entire and integrated agreement between OWNER and CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

OWNER and CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither OWNER nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, CONSULTANT may assign its rights to payment without OWNER'S consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent CONSULTANT from engaging independent CONSULTANTS, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of OWNER and CONSULTANT. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

IN WITNESS WHEREOF, OWNER and C. H. Guernsey & Company have executed this Agreement.

DATED this ____ day of _____, 2015.

The City of Norman
(OWNER)

Signature _____

Name Cindy Rosenthal

Title Mayor

Date _____

Attest:

City Clerk

C. H. Guernsey & Company

Signature Ken Senour

Name KEN SENOUR

Title SR. VP

Date 3/24/15

Attest:

Richard R. Hines
Assistant Secretary

APPROVED BY CITY OF NORMAN LEGAL DEPARTMENT
BY [Signature] DATE 3/30/15

Approved as to form and legality this ____ day of _____ 2015.

City Attorney

Attachment A

Scope of Work

1. Pre-Planning & Kickoff

- a. Meet with the City of Norman staff to develop clear objectives and vision, scope, schedule and processes for implementing the wayfinding pilot project
- b. Review all applicable national, state and local codes as they relate to signage
- c. Obtain and review all relevant GIS and data from the City
- d. Review the Wayfinding Master Plan with the City to gather comments that could influence the design development refinement

Meetings: One kickoff meeting in Norman with the City Staff

Norman Staff Support: Provide all relevant GIS and data

2. Design Development Refinement

- a. Review the existing conceptual designs, plans and approach
- b. Review the existing district icons
- c. Walk the pilot program area to review wayfinding approach, preliminary locations, confirm dimensions, and identify conflicts
- d. Refine and develop the components of the program, illustrating each sign type, including typography, color, iconography, cartography, materials, finishes, fabrication methods, dimensions, mounting methods, and lighting recommendations
- e. Develop required drawings for mock-up fabrication of the pilot project signage
- f. Coordinate and work with a manufacturer to procure a full-size mock-up of the pilot project typical sign type for onsite review of legibility, color clarity and other factors. The fabrication cost of the mockup to be paid by the City.
- g. Present designs to a broader stakeholder group
- h. Adjust design concepts accordingly and present to project management for approval to proceed
- i. Develop and present sample specifications for project management review
- j. Confirm the opinion of probable construction cost and schedule, if needed
- k. Study alternative fabrication methods for value engineering, if needed

Meetings: One meeting in Norman to present designs to the stakeholder group and conference calls as needed for review and commenting

Norman Staff Support: Develop the stakeholder committee and secure a meeting location for the stakeholder presentation

3. Design Intent Documentation Services

- a. Finalize design concepts of all signage elements in the program, illustrating each sign type and identifying all colors, typography, materials, graphics and dimensions, suitable for bidding
- b. Finalize detailed location plans and message schedules for each signage element to verify locations, count and nomenclature locations, count and nomenclature
- c. Finalize specifications suitable for bidding
- d. Develop all digital vector art and/or electronic art files needed and as outlined in the specifications for use by the manufacturer in fabricating the signage elements
- e. Develop all copy layouts as necessary
- f. Provide a complete set of documents (design drawings, location plans, message schedule and specifications) in digital format for the fabrication of prototypes
- g. Work with project management to develop implementation priorities and phasing, as needed

Meetings: Conference Calls as needed for review and commenting

4. Bid Assistance Services

- a. Develop a list of prospective bidders for signage construction and installation suitable for this project
- b. Develop a draft package for signage construction and installation
- c. Finalize a bid package based on comments received from the City and stakeholders

Meetings: Conference Calls as needed for review and commenting

Attachment B

Schedule

The Scope of Work will be completed within four months of receipt of Notice to Proceed.

Attachment C

Compensation

Owner shall pay Engineer a Lump Sum fee of \$20,000.

The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.