

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and JWebb & Associates, LLC (CONSULTANT) for the following reasons:

1. OWNER intends to construct and coordinate with the Burlington Northern Santa Fe Railway Company the installation of Supplemental Safety Devices for the establishment of a Railroad Quiet Zone in Norman, between Post Oak Road and Acres Street (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 ____th 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 other 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 agrees to defend, indemnify, and hold harmless the OWNER, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the CONSULTANT in the performance of services under this Agreement. OWNER agrees to defend, indemnify, and hold harmless the CONSULTANT, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the OWNER in the performance of services under this Agreement, provided such indemnification shall be applicable only to the extent sovereign immunity has been waived pursuant to Oklahoma law. The CONSULTANT and the OWNER each agree to promptly service notice on the other party of any claims arising hereunder, and shall cooperate in the defense of such claims. 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 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 without at least thirty days' written notice to OWNER. 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

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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. 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, guarantee or warrant 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:

Angelo Lombardo, P.E.
Transportation Engineer
City of Norman
P.O. Box 370
Norman, OK 73070

JWebb & Associates, LLC:
Dr. Jack W Webb, P.E., PTOE
Senior Principal
11135 Shortmeadow Drive
Dallas, Tx 75218

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.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction. 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 JWebb & Associates, LLC have executed this Agreement.

DATED this __ th day of _____, 2015.

The City of Norman
(OWNER)

Signature _____

Name _____

Title _____

Date _____

Attest:

City Clerk

JWebb & Associates, LLC

Signature _____

Jack W Webb

Senior Principal

May 15, 2015

Attest:

Secretary

Approved as to form and legality this 21 day of May 2015.

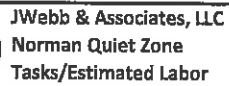
City Attorney

Attachment "A"
Scope of Services
Norman Quiet Zone Improvements
JWebb & Associates, LLC
05/15/2015

1. The primary corridor will require plan view drawings for each of the following grade crossing locations that are anticipated to require additional Supplemental Safety Measure improvements:
 - a. Post Oak Road;
 - b. Constitution Street;
 - c. Lindsey Street;
 - d. Brooks Street;
 - e. Boyd Street;
 - f. Eufaula Street;
 - g. Acres Street.
2. The following crossing locations are not anticipated to require additional Supplemental Safety Measure improvements and consequently will not require plan view drawings:
 - a. Cedar Lane Road;
 - b. Duffy Street;
 - c. Main Street;
 - d. Gray Street.
3. Any improvements necessary to facilitate the placement of the fencing along the Legacy Trail will be coordinated by the City. The design of any necessary fencing improvements will be developed by the City.
4. If deemed necessary by the City, secondary components of the scope would also include additional plan view drawings and the coordination of Supplemental Safety Measure improvements at the following locations:
 - a. Lexington Street;
 - b. Rock Creek Road
 - c. Tecumseh Road;
 - d. Franklin Road;
 - e. Indian Hills Road.


5. The primary scope includes provisions for Professional Services supporting the coordination of actual improvements to be completed by the Burlington Northern Santa Fe Railroad:
 - a. The coordination of Diagnostic Team Inspections for each grade crossing requiring improvement;
 - b. The submittal of estimate requests for proposed improvements at each grade crossing requiring improvement;
 - c. The preparation and submittal of the agreements necessary to implement the necessary improvements at each grade crossing requiring improvement;
 - d. The preparation of cost estimates for any necessary Supplemental Safety Measure improvement(s);
 - e. The preparation and distribution of the required Notice of Intent to appropriate agencies.
6. The primary scope also includes provisions for:
 - a. Project tracking status with the railroad;
 - b. Field inspection activities associated with improvements completed by the railroad;
 - c. Construction bid document or contractor selection activities associated with the completion of any necessary Supplemental Safety Measures;
 - d. Any necessary final acceptance activities associated with construction completed by the railroad;
 - e. Monthly status reporting detailing the progress and status of improvements;
 - f. Monthly status meetings with City personnel;
 - g. Two City Council meetings;
 - h. Two public meetings;
 - i. Plan-view drawings that do not include profile data for any Supplemental Safety Measure improvements as well as any improvements to be completed by the railroad.
7. General provisions of this Scope of Services include:
 - a. Preparation for City Council/Public Meetings including the compilation, formulation and revision (based on City comments) of materials necessary for presentation to the appropriate constituents;
 - b. The incorporation of appropriate information provided by the City, for any fencing improvements along Legacy Trail;
 - c. Monthly travel to Norman to provide project status reporting.

Task	Begin Date	End Date
Quiet Zone Calculations	5/26/2015	6/30/2015
Pre DTI Letter	6/15/2015	6/18/2015
Diagnostic Team Inspection	6/29/2015	7/28/2015
Post DTI Letter	7/1/2015	7/31/2015
Plan View Drawing	8/1/2015	8/14/2015
Request for Estimate	8/7/2015	8/14/2015
Draft Agreement	9/1/2015	12/1/2015
SSM Estimates	12/1/2015	2/28/2016
Progressive/Final Invoice Verification	12/1/2015	2/28/2017
"Notice of Intent" Distribution	2/18/2017	5/1/2017
Final Inspection	2/28/2017	4/1/2017



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Attachment "C"
Secondary Locations

<div>  JWebb & Associates, LLC Norman Quiet Zone Tasks/Estimated Labor </div>													
At-Grade Railroad Crossings		Quiet Zone Calculations	Pre DTI Letter	Diagnostic Team Inspection	Post DTI Letter	Plan View Drawing	Request for Estimate	Draft Agreement	Progressive/Final Invoice Verification	SSIM Estimates	"Notice of Intent" Distribution	Final Inspection	Labor Hours
	Lexington Street	0.75	0.25	0.50	0.50	5.00	0.75	1.00	1.00	2.00	1.50	0.50	13.75
	Rock Creek Road	0.75	0.25	0.50	0.50	5.00	0.75	1.00	1.00	2.00	1.50	0.50	13.75
	Franklin Road	0.75	0.25	0.75	0.50	6.00	0.75	1.00	1.00	2.00	1.50	0.50	15.00
	Tecumseh Road	0.75	0.25	0.50	0.50	5.00	0.75	1.00	1.00	2.00	1.50	0.50	13.75
	Indian Hills Road	0.75	0.25	0.50	0.50	5.00	0.75	1.00	1.00	2.00	1.50	0.50	13.75
	Task Total (Hrs)	3.75	1.25	2.75	2.50	26.00	3.75	5.00	5.00	10.00	7.50	2.50	70.00
	Additional Tasks												
	Meetings												
												Total Hrs	\$/HR
												70.00	\$175.00
													Total \$
													\$12,250.00