



January 22, 2021

David Riesland, PE
Transportation Engineer
City of Norman
Norman, OK 73069
David.Riesland@NormanOK.gov

Re: Professional Services Agreement
City of Norman Wayfinding Phase 1
Norman, Oklahoma

Dear Mr. Riesland,

Kimley-Horn and Associates, Inc. ("Kimley-Horn") is pleased to submit this letter agreement (the "Agreement") to the City of Norman ("Client") for providing professional landscape architectural services for the proposed City of Norman Wayfinding Project Phase 1 (the "Project") located at various locations throughout the City of Norman ("City"). The Project Understanding and Scope of Services are outlined below.

PROJECT UNDERSTANDING

Kimley-Horn understands that the Client desires to continue installing wayfinding signage based on the Wayfinding Master Plan documents. The Client has identified the potential for up to twenty-two new signs along Lindsey Street, Chautauqua Ave, and Jenkins Ave and around the municipal buildings as shown on the following pages.

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**KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS**

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the

Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section 9 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 9 shall require the Client to indemnify the Consultant.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

SUBJECT SITE

The anticipated sign locations are shown below.



SCOPE OF SERVICES

Kimley-Horn will provide the services specifically set forth below.

Task 1 Planning & Kickoff

This task includes the initial planning and data gathering portion of the project.

Our work will consist of the following:

- A. Attend a kick-off meeting to develop clear objectives, vision, scope, schedule, and processes for the Phase 1 implementation.
- B. Review applicable national, state, and local codes as they relate to wayfinding signage.
- C. Obtain and review relevant GIS and other base map data from the City.
- D. Obtain message lists from the City that are to be included in the program.
- E. Evaluate the destination locations and anticipated traffic flows to validate message lists
- F. Review the Wayfinding Master Plan and gather comments that could influence the Design Development Refinement Phase

One kickoff meeting with City staff is included in this task. The kickoff meeting will either be in-person or via a conference call depending on the Client's preference.

Task 2 Design Development Refinement

This task includes the refinement and development of design development drawings. Our work will consist of the following:

- A. Review existing designs, icons, plans, and approach
- B. Walk the pilot program to best understand the successes and deficiencies of the existing pilot project signs
- C. Walk the proposed Phase 1 program to review wayfinding approach, locations, dimensions, visible existing utilities, and identify challenges and conflicts, if observed.
- D. If needed, refine/adjust the existing design concepts to address any deficiencies or challenges observed during the site walks.
- E. Present refined design concepts via a conference call with the City Staff.

One on-site meeting to meet and walk the existing and proposed sign locations is included in this task.

Task 3 Design Intent Documentation

This task includes the following:

- A. Preliminary 90% design intent documents
 - a. Prepare preliminary 90% design intent documents for each signage elements in the program, illustrating each sign layout and identify anticipated colors, typography, materials, graphics and dimensions that are suitable for bidding.
 - b. Prepare detailed location plans for the location of each signage element. The location plans will be provided on a georeferenced aerial image with approximate sign location dimensions from two known points provided. Existing utilities will be shown to the extent provided by the City of Norman GIS database.
 - c. Prepare technical specifications
- B. Review preliminary 90% design intent documents and technical specifications with the City via a conference call.
- C. Incorporate one round of review comments into the final design intent documents.
- D. Final design intent bidding documents
 - a. Provide a final set of bidding documents (design intent, locations plans and specifications) in digital format to the City. Bid set to include the following:
 - i. Signage graphic layout sheets
 - ii. Messaging sheets
 - iii. Sign detailing sheet including materials, dimensions and general footing/breakaway design. No engineered drawings will be provided. Contractor to provide stamped engineered shop drawings through the submittal process.
 - iv. Final location plans for each sign as described in Task 3A

One conference call with City staff to discuss review comments is included in this task.

Task 4 Bidding Assistance

This task captures the effort identified below. Due to the unknown level effort required for this task, the budget estimate is based upon 30 hours of effort. If additional effort is required for completion of this task it will be billed at our then current hourly rates in addition to the estimated fee identified above.

- A. Bid Document Preparation and Contractor Notification: Kimley-Horn will issue bid packages for the submittal of quotations to perform the work and conduct one pre-bid meeting with potential bidders and the Client. Kimley-Horn will tabulate the bids received and evaluate compliance of bids with the bidding documents. Kimley-horn will prepare a written summary of this tabulation and evaluation. If requested, Kimley-Horn will notify the selected Contractor.
- B. As directed by the Client, Kimley-Horn will respond to questions from potential bidders.

One prebid meeting is included in this task. The prebid meeting will either be in-person or via a conference call depending on the Client's preference.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Opinions of probable construction costs
- Revisions to design intent drawings after design approval
- Attorney fees and documentation for license agreements, zoning, permitting, easements, variances, etc.
- City of Norman inspection services, including any special inspections (as defined by International Building Code)
- Additional bidding phase services beyond what is provided in the scope of services.
- Construction Phase Services
- Aerial photography
- Sign structural design
- Topographic survey or signed survey
- Subsurface utility survey and engineering
- Existing easement searches
- Metes and bounds legal descriptions
- Preparation of preliminary or final plat and boundary survey
- Geotechnical investigation
- Post construction survey or record drawings
- SWPPP Plan Manual / Submissions
- Revisions due to changes in regulations
- Materials testing
- Archaeological survey
- Submittal, Permitting, or Impact Fees
- Roadway or sidewalk design
- Temporary traffic control plans
- Environmental permitting
- Additional meetings

INFORMATION PROVIDED BY CLIENT

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. Kimley-Horn will not be liable for errors or omissions in our work that were contributed to by errors or omissions in the provided information. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to:

The City will provide all of the basemap information (GIS/AutoCad files) that will be used to develop the sign location plans. Available survey, utility, electrical and easement information will be provided by the City.

SCHEDULE

We will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

FEE AND EXPENSES

Kimley-Horn will provide the design and consulting services described within the Scope of Services for the following fee below:

Task	Description	Fee	Fee Type
1	Planning and Kickoff	\$9,800	LS
2	Design Development Refinement	\$11,200	LS
3	Design Intent Documentation	\$12,900	LS
4	Bidding Assistance	\$5,700	LS
	Total	\$39,600	

Fees Types:

LS = Lump Sum Fee

FEE TYPES, EXPENSES, AND BILLING

Lump Sum (LS) tasks will be invoiced based on the percent completion of the tasks.

All permitting, application, recording, and similar project fees will be paid directly by the Client.

Project billing will be monthly, and payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn is not a Contingent Partner in this project. As such Kimley-Horn will be paid in full for all Professional Services rendered.

This agreement is subject to, and only to, the attached Standard Provisions.

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to City of Norman.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to david.riesland@normanok.gov

_____ Please copy katherine.coffin@normanok.gov

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute two copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed: 

Printed Name: Darran Scott, PLA

Title: Project Manager

Signed: 

Printed Name: Steven Cooksey, P.E.

Title: Assistant Secretary

Agreed to by:

CITY OF NORMAN

SIGNED:



PRINTED NAME:

DARREL L. PYLE

TITLE:

CITY MANAGER

DATE:

1-26-21

Attachments

Standard Provisions