

July 6, 2021

Megan Mainer
Director of Parks & Recreation
City of Angleton
121 S. Velasco
Angleton, TX 77515

**Re: Professional Services Agreement
Park Standards**

Dear Mrs. Mainer,

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to The City of Angleton (“Client”) for providing Professional Services associated with the above referenced project.

PROJECT UNDERSTANDING

Kimley-Horn understands that the Client seeks professional assistance in the development of Park Standards to guide developers, consultants and staff on future park improvements. Tasks may include coordination and meetings, developing or modifying standards in an effort to prepare a Park Standards document. Our understandings and assumptions which this Agreement is based include:

- The Client has directed Kimley-Horn to utilize the City of Virginia Beach, VA “Design Standards Manual” and the City of Alexandria, VA “Park Facility Standards Manual” as a template for formatting and content on replica and modified park standards.
- We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client’s consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:
 - List of Parks
 - Lakeside Park Construction Documents
 - Bates Park Construction Documents
 - Dickey Park Construction Documents
 - KAB Plant List
 - Gateway Master Plan
 - Corporate ID Package
 - Applicable details, specifications, and standards to reference
- The Consultant will rely upon the timely response and participation of the Client.

SCOPE OF SERVICES

Kimley-Horn will provide the services specifically set forth below. The approach to developing the Park Standards includes two phases: Evaluation Phase and Development Phase.

Task 1 Evaluation Phase \$10,000 Lump Sum

The Consultant will attend a Kickoff Meeting with the City to discuss the City's current standards, confirm new standards to include, review documents to reference in development of modified and replica park standards, and provide the Consultant with the applicable documents to utilize. During this meeting, the Consultant will also confirm which parks to include in the Park Development Standards section.

Based on initial discussions with the Client, it is our understanding the following Park Standards will be included:

- Disc Golf
- Restroom Building
- Parking lots (concrete, asphalt, gravel, pervious)
- Trails (concreted, aggregate, natural)
- Baseball / Softball (field, backstop, dugout cover)
- Soccer (field, goal)
- Basketball (court, goal system)
- Horseshoe Pit
- Tennis Court (court, netting)
- Volleyball (court, netting, sand)
- Football (field, goal)
- General Fields
- Court Surfacing
- Bleachers
- Playground (site considerations, equipment, surfacing: wood fiber or poured in place rubber, drainage)
- Pedestrian Prefabricated Bridge
- Decks/Boardwalks
- Shelters (wood, fabric)
- Lighting (street, parking lot, pathways, areas, athletic fields, ground recessed, historic pole)
- Fencing (chain link, metal, wood)
- Signage (Entry, educational, wayfinding, regulatory)
- Site furnishings (bench, bike rack, grill, picnic table, trash receptacle, pet waste disposal, drinking fountain, pet fountain, flagpole, bollards)
- Park Utilities
- Planting Design
- Irrigation
- Site prep and clean up

The Consultant will review the information provided in the Kickoff Meeting, evaluate the information, and develop a spreadsheet outline for the Park Standards. Outline to include references to modified park standards (based on information provided by the City), new park standards (based on limited to

no information provided by the City), and replica park standards (based on the same standard developed by Virginia Beach and/or Alexandria's Park Standards without any modifications). Upon completion of the outline, Kimley-Horn will meet with staff to confirm the document direction and incorporate any feedback into the Development Phase.

This task includes project management effort for the preparation of progress reports, meeting notes, project workplan, schedule, administration, and coordination with staff.

Meetings: Two (2) in person

Deliverables: Outline of Park Standards spreadsheet

Task 2 Development Phase \$75,000 Lump Sum

The Consultant will prepare a Park Standards document in accordance with the Outline of Park Standards from the Evaluation Phase. Anticipated sections include:

- Cover page
- Table of Contents
- Introduction
- Park Development Standards
- User Guide / Park Standard Template
- Park Standards

Park Standards content to include:

- Definition / Purpose – scope and functionality of each component
- General information – as applicable: jurisdictional requirements, special conditions, preferred manufacturer, related sections, design criteria
- Materials / Finish – as applicable: treatment, fabrication requirements, color
- Features – components, options
- Installation – method, specific site requirements
- Life cycle – warranty requirements, site requirements
- Standard detail / Example Photo

The Consultant will develop up to 30 modified park standards (based on information provided by the City), up to 20 new park standards (based on limited to no information provided by the City), and up to 15 replica park standards (based on the same standards developed by Virginia Beach and/or Alexandria's Park Standards). The Consultant shall rely on all information supplied by the Client as accurate and correct. Consultant is not responsible for additional work required due to inaccurate, incorrect, or incomplete information supplied by the Client.

Kimley-Horn will prepare a Draft Park Standards Document to review with the Client up to 3 times at 30%, 60%, and 90% completion. Upon 60% completion, Kimley-Horn will meet with the Parks Board to gather feedback. Feedback to be incorporated into the subsequent deliverable. A Final Park Standards document will be prepared and printed to hardcopy. Additional revisions following the Final Park Standards document will be considered an additional service.

This task includes project management effort for the preparation of progress reports, meeting notes,

project workplan, schedule, administration, and coordination with staff.

Meetings: Four (4) in person

Deliverables: Draft Park Standards pdf, Final Park Standards pdf/hardcopy (up to 3)

SERVICES NOT INCLUDED

Any other services, including but not limited to the following, are not included in this Agreement:

- Additional meetings, stakeholder coordination, or presentations
- Additional standards above the quantities identified herein
- Developing Construction Specifications
- Developing Bidding or Construction Documents
- Cost estimates
- Website creation

ADDITIONAL SERVICES

Any items requested that are not specifically noted in the above scope will be considered additional services and will be provided as requested and authorized by the Client at our then current hourly rates.

SCHEDULE

The Consultant will work to prepare a mutually agreed upon schedule with the City.

FEE AND EXPENSES

Kimley-Horn will perform the services in Tasks 1-2 for the total lump sum labor fee below. Individual task amounts are informational only.

Task 1	Evaluation Phase	\$10,000	LS
Task 2	Development Phase	<u>\$75,000</u>	LS
	Total	\$85,000	

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

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 The City of Angleton.

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 _____

_____ Please copy _____

If you want us to proceed with the services, please have an authorized person sign this Agreement below and return 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.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

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

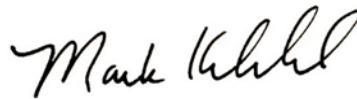
Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Kristina Malek, P.L.A.

Associate / Project Manager



Mark Kirkland, P.E.

Vice President

Attachment: Request for Information, Standard Provisions

Agreed to on this ____ day of _____, 2021.

City of Angleton

By: _____

Signature

Title

Print Name

Date

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

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 rate of 12% per year beginning on the 25th day. 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 within 25 days of receipt.
 - (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 two years 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 of Texas. 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.