

AGREEMENT FOR SERVICES
(National Sign Plazas, Inc. - Wayfinding Sign Program)

This AGREEMENT made this 6th day of December, 2022, between:

Client: City of Stephenville having a principal place of business at:
298 West Washington Street, Stephenville, TX 76401

and Consultant: National Sign Plazas, Inc., a California corporation, having a principal
place of business at:
2202 West Huntington Drive, Tempe, AZ 85282.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on December 6, 2022 ("Effective Date") and will continue in effect through December 31, 2023, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that Consultant is an independent contractor and not an employee, agent, joint venturer or partner of Client. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and Consultant or any employee or agent of Consultant. Both parties acknowledge that Consultant is not an employee for state or federal tax purposes. Consultant shall not be entitled to any of the rights or benefits afforded to Client's employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. Consultant shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

A. Specific Services

Consultant agrees to perform the "Services" as outlined in Exhibit A ("Specific Provisions") and Exhibit B ("Scope of Services"), subject to the payment terms and conditions described Exhibit C ("Milestone Schedule").

B. Method of Performing Services

Consultant shall determine the method, details and means of performing the above-described Services. Client shall have no right to, and shall not, control the manner or determine the method of accomplishing Consultant's Services.

C. Employment of Assistants

Consultant may, at the Consultant's own expense, employ such assistants as Consultant deems necessary to perform the Services required of Consultant by this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 below. Client may not control, direct, or supervise Consultant's assistants in the performance of those Services. Consultant assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

D. Place of Work

Consultant shall perform the Services required by this Agreement at any place or location and at such times as Consultant shall determine is necessary to properly and timely perform Consultant's Services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the Services to be performed by Consultant, Client agrees to pay Consultant the fixed sum of One Hundred Forty Thousand Dollars (\$140,000.00) ("Fixed Price") for the Services described in Exhibit B, and as set forth in Exhibit D ("Payment Schedule"). In no event however shall the total compensation paid to Consultant exceed the Fixed Price, unless approved by Client in a written authorization. (The sign type, quantity, and value will be determined in the Design & Planning phase to provide the overall cost and breakdown per sign)

B. Invoices

Consultant shall submit invoices for all Services rendered or comprehensive invoices based on milestones outlined in Exhibit D.

C. Payment

Payment of the Fixed Price shall be due according to the payment schedule set forth in Exhibit D. No payment will be made unless Consultant has first provided Client with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in Exhibit A, Section IV) incurred during the preceding period. If Client objects to all or any portion of any invoice, Client shall notify Consultant of the objection within five (5) business days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute.

D. Expenses

Consultant shall be responsible for all costs and expenses incident to the performance of Services for Client, including but not limited to, all costs of equipment used or provided by Consultant, all fees, fines, licenses, bonds or taxes required of or imposed against Consultant and all other of Consultant's costs of doing business. Client shall not be responsible for any expenses incurred by

Consultant in performing Services for Client, except for those expenses constituting “direct expenses” referenced on Exhibit A.

ARTICLE 5. OBLIGATIONS OF CONSULTANT

A. Tools and Instrumentalities

Consultant shall supply all tools and instrumentalities required to perform the Services under this Agreement at its sole cost and expense. Consultant is not required to purchase or rent any tools, equipment or Services from Client.

B. Workers' Compensation

Consultant agrees to provide workers' compensation insurance for Consultant's employees and agents and agrees to hold harmless, defend with counsel acceptable to Client and indemnify Client, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, arising out of any injury, disability, or death of any of Consultant's employees.

C. Insurance.

In addition to any other obligations under this Agreement, Consultant shall, at no cost to Client, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of \$1,000,000 per occurrence and aggregate. As a condition precedent to Client's obligations under this Agreement, Consultant shall furnish evidence of such coverage (naming Client, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

D. Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of Consultant under this Agreement may be assigned by Consultant without the prior written consent of Client, which Client may withhold in its sole and absolute discretion. For the purposes of this subsection, subcontracting shall not be interpreted as an assignment given that Consultant has retained liability and responsibility for the services outlined in Exhibit A.

E. State and Federal Taxes

As Consultant is not Client's employee, Consultant shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, Consultant acknowledges and agrees that:

- Client will not withhold FICA (Social Security) from Consultant's payments;

- Client will not make state or federal unemployment insurance contributions on Consultant's behalf;
- Client will not withhold state or federal income tax from payment to Consultant;
- Client will not make disability insurance contributions on behalf of Consultant;
- Client will not obtain workers' compensation insurance on behalf of Consultant.

ARTICLE 6. OBLIGATIONS OF CLIENT

A. Cooperation of Client

Client agrees to respond to all reasonable requests of Consultant and provide access, at reasonable times following receipt by Client of reasonable notice, to all documents reasonably necessary to the performance of Consultant's duties under this Agreement.

B. Assignment

Client may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of Consultant. Such assignment shall not release Consultant from any of Consultant's duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of Consultant's Business/ Death of Consultant.

Consultant shall notify Client of the proposed sale of Consultant's business no later than thirty (30) days prior to any such sale. Client shall have the option of immediately terminating this Agreement. Any such Client termination pursuant to this Article 7.A shall be in writing and sent to the address for notices to Consultant set forth in Exhibit A, Subsection V.H., no later than thirty (30) days after Client's receipt of such notice of sale.

If Consultant is an individual, this Agreement shall be deemed automatically terminated upon death of Consultant.

B. Termination by Client for Default of Consultant

Should Consultant default in the performance of this Agreement or materially breach any of its provisions, Client, at Client's option, may terminate this Agreement by giving written notification to Consultant. For the purposes of this section, material breach of this Agreement shall mean Consultant's repeated failure to professionally and/or timely perform any of the Services contemplated by this Agreement within a reasonable period of time after receiving a written notice of such breach from Client.

C. Termination for Failure to Make Agreed-Upon Payments

Should Client fail to pay Consultant all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, Consultant, at the Consultant's option, may terminate this Agreement if such

default is not remedied by Client within Fifteen (15) days after demand for such payment is given by Consultant to Client.

ARTICLE 8. GENERAL PROVISIONS

A. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

B. Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the Consultant shall comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 (“the Act”) in its current form and as it may be amended from time to time. Consultant shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 above.

C. Attorneys’ Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys’ fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

D. Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

E. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of Services by Consultant for Client and contains all the covenants and agreements between the parties with respect to the rendering of such Services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of Client prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon Client.

F. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of laws principles. Venue shall occur in Kerr County, Texas.

G. Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in Exhibit A, Section V.H. but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

H. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

I. Time of the Essence

All dates and times referred to in this Agreement are of the essence.

J. Waiver

Consultant agrees that waiver by Client of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Consultant:

National Sign Plazas, Inc.

By: _____
Name: Grant Hayzlett
Title: President

Taxpayer
Identification Number 77-0471997

Client:

City of Stephenville

By: _____
Name:
Title:

ATTEST:

EXHIBIT A

SPECIFIC PROVISIONS

I. PROJECT MANAGER

Consultant shall provide the Services indicated on the attached Exhibit B, Scope of Services (“Services”). To accomplish that end, Consultant agrees to assign Pat Fuller, Vice President, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, Consultant shall furnish all technical and professional Services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to complete the Services in accordance with the terms of this Agreement.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

Consultant shall commence the Services upon delivery to Consultant of a written “Notice to Proceed”, which Notice to Proceed shall be in the form of a written communication from designated Client contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, Pat Fuller, Vice President or Justin Arellano, Project Coordinator shall also be the designated Client contact person(s). “Notice to Proceed” shall be deemed to have been delivered upon actual receipt by Consultant, if otherwise delivered as provided in the Section V.F. (“Notices”) of this Exhibit A or upon receipt of the initial payment outlined in Exhibit D.

B. COMPLETION OF SERVICES

When Client determines that Consultant has completed all of the Services in accordance with the terms of this Agreement, Client shall give Consultant written Notice of Final Acceptance. Consultant may request this determination of completion when, in its opinion, it has completed all of the Services as required by the terms of this Agreement and, if so requested, Client shall make this determination within two (2) weeks of such request, or if Client determines that Consultant has not completed all of such Services as required by this Agreement, Client shall so inform Consultant within this two (2) week period.

III. PROGRESS SCHEDULE

The extent of the work of Consultant included within the Fixed Price will be as set forth in the attached Exhibit B and Exhibit C.

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to Consultant as provided for in Exhibit D.

Direct expenses are charges and fees not included in Exhibit B. Client shall be obligated to pay only for those direct expenses which have been previously approved in writing by Client. Consultant shall obtain written approval from Client prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

V. OTHER PROVISIONS

A. STANDARD OF WORKMANSHIP

Consultant represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and Client expressly relies upon Consultant's representations and warranties regarding its skills, qualifications and licenses. Consultant shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline as Consultant.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality reasonably acceptable to Client. The minimum standard of appearance, organization and content of the drawings shall be that used by Client for similar purposes.

B. RESPONSIBILITY OF CONSULTANT

Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. Consultant shall not be responsible for the accuracy of any project or technical information provided by the Client. The Client's review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable to Client in accordance with applicable law for all damages to Client caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

C. RIGHT OF CLIENT TO INSPECT RECORDS OF CONSULTANT

Client, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of Consultant for the purpose of verifying any and all charges made by Consultant in connection with this Agreement. Consultant shall maintain for a minimum period of one (1) year (from the date of final payment to Consultant), or for any longer period required by law, sufficient books and records in accordance with standard accounting practices to establish the correctness of all charges submitted to Client by Consultant, all of which shall be made available to Client at the Client's offices within five (5) business days after Client's request.

D. NO PLEDGING OF CLIENT'S CREDIT.

Under no circumstances shall Consultant have the authority or power to pledge the credit of Client or incur any obligation in the name of Client.

E. OWNERSHIP OF MATERIAL.

Work Product. All drawings, specifications and other documents and electronic data furnished by Consultant to Client under the Contract Documents ("Work Product") are deemed to be "Instruments

of Service” and Consultant shall retain the ownership and property interests therein, including the copyrights thereto.

Client’s Limited License After Completion. Client shall have a license to use the Work Product in connection with Client’s ownership, use, and occupancy of the land and the improvements comprising the project contemplated by the Services following the completion of the project, conditioned on Client’s express understanding that such use of the Work Product is, except to the extent Consultant is involved in such use, at Client’s sole risk and without liability or legal exposure to Consultant or anyone working by or through Consultant, including design consultants of any tier. It is understood and agreed in this respect that the Client may use the Work Product (including without limitation Work Product prepared by Consultant, or Consultant’s subcontracted architects and consultants), for the construction, reconstruction, or renovations of and additions to said wayfinding program elements and improvements (including, but not limited to those items listed in Exhibit B, “Scope of Services”), and the Client may permit qualified professionals to reproduce all or portions of the Work Product (including the design embodied in that Work Product) for incorporating into renovations of or additions to the wayfinding program and the associated elements if those professionals assume all responsibility for the resulting instruments of service and all references to the Consultant and the Consultant’s consultants are removed from the resulting instruments of service.

F. NOTICES.

Notices are to be sent as follows:

Client: City of Stephenville
ATTN: City Manager’s Office
298 West Washington Street
Stephenville, TX 76401
O: (254) 918-1220
E:

Consultant: Austin, TX:

National Sign Plazas, Inc.
Attn: Pat Fuller, Vice President
715 Discovery Blvd, #305
Cedar Park, TX 78613
O: (512) 670-3717
E: pfuller@nspag.net

Executive Office:

National Sign Plazas, Inc.
Attn: Grant Hayzlett, President
2202 West Huntington Drive
Tempe, AZ 85282
O: (480) 968-2978
E: ghayzlett@nspag.net

EXHIBIT B

SCOPE OF SERVICES

The following categories have been presented as an overview of the actions that will be performed by Consultant and governed by this Agreement. The following are presented as guidelines of the general services to be performed and are not meant to be construed as comprehensive to Consultant's duties under this Agreement.

1. Conduct a detailed assessment of the current plan. This assessment will include the analysis of each proposed location and creating a summary statement that will conclude the validity of the location.
2. Perform a site analysis for each proposed location to determine the needs of existing signage, possible removal of signage and any outstanding maintenance that needs to be performed prior to or during the new installation.
3. Work with City staff to ensure that the graphic needs of their logos, colors and artwork and any other requests are considered.
4. Present periodic summary reports to City staff and interested parties.
5. Present all of the final program elements including, but not limited to, construction standards, mapping, placement, construction documents, and design in a "manual" that will summarize the Client's wayfinding sign program.
6. At least one (1) presentation will need to be given to City Staff and / or City Council.
7. Develop updated maps and site plans that will aid in the development sign scheduling.
8. Create progress reports / message schedules and submit them to City staff.
9. Recommend materials that may better serve the function of the signage while being considerate of the existing design.
10. Expertly fabricate and deliver all of the components of the wayfinding program. This may include the design and development of components that do not currently exist in the plan.
11. Install each component with consideration of the surrounding environment, line-of-sight, MUTCD standards and TXDOT regulations.
12. Work with TXDOT and develop all necessary forms to allow for the successful use of TXDOT right-of-way with the preferred design.
13. Work with private land owners to establish easements and land use in the event that existing right-of-way is not viable.
14. Inspect all materials, prior to and after construction and installation, for warranty failures and quality craftsmanship. Perform a final walkthrough with City Staff.

Exhibits C, D, E, and F will not be executed until the Design & Planning Agreement has been completed. At that time the sign type, locations and value of each sign will be determined.

The values and dates in Exhibits C, D, E, and F will intentionally be left blank.

EXHIBIT C

Developing Your Wayfinding Program - Programmatic Information

I. PROJECT SCHEDULE

Consultant hereby agrees that the work outlined in this Agreement and the attached Exhibits B, C & E shall be completed, inspected and considered for acceptance by Client (Exhibit F) not later than _____, 2023. Consultant agrees to submit a request for inspection prior to _____, 2023 and Client agrees to respond to Consultant regarding said request on or before _____, 2023.

II. FINAL ACCEPTANCE

Client and Consultant shall schedule a final inspection of the inventory outlined in Exhibit E in order to determine the completion of the first phase of the wayfinding project. In the event that the parties agree that the project has been completed and meets the requirements of this Agreement, Client shall process Exhibit F and the final payment outlined in Exhibit D. In the event that Client is not satisfied with the completeness of the wayfinding project or Consultant has failed to meet the requirements of this Agreement at the time of final inspection then Client shall inform Consultant of the items that are not in compliance with this Agreement

A. TIME TO CURE

In the event that Consultant fails to meet the requirements of the Agreement, Client shall notify Consultant that they are in breach of the Agreement and provide them three (3) weeks to cure said breach. Client and Consultant agree that Consultant will not be held liable for delays due to weather, Client obligations, TXDOT review or the like and Consultant will only be held liable for breach as it relates to their control of the work outlined in this Agreement.

B. WARRANTY

Consultant agrees to warrant their labor relative to product assembly, site delivery and proprietary skill(s) for a period of one (1) year from the date of installation and Consultant agrees to warrant their labor relative to foundation installation for a period six (6) months from the date of installation. Further, Consultant agrees to execute manufacturer warranty repair/replacement on behalf of the Client.

C. MAINTENANCE

Consultant agrees to notify Client of the need for maintenance and repairs based on the periodic inspections Consultant may perform. If the cost of replacement/repair has not already been determined by this Agreement, Consultant and Client shall agree to said cost prior to Consultant's execution of repair(s).

III. ADDITIONAL PURCHASE/PHASES

Through the development of this Agreement Client and Consultant have addressed the possible development of future phases and/or purchases targeted at expanding the scope and influence of the wayfinding program within the Client area. In the event that Consultant decides not to

pursue future phases within the wayfinding program the Client shall be under no further obligation to utilize Consultant for sign replacement, repair, maintenance or the like.

IV. ADDITIONAL EXPENSES

Consultant and Client agree that in order for Consultant to deliver the products outlined in Exhibit E Consultant may need to provide additional services. Included in the purchase of this wayfinding program Consultant agrees to provide to Client supporting documentation for the appropriate development of the wayfinding program. Items shall include, but not be limited to site plans, maps, construction documents, shop drawings, message schedules and product samples. Client and Consultant further agree that needs may arise for the development of items that are necessary, but not covered within the scope of this Agreement. Items not covered by this Agreement shall include, but not be limited to design of new program elements, engineering of existing or new designs and landscape design. Client and Consultant agree that pricing shall be determined and approved prior to Consultant engaging in activities not covered by this Agreement.

EXHIBIT D

PAYMENT SCHEDULE (PREFERRED DESIGN)

<u>Payment Date</u>	<u>Payment Amount</u>
With Contract Execution (Effective Date)	
(30) Days After Effective Date	
Final Payment Summarized by the successful installation of 100% of the final program elements as summarized in <u>Exhibit E</u> and the complete execution of the Final Acceptance (<u>Exhibit F</u>).	
Total:	

PAYMENT SCHEDULE (ALTERNATIVE DESIGN)

<u>Payment Date</u>	<u>Payment Amount</u>
With Contract Execution (Effective Date)	
Final Payment Summarized by the successful installation of 100% of the final program elements as summarized in <u>Exhibit E</u> and the complete execution of the Final Acceptance (<u>Exhibit F</u>).	
Total:	

EXHIBIT E

**ITEMIZED SUMMARY/REPLACEMENT COSTS
(PREFERRED DESIGN)**

The following table illustrates the individual units and unit prices for the items that Client intends to purchase for the wayfinding program described herein. For a period of not less than one (1) year from the effective date of this Agreement Consultant agrees to honor the pricing outlined in this Exhibit F for the purpose of additional purchases or replacement of prior purchases.

Item	Sign Type	Unit Price	Units	Total
1				
2				
3				
4				
Total				

**ITEMIZED SUMMARY/REPLACEMENT COSTS
(ALTERNATIVE DESIGN)**

The following table illustrates the individual units and unit prices for the items that Client intends to purchase for the wayfinding program described herein. For a period of not less than one (1) year from the effective date of this Agreement Consultant agrees to honor the pricing outlined in this Exhibit F for the purpose of additional purchases or replacement of prior purchases.

Item	Sign Type	Unit Price	Units	Total
1				
2				
3				
4				
Total				

EXHIBIT F

NOTICE OF FINAL ACCEPTANCE

In consideration of this Agreement and the scope of services provided for under this Agreement Client and Consultant do hereby agree that Consultant has met all of Client's needs pertaining to the requirements necessary for issuance of the final payment. For the purpose of calculating the final payment Client shall determine Consultant's adherence to the Project Schedule and apply penalties, if necessary. Further, in executing this Final Acceptance the parties agree that Consultant has provided the services and products outlined herein.

Item	Sign Type	Unit Price	Units	Delivered (Yes/No)
1	VEH.01	\$0.00		
2	VEH.02	\$0.00		
3	VEH.03	\$0.00		
4	PED.01	\$0.00		

Payments to Date	\$0.00
Additions	\$0.00
Final Payment	\$0.00

Consultant:

National Sign Plazas, Inc.

By: _____

Name: Grant Hayzlett

Title: President

Date: ____/____/2022

Client:

City of Stephenville

By: _____

Name:

Title: City Manager

Date: ____/____/2022