

AGREEMENT FOR SERVICES

This Agreement (“Agreement”) is entered into by and between the CITY OF WYLIE and NATIONAL SIGN PLAZAS, INC., a California corporation (“Contractor”) (collectively, the “Parties”).

WHEREAS, City Code of Ordinances Section 9.E allows City to install Kiosks within rights-of-way and,

WHEREAS, City desires to initiate a Kiosk Program to give direction to subdivisions, developers and homebuilders within the City, and to contract for the installation and maintenance of the Kiosks and sign panels; and

WHEREAS, Contractor represents that it is a California corporation authorized to do business in the State of Texas; and

WHEREAS, Contractor desires to install Kiosks as described more fully in this Agreement; and

WHEREAS, Contractor desires to maintain the Kiosks after their installation and to lease space on the Kiosks to developers and homebuilders and to bill and collect fees from the developers and homebuilders for itself and for the City; and,

WHEREAS, Contractor submitted a proposal that meets the City’s needs.

NOW, THEREFORE in consideration of these recitals and other good and valuable consideration, the value and receipt of which is acknowledged, City and Contractor agree as follows:

1. Recitals. The Recitals above are hereby incorporated into this Agreement by reference.
2. Contract Documents. The Contract Documents, which set forth the entire Agreement of the Parties, are named below. In the event of a conflict between the terms of two or more documents, they shall take priority in the order set forth below including, but not limited to, the sign ordinance of Wylie, which is incorporated herein as it now exists or may be amended from time to time:
3.
 - A. All applicable laws and regulations of the CITY OF WYLIE and the STATE of TEXAS.
 - B. This Agreement.

Each party shall comply with all of the terms, conditions and specifications contained in the Contract Documents.

1. Scope of Work. Contractor shall perform the work set forth in the Contract Documents. In general, this work shall consist of the following:

In administrating the Kiosk Program, the contractor will:

- A. Construct, install, maintain and repair approved Kiosks and sign panels at no cost to the City.
- B. Contract with developers and homebuilders for the lease of sign panels.
- C. Assist City in determining appropriate locations for Kiosks.
- D. Assist City with identifying and removing all illegal off-premise signage.
- E. Attend meetings as necessary with City staff and developers to coordinate project.
- F. Collect all lease payments and remit to City, on a quarterly basis, an administrative fee as specified in Section 4.B of this document.

2. Definition, Purpose of Kiosk Programs and Specifications of Kiosks.

- A. Definition. For the purposes of this Agreement, a Kiosk is a ladder style sign multiple sign panels that is installed within the public right-of-way, and which complies with all applicable sign regulations set forth in the Wylie Code of Ordinances. The specifications of the Kiosk and sign panels are more fully developed in these Contract Documents.
- B. Purpose of Kiosks. The purpose of Kiosks is to provide direction for homebuyers, and the like, to the location of subdivisions, housing developments, homebuilders and public facilities within the City of Wylie while discouraging the placement of unsightly and hazardous off-site directional signs.
- C. Specifications of Kiosks and Sign Panels. Contractor agrees to manufacture and install Kiosk structures and sign panels in accordance with the specifications in these Contract Documents, City Ordinance No. 2008-33, and the following:
 1. Kiosk Structures shall not exceed twelve (12) feet above average grade. Structures shall be more completely described in Exhibit A.
 2. Kiosks shall be constructed of steel and/or aluminum and shall be capable of displaying up to ten (10) sign panels, doubled-sided, if necessary.
 3. A City topper panel will be designed for the City of Wylie and shall be prominently displayed at the top of any Kiosk within the jurisdictional limits of Wylie, TX and shall be visible on any side of a Kiosk which displays directional sign panels.
 4. The color of all Kiosk Structures shall be black. All sign panels shall conform to Section 2.C.11 below.
 5. The Contractor shall submit final design plans to the City for approval prior to installation of any Kiosk.
 6. No additions, tag sign streamers, attention-getting devices or other appurtenances shall be attached to any Kiosk or sign panel.
 7. Kiosk locations shall be approved and designated by the City with the assistance of the Contractor.
 8. At the City's request and direction, the Contractor shall remove and relocate any Kiosks within thirty (30) days of the receipt of written notice at no cost to the City/County.

9. Contractor shall provide, at no cost to the City, at least one panel in addition to the top panel of each kiosk for use as directional signage to municipal facilities or information about city-sponsored events.
 10. Contractor shall provide to the City a semi-annual inventory report of existing installed sign panels
 11. Sign panels shall contain only the name of a residential community, subdivision, homebuilder, public facility, City and logo, the builder or developer's name and/or logo, the builder or developer's recognized color scheme, and directional information or the name of the builder/developer and logo and an appropriate directional arrow. Directional arrows will be of a uniform size; a line of text at the bottom of the sign panel with directional information is permissible if circumstances warrant it. Fluorescent colors are not allowed. Reflective colors and text are permissible. Unless so authorized by City, the sign panels shall not appear to replicate the commonly accepted color schemes of motorist signs.
 12. Contractor shall, at its own cost, maintain, repair, replace and repaint each sign panel as necessary or deemed necessary by the City. Upon notice by the City, Contractor agrees to undertake necessary repairs or replacement of any sign panel within seventy-two (72) hours of receipt of notice.
 13. Contractor shall not install or maintain any Kiosks or sign panels within the City, which are not in compliance with the terms of this Agreement.
 14. Sign Panels shall be constructed on Alpolic 360 or similar. The panels shall overlay with 3M or similar High-Performance Vinyl and overlaminated.
 15. Individual sign panels on the Primary Structures shall not exceed fifty (50) inches in horizontal length by fifteen (15) inches in height. Individual sign panels on the Community Structures shall not exceed fifty (50) inches in horizontal length by fifteen (15) inches in height. Individual sign panels on the Neighborhood Structures shall not exceed thirty (30) inches in horizontal length by thirty (30) inches in height.
3. Number of Kiosk Structures. The City has sole discretion to determine the number and placement of the Kiosks in its right-of-way. The number and location of Kiosks may be limited by the restrictions set forth in Ordinance 2008-33. Contractor must also comply with the administrative procedures set forth in Ordinance 2008-33 regarding the submission and approval of a map showing the number and location of the Kiosks. Contractor may submit to City at any time during the term of the Agreement subsequent requests for the timely approval of additional Kiosk locations, as may be expressed by homebuilders, developers, and residential communities over time. If the City feels that any location is unsafe or unnecessary, they may choose to refuse aforementioned sign approvals.
 4. Price and Payment Schedule for the Purchase of the Kiosks and Sign Panels. Subject to the provisions in Paragraph 6 below, the price and payment schedule for Kiosks shall be as follows:
 - A. Contractor will install the Kiosks and rotate City panels at no cost to the City.

- B. Contractor will collect, and remit to the City, an amount of \$10.00 per panel, per month (Excluding city directional panels). Said fees shall be remitted within ninety (90) days of the end of each fiscal quarter. Fiscal quarters will be based on the Contractor's fiscal cycle, beginning October 1 and ending September 30.

5. Term of Agreement and Termination of Agreement

- A. Term. The term of this Agreement is five (5) years.
- B. Renewal. At the end of the initial five-year term, this contract may be automatically renewed for an additional (3) three-year term if both parties agree in writing before the end of the five year term of their intention(s) to extend this agreement.
- C. Termination. This Agreement may not be terminated by either party, except for breach as provided for in this Agreement:
 - 1. Termination by City. If Contractor breaches and fails to remedy said breach as provided for in this Agreement, the City may terminate this contract. Contractor shall remove the Kiosks within thirty (30) calendar days after receiving a written termination letter from the City.
 - 2) Termination by Contractor. If Contractor terminates this Agreement before the end of the term as stated in subsection A immediately above, Contractor agrees that the Kiosks shall remain in place and that the sign panels and all receivables from the placement of the sign panels shall become the property of the City. Further, Contractor agrees to promptly transfer all information related to the placement of the sign panels to the City, including, but not limited to, the original sign service documents, an accounting of all open accounts, and all other relevant documents. After the transfer of all information, this Agreement shall be of no further effect.

6. Placement of Sign Panels. After the City's written approval and acceptance of the installed Kiosks, the City agrees to extend to Contractor an exclusive right to use the Kiosks for sign panel placements and to maintain the Kiosks and sign panels subject to the terms of this Agreement.

- A. Contractor agrees to offer and place sign panels for homebuilders, developers and residential communities. Contractor further agrees to use Contractor's best efforts to place all available sign panels.
- B. Contractor agrees that the placement fees for the sign panels will be set at market rate. Contractor shall be allowed an annual cost of living increase for the placement fees for the sign panels as determined by the Consumer Price Index.
- C. Contractor agrees to maintain all aspects of the placement of the sign panels, including entering into sign placement service agreements, billing, collecting fees, and paying any applicable taxes and fees.
- D. Contractor will remit to the City on a quarterly basis the amount of the City's Administrative Fee as specified in Section 4.B of this document.

- E. Contractor agrees to provide an annual report to the City pertaining to the number of sign panels installed within the City, the amount billed and the collection of the City's amount Administrative Fees.
- F. Contractor agrees that in no event will the City be liable for any fee payment or other fees related to the placement of the sign panels.
- G. Contractor agrees to include in all sign service agreements an assignment clause which will assign Contractor's rights to fee payment to the City in the event Contractor elects to terminate this Agreement pursuant to Paragraph 5.C.2 above.
- H. Homebuilders, developers, and residential communities with sites located within the jurisdictional boundaries of the City, present and soon-to-be-annexed, shall at all times be allowed to participate in the Kiosk program.
- G. City and Contractor agree that no sign panels other than those Manufactured and installed by Contractor shall be allowed on the Sign Structures

7. Maintenance of Kiosks:

- A. Contractor agrees to maintain the Kiosks and sign panels for the term of this Agreement.
- B. Contractor agrees to replace damaged Kiosks and sign panels, as it deems necessary or as requested by the City.
- C. Contractor agrees to provide to the City a telephone number and a contact person allowing the City to contact Contractor requesting maintenance on the Kiosks or sign panels 24 hours a day, seven days a week.
- D. Contractor agrees to repair all Kiosks within five (5) business days of the receipt of the City's written request for repair. Contractor further agrees to remove for repair all sign panels within seventy-two (72) hours of written notification of the need of repair by the City. Sign panel will be replaced within five (5) business days of the written notification. Email notification shall serve as proof of written request.
- E. Contractor agrees to maintain a regular maintenance schedule to check each Kiosk and sign panel for all necessary repairs and to complete those repairs promptly.
- F. Contractor agrees to maintain all Kiosks and sign panels in conformity with all terms of this Agreement.

8. Indemnification.

NATIONAL SIGN PLAZAS, INC., ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES AND/OR TRUSTEES (COLLECTIVELY REFERRED TO AS "COMPANY" FOR PURPOSES OF THIS SECTION), AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF WYLIE AND ITS OFFICERS, COUNCIL MEMBERS, REPRESENTATIVES, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INJURIES (INCLUDING DEATH) LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY OUT OF THE OPERATION OR PERFORMANCE OF COMPANY UNDER THIS AGREEMENT. THE CITY WILL NOT ACCEPT

LIABILITY FOR INJURIES THAT ARE THE RESULT OF THE NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION OF COMPANY. COMPANY AGREES TO ACCEPT LIABILITY FOR INJURIES TO ITSELF OR OTHERS CAUSED BY ITS OWN NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION. THIS INDEMNIFICATION PROVISION IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT BE LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN COMPANY AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE COMPANY, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY COMPANY IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CITY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CITY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. COMPANY SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF COMPANY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND OWNER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

9. Insurance. Contractor shall maintain in full force and effect throughout the entire term of this Agreement insurance with an insurance company authorized to conduct business in WYLIE, TX with the following policy limits.

- A. Comprehensive General Liability - \$2,000,000 combined aggregate
- B. Automobile Liability - \$1,000,000
- C. Workers Compensation
 - 1. Bodily Injury by Accident - \$1,000,000
 - 2. Bodily Injury by Disease - \$500,000

Contractor shall present a Certificate of Insurance in a form satisfactory to the City Attorney which shall name the City as an additional insured party on Contractor's Comprehensive General and Automobile Liability policies. If during the term of this Agreement, any such insurance is canceled, or if Contractor fails to renew same, or if the policy limits are reduced below the limits required above, such event shall constitute a default of this Agreement. Contractor shall immediately notify the City in writing if such an event occurs. Contractor shall have Five (5) business days to cure any such default.

- 10. Independent Contractor. Contractor shall, at all times herein, be an independent contractor and not an employee of the City.
- 11. Notice. Any notice required to be given pursuant to this Agreement may be personally served upon the parties or may be served by certified mail, return receipt required, to:

CITY:

City of Wylie, TX
 Attn: Brent Parker, City Manager
 300 Country Club Road
 Building 100, First Floor
 Wylie, TX 75098

Telephone: (972) 516-6010
 Fax: (972) 516-6026

CONTRACTOR:

National Kiosks
 Attn: Grant Hayzlett, President
 2202 West Huntington Drive
 Phoenix, AZ 85282

Telephone: (480) 968-2978
 Fax:

All notices, regardless of the nature of service, shall additionally be served upon Contractor at Contractor's office(s) in the State of Texas located at:

Attn: Patrick Fuller, Vice-President
 715 Discovery Blvd Ste 309
 Cedar Park, TX 78613
 Telephone: 512-670-3719
 Fax: (512) 670-3717

- 12. Assignment. No provisions of this Agreement or the Contract Documents may be assigned without prior written consent from both Parties.
- 13. Subcontracting. Nothing contained herein shall prevent the Contractor from subcontracting all or any part of the work related to the fabrication and installation of the Kiosk structures and production of the sign panels, which require equipment, materials and expertise which the Contractor reasonably may not be expected to possess. The Contractor shall not subcontract any other part of the work related to this Agreement or the Contract Documents without prior written consent from the City.
- 14. Miscellaneous.

- A. The Contract Documents represent the entire and integrated Agreement between the City and Contractor and supersedes all prior negotiations, representations of Agreements, whether written or oral, except as where noted;
 - B. The Contract Documents may be modified only by a written document signed by both parties and approved by the City Council at a public meeting;
 - C. This Agreement shall be governed under Texas State law, and any action relating to the Agreement shall be brought only in Collin County, Texas;
 - D. This Agreement and any amendment, waiver, approval or consent relating hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The delivery by any party of an executed signature page to this Agreement or any amendment, waiver, approval or consent relating hereto by facsimile transmission or by electronic email in Adobe Corporation's Portable Document Format (or PDF) shall be deemed to be, and shall be enforceable to the same extent as, an original signature page hereto or thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it;
 - E. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
15. Mutual Drafting. The City and the Contractor each has had opportunity to consult legal counsel regarding the drafting of this Agreement and the provisions of this Agreement shall not be construed against or in favor of either party.
16. Default and Remedies. If any Party fails to perform any of its obligations under the Contract Documents, such failure shall constitute a default. The non-defaulting Party shall give the defaulting Party written notice of the default. The defaulting Party shall have ten (10) business days after the receipt of such notice in which to cure the default. Failure to cure the default shall constitute a breach of this Agreement. In the event of a breach, the non-breaching party may terminate this Agreement and may obtain any reasonable remedy provided by law.
17. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
18. Ordinances. Except as specifically provided in the Agreement Documents, the parties agree that Company shall be subject to all Ordinances of the City, whether now existing or in the future arising.
19. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

20. Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
21. Dispute Resolution
- A. Should any dispute between the Parties arise under this Agreement (a “Dispute”), written notice of such Dispute shall be delivered from one party to the other and thereafter, the parties, through their appointed representatives or designees (each an “Authorized Representative”), shall first meet and attempt to resolve the Dispute in face-to-face negotiations. This meeting shall occur within thirty (30) days of the date on which a written notice of such Dispute is received from the complaining party.
 - B. If no resolution is reached through the informal process set forth in Section 10(a) above, at the direction of either party’s Authorized Representative, the parties shall engage in non-binding mediation for a period of no less than sixty (60) days (or such longer period as may be mutually agreed by the parties) (the “Mediation Period”). The mediation shall be conducted in Wylie, Texas by a single mediator mutually selected by the parties. The parties shall share equally in the fees of the mediator. If the Dispute remains unresolved following the Mediation Period, either party may seek any remedy at law or in equity that may be available. Any disputes shall be brought exclusively in the District Court of Rockwall County, Texas.
22. Attorneys’ Fees. If any judicial or non-judicial proceeding is initiated for the purpose of enforcing a provision of this contract, the prevailing party shall be awarded reasonable attorneys’ fees in addition to all other costs associated with the proceeding, whether or not the proceeding advances to judgment.
23. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
23. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its legal counsel.
24. Force Majeure. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing “force majeure” events shall deliver written notice of the commencement of any such delay resulting from such “force majeure” event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a “force majeure” event

causing such delay and the other party shall not otherwise be aware of such “force majeure” event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

25. No Boycott of Israel. Pursuant to Texas Government Code Chapter 2270, Company’s execution of this Agreement shall serve as verification that the Company does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

In Witness Whereof, authorized parties have signed this Agreement on the dates indicated below.

City of Wylie, TX

National Kiosks, Inc
a California Corporation

By _____
Brent Parker, City Manager

By _____
Grant Hayzlett, President

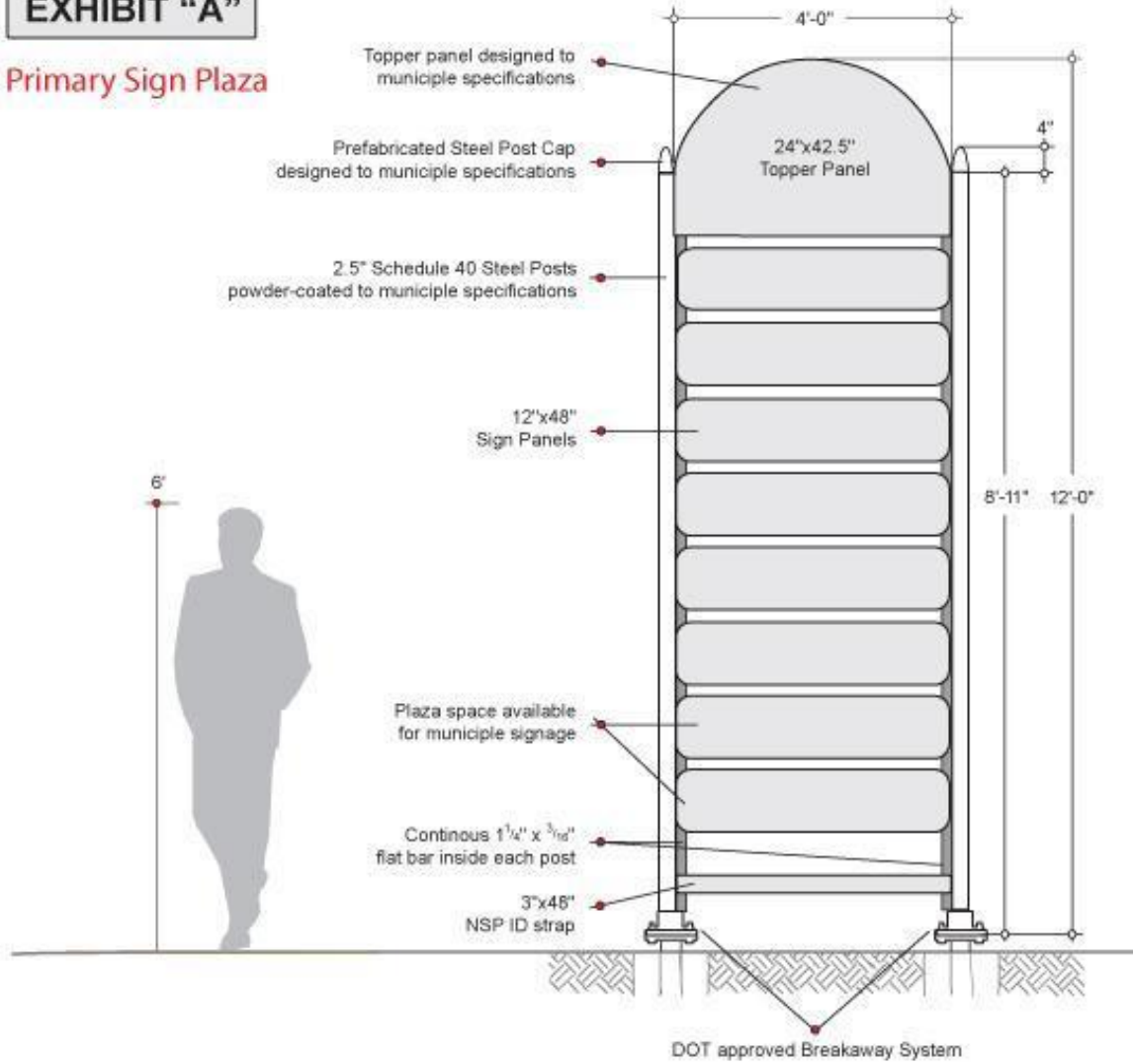
Date _____

Date _____

DRAFT

EXHIBIT "A"

Primary Sign Plaza



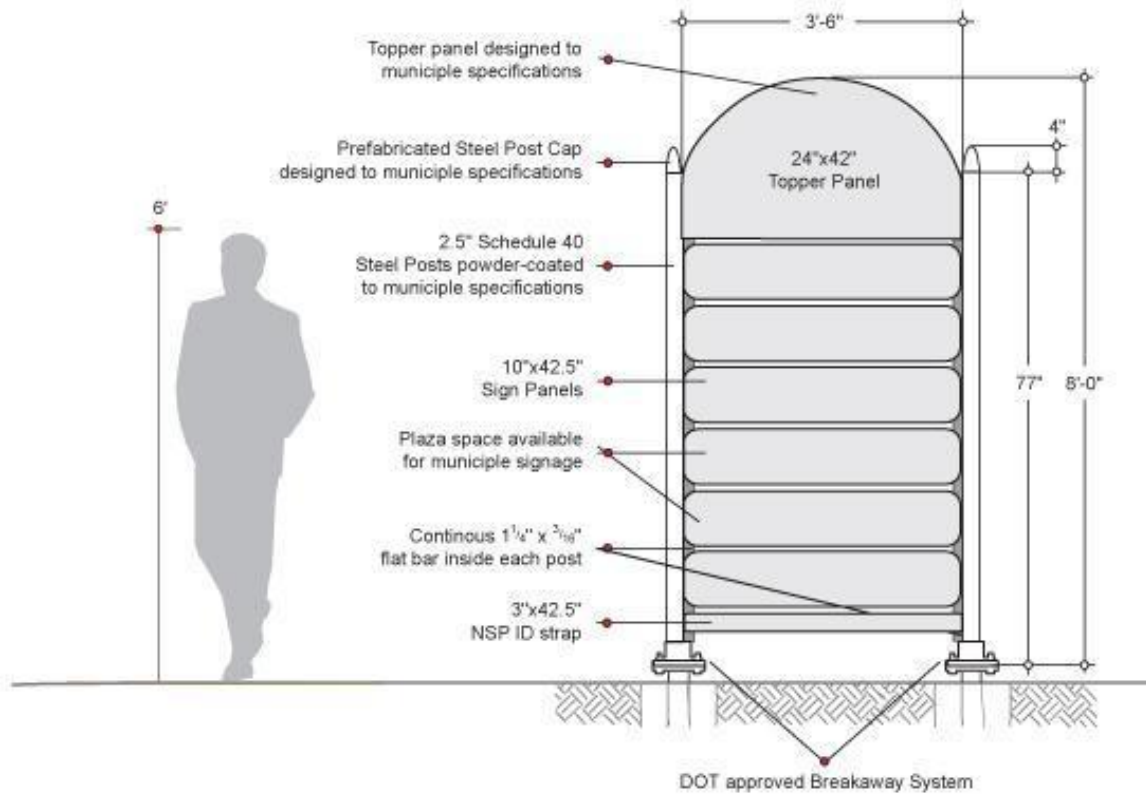
Primary Sign Panel Specifications

- Alpolic 350 substrate
- 2mm to 3mm thick
- Full-color graphics
- Directional arrow



EXHIBIT "A"

Community Sign Plaza



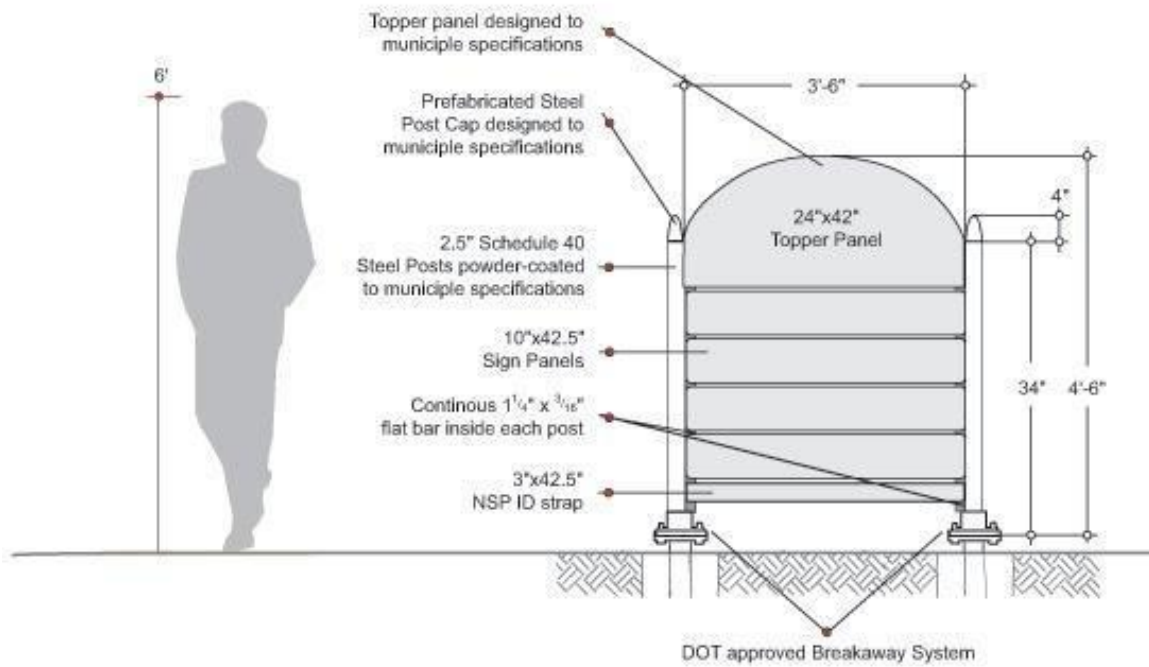
Community Sign Panel Specifications

- Alpollic 350 substrate
- 2mm to 3mm thick
- Full-color graphics
- Directional arrow



EXHIBIT "A"

Neighborhood Sign Plaza



Neighborhood Sign Panel Specifications

- Alpollic 350 substrate
- 2mm to 3mm thick
- Full-color graphics
- Directional arrow

