



November 22, 2021

Leslie Herman, Director
Town of Vienna Parks and Recreation
Vienna Community Center
120 Cherry Street SE
Vienna, VA 22180

Phone: 703.255.6356 Email: Leslie.Herman@viennava.gov

**RE: PROFESSIONAL SERVICES AGREEMENT, MEADOW LANE PARK
Site Survey**

Leslie:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the Department of Parks and Recreation of the Town of Vienna, Virginia ("Client") for providing site-survey services for Meadow Lane Park.

PROJECT UNDERSTANDING

Kimley-Horn understands that the Client desires to obtain a site survey for Meadow Lane Park. The existing 3.42 acre site is located at 400 Courthouse Road SW. The site is generally bounded by Ware Street, SW on the West, Meadow Lane SW on the South, Frederick Street, SW on the East, and Courthouse Road SW and a single family residence on the North. The site contains, mature trees, 1-diamond field, 1-basketball court, open lawn, pavilions, playground, restroom building, 2-tennis courts and drinking fountain. Standard parking and accessible spaces are located on adjacent streets.

SCOPE OF SERVICES – SITE SURVEY

Task-1 Site Boundary and Topographic Survey

Kimley-Horn will obtain services of a subconsultant to perform site boundary and topographic survey work. The subconsultant will obtain owners' names, tax maps, deeds, filed maps, utility maps, highway plans, flood map from FEMA and other documentation available. The subconsultant will then perform a site visit to locate property corner evidence which will be used to establish the property lines. A topographic survey including manmade and natural features and visible utilities will be performed on the property. The survey will extend approximately 25-feet onto adjacent properties and to the opposite face of curb on Meadow Lane, Ware Street and Courthouse Road. Elevations will be obtained at a thirty (30) foot interval with contours being generated at a one (1) foot interval. Trees, 4" DBH or larger and wetlands, if marked, will be located at the time of the survey. The topography will be based upon NGVD 29 datum and NAD 83 grid. Underground utility information will be based upon surface features, utility company mark outs, and mapping provided by the client. The subconsultant does not guarantee the underground utilities shown will comprise all the utilities in the area, either in service or abandoned. The subconsultant does not certify that the utilities are shown in the exact location, however the subconsultant will locate the utilities based upon the available information.

Deliverable: Information will be collectively analyzed and compiled into an appropriately scaled AutoCAD 2018 electronic drawing document and provided to the Town.

Task-3 Project Management

Kimley-Horn will administratively assist the Town in coordinating and administering work of the subconsultant. This effort will include scheduling work and confirming submission. We initially anticipate up to ¾-business day of direct effort to complete this task.

SCHEDULE, FEE and ITEMS PROVIDED BY CLIENT

Based on initial input from the Town, we anticipate that Task-1 and Task-2 will be performed generally during the 1st and 2nd quarters of 2022 and will commence coordination of work upon receipt of notice to proceed. Kimley-Horn will perform the above outlined services as follows:

Task	\$USD
Task-1 Site Boundary and Topographic Survey.....	9,000
Task-2 Project Management.....	1,000
Total.....	\$10,000

We will not exceed the total maximum lump sum labor fee without prior authorization from the client. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary. The scope of work and related fee is valid for sixty (60)-calendar days from date of this document. Payment is due within twenty-five (25)-calendar days of issuance date of invoice. The Client will provide full and open access to the site, adequate notice of meetings to stakeholders, timely review and provision of consolidated comments for deliverables. Kimley-Horn is entitled to rely on the accuracy of documents, jurisdictional information, mapping and other items provided by the client and/or other various sources. Verification of field condition variations, changes to previously approved work, and/or other modifications are not a part of this effort. The Client will provide a single point of contact that will act on behalf of the Town to implement actions and interact directly with the consultant team.

We will provide our services as expeditiously as practicable for delivery of the scope of work referenced herein and under the assumption of reasonable requests and timely responses by the Town. Due to the everchanging circumstances surrounding COVID-19, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the Town, sub-consultants, utility providers, and other public agencies. There could be unforeseen changes in anticipated working methods, 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 the Town for any delays, expenses, losses, or damages of any kind arising out of the impact of COVID-19.

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 Town of Vienna, Virginia. Kimley-Horn, in 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 concur with the foregoing and wish to direct us to proceed with the services, please have authorized persons execute a copy of this Agreement in the spaces provided below and return it to us with contact information for the Town of Vienna, Virginia's designated single point of contact.

On behalf of Kimley-Horn, we appreciate the opportunity to provide the above referenced services to you. With Kimley-Horn, you should expect more – and will experience better.

Thank you and Respectfully Yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Ron M. Kagawa, ASLA LEED AP
Principal in Charge/Landscape Architect



Jeffrey S. Holzer, CLARB CPSI
Project Manager/Landscape Architect

APPROVED & ACCEPTED

Date: 2021

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment(s): Kimley-Horn and Associates, Inc. Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

(1) Consultant's Scope of Services and Additional Services.

The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, 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 described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, 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 including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of 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 for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incidental to the responsibilities of the Client.

(3) Period of Services.

Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of 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 (cumulatively), Consultant's compensation shall be renegotiated.

(4) Method of Payment.

Compensation shall be paid to the Consultant in accordance with the following provisions:

- (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 for the duration of the project 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 to the Consultant 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 in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.

- (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, including but not limited to drawings, specifications, reports, and data or programs stored electronically, 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, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation 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 developed in the development of application 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. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(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 opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified 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 through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, 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 the result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) Insurance.

The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability

insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **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 undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **Limitation of Liability.**

In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the 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, resulting from or in any way related to the services under this Agreement from any cause or 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. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **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.

(12) **Certifications.**

The Consultant shall not be required to execute certifications 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 Construction Industry Mediation Procedures of 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.**

In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, 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's services include the preparation of documents to be used for construction 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) If the Consultant provides construction phase services, 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 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 the design professional 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 for 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.

(15) 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.

(16) 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.

(17) Miscellaneous Provisions.

This Agreement is to be governed by the law of the Commonwealth of Virginia. 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. Provided, however, that 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.

Please return this information with your signed contract; failure to provide this information could result in delay in commencing effort on the scope of work.

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	<input type="checkbox"/>	

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

