CITY OF CHARLES TOWN
BOARD OF PARKS AND RECREATION
AGENDA • AUGUST 10, 2023

Committee Meeting **CITY HALL CONFERENCE ROOM** **6:00 PM**

101 E Washington Street, Charles Town, WV 25414

1. CALL TO ORDER

2. APPROVAL OF MINUTES

3. UNFINISHED BUSINESS

: **2023-695** Pool/Pool House RFP Engineering Firm Review/Selection (Possible Executive Session)

: **2023-696** Master Parks Plan Scope and Fee
City of Charles Town - ParksMasterPlan Scope and Fee.pdf

: **2023-697** Day of Caring Service Projects

4. NEW BUSINESS

: Park Updates:

Jefferson Memorial Park
Evitts Run Park
Willingham Knolls Park
CraigHill/Happy Retreat
Skate Park

5. ADJOURNMENT

6. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at:

https://www.charlestownwv.us/government/agendas-and-minutes/

Board of Parks and Recreation
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/10/23
Department: Board of Parks and Recreation
Category: Information Only
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

2023-695 Pool/Pool House RFP Engineering Firm Review/Selection (Possible Executive Session)

Pool/Pool House RFP Engineering Firm Review/Selection (Possible Executive Session)

ATTACHMENTS:

Board of Parks and Recreation
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/10/23
Department: Board of Parks and Recreation
Category: Contract
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

2023-696 Master Parks Plan Scope and Fee

Master Parks Plan Scope and Fee

ATTACHMENTS:

- City of Charles Town - ParksMasterPlan Scope and Fee.pdf

July 26, 2023

Ms. Alissa Meeks
Director of Community Development
City of Charles Town
101 E. Washington Street
Charles Town, WV 25414

Re: City of Charles Town Master Parks Plan

Dear Ms. Meeks:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of Charles Town ("Client") for providing planning services for the development of a Master Parks Plan.

PROJECT UNDERSTANDING

Based on the Request for Proposals provided by the City, Kimley-Horn understands the desire to create a Master Parks Plan incorporating all five (5) City-owned parks, which includes:

- Charles Town Skate Park
- Evitts Run Park
- Happy Retreat/Craighill Estates
- Jefferson Memorial Park
- Willingham Knolls Park

The scope of services outlined below includes an approach that completes the Master Parks Plan in two phases. Each phase concludes with an interim product, which forms the final Master Parks Plan and can be completed as separate efforts per task, bridging fiscal years based on available budget. The scope outlined is based on our nation-wide experience in park and recreation planning and design and meets the Commission of Accreditation of Park and Recreation Agencies (CAPRA) national standards if the City decides to complete accreditation at a future date.

Kimley-Horn assumes that the following information will be provided upon notice to proceed:

- Readily available GIS data
- Prior approved or draft plans relevant to the completion of the Parks Master Plan
- Previously approved capital improvement plans

Additionally, Kimley-Horn understands that it is the desire to account for the project tasks and budget to span multiple fiscal years. Doing this will incur an additional "optional" task as noted in Task 5 to re-evaluate project goals and objectives working towards a completed document. Kimley-Horn recommends completing effort through the Public Open House and completing Tasks 5 and 6 as part of the new fiscal year.

SCOPE OF SERVICES

Phase 1 – Needs and Priorities Assessment

Task 1: Project Startup, Coordination, and Administration

Task 1.0: Project Administration and Monthly Coordination Calls

In addition to the following specific services, Kimley-Horn will facilitate a monthly coordination call with the City's Project Team. For budgeting purposes, Kimley-Horn is assuming that the project duration is approximately eight (8) months. We will also monitor the project schedule as it relates to this scope contained herein and provide timely invoicing and reporting of project progress.

Additionally, this also includes coordination with the City of Charles Town Board of Parks and Recreation and other established partners and stakeholders. It is assumed that deliverables and reports will be in memo format, utilizing branding and document layout standards provided by the City of Charles Town.

Task 1.1: Project Kick-Off meeting

Kimley-Horn will conduct a virtual kickoff meeting with City Staff and project leadership to review and discuss the following:

- Project Purpose, scope, and tentative schedule
- Project roles and expectations
- Overview of the City's recreation and parks system attributes
- Needs, priorities, obstacles, opportunities, and implementation goals
- Comprehensive Plan, City's Strategic Plan, and other provided guiding documents
- Focus Group Participants
- Final document format

Task 1 Deliverables:

- *Prepare for and attend up to eight (8) monthly coordination calls*
- *Invoicing and reporting of project progress for up to eight (8) occurrences*
- *Prepare for and attend virtual kickoff meeting with City Staff*
- *Provide meeting notes submitted to the City for review*

Task 2: Research and Inventory

Task 2.0: Guiding Documents Review and Data Review

Kimley-Horn will review guiding documents and data provided by the City and compile an analysis of relevance to existing efforts. Kimley-Horn may request assistance from City staff in obtaining a digital

copy or hardcopy of the guiding documents listed below should the source not be publicly available online. Sources may include the following:

- 2018 Historically Hip Charles Town 2040 Comprehensive Master Plan
- 2009 Evitts Run Park Master Plan – Summary of Opportunities and Constraints
- West End Revitalization Plan
- 2016 City of Charles Town Walkability and Connectivity Study
- Most recent Jefferson County Parks and Recreation Master Plan
- Annual budget and financial reports; most current and last 5 years
- Asset Management Program and
- O&M procedures
- List of planned (through 2028) park capital projects
- Contacts for partner organizations, vendors, and concessioners
- Division organization chart, policies, and procedures
- List of joint-use agreements
- List of current partnerships (Parks and Recreation Board, City Council, Jefferson Memorial Park Dolphins Swim Team, Jefferson Junior Boys/Girls Tennis League, Jefferson County Boys and Girls club, etc.) community special events, current recreation programs and sports leagues (both adult and youth), program levels and schedules; and
- Other relevant studies, data, and information as available from such sources as the State of West Virginia, Jefferson County, and public schools.

Kimley-Horn will prepare a digital GIS base file for the project study area (covering the 5 City of Charles Town parks as well as connections) utilizing readily available information. It is assumed that the information available will include relevant City layers and those of containing information regarding adjacent municipal/county facilities that are used by residents. Kimley-Horn will use data obtained to prepare a graphic map suitable for use in the Master Plan report and for public display. Data to be provided by City should include vacant or undeveloped City-owned parcels in addition to existing 5 City owned or managed park sites and facilities. Sources for the GIS data shall be public and may include:

- Jefferson County data
- Municipal data
- Private
- Non-Profit
- HOA

Task 2.1: Demographic Analysis

Kimley-Horn will evaluate the latest public 2020 US Census data and projected population trends in population size, character, ages, gender, ethnicity, income level and education level. Kimley-Horn will review, identify, and summarize trends, and graphically depict key findings in charts, graphs or maps that have specific relevance for park and recreation planning.

Task 2.2: Parks and Facilities Evaluation and Inventory

Kimley-Horn will conduct a series of site evaluations to observe city-owned and managed parks (estimated at 5 existing park locations). Using criteria adapted from Project for Public Spaces (PPS) methodology for evaluating the effectiveness and performance of the public space, the criteria emphasize elements that promote placemaking and high-quality lifestyles for communities. The specific criteria used for the city will be developed with input from City staff. Elements may include:

- Design and Materials: Includes observations of the quality of design, materials, use of standards and the durability of a space.
- Use and Effectiveness: Includes the observation of users or evidence of users of a space, range of offerings, balance of activities and contextual consistency.
- Maintenance: Includes observations of the quality of upkeep of a space, evidence of pride of users and maintenance, and presence of deferred improvements.
- Comfort: Includes observation of a space's first impression, comfort of users, visual attractiveness, and perception of safety.
- Access and Connectivity: Includes observation of universal accessibility barriers, multi-modal connectivity, dominance of the space by a transportation use other than pedestrian and bicycles and ease of access from surrounding areas.
- Sustainability: As a three-part category, observations focus on social interactions and connections to surrounding neighborhoods, environmental considerations and promotion that result in net positive contributions, and economic viability and contributions.

The evaluation will use observational-based information collected to rate the performance of each park or open space, providing summaries of key successes, and opportunities for improvements. Existing conditions of park amenities will be identified and combined with observations to outline recommended capital and operational improvements tied to documented needs and community priorities.

Note: This evaluation is not intended to be an engineering review of the viability, integrity, or structural condition of existing facilities.

Task 2.3: Existing Level of Service Analysis and Benchmarking

Kimley-Horn will work with City staff to verify park level of service goals in coordination with current NRPA and SCORP standards as well as with the Objective from the City's comprehensive plan. The existing Level of Service (LOS) analysis will include acreage and facility level of service comparisons with peer communities selected in coordination with City staff. Using demographic projections analyzed before, Kimley-Horn will prepare estimated park acreage and facility needs for 5, 10 and 15-year increments.

Kimley-Horn will also conduct a GIS-based Access service area analysis for each existing park based on county-wide provision of access. Drive-to (5 miles), bike-to (2 miles) and walk-to (1/2 mile) distances (based on available GIS data for roads and streets within the City) will be identified, allowing the team to identify gaps in overall service area and help advance the City's Objectives stated in the Comprehensive Plan regarding access to parks and trails.

Benchmarking may include comparison with up to four (4) peer communities, and/or national/state benchmarks in coordination with City Staff input. Categories may include budget expenditures and revenues per capita, staffing levels, capital budgets per capita, acreage of parkland, and number of facilities.

Task 2 Deliverables:

- *Prepare a map and written summary of opportunities and constraints based on site inventory and analysis*
- *Evaluate and document active and passive recreational opportunities*
- *Visually assess, rate, and document visual conditions of park amenities such as playgrounds, outdoor restrooms, shelters/pavilions, hard courts, skate park, grass/dirt sports fields, and other amenities.*

Task 3: Public Involvement

Task 3.0: Virtual Stakeholder Interviews

Kimley-Horn will conduct up to six (6) Stakeholder interviews. These Stakeholder interviews are intended to reach each of the named project stakeholders as listed in the RFP, which include the City of Charles Town Parks and Recreation Board, City of Charles Town City Council, Jefferson Memorial Park Dolphins Swim Team, Jefferson Junior Boys/Girls Tennis League, and Jefferson County Boys and Girls Club. Each interview will be approximately 45 minutes in length and may be completed virtually. Interview notes will be provided blind to City official and stakeholders. Community stakeholder interviews will be coordinated with Focus Groups for location and date/ time. Kimley-Horn will prepare the agenda, meeting materials, facilitate the discussion, and provide meeting notes.

Task 3.1: Virtual Focus Group meetings

Kimley-Horn will conduct up to two (2) Virtual Focus Group meetings. Each online Focus Group will be approximately 60 minutes and include between 6-10 participants as determined by the City. All meetings will be held virtually through either MS Teams or Zoom and hosted by Kimley-Horn. Kimley-Horn will prepare the agenda, meeting materials, facilitate the discussion, and provide meeting notes. Focus Group topics that may be relevant to the listed focus groups include:

- **Athletics:** Customers/participants and staff leads for athletic leagues and programs, **Seniors/Active Adults:** Participants and staff leads for senior programs.

- **Parents and Youth:** 12 and under representatives and parent participants in department programs, and school district representative.
- **Connectivity:** local advocates from the bike and pedestrian community.
- **Sustainability:** local advocates.

Task 3.2: Community Meeting

Kimley-Horn will conduct one (1) in person community meeting. It is anticipated that the community meeting will include a short presentation on existing conditions, and information heard during the virtual focus group and stakeholder meetings. Kimley- Horn will prepare the agenda, meeting materials, facilitate the discussion, and provide meeting notes.

All stakeholder interviews, focus groups, and community meetings are to occur over a single three (3) day period to build public excitement and participation. For each public meeting, City staff will be responsible for the arrangement of meeting logistics such as identification of focus group participants, scheduling, and advertising.

Task 3.3: Statistically Valid Online Survey

Kimley-Horn will coordinate with City staff during develop of an online statistically valid survey focused on identifying the parks and recreation needs and priorities of the community. Kimley-Horn will use information to identify trends within the City for residents and other users of services, usage of parks, importance, barriers to use or participation, communications, funding, priorities, and demographics. A draft survey instrument will be provided to the City for review prior to administration.

Techniques utilized for administration of survey will include website posting (on City's website) and coordination with City social media accounts. The statistically valid survey will have a targeted sample size of 400 with a level of confidence of 95% and margin of error of +/- 5.0%. Final accuracy of survey will be based upon project schedule and total number of unique responds from residents. A final digital report will be provided with highlighting findings and cross tabulations.

Task 3.5: Needs and Priorities Assessment Summary

Based on the tasks outlined above, Kimley-Horn will establish recommendations based on the analysis of existing conditions, public survey, stakeholder interviews, and analysis of data. This information, along with the results of the survey and public input will provide the basis for determining the priority for provision of parks and recreation programs and services in the City.

Task 3 Deliverables:

- *Prepare for, attend, and facilitate up to eight (8) virtual meetings – six (6) stakeholder interviews, and two (2) virtual focus group meetings – including preparing the agenda, meeting materials, facilitate the discussion, and provide meeting notes*
- *Prepare for, attend, and facilitate one (1) in person community meeting, including preparing the agenda, meeting materials, facilitate the discussion, and provide meeting notes.*
- *Provide written Needs and Priorities Assessment Summary*
- *Statistically Valid Online Survey and results*
- *Provide electronic and hard copy of written summary to the City's Community Development Director*

Phase 2 – Vision and Strategic Plan

Task 4: Preliminary Master Parks Plan Development

Task 4.0: Vision and Implementation Workshop

Kimley-Horn will facilitate a two-part, half-day workshop with City staff. The purpose of the workshop will be two-fold; review of long-range vision needs, and priorities gathered during the Needs and Priorities Assessment; and initial discussion of funding priorities, goals, and objectives of the Strategic Plan. A preliminary agenda for the workshop include:

- Review of the key findings from the Needs Assessment
    - Identification of underserved areas of the City
- Development of vision goals and objectives; development of a vision statement
    - Coordination with other long-term goals of the City
    - Identification of priorities for sub-systems:
    - Preliminary target areas of acquisition for new parks and expansion opportunities for existing parks
    - Concept development for each of the existing five (5) parks
- Identify new priorities and recommendations
    - Review of current 5-year CIP
    - Review of funding projections
    - Determination of top spending priorities, and
    - Identify priority funding and phasing strategies for 5, 10, and 15+ year periods for existing and proposed system.

Task 4.1: Order of Magnitude Estimate of Probable Construction Costs

Kimley-Horn will prepare an "order-of-magnitude" opinion of probable construction costs (Excel) to implement each of the parks and/or other improvements identified during the Vision Workshop and the, including:

- Potential and Acquisition for expansion or new City property based on LOS analysis (based on costs/acre provided by the City)
- Park/Facility/Amenity Development (based on comparable facilities); based upon the concept developed for each of the five (5) existing parks, plus any additional long-range proposed capital projects.
- Operations and Maintenance for proposed system; based upon benchmark figures from NRPA 2022 (or 2023 if available) Performance Report.

Note: The Consultant has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Consultant at this time and represent only the Consultant's judgment as a design professional familiar with the construction industry. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

Task 4.2: Strategic Plan

Kimley-Horn will develop a multiple horizon year Strategic Plan for the five (5) City owned parks that will include strategies for improvements to the parks system, open spaces, trails, and recreational opportunities. It is anticipated that the strategic plan will be in a technical report format, with supporting graphics. The plan for each of the five (5) parks will include the following:

- Potential and Acquisition for expansion or new City property based on LOS analysis (based on costs/acre provided by the City)
- Park/Facility/Amenity Development (based on comparable facilities); based upon the concept developed for each of the five (5) existing parks, plus any additional long-range proposed capital projects.
- Operations and Maintenance for proposed system
- Funding and Phasing Strategies:
    - A prioritized list of capital projects (parks and facilities) based on established goals, performance evaluations, community input and trends for the parks and recreation into a 10-year+ Capital Improvement Program (CIP) including suggested timelines. Projects must meet the City's criteria for inclusion in the CIP.
    - Identification of short-term (1-5 years); mid-term (6-10 years) and long-term (10+ years) recommendations and priorities into five-year increments through 2033+
    - Identification of potential funding alternatives tied to project type and funding sources requirements.
- Identification of future potential expansion opportunities for existing parks
- Level of Service (LOS) recommendations, including acreage, amenities, facilities and access standards and definitions.
- Recommendations for local ordinances or modifications for private parkland dedication and/or development standards
- Recommendations for organizational structure, operations, and maintenance

- Development of policies for public, private, and non-profit partnerships opportunities
- Identification of park land for possible acquisition of new park sites (target areas), open spaces, sports facility, and civic space to meet future needs for potential acquisition or partnership strategies, guidelines for ideal park sites, and development of criteria for site future site acquisition considerations.
- Development of an Action Plan with Priority Next Steps and short-term recommendations.

Task 4.3: Draft Master Parks Plan Document

Kimley-Horn will prepare a draft Preliminary Master Parks Plan document for review by City staff. City staff will provide Kimley-Horn with consolidated written comments which Kimley-Horn will incorporate into a final report document during Task 5.

Task 4 Deliverables:

- *Prepare for, facilitate, and document the Vision and Implementation Workshop*
- *Order of magnitude estimate of probable cost*
- *Provide Strategic Plan in memorandum format*
- *Draft Preliminary Plan document in digital report format, including supporting graphics as developed in support of Task 4.3*
- *Prepare for, attend, and document the Public Open House*

Task 5: Public Open House

Optional Task 5.0: New Fiscal Year Project Kick-off

If the City desires to split the project across multiple fiscal years, Kimley-Horn will conduct a coordination meeting with City Staff prior to completing the Public Open house. It is anticipated that the coordination meeting will confirm project goals, scope, tentative schedule, and any feedback received outside of the previously completed public engagement meetings.

Task 5.1: Public Open House

Kimley-Horn, in coordination with the City of Charles Town Board of Parks and Recreation, will conduct an in person Open House for public review of recommendations. It is assumed that the Public Open House will include a brief presentation, followed by an open house where the Kimley-Horn team will be available to receive feedback from the community. The City will be responsible for meeting logistics such as advertisement, meeting facility, invites, and presentation screen.

Task 5 Deliverables:

- *Prepare for, attend, and document Optional Task 5.0 as noted in the scope of services*

- *Prepare for, attend, and document the Public Open House*

Task 6: Final Master Parks Plan

Task 6.0: Final Master Parks Plan Document

Kimley-Horn will prepare a Final Master Parks Plan document for review by City staff. It is anticipated that the Final Master Parks Plan Development will include one (1) round of consolidated feedback provided through community and City staff input received from Tasks 1 through 5. It is anticipated that the Final Master Parks Plan will consist of a report with supporting graphics and narrative. Kimley-Horn will incorporate consolidated comments from the City one (1) time into the final document. Kimley Horn will provide the Final Master Parks Plan in .pdf format, as well as up to fifteen (15) printed and bound color copies compatible with the City's software. This task includes one (1) round of minor revisions based on comment provided by staff.

Task 6.1: Presentations

Kimley-Horn will make up to two (2) in person presentations to report and summarize the Final Master Parks Plan Document. One presentation will be to the City's Board of Parks and Recreation, and the second presentation will be the final presentation to the City Council. It is assumed that the two presentations will be completed on the same calendar day.

Task 5 Deliverables:

- *Up to fifteen (15) printed and bound color copies and one digital .pdf format Final Concept Plan Document compatible with the City's software.*
- *Prepare for, attend, and present at up to two*
- *(2) in person presentations of the Final Concept Plan Document*

Information provided by City

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Available GIS data for park and recreation facilities properties and inventory
- Available data from previously completed Master Plans
- Approved or draft plans or reports with implications to this project
- List of current partnerships, prior funding sources (including grants), community special events, current recreation programs and sports leagues (both adult and youth), program levels and schedules

Additional Services

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

- Presentations not specifically mentioned as part of the above scope of services
- Meetings not specifically mentioned as part of the above scope of services
- Existing vegetation maps / tree inventory
- ISA arborist services consisting of individual health assessment or valuation of trees located within parkland
- ADA / FHA review accessibility exhibits
- Colored renderings and illustrative drawings
- Design of entrance feature monument or site signage
- Substantial revisions to Master Plan documents
- 3-D modeling of amenity areas using Sketch-Up, Revit or AutoCAD 3D
- Illustrative graphic plans or renderings
- Financial advisory
- Meeting room or facilities booking and fees
- Development of mailers, notifications, or postage
- Social media hosting and/or advertising of meetings
- Graphic branding

Schedule

The Consultant will develop a final project schedule following the Project Kick-Off Meeting with mutually agreed upon timelines during the call. The Consultant will provide these services as expeditiously as practicable with the goal of meeting the established schedule. A Preliminary Project Schedule is included as Exhibit A and will be reviewed with the Client at the Project Kick-Off Meeting.

The Consultant shall not be held responsible for any delays in time of completion resulting from the following:

- Client's failure to carry out any of their responsibilities in a timely manner.
- Approving agencies failure to provide timely approval of permits, encroachments, or other entitlement applications.
- Additional Services requested by the Client.
- Any other circumstances beyond the control of the Consultant.

Fees and Billing

The Consultant shall perform the services described herein as the Scope of Services for a lump sum fee below**.** Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at direct cost. The Client will directly pay all room rentals, advertisements, and similar project fees.

Task	Task Description	Fee	Fee Type
1	Project Startup, Coordination, and Administration	$9,500	Lump Sum
2	Research and Inventory	$17,500	Lump Sum
3	Public Involvement	$22,500	Lump Sum
4	Preliminary Master Parks Plan Document	$25,500	Lump Sum
Fiscal Year 2023 Lump Sum Total		**$75,000**	
5	Public Open House	$7,500	Lump Sum
6	Final Master Parks Plan	$30,000	Lump Sum
Fiscal Year 2024 Lump Sum Total		**$37,500**	

In addition to the lump sum labor fee, Kimley-Horn shall be reimbursed at unit costs for all expenses incurred not to exceed **$10,000.**

Total Fiscal Year 2023 Lump Sum Labor Fee: ..... **$ 75,000**
Total Fiscal Year 2024 Lump Sum Labor Fee: ..... **$ 37,500**
Total NTE Expenses: ..... **$ 10,000**
Total Fee (inclusive of estimated expenses): ..... **$ 122,500**

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

CLOSURE

The work described with this proposal will be completed in accordance with the terms and conditions of contract between the City of Charles Town and Kimley-Horn. We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

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 Charles Town.

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.

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 & ASSOCIATES, INC.



Keith Aimone, PLA, LEED AP
Project Manager

City of Charles Town
SIGNED:

PRINTED NAME: _____

TITLE:_____

DATE: _____

Client's Federal Tax ID: _____
Client's Business License No.: _____
Client's Street Address: _____

ATTACHMENTS

1. Attachment – Request for Information
2. Attachment – Standard Provisions

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		Agent for Owner		Unrelated to Owner	

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

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

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

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

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

5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's

documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.

7) **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.

8) **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.

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 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 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 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 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) **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.

13) **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.

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

15) 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.

16) 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.

17) **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.

18) **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.

19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. 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.

Board of Parks and Recreation
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/10/23
Department: Board of Parks and Recreation
Category: Information Only
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

2023-697 Day of Caring Service Projects

Day of Caring Service Projects

ATTACHMENTS:

Board of Parks and Recreation
101 East Washington Street
Charles Town, WV 25414

Meeting: 08/10/23
Department: Board of Parks and Recreation
Category: Information Only
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Park Updates:

Jefferson Memorial Park
Evitts Run Park
Willingham Knolls Park
CraigHill/Happy Retreat
Skate Park

Park Updates:

Jefferson Memorial Park
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ATTACHMENTS: