

CITY OF FORT WORTH, TEXAS

STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT is between the City of Fort Worth, a Texas home-rule municipality (the "CITY"), and Beth Ramirez Transportation Engineering LLC, authorized to do business in Texas, an independent contractor ("Consultant"), for a PROJECT generally described as: On Call Traffic Services.

Article I

Scope of Services

- (1) Consultant hereby agrees to perform as an independent contractor the services set forth in the Scope of Services attached hereto as Attachment "A". These services shall be performed in connection with On Call Traffic Services.
- (2) Additional services, if any, will be requested in writing by the City. City shall not pay for any work performed by Consultant or its subconsultants, subcontractors and/or suppliers that has not been ordered in writing. It is specifically agreed that Consultant shall not be compensated for any alleged additional work resulting from oral orders of any person.

Article II

Compensation

Consultant shall be compensated in accordance with the Fee Schedule shown in Attachment "B". Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment "A". However the total fee paid by the City shall not exceed a total of \$100,000.00 unless the City and the Consultant mutually agree upon a fee amount for additional services and amend this Agreement accordingly.

The Consultant shall provide monthly invoices to the City. Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant's invoice for payment of same.

Acceptance by Consultant of said payment shall operate as and shall release the City from all claims or liabilities under this Agreement for anything related to, done, or furnished in connection with the services for which payment is made, including any act or omission of the City in connection with such services.

Article III

Term

Unless terminated pursuant to the terms herein, this Agreement shall be for a term of one year, beginning upon the date of its execution, or until the completion of the subject matter contemplated herein, whichever occurs first.

Article IV

Independent Contractor

Consultant shall operate hereunder as an independent contractor, and not as an officer, agent, servant, or employee of the City. Consultant shall have exclusive control of and the exclusive right to control the details of its work to be performed hereunder and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. The doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint venture between City and Consultant.

Article V

Professional Competence and Indemnification

- (1) Work performed by Consultant shall comply in all aspects with all applicable local, state and federal laws and with all applicable rules and regulations promulgated by the local, state and national boards, bureaus and agencies. Approval by the City shall not constitute or be deemed to be a release of the responsibility and liability of Consultant or its officers, agents, employees, contractors and subcontractors for the accuracy and competency of its services performed hereunder.

- (2) In accordance with Texas Local Government Code Section 271.904, the Consultant shall indemnify, hold harmless, and defend the City against liability for any damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Consultant or Consultant's agent, consultant under contract, or another entity over which the Consultant's exercises control.**

Article VI

Insurance

- (1) Consultant shall not commence work under this Agreement until it has obtained all insurance required under this Article and the City has approved such insurance, nor shall Consultant allow any subcontractor to commence work on its subcontract until all similar insurance of the subcontractor has been so obtained and approval given by the City; provided, however, Consultant may elect to add any subconsultant as an additional insured under its liability policies.

Commercial General Liability
\$1,000,000 each occurrence
\$1,000,000 aggregate

Automobile Liability
\$1,000,000 each accident (or reasonably equivalent limits of coverage if written on a split limits basis). Coverage shall be on any vehicle used in the course of the Project.

Worker's Compensation
Coverage A: statutory limits
Coverage B: \$100,000 each accident
\$500,000 disease - policy limit
\$100,000 disease - each employee

(2) Additional Insurance Requirements

- a. Except for employer's liability insurance coverage under Consultant's worker's compensation insurance policy, the City, its officers, employees and servants shall be endorsed as an additional insured on Consultant's insurance policies.
- b. Certificates of insurance shall be delivered to the Transportation/Public Works Department, Attention: Michael Wobken, 5001 James Avenue, Fort Worth, TX 76115, prior to commencement of work.
- c. Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
- d. Each insurance policy shall be endorsed to provide the City a minimum thirty days notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days notice shall be acceptable in the event of non-payment of premium.

- e. Insurers must be authorized to do business in the State of Texas and have a current A.M. Best rating of A: VII or equivalent measure of financial strength and solvency.
- f. Other than worker's compensation insurance, in lieu of traditional insurance, City may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups. The City must approve in writing any alternative coverage.
- g. Workers' compensation insurance policy(s) covering employees employed on the Project shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
- h. City shall not be responsible for the direct payment of insurance premium costs for Consultant's insurance.
- i. Consultant's insurance policies shall each be endorsed to provide that such insurance is primary protection and any self-funded or commercial coverage maintained by City shall not be called upon to contribute to loss recovery.
- j. In the course of the Agreement, Consultant shall report, in a timely manner, to City's officially designated contract administrator any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- k. Consultant's liability shall not be limited to the specified amounts of insurance required herein.
- l. Upon the request of City, Consultant shall provide complete copies of all insurance policies required by these Agreement documents.

Article VII

Transfer or Assignment

City and Consultant each bind themselves, and their lawful successors and assigns, to this Agreement. Consultant, its lawful successors and assigns, shall not assign, sublet or transfer any interest in this Agreement without prior written consent of the City.

Article VIII

Termination of Contract

- (1) City may terminate this Agreement for its convenience on 30 days' written notice. Either the City or the Consultant for cause may terminate this Agreement if either Party fails substantially to perform through no fault of the other and does not

commence correction of such nonperformance with 5 days of written notice and diligently complete the correction thereafter

- (2) If City chooses to terminate this Agreement under Article 8, upon receipt of notice of termination, Consultant shall discontinue services rendered up to the date of such termination and City shall compensate Consultant based upon calculations in Article 2 of this Agreement and Exhibit "B" attached hereto and incorporated herein.
- (3) All reports, whether partial or complete, prepared under this Agreement, including any original drawings or documents, whether furnished by the City, its officers, agents, employees, consultants, or contractors, or prepared by Consultant, shall be or become the property of the City, and shall be furnished to the City prior to or at the time such services are completed, or upon termination or expiration of this Agreement.

Article IX

Right to Audit

- (1) Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions relating to this Agreement. Consultant agrees that the City shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. City shall give Consultant reasonable advance notice of intended audits.
- (2) Consultant further agrees to include in all its subcontracts hereunder, a provision to the effect that the subcontracting consultant agrees that the City shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such sub-consultant, involving transactions to the subcontract, and further, that City shall have access during normal working hours to all sub-consultant facilities, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this article. City shall give Consultant and any sub-consultant reasonable advance notice of intended audit.
- (3) Consultant and sub-consultants agree to photocopy such documents as may be requested by the City. The City agrees to reimburse Consultant for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

Article X

Minority Business and Small Business Enterprise (MBE)(SBE) Participation

In accordance with the City's Business Diversity Enterprise Ordinance No. 20020-12-2011, as amended, the City has goals for the participation of minority business enterprises and/or small business enterprises in City contracts. Consultant acknowledges the MBE and SBE goals established for this Agreement and its accepted written commitment to MBE and SBE participation. Any misrepresentation of facts (other than a negligent misrepresentation) and/or the commission of fraud by the Consultant may result in the termination of this Agreement and debarment from participating in City contracts for a period of time of not less than three (3) years.

Article XI

Observe and Comply

Consultant shall at all times observe and comply with all federal, state, and local laws and regulations and with all City ordinances and regulations which in any way affect this Agreement and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. Consultant agrees to defend, indemnify and hold harmless City and all of its officers, agents and employees from and against all claims or liability arising out of the violation of any such order, law, ordinance, or regulation, whether it be by itself or its employees.

Article XII

Venue and Jurisdiction

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

Article XIII

Contract Construction

The Parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the

interpretation of this Agreement or any amendments or exhibits hereto.

Article XIV

Severability

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

Article XV

Notices

Notices to be provided hereunder shall be sufficient if forwarded to the other Party by hand-delivery or via U.S. Postal Service certified mail return receipt requested, postage prepaid, to the address of the other Party shown below:

City of Fort Worth
Attn: Transportation/Public Works Department
5001 James Avenue
Fort Worth, Texas 76115

Consultant:

Beth Ramirez Transportation Engineering, LLC
Attn: Beth Ramirez
9525 Alta Mira Dr
Dallas, TX 75218

Article XVI

Headings

The headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision of this Agreement

Article XVII

Counterparts

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

Executed and effective this the _____ day of _____, 20__ .

BY:
CITY OF FORT WORTH

BY:
ENGINEER
Beth Ramirez Transportation Engineering,
LLC

Fernando Costa
Assistant City Manager

Elizabeth Ramirez, P.E.
Owner

Date: _____

Date: _____

APPROVAL RECOMMENDED:

By: _____
Doug W. Wiersig, Ph.D., P.E.
Director, Transportation & Public Works

APPROVED AS TO FORM AND LEGALITY

M&C No.: _____

By: _____
Douglas W. Black
Assistant City Attorney

M&C Date: _____

ATTEST:

Mary J. Kayser
City Secretary

ATTACHMENT "A"

Scope for Traffic Services Division On Call Engineering Traffic Signal Related Services

The scope set forth herein defines the work to be performed by the ENGINEER in completing the project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project.

OBJECTIVE

The engineering consultant will provide task efforts in the following areas on an as-needed basis as directed by the city project manager. Work under this agreement includes, but is not limited to: identification and reconciliation of project funding, identification of signal timing and equipment needs citywide, and oversight and support for the deployment of new traffic signal equipment.

WORK TO BE PERFORMED

ENGINEER hereby agrees to perform On Call Traffic Engineering Services as may be requested by the CITY during the term of this AGREEMENT. Work under this agreement will be performed on a Work Authorization basis. The CITY will request services for each Work Authorization. The ENGINEER shall prepare the scope, fee, and schedule as necessary to perform the services requested for each Work Authorization within 10 working days of the CITY's request.

Each Work Authorization shall include a scope of services as Attachment "A". This scope will outline the tasks required to complete the Work Authorization. For each task the scope shall include a detailed description of the task, outline as assumptions and list the required deliverables.

Each Work Authorization shall include an Attachment "B" detailing the compensation for the Work Authorization. Compensation will be based on hours agreed to by the CITY and the ENGINEER for each Work Authorization. Compensations will be based upon hours agreed to by the CITY and the ENGINEER for each Work Authorization. Compensation will be based on Article I of Attachment "B" of this agreement. The fee will include an estimate of reimbursable and sub-consultant cost for each Work Authorization. Compensation for each Work Authorization shall be based on hours worked at the hourly rate specified in Attachment "B". Non-Labor expenses and sub-contractor expenses (if applicable) shall be reimbursed per the terms in Attachment "B".

If the Work Authorization requires a schedule it shall be attached as Attachment "D".

Each Work Authorization shall include an Attachment "E" identifying the project locations.

ATTACHMENT B COMPENSATION

On Call Traffic Engineering Services

I. Compensation

A. The ENGINEER shall be compensated a total fee not to exceed \$100,000.00 as summarized in Exhibit B-1 – Engineer Invoice and Section IV – Summary of Total Project Fees. The total fee shall be considered full compensation for the services described in Attachment A, including all labor materials, supplies, and equipment necessary to deliver the services.

i. **Labor Expenses.** All labor expenses for Elizabeth Ramirez, P.E., PTOE shall be reimbursed at an hourly rate of \$130 per hour. Labor rates for other employees, if any, must be submitted to the CITY for approval prior to beginning work.

ii. **Non-Labor Expenses.** Non-labor expenses shall be reimbursed as Direct Expenses at invoice or internal office cost. Direct expenses (non-labor) include, but are not limited to: mileage, travel and lodging expenses, mail, supplies, printing and reproduction services, other direct expenses associated with the delivery of the work; plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes.

iii. **Subcontractor Expenses.** Subcontract expenses and outside services shall be reimbursed at cost to ENGINEER plus a markup of ten percent (10%).

iv. **Budgets.** ENGINEER will make reasonable efforts to complete the work within the budget and will keep the City informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.

ENGINEER is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is the City obligated to pay ENGINEER beyond these limits.

If ENGINEER projects, in the course of providing the necessary services, that the PROJECT cost presented in Article 2 of this Agreement will be exceeded, whether by change in scope of the project, increased costs or other conditions, the ENGINEER shall immediately report such fact to the City and, if so instructed by the City, shall suspend all work hereunder.

When any budget has been increased, ENGINEER's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

B. The ENGINEER shall be paid monthly payments as described in Section II - Method of Payment.

ATTACHMENT B COMPENSATION

II. Method of Payment

- A. Partial payment shall be made to the ENGINEER monthly upon City's approval of an invoice prepared and submitted by the ENGINEER in the format and including content as presented in Exhibit B-1.
- B. The estimated current physical percent complete as required on the invoice shall be calculated from the progress schedule as required in each task order to this Standard Agreement and according to the current version of the City of Fort Worth's Schedule Guidance Document.
- C. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments.
- D. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of the ENGINEER.

III. Progress Reports

- A. The ENGINEER shall prepare and submit to the designated representative of the Transportation and Public Works Department monthly progress reports and schedules in the format required by the City. Progress reports will include:
 - i. List of task orders in progress
 - ii. Hours spent on each
 - iii. % of task order complete
 - iv. Any relevant notes that might impact schedule or product

**ATTACHMENT B
COMPENSATION**

IV. Summary of Total Project Fees

Firm	Primary Responsibility	Fee Amount	%
Prime Consultant			
Beth Ramirez Transportation Engineering, LLC	Identification and reconciliation of project funding, citywide signal timing needs assessment, deployment of new traffic signal equipment	\$100,000.00	100
Proposed M/WBE Sub-Consultants			
Non-M/WBE Consultants			
TOTAL		\$100,000.00	100%

Project Number & Name	Total Fee	M/WBE Fee	M/WBE %
	\$ _____	\$ _____	_____ %

City M/WBE Goal = 0 %

Consultant Committed Goal = 0 %

EXHIBIT "B-1"
ENGINEER INVOICE
(Supplement to Attachment B)

Insert required invoice format following this page, including negotiated total budget and allocations of budgets across work types and work phases.

ATTACHMENT “C”

CHANGES AND AMENDMENTS TO STANDARD AGREEMENT On Call Traffic Engineering Services

<List any changes to the Standard Agreement>

The Consultant is a sole proprietor without employees. The Worker’s Compensation provisions do not apply.

Attachment D - Project Schedule

Not applicable to this contract.

Attachment E

Not applicable to this contract.