
MEMO

APPROVED
3/18/2024



DATE: March 13, 2024
FROM: Matney M. Ellis
Procurement Director
TO: Board of County Commissioners
SUBJECT: Agreement – Garver, LLC

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached Professional Services Agreement between the Board of County Commissioners of the County of Tulsa, on behalf of Tulsa County Engineering, and Garver, LLC for a signal warrant analysis of the intersection of E. 76th Street N. and Whirlpool Drive west of Owasso, Oklahoma. In addition, an intersection operational analysis of existing geometry and a geometric analysis will be completed. Compensation amount for services is \$17,400.00, as further described in the attached.

This agreement is respectfully submitted for your approval and execution.

MME/llm

SUBMITTED FOR: The March 18, 2024 BOCC meeting agenda.

CME# 20240408

**Agreement for Engineering Services
for the Intersection of E. 76th St. N. & Whirlpool Dr.**

This AGREEMENT is made and entered into on this 18th day of March, 2024, by and between the Board of County Commissioners of the County of Tulsa, Oklahoma, hereinafter referred to as COUNTY, and Garver LLC, hereinafter referred to as ENGINEER;

WITNESSETH:

WHEREAS, COUNTY requests a traffic signal warrant analysis for the intersection of E. 76th St. N. & Whirlpool Dr., hereinafter referred to as the PROJECT; and

WHEREAS, the COUNTY requires certain professional services in connection with the PROJECT, hereinafter referred to as the SERVICES; and

WHEREAS, ENGINEER is prepared to provide such SERVICES; and

WHEREAS, funding is available for the payment of the ENGINEER for providing the SERVICES under this AGREEMENT.

NOW THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

- 1.0 SCOPE:** The scope of this PROJECT and the related SERVICES which shall be performed by the ENGINEER are described in Attachment A, SCOPE OF SERVICES, which is attached hereto and incorporated by reference as part of this AGREEMENT.
- 2.0 COMPENSATION:** The COUNTY shall pay ENGINEER in accordance with Attachment B, COMPENSATION, which is attached hereto and incorporated by reference as part of this AGREEMENT.
- 3.0 TIME FOR COMPLETION:** The ENGINEER shall provide the necessary SERVICES and complete all work required for each phase of the PROJECT within the times stated in paragraph 3 of Attachment A. Notwithstanding anything to the contrary herein, if, through no fault of ENGINEER, schedule or dates are changed, or the orderly and continuous progress of the SERVICES is impaired, or SERVICES are delayed or suspended, then the time for completion of SERVICES, and the rates and amounts of ENGINEER's compensation may be adjusted equitably upon written agreement of both parties.
- 4.0 COUNTY'S RESPONSIBILITIES:** The COUNTY shall be responsible for all matters described in Attachment C, RESPONSIBILITIES OF THE COUNTY, which is attached hereto and incorporated by reference as part of this agreement.
- 5.0 STANDARD OF PERFORMANCE:** The ENGINEER shall perform the SERVICES in a manner consistent with the degree of care, skill, and competence that reasonably competent members of the profession would exercise under similar circumstances. All engineering work shall be performed by or under the supervision of a Professional Engineer licensed in the State of Oklahoma, and properly qualified to perform such engineering services, which qualification shall be subject to review by COUNTY. The

ENGINEER shall have the obligation to the COUNTY to perform in accordance with the foregoing standard, but no warranty, either express or implied, shall apply to the SERVICES to be performed by the ENGINEER pursuant to this AGREEMENT or to the suitability of ENGINEER'S work product for a particular use.

6.0 LIMITATIONS OF RESPONSIBILITY: ENGINEER shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the PROJECT.

7.0 OPINIONS OF COST AND SCHEDULE:

7.1 Because the ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over contractors', subcontractors' or vendors' methods of determining prices, or over competitive bidding or market conditions, the ENGINEER'S opinions of the probable cost of the PROJECT as for herein are to be made on the basis of his experience and qualification. Such opinions represent his professional judgment as an experienced and qualified Professional Engineer familiar with the construction industry. The ENGINEER does not guarantee that the proposals, bids or actual construction costs will not vary from the opinions of probable cost prepared by him.

7.2 Because the ENGINEER has no control over the resources provided by others to meet construction contract schedules, the ENGINEER'S opinion of the probable construction schedule for the PROJECT is to be made on the basis of his experience and qualifications. Such opinion represents his professional judgment as an experienced and qualified Professional Engineer familiar with the construction industry. The ENGINEER does not guarantee that the construction schedule will not vary from the opinion prepared by him.

8.0 LIABILITY AND INDEMNIFICATION:

8.1 The ENGINEER shall indemnify the COUNTY from and against legal liability for third-party tort damages arising out of the performance of the SERVICES for the COUNTY including, but not limited to any claims, costs, reasonable attorney fees, or other expenses attributable to bodily injury (including death) or tangible property damage where such liability is caused by the negligent act, error, or omission of ENGINEER or any employee, sub-consultants or agents for whom ENGINEER is legally liable. Nothing in this paragraph shall make the ENGINEER liable for any damages caused by the COUNTY or any other contractor of the COUNTY.

8.2 The ENGINEER shall not be liable to the COUNTY for any special, indirect or consequential damages, such as, but not limited to, loss of revenue, or loss of anticipated profits.

9.0 COMPLIANCE WITH LAWS:

9.1 In performance of the SERVICES, the ENGINEER will comply with applicable regulatory requirements including federal, state, and local laws, rules, regulations, orders, codes, criteria and standards. The ENGINEER shall procure the permits, certificates, and licenses necessary to allow ENGINEER to perform

the SERVICES. ENGINEER shall not be responsible for procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to ENGINEER in Attachment A, SCOPE OF SERVICES.

- 9.2 The ENGINEER shall take steps within its authority to verify its SERVICES are in compliance with the United States Department of Justice guidelines for Title II and III of the Americans with Disabilities Act. It is understood that the program of the ENGINEER is not a program or activity of the COUNTY. The ENGINEER agrees that its program or activity will comply with the requirements of the Americans with Disabilities Act. Any cost of such compliance will be the responsibility of the ENGINEER.

10.0 INSURANCE:

- 10.1 During the performance of the SERVICES under this AGREEMENT, the ENGINEER shall keep and carry in force policies of insurance in the minimum amount as set forth herein or as required by the laws of the State of Oklahoma, whichever is greater.

10.1.1 General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.

10.1.2 Automobile Liability Insurance with bodily injury limits of not less than \$1,000,000 for each person and not less than \$1,000,000 for each accident and with property damage limits of not less than \$100,000 for each accident.

10.1.3 Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence.

10.1.4 Professional Liability Insurance with limits of not less than \$500,000 per claim with prior acts endorsement for the insurance to remain in effect for a minimum of two years after acceptance of the PROJECT by the COUNTY.

- 10.2 The ENGINEER shall furnish to the COUNTY certificates of insurance showing he is carrying insurance in at least the specified minimum amounts. Said certificates shall further provide that said insurance will not be cancelled by the Insurer without the Insurer first giving the COUNTY thirty (30) days written notice of cancellation.

11.0 OWNERSHIP AND REUSE OF DOCUMENTS:

- 11.1 All documents, including original drawings, estimates, specifications, field notes and data shall become and remain the property of the COUNTY. This conveyance shall not deprive ENGINEER of the right to retain reproducible copies of the project materials nor ownership of ENGINEER'S proprietary

software, standard design details, derivatives or specifications which it has developed during the time of its business.

11.2 The COUNTY'S use of such documents other than the specific purpose for which they were intended without written verification or adaptation by ENGINEER shall be at COUNTY'S risk and responsibility.

12.0 TERMINATION OF CONTRACT:

12.1 At any time prior to completion of all SERVICES under this AGREEMENT and in the event of substantial failure by one party to perform in accordance with the terms of this AGREEMENT through no fault of the terminating party, the terminating party may terminate this AGREEMENT by giving written notice by registered mail at least fifteen days prior to the effective date of termination.

12.2 The COUNTY shall have the right to terminate this AGREEMENT, or suspend performance thereof, for COUNTY'S convenience by giving written notice to ENGINEER. In the event of termination or suspension of the AGREEMENT for COUNTY'S convenience, COUNTY shall make prompt payment to the ENGINEER for all SERVICES performed in accordance with provisions of Attachment B, COMPENSATION. Upon receipt of written notice by the ENGINEER to resume the SERVICES under this AGREEMENT, compensation shall continue in accordance with Attachment B, COMPENSATION.

13.0 NOTICE:

13.1 Any notice demand, or request required by or made pursuant to this AGREEMENT shall be considered properly made if personally delivered in writing or if delivered by the United States Postal Service, postage prepaid, to the address specified below.

13.1.1 To ENGINEER: Garver, LLC
6100 S. Yale Ave., Ste. 1300
Tulsa, OK 74136

13.1.2 To COUNTY: Tulsa County Highway Engineering
Attn: Alex Mills
218 W. 6th Street, Ste. 840
Tulsa, Oklahoma 74119

13.2 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of ENGINEER and COUNTY.

14.0 UNCONTROLLED FORCES: Neither the COUNTY nor ENGINEER shall be considered to be in default of this AGREEMENT if failures or delay of performance shall be due to forces which are beyond the control of the parties; including, but not limited to: fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance or sabotage; inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses, or services required to be provided by either COUNTY or ENGINEER under this AGREEMENT; strikes, work slowdowns or other labor disturbances, and judicial restraint.

15.0 SEVERABILITY: If any portion of the AGREEMENT shall be construed by a court of competent jurisdiction as unenforceable, such portion shall be severed here from, and the balance of this AGREEMENT shall remain in full force and effect.

16.0 INTEGRATION AND MODIFICATION: This AGREEMENT includes Attachments A, B, and C and represents the entire and integrated AGREEMENT between the Parties; and supersedes all prior negotiations, representations, or agreements pertaining to the SCOPE OF SERVICES contained herein, either written or oral. This AGREEMENT may be amended only by a written instrument signed by each of the Parties.

17.0 ASSIGNMENT:

17.1 The ENGINEER shall not assign its obligations undertaken pursuant to this AGREEMENT, to another party, provided that nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates, and subcontractors as ENGINEER may deem appropriate to assist ENGINEER in the performance of the SERVICES hereunder.

17.2 It is understood and agreed that all work performed under this AGREEMENT shall be subject to inspection and approval by the County Engineer and any plans or specifications not meeting the terms set forth in this AGREEMENT will be replaced or corrected at the sole expense of the ENGINEER. The ENGINEER will meet with the COUNTY staff initially and monthly thereafter and will be available for public hearings and or County Commission presentations.

18.0 DISPUTE RESOLUTION PROCEDURE: In the event of a dispute between the ENGINEER and the COUNTY over the interpretation or application of the terms of this AGREEMENT, the matter shall be referred to the County Engineer for resolution. If the County Engineer is unable to resolve the dispute, the matter may be referred to the County Commission for resolution. Regardless of these procedures, neither party shall be precluded from exercising any rights, privileges or opportunities permitted by law to resolve any dispute. Each of the parties hereto hereby knowingly, voluntarily, and intentionally waives any rights it may have to trial by jury in respect of any litigation between the parties arising out of, under, or in connection with this AGREEMENT or any other documents entered into in connection herewith, thereby agreeing that any lawsuit arising out of any controversy under this AGREEMENT shall be tried in a court of competent jurisdiction by a judge sitting without a jury.

19.0 RISK ALLOCATION: To the fullest extent permitted under applicable law and in recognition of the relative risks and benefits of the SERVICES to both the COUNTY and ENGINEER, COUNTY hereby agrees that ENGINEER's and its personnel's total liability under the AGREEMENT shall be limited to one hundred percent (100%) of ENGINEER's fee set forth in Attachment B, COMPENSATION.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the respective dates noted herein, said AGREEMENT to be effective on the date executed by the Chair of the Board of County Commissioners.

ATTEST: (SEAL)



Michael Willis
Michael Willis, County Clerk
by Kenneth Yates, Chief of Staff

TULSA COUNTY, OKLAHOMA
Board of County Commissioners

Stan Sallee
Stan Sallee, Chairman

APPROVED AS TO FORM:

Andreas Abelut
Assistant District Attorney

GARVER, LLC

Michael Winterscheidt
Michael Winterscheidt
Transportation Team Leader, Project Manager

ATTEST: (SEAL)

State of Oklahoma)
County of Tulsa) SS

Subscribed and sworn to before me on the 12th day of March, 2024.

My Commission Expires:

August 05, 2024

Amber Rakestraw
Notary Public

AMBER RAKESTRAW
Notary Public, State of Oklahoma
Commission #20009443
My Commission Expires AUGUST 05, 2024

ATTACHMENT A – SCOPE OF SERVICES (E. 76TH ST. N. AT WHIRLPOOL DRIVE)

1. General

Generally, the scope of services includes a signal warrant analysis of the intersection of E. 76th Street N. and Whirlpool Drive west of Owasso, Oklahoma. Intersection operational analysis of existing geometry and geometric analysis will also be completed.

A. Traffic Analyses

A site visit for the intersection of E. 76th Street N. and Whirlpool Drive will be conducted to observe operating conditions and issues. Using 24-hour turning movement classification counts which Garver will subcontract to be collected by The Traffic Group, criteria outlined in the Manual on Uniform Traffic Control Devices (MUTCD) will be evaluated as part of a signal warrant analysis at the E. 76th Street N. and Whirlpool Drive intersection. Signal warrant analysis will also be completed by applying a right turn reduction on the minor intersection approaches. If it is determined that a signal is warranted at this intersection, the need for turn lanes will also be evaluated based on turning movement volumes, operational performance, and general rules of thumb.

If a signal is not warranted at this intersection, Garver will utilize NCHRP Report 457 guidelines and capacity analysis results to evaluate the need for turn lanes at the stop-controlled intersection.

Garver will utilize *Synchro/SimTraffic* software to conduct an operational analysis of the existing geometry at the intersection of E. 76th Street N. and Whirlpool Drive during both AM and PM peak hours. The evaluation will include *Highway Capacity Manual* (HCM) methodology for delay, level of service (LOS), and queueing distance for each intersection movement. *SimTraffic* methodology will also be used to evaluate delay, LOS, and queues. This base condition information will be used for comparison to impacts of geometric improvements. The traffic models will be calibrated as necessary to ensure that the base condition accurately reflects what was observed during the site visit. In addition to modeling the existing conditions, Garver will complete an operational analysis of the E. 76th Street N. and Whirlpool Drive intersection with any recommended geometric improvements and stop-control, and with any recommended geometric improvements and signal (if signal is warranted). Crash data will also be collected and applied for signal warrants.

If a signal is not warranted, Garver will evaluate the growth needed to meet criteria.

B. Report

Garver will develop a brief memo to summarize the findings of the signal warrant analysis, geometric analysis, and operational analysis.

2. Project Deliverables

Garver will submit one electronic copy of the report along with appendices that include detailed outputs of the signal warrant analysis and the intersection operational analysis.

Extra Work

The following items are not included under this agreement but will be considered as extra work:

- A. Analysis of any future conditions
- B. Construction plans for the intersection improvements
- C. Traffic counts beyond intersection of E. 76th Street N. and Whirlpool Drive

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and Garver.

3. Schedule

Garver shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the study within thirty (30) days of receipt of traffic count data.

ATTACHMENT B: COMPENSATION

Tulsa County
Signal Warrant Analysis - Whirlpool Drive

FEE SUMMARY

Title I Service	Estimated Fees
Conceptual Design	\$ 17,400.00
Subtotal for Title I Service	\$ 17,400.00

ATTACHMENT B: COMPENSATION

**Tulsa County
Signal Warrant Analysis - Whirlpool Drive**

CONCEPTUAL DESIGN

WORK TASK DESCRIPTION	E-6	E-3	T-3	E-5
	\$326.70	\$174.90	\$140.25	\$247.50
	hr	hr	hr	hr
1. Project Management				
Administration and Coordination	1			6
Quality Control Review	1			1
Submittals to Client				1
Subtotal - Project Management	2	0	0	8
2. Traffic Engineering				
Site Visit			10	
Compile/Analyze Historical Crash Data		16		
Existing Traffic Volumes Analyses				
Process Traffic Count Data		4		
Signal Warrant Analysis (with and without RTR, left turn vs TH)	1	12		
Operational Analysis of Existing Geometry (AM and PM)		6		
Operational Analysis with Turn Lane (AM and PM)		6		
Develop Signal Phasing Recommendations		6		
Future Year Warrant Analysis		6		
Report	1	8		
Subtotal - Traffic Engineering	2	64	10	0
Hours	4	64	10	8
Salary Costs	\$1,306.80	\$11,193.60	\$1,402.50	\$1,980.00

SUBTOTAL - SALARIES: \$15,882.90

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$49.10
Postage/Freight/Courier	\$0.00
Office Supplies/Equipment	\$0.00
Communications	\$0.00
Survey Supplies	\$0.00
Aerial Photography	\$0.00
GPS Equipment	\$0.00
Computer Modeling/Software Use	\$0.00
Traffic Counting Equipment	\$0.00
Locator/Tracer/Thermal Imager Equipment	\$0.00
Travel Costs	\$268.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$317.10

SUBTOTAL: \$16,200.00

SUBCONSULTANTS FEE (Turning Movement Count): \$1,200.00

TOTAL FEE: \$17,400.00

Attachment C: RESPONSIBILITES OF THE COUNTY

- C.0. **RESPONSIBILITES OF THE COUNTY:** THE COUNTY shall provide the information and services as provided herein in a manner that causes no undue delays in the performance of the SERVICES by the ENGINEER.
- C.1. **INFORMATION:** The COUNTY shall furnish, as requested and required by the ENGINEER and at no expense to the ENGINEER, information relative to the design and construction of the PROJECT.
1. Records, reports, studies, plans, drawings, and any other data available in the files of the COUNTY which may be useful in the work involved under this AGREEMENT.
 2. Standard drawings, contract documents and specifications.
- C.2. **ACCESS:** The COUNTY shall furnish and make all provisions for the ENGINEER to enter upon public or private property as required for the ENGINEER to perform his services under this AGREEMENT.
- C.3. **STAFF ASSISTANCE:** The COUNTY shall designate a person to act as its representative with respect to the SERVICES to be provided under this AGREEMENT and such person shall have complete authority to transmit instructions, receive information and interpret and define COUNTY policies and decisions with respect to materials, equipment and systems pertinent to the SERVICES covered by this AGREEMENT.
- C.4. **DOCUMENT REVIEW:** The COUNTY shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and the COUNTY shall render in writing all decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.