

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and Cabbiness Engineering, LLC (CONSULTANT) for the following reasons:

1. OWNER intends to develop a conceptual plan for the Porter Avenue and Acres Street Intersection Improvement Conceptual Study (the Project); and,
2. OWNER requires certain professional survey, design, analysis and engineering services in connection with the Project (the Services); and,
3. CONSULTANT is prepared to provide the Services.

In consideration of the promises contained in this Agreement, OWNER and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be ___th day of _____, 2013.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oklahoma.

ARTICLE 3 - SCOPE OF SERVICES

CONSULTANT shall provide the Services described in Attachment A, Scope of Services.

ARTICLE 4 - SCHEDULE

CONSULTANT shall exercise its reasonable efforts to perform the Services described in Attachment A according to the Schedule set forth in Attachment B.

ARTICLE 5 - COMPENSATION

OWNER shall pay CONSULTANT in accordance with Attachment C, Compensation. Invoices shall be due and payable upon receipt. OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment D, OWNER'S Responsibilities. OWNER hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by OWNER to CONSULTANT. If OWNER does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to CONSULTANT, OWNER shall obtain a license or right to use, including the right to sublicense to CONSULTANT. OWNER hereby grants CONSULTANT the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. OWNER represents that CONSULTANT'S use of such documents will not infringe upon any third parties' rights.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

Indemnification. The CONSULTANT and the OWNER each hereby agree to defend, indemnify, and hold harmless the other party, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the indemnifying party in the performance of services under this Agreement. The CONSULTANT and the OWNER each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims. In any and all claims asserted by any employee of the CONSULTANT against any indemnified party, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any of the CONSULTANT'S employees under workers' compensation acts, disability benefit acts, or other employee benefit acts. The acceptance by OWNER or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by the CONSULTANT shall in no event be deemed a waiver of any of the provisions of this indemnity provision. None of the foregoing provisions shall deprive the OWNER of any action, right, or remedy otherwise available to the OWNER at common law.

Survival. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance:

- (a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- (b) Automobile Liability Insurance, with a combined single limit of \$1, 000,000 for each person and \$1,000,000 for each accident.
- (c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- (d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

CONSULTANT shall, upon written request, furnish OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to OWNER. OWNER shall require all Project contractors to include OWNER, CONSULTANT, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insured's on their General and Automobile Liability insurance policies, and to indemnify both OWNER and CONSULTANT, each to the same extent

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to CONSULTANT, to fulfill contractual responsibilities to OWNER or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services. In the event the OWNER requests CONSULTANT to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to CONSULTANT for review at least 15 days prior to the requested date of execution. CONSULTANT shall not be required to execute any certificates or documents that in any way would, in CONSULTANT's sole judgment, (a) increase CONSULTANT'S legal or contractual obligations or risks; (b) require knowledge, services or responsibilities beyond the scope of this Agreement; or (c) result in CONSULTANT having to certify, guarantee or warrant the existence of conditions whose existence CONSULTANT cannot ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, CONSULTANT's opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. CONSULTANT does not guarantee that proposals, bids, or actual Project costs will not vary from CONSULTANT'S cost estimates or that actual schedules will not vary from CONSULTANT'S projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by CONSULTANT as deliverables pursuant to the Scope of Services are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT. OWNER shall indemnify and hold harmless CONSULTANT and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle CONSULTANT to additional compensation at rates to be agreed upon by OWNER and CONSULTANT.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by CONSULTANT and furnished to OWNER as part of the Services shall become the property of OWNER; provided, however, that CONSULTANT shall have the unrestricted right to their use. CONSULTANT shall retain its copyright and Ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of CONSULTANT.

ARTICLE 14 - TERMINATION AND SUSPENSION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. OWNER may terminate or suspend performance of this Agreement for OWNER'S convenience upon written notice to CONSULTANT. CONSULTANT shall terminate or suspend performance of the Services on a schedule acceptable to OWNER, and OWNER shall pay CONSULTANT for all the Services performed. Upon restart of suspended Services, an equitable adjustment shall be made to CONSULTANT'S compensation and the Project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or CONSULTANT under this Agreement. CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 16 - NOTICES

Any notice required by this Agreement shall be made in writing to the address specified below:
OWNER:

David Riesland, P.E.
Traffic Engineer
City of Norman
P.O. Box 370
Norman, OK 73070

CONSULTANT:

J. Bret Cabbiness, P.E., President
Cabbiness Engineering, LLC
333 12th Avenue SE, Suite 200
Norman, Oklahoma 73071
(405) 310-6435 Office
(405) 310-6495 FAX

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of OWNER and CONSULTANT.

ARTICLE 17 - DISPUTES

In the event of a dispute between OWNER and CONSULTANT arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations. CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is CONSULTANT'S policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. CONSULTANT further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

A waiver by either OWNER or CONSULTANT of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, including Attachments A, B, C, and D incorporated by this reference, represents the entire and integrated agreement between OWNER and CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

OWNER and CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither OWNER nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, CONSULTANT may assign its rights to payment without OWNER'S consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent CONSULTANT from engaging independent CONSULTANTS, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of OWNER and CONSULTANT. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

IN WITNESS WHEREOF, OWNER and CABBINESS ENGINEERING, LLC have executed this Agreement.

DATED this ___th day of _____, 2013.

The City of Norman
(OWNER)

Signature _____

Name Cindy Rosenthal

Title Mayor

Date _____

Attest:

City Clerk

Cabbiness Engineering, LLC
(CONSULTANT)

Signature *J. Bret Cabbiness*

Name J. Bret Cabbiness, P.E.

Title President

Date 2-11-13

Attest:

Vicki Cabbiness
Secretary



Approved as to form and legality this 20 day of Feb. 2013.

[Signature]
City Attorney

ATTACHMENT A – SCOPE OF SERVICES

General

The CONSULTANT will perform the conceptual roadway design of the Porter Avenue and Acres Street intersection improvement, conceptual drainage design, signalized intersection analysis, conceptual utility coordination and subsequent relocations, anticipated right-of-way requirements and develop associated budgetary cost estimates and document our findings with a detailed written report. The conceptual design will investigate:

A signalized intersection at Porter Avenue and Acres Street. Daws Street on the west side of Porter Avenue will be closed to access and replaced with a turnaround cul-de-sac.

The conceptual roadway improvements proposed will need to include multiple driving lanes in each travel direction, a center turn lane, sidewalks and ADA compliant sidewalk ramps. The traffic engineering scope of work for this project shall include a detailed traffic study to evaluate the existing and projected traffic with the focus being on the conceptual intersections and approaches of Porter Avenue with the cross streets at Acres Street and Daws Street.

Meetings and Site Visits

Immediately after receipt of a formal Notice to Proceed, a kick-off meeting will be held between the OWNER and the CONSULTANT to clearly define the project goals and reporting procedures, and discuss the project schedule and submittal dates. The CONSULTANT will also discuss the relevance of previous studies completed within the project area to determine the extent of available data that is valid for use in carrying out the goals of this project.

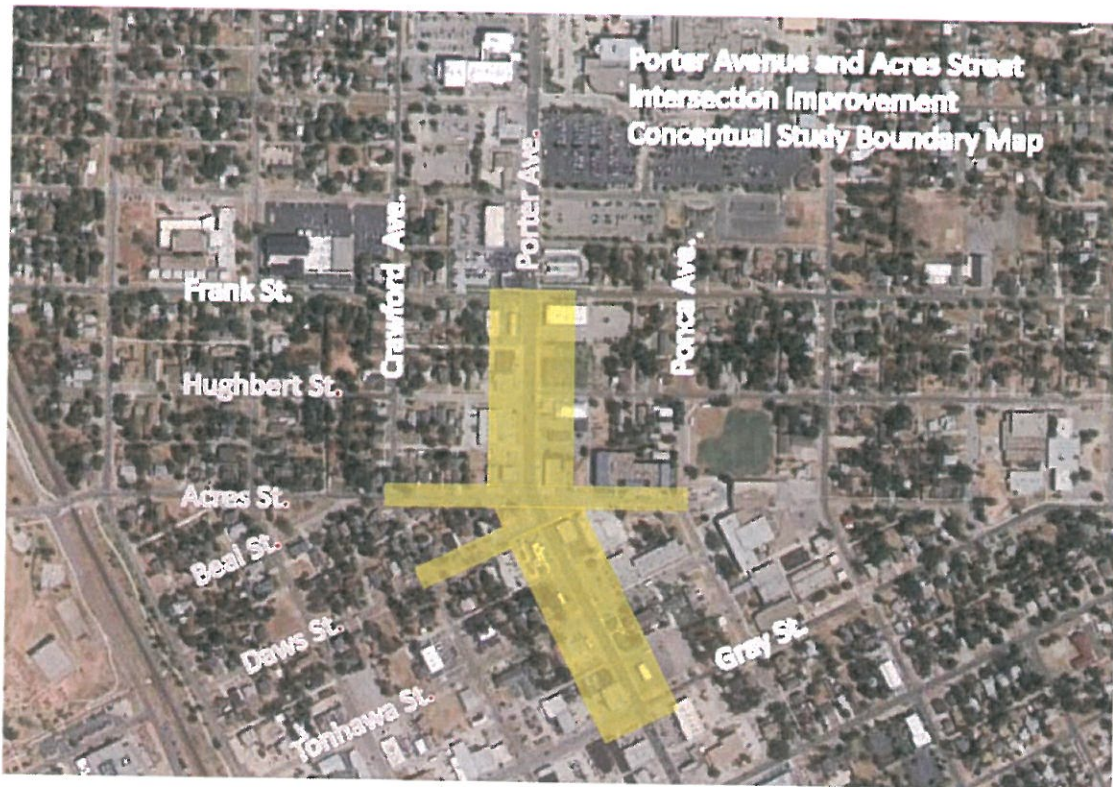
Before any corridor improvements are conceptually designed, careful planning will be undertaken to ensure that the transportation and access needs of the local community are fulfilled. Prior to the conceptual analysis, the CONSULTANT will observe the study corridor and make field observations to gauge existing congestion and safety conflicts during the peak periods.

The CONSULTANT will also participate in at least two (2) meetings with the OWNER's staff and one (1) meeting administered by the OWNER with the immediate property owners and stakeholders.

Topographical Survey

Before any corridor improvements are conceptually designed, an accurate and detailed topographical survey of the Porter Avenue corridor shall be conducted. The survey corridor shall run along Porter Avenue from Gray Street to Frank Street at an approximate width of three hundred feet (300') centered along the roadway's centerline. Additional topographical

survey will be made along Acres Street and Daws Street from Ponca Avenue to Crawford Avenue. This survey swath will be approximately eight feet (80') wide. A general survey boundary map is provided below.



Platted property, parcel ownership, right-of-way limits and easements for the topographic survey limits described above will be researched and document as part of the survey scope of work.

A detailed survey model of the existing topography will be provided, and become the basis of all conceptual designs. The survey will be tied to the City of Norman horizontal and vertical control and will be in accordance with the "Oklahoma Minimum Standards for the Practice of Land Surveying" as adopted by the Oklahoma State Board of Registration for Professional Engineers and Land Surveyors.

Conceptual Roadway Design

The CONSULTANT'S conceptual roadway design for the corridor will include widening Porter Avenue to accommodate a signalized intersection. Included in the roadway footprint will be new ADA compliant sidewalks and sidewalk ramps. Multiple travel direction lanes will be conceptually designed with a center-turn lane at the intersection of Acres Street to accommodate normal vehicular traffic (cars, motorcycles, buses, and trucks) and pedestrian modes of transportation. The roadway's vertical profile grade will also be reviewed and may conceptually be adjusted to complement Porter Avenue's conceptual design.



Conceptual Drainage Design

The conceptual drainage improvements along Porter Avenue will have a significant importance to the conceptual roadway widening. The CONSULTANT'S conceptual drainage design will also help dictate the new roadway vertical profile for Porter Avenue to ensure proper storm water collection and conveyance.

Currently, there are known drainage problems at the intersections of Acres Street and Porter Avenue and the intersection of Daws Street and Porter Avenue. The CONSULTANT'S conceptual design solutions will address the localized storm water flooding at these locations and will also be incorporated into the roadway's conceptual plan.

Traffic Engineering Study

For the traffic engineering study, the CONSULTANT will assess the pros/cons of the conceptual intersection design with regard to traffic. The related local-trip traffic volumes will be re-distributed to adjacent streets and intersections. A traffic analysis of the adjacent streets and intersections is not included in this scope of work, but some general information regarding the expected impacts of redistributed traffic for each alternative will be provided.

Immediately after the kick-off meeting, the CONSULTANT will gather available information (existing traffic counts, future developments, and land use information) to analyze existing conditions and project future conditions at the intersection.

The CONSULTANT will analyze the study intersection area (including both intersections) based on the 2013 and 2035 design hour volumes (DHVs). The level of service expected based on the AM and PM peak hours will be determined for 2013 and 2035 DHVs with the conceptual design's lane configurations.

Expected back-of-queue locations will be predicted and reported with the operational analysis results. The expected queues and operational analysis results will be used to make recommendations for the intersection area improvements. Locations and lengths of turning lanes at the intersection will be provided.

The crash history available for the intersection study area will be summarized and analyzed to record crash cluster locations and major trends in the types of crashes. Five years of crash data will be included with this summary and analysis.

A traffic design memo will be provided summarizing the procedures used, the traffic data collected, the design traffic volumes used, the analysis results, the intersection improvement recommendations, and a detailed preliminary cost estimate for the new traffic signal (including fiber optic signal interconnect).

Conceptual Utility Design

Conceptual utility design will consist of identifying public and private utilities along the project, recommend a preferred utility corridor for each utility, and estimate the cost for each utility relocation. The CONSULTANT will obtain and utilize utility atlases to determine the location of the existing utilities and identify potential conflicts with the proposed conceptual design. Budgetary cost estimates will be prepared for the recommended utility relocations. Pothole location of existing utilities is not included in the conceptual utility design.

Right-of-Way Requirements

It is anticipated, the roadway's conceptual design footprint will exceed the existing right-of-way in some locations along the corridor of Porter Avenue. Currently, Porter Avenue has an existing sixty foot (60') right-of-way south of Acres Street. North of Acres Street, the existing right-of-way widens to eighty feet (80') which could potentially accommodate a

conceptual roadway modification. These right-of-way dimensions will be confirmed by topographical survey, property ownership research and platted parcel information. To further complicate this design challenge, public and private utilities (water, sanitary sewer, gas, electric, and communications), street lighting, and storm water collection and conveyance systems will also need to fit within this corridor.

The CONSULTANT will determine the amount of right-of-way required to construct the conceptual roadway design concepts and additional room required for needed utility relocations. Included with this task, will be the identification of property and structures that might need to be acquired to accommodate construction of any of the conceptual roadway design concepts.

Project Deliverables

At the conclusion of this project, the CONSULTANT will prepare a detailed written report of the project's findings; anticipated costs associated with each conceptual roadway design investigated; anticipated costs associated with necessary utility relocations; and anticipated right-of-way acquisition costs with each conceptual design. The following will be provided to the OWNER:

1. Ten (10) copies of the Porter Avenue and Acres Street Intersection Improvement Conceptual Study written report.
2. Electronic files of the written report, supporting exhibits, conceptual illustrations and traffic study models as requested.

Extra Work

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

1. Collection of the AM peak (7:00 AM to 9:00 AM) and PM peak (4:00 PM to 6:00 PM) turning movement counts at the Porter Avenue and Acres Street intersection. The current peak hour and daily traffic volumes will be projected by the owner to a design year of 2035 based on available historical traffic data and opportunities for growth around the study area.
2. Roadway and drainage construction plans beyond 50% of normal Oklahoma Department of Transportation (ODOT) standard of complete construction plans
3. Storm water permitting documentation
4. Traffic signal plans
5. Specific signal timing or phasing recommendations
6. Signing and striping construction plans
7. Design of street lighting or other electrical design
8. Design of any utilities relocations and subsequent relocation construction plans
9. Property acquisition documents or acquisition
10. Environmental handling and documentation, including wetlands identification, underground leaking storage tanks, mitigation plans or other work related to

- environmentally or historically (culturally) significant items
11. Preliminary and final construction plans of normal Oklahoma Department of Transportation (ODOT) standards
 12. Submittals or deliverables in addition to those listed herein

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

ATTACHMENT B – SCHEDULE

CONSULTANT shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below and graphically shown on the following design schedule:

<u>Phase Description</u>	<u>Calendar Days</u>
Conceptual Design	90 days from start date

ATTACHMENT C – COMPENSATION

The conceptual design fee for the services shown in Attachment A are be based upon a lump sum fee broken down by task items. The total fee for the Porter Avenue Corridor Conceptual Plan is \$ 55,300.00. Costs associated with each task are shown below:

Topographical Survey of Corridor	\$ 21,500.00
Roadway Conceptual Design	\$ 10,000.00
Drainage Conceptual Design	\$ 3,000.00
Traffic Engineering and Analysis	\$ 9,300.00
Conceptual Utility Relocation Design	\$ 2,000.00
Progress and Site Meetings with Owner	\$ 1,500.00
<u>Final Report</u>	<u>\$ 8,000.00</u>
Total Lump Sum Fee	\$ 55,300.00

ATTACHMENT D – OWNERS RESPONSIBILITIES

The following will items will be provided by the OWNER:

1. Most current aerial photography of the corridor in electronic format
2. Existing public utility atlas information
3. As-built construction plans of any known public construction improvement project for the corridor
4. Existing ADT information along the corridor
5. Existing accident data along the corridor
6. Known public and private utility contacts
7. Collection of the AM peak (7:00 AM to 9:00 AM) and PM peak (4:00 PM to 6:00 PM) turning movement counts at the Porter Avenue and Acres Street intersection. The current peak hour and daily traffic volumes will be projected by the owner to a design year of 2035 based on available historical traffic data and opportunities for growth around the study area.