

AGREEMENT FOR PROFESSIONAL SERVICES

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

1. OWNER intends to replace the existing AM/Midday/PM peak period signal timings along the Robinson Street corridor with updated timings reflective of the typical existing traffic demand in the area (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 26th day of June, 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 insureds 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 R. Riesland, PE
City Traffic Engineer
City of Norman, Oklahoma
1311 DaVinci Street
Norman, OK 73069
(405) 329-0528

CONSULTANT:

Michael Graves
Garver, LLC 1016 24th Avenue NW
Norman, Oklahoma 73069
(405) 329-2555 Office
(405) 329-3555 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 Garver, 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

Garver, LLC
(CONSULTANT)

Signature _____

Name Michael Graves

Title Vice President

Date 6-5-13

Attest:

Lisa Nipper
Secretary



Approved as to form and legality this ____ day of _____ 2013.

City Attorney

APPENDIX A – SCOPE OF SERVICES

1. General

The City of Norman requires the professional services of an engineering firm to provide all engineering services necessary to replace the existing AM/Midday/PM peak period signal timings along the Robinson Street corridor. Generally, the scope of services consists of coordinating with the city; providing optimal signal splits and offsets at 14 signalized locations in order to maximize vehicle progression and minimize overall delay throughout the corridor. Specific tasks will consist primarily of the following:

2. Services of Engineer

The basic services include design and preparation of Synchro models and the implementation of coordinated signal timings along Robinson Street in Norman, Oklahoma.

More specifically, the Engineer will perform the following services:

- 2.1. **Traffic Data Collection** – Owner will provide AM/Midday/PM intersection turning movement counts to the Engineer. The Engineer will take this raw data and produce traffic flow diagrams for the corridor – balancing intersections without intervening driveways and noting locations with significant driveways between signalized intersections that provide an imbalance. The Engineer will analyze traffic volumes for the current construction conditions as volumes are presently higher near the Robinson/I-35 interchange due to construction at the nearby I-35 interchange at Main Street. The Engineer will also reduce the volumes for “2014 post-construction” conditions.
- 2.2. **Field Observation and Signal Inventory** – Owner will provide aerial photography with key dimensions as well as the existing signal timing and phasing data in place at each intersection. The Engineer will observe the study corridors during the peak periods to determine the existing quality of vehicle progression, progression speed, intersection queuing, locations of high pedestrian activity, and any other impediments to providing coordinated signal timings. The Engineer will also make field observations to ensure that the collected data is reflective of the true vehicle demand or if any volumes are constrained due to a lack of intersection capacity. Finally, the Engineer will conduct “Before” travel time runs along the corridor.
- 2.3. **Develop Synchro Model for Corridor** – The Engineer will use the collected traffic, lane, and signal data to develop a computer model of the existing corridor for each peak period. The Engineer will use the computer software program, Synchro - Version 7 for all computer models. The Engineer will use the field observations recorded in Item 2.2 to calibrate the model as needed in order to develop an accurate base for comparing the benefit of any future timing improvements.
- 2.4. **Develop New Timing Plans for Corridor** – The Engineer will update the Synchro model for each peak period in order to minimize overall corridor delay. The timing plans will be analyzed based on intersection Level of Service (LOS), expected

progressive flow according to time-space diagrams, and SimTraffic simulation results that compare corridor-wide delay, number of stops, and number of cycle failures for various alternatives. The Engineer will consider minor operational changes to signalization (such as lagging protected left turn phases or restricting certain movements during the peak hour). Any such changes will be approved by the Owner prior to implementation.

In addition, critical intersections along the corridor will be identified. The timing needs for these intersections will take precedence over the non-critical intersections as these are typically locations where sensitive timing plans are needed in order to ensure corridor-wide benefits and reduce potential queuing disruptions. Critical intersections can also include those that are part of other existing coordinated corridors.

Using the established city-wide cycle lengths of 100 seconds (AM) and 110 seconds (Midday/PM), the Engineer will determine the optimal signal splits to minimize delay at each intersection within the corridor. Once the intersections are optimized, the Engineer will consider the magnitude of through traffic, the distance between intersections, and the prevailing vehicle speeds to determine the offsets and signal phasing order for the best progressive bandwidth possible for each peak period. At this time, consideration will be given to allocating additional green time to the major street through movement to enhance progression and improve corridor-wide delay if acceptable conditions (as determined by the Owner) can be maintained for the minor intersection movements. Time-space diagrams developed in Synchro and observed visually in SimTraffic will be consulted to determine the best possible progressive bandwidth for the corridor that minimizes stops and overcomes operational issues like deficient turn lane storage or queuing between closely spaced intersections.

- 2.5. **Implement New Timing Plans** – After a review of the updated preliminary Synchro timing plans with the Owner, the model output will be entered into the controller database, verified as acceptable within the signal controllers, and downloaded for operation. It is the Engineer's understanding that the Owner will input the data. Once the data is loaded into the controllers, the Engineer will observe traffic for each plan and make iterative field adjustments to the timings to produce optimal operation. The Engineer will make note of these field adjustments and update all Synchro models and associated documentation when submitting the deliverables to the Owner.
- 2.6. **Conduct Project Meetings with City Staff** – Prior to beginning work, the Engineer will meet with the Owner to discuss goals, establish priorities, and develop strategies for the updated traffic signal timings. The Owner will evaluate the new plans and offer comments prior to implementation.

3. Project Deliverables

The following will be submitted to the Owner, or others as indicated, by Garver:

1. PDF submittal of all Meeting Minutes.
2. Electronic copies of all submittal Synchro models, including final runs updated to

- reflect any field adjustments for all peak periods.
- 3. Two copies of the final signal timing database, including all changes made to the timing plans in tabular form.
- 4. Electronic copy of before/after study for website display.

4. Extra Work

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

- 1. Before/After Report for the website.
- 2. Consideration of any future year conditions other than before/after I-35 at Main Street construction.
- 3. Recommendations for additional lane capacity.
- 4. Off-peak timings (including weekend or holiday plans)
- 5. 24-Hour machine traffic counts
- 6. Analysis of transition methods or times between plans
- 7. Construction plans
- 8. Submittals or deliverables in addition to those listed herein.
- 9. Coordination or design of any utilities relocation.
- 10. Surveying.
- 11. Environmental Handling and Documentation.

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

ATTACHMENT B – SCHEDULE

The CONSULTANT shall begin work under this Agreement within ten (10) days of a Notice to Proceed (NTP) and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Kick-Off Meeting	10 days from NTP
Submit Preliminary Timing Plans to the City	45 days from NTP
Submit Final Timing Plans to the City for Implementation	20 days from approval of preliminary timing plans
Submit Final Report	20 days from implementation of final timing plans

**THE CITY OF NORMAN
ROBINSON STREET TRAFFIC SIGNAL TIMING PLANS**

PROJECT DESCRIPTION:

The City of Norman requires the professional services of an engineering firm to provide all engineering services necessary to replace the existing AM/Midday/PM peak period signal timings along the Robinson Street Corridor with updated timings reflective of the typical existing traffic demand of the area.

FEE SUMMARY:

Labor	Man-Hours	Total
1. Signal Timings	258	\$31,264.00
Total Labor	258	\$31,264.00

Expenses	Amount
1. Signal Timings	\$736.00
Total Expenses	\$736.00

GRAND TOTAL LUMP SUM FEE:**\$32,000.00**

ATTACHMENT D - OWNER'S RESPONSIBILITIES

In connection with the project, the Owner's responsibilities shall include, but not be limited to, the following:

1. Giving thorough consideration to all documents presented by the Engineer and informing the Engineer of all decisions within a reasonable time so as not to delay the work of the Engineer.
2. Furnishing the Engineer existing AM/Midday/PM peak hour turning movement counts, aerial photography with intersection dimensions, signal timing and phasing data, and posted speed limits, and providing verification of all signal detection and communication equipment.
3. Making provision for the employees of the Engineer to enter public and private lands as required for the Engineer to perform necessary field investigations.
4. Furnishing the Engineer existing plans, previous studies, or copies of the same, related to or bearing on the proposed work as may be in the possession of the Owner. Such documents or data will be returned upon completion of the work or at the request of the Owner.
5. Providing legal, accounting, and insurance counseling services necessary for the project and such auditing services as the Owner may require.
6. Giving prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the project or other events which may substantially alter the Engineer's performance under this Agreement.
7. Owner will not hire any of the Engineer's employees during performance of this contract and for a period of one year beyond completion of this contract.