



## STAFF REPORT

DATE: September 12, 2023  
TO: Ty Lasher, City Manager  
FROM: Anne Stephens, City Engineer  
RE: 45<sup>th</sup> – Oliver to Woodlawn Traffic Counts

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### **Proposal Focus:**

#### Our Mission

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- Attractive growth and safe living – We have a clean city, people are proud of our community. Encourage attractive neighborhoods and new developments through code enforcement and planning/zoning.

#### Our Values

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- Small Town Pride, regardless of size – Regardless of how big we get, keep that hometown feeling and attitude.
- Creativity and Innovation – Be open to new ideas, creativity and innovation within the organization and from the community.

### **Current Situation:**

A large part of the decision regarding the configuration of 45<sup>th</sup> Street rests upon the traffic counts, particularly the turning movements at each intersection. As part of Garver's agreement for the design of the project, they presented budgetary numbers for an agreement with The Traffic Group to collect data for the traffic study.

### **Goals:**

- To collect data for use in the traffic study of the 45<sup>th</sup> Street corridor to assist in determining lengths of turn-bays and intersection needs at 45<sup>th</sup> and Oliver.

### **Discussion:**

Garver proposed working with The Traffic Group in their initial scoping of the project and has provided us with an agreement for obtaining the traffic counting services. The agreement has two groups – the first group is intersections that have been identified as the most important with the second group of intersections being “nice to have”. It should be noted that there is an error in the first intersection of Group 2. This intersection is intended to be 37<sup>th</sup> and Oliver and not 44<sup>th</sup> and Oliver.

### **Financials:**

The City is required to pay 100% of all engineering design costs related to the 45<sup>th</sup> Street – Oliver to Woodlawn Reconstruction Project. The City's portion of this project will be paid for with temporary note proceeds. After three years, the temporary note will be refinanced with a GO Bond and the City will pay annual debt service payment over the next 20 years.

### **Recommendation:**

If Council wants a comprehensive view of the current traffic loading on 45<sup>th</sup> Street, the approval of the full count (parts 1 and 2) is recommended. This ensures that nothing is missed, nor left up to an assumption during the design of the road.



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September 11, 2023

Ms. Anne Stephens, PE  
City Engineer  
City of Bel Aire  
7651 E. Central Park Ave.  
Bel Aire, KS 67226

RE: City of Bel Aire Data Collection  
**TRAFFIC COUNTS**  
Bel Aire, Kansas  
Our Agreement No.: 2022-1214  
Bill Group No.: 001

Dear Ms. Stephens:

While traffic engineering and transportation planning is our passion, exceptional client service and high value to the client is imperative. There is nothing more important and nothing more satisfying to us at The Traffic Group (TTG) than serving you, the client. We want you to succeed and we will assist you to ensure that happens!

Our team believes strongly that the best planning and design solutions come out of a thoughtful, collaborative approach – a partnership – and we look forward to working with you in that capacity.

Thank you for the confidence you have placed in us and for the opportunity to provide traffic consulting services related to the City of Bel Aire Data Collection (the “Project”). Based upon your email, we are pleased to submit the following agreement (this “Agreement”) for your consideration.

**DESCRIPTION OF WORK (HEREINAFTER, THE “SERVICES”):**

1. Conduct 24-hour Video Vehicle Classification Turning Movement counts with length-based classification to be collected at the following intersections on a Tuesday, Wednesday, or Thursday:
  - E. 45<sup>th</sup> St. at Oliver
  - E. 45<sup>th</sup> St. at Westlake
  - E. 45<sup>th</sup> St. at School Dr.
  - E. 45<sup>th</sup> St. at Edgemoor
  - E. 45<sup>th</sup> St. at Auburn
  - E. 45<sup>th</sup> St. at Farmstead
  - E. 45<sup>th</sup> St. at Woodlawn
  - E. 37<sup>th</sup> St at Parkwood

*All video classification data will be length-based with four classifications available (passenger vehicles, buses, medium trucks, and heavy trucks) and Pedestrians. All data will be submitted in Excel, and video will also be made available upon request.*

2. Conduct 24-hour Video Vehicle Classification Turning Movement counts with length-based classification to be collected at the following intersections on a Tuesday, Wednesday, or Thursday:
  - E. 44<sup>th</sup> St. at Oliver
  - E. 45<sup>th</sup> St. at Dundee St.
  - E. 45<sup>th</sup> St. at N Hillcrest
  - E. 45<sup>th</sup> St. at S Hillcrest

*All video classification data will be length-based with four classifications available (passenger vehicles, buses, medium trucks, and heavy trucks) and Pedestrians. All data will be submitted in Excel, and video will also be made available upon request.*

**NOTE: If additional services are requested by you or a government agency, we will provide an additional cost agreement or conduct the work on an hourly basis with your authorization.**

### **ESTIMATED TIME OF COMPLETION:**

Two weeks from Notice to Proceed. Counts submitted 1 week from completion.

### **FEE:**

- 1. Lump Sum = \$9,850.00.**
- 2. Lump Sum = \$4,950.00.**

Meetings and hearings are not included.

Travel time, meetings, and hearings will be billed on an hourly basis. Our hourly rates are available upon request.

This Agreement, the obligations of the parties hereto, and the Services provided by The Traffic Group, Inc. shall be governed by the Standard Terms & Conditions attached hereto as Exhibit A, which are expressly incorporated herein in their entirety and made a part of this Agreement.

While The Traffic Group, Inc. will not discuss details of the work it is performing on behalf of the Client, the firm is permitted to promote the fact that it has been retained by the Client through posts on its website or in social media, or through news releases or other promotional vehicles.

If the terms and conditions of this Agreement are acceptable to you, please countersign below, return this copy to me, and keep a copy for your files. Each executed counterpart of this Agreement will be deemed to be an original copy of this Agreement and all counterparts together will be deemed to constitute one and the same agreement. Faxed or other electronically delivered signatures may be used in lieu of original signatures and shall constitute effective execution and delivery of this Agreement.

We look forward to working with you on this Project.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Blair". The signature is fluid and cursive, with a large loop at the end.

John A. Blair  
Vice President, Data Division

JAB:amr

(M:\Proposals\2022\2022-2014\_City of Bel Aire Data Collection\DOCS\PROPOSALS\BG001\_Proposal\_Traffic Counts\_Stephens.docx)

This Agreement (including the Standard Terms & Conditions attached hereto as Exhibit A, which are expressly acknowledged as being received) as stated herein is hereby accepted by the undersigned. The undersigned is an authorized officer or representative of the Client and possesses the power and authority to execute this Agreement on behalf of the Client. The undersigned hereby agrees to unconditionally and irrevocably guarantee full payment and performance of the obligations of Client set forth herein. The undersigned hereby executes this Agreement, under seal, as of the date first set forth above, and upon such execution, authorization to proceed is hereby granted.

Company Name/Responsible Party:

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

**Special Billing Instructions:** \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

**STANDARD TERMS & CONDITIONS**

Capitalized terms used herein shall have the means set forth in the agreement between The Traffic Group, Inc. and the Client.

**PAYMENT FOR SERVICES:**

Invoices for Service may be issued semi-monthly or as otherwise appropriate for the level of work activity as determined in the sole and absolute discretion of The Traffic Group, Inc. Payment is due thirty (30) calendar days from date of invoice. Any late payment shall constitute a material breach of, and default under, the attached Agreement and the unpaid balance shall accrue interest at the monthly rate of one and one-half (1½%) percent per month. Any collection efforts undertaken by The Traffic Group, Inc. (including but not limited to referral to an attorney or collection agency, by judicial proceeding or otherwise) commenced to enforce this Agreement (including recover amounts due under the Agreement), shall become the responsibility of Client and all of The Traffic Group, Inc.'s reasonable costs and expenses associated with the enforcement, including without limitation, attorney's fees, court costs and expenses, whether incurred prior to or during the enforcement action, shall be added to the balance due under the Agreement. The Traffic Group, Inc.'s remedies under the Agreement are cumulative and in addition to, and not in lieu of, any other remedies allowed by law or equity except where specifically stated otherwise herein.

Should invoices remain outstanding for a period in excess of thirty (30) days from the date of the invoice, The Traffic Group, Inc. shall have the sole right to suspend and/or discontinue the Services associated with the Project without penalty. Upon payment of invoice, Client and The Traffic Group, Inc. shall readjust schedules accordingly. No work product, deliverable or other materials will be released or provided to the Client until delinquent accounts have been satisfied in full.

If Client materially breaches this Agreement in any respect, The Traffic Group, Inc. shall be entitled to the immediate payment from Client of all amounts which are or would become due and payable to The Traffic Group, Inc., throughout the full term of the Project including this Agreement, plus interest, in addition to any other remedies allowed by law or under this Agreement.

Should Client decide to terminate this Agreement prior to the completion of the Services contemplated in this Agreement, Client agrees to compensate The Traffic Group, Inc. in full for all Services performed to date prior to the termination.

To the extent that Client's Project constitutes or involves the improvement of property, Client acknowledges that The Traffic Group, Inc.'s Services constitute work for or about the improvement and, as such, constitutes an integral part of said construction or development as set forth in the Maryland Mechanics Lien Law.

In the event Client is a corporation, partnership, limited liability company or any other legal entity, the individual whose signature appears on the Agreement, whether executing the Agreement on behalf of Client or otherwise, hereby agrees to be bound by the terms and conditions set forth in this Agreement and does hereby personally guarantee, jointly and severally with Client, payment for any and all Services, costs, fees, charges, and expenses arising out of or due in connection with the Agreement or The Traffic Group, Inc.'s work for Client.

**COMPLIANCE WITH STANDARDS; WAIVER OF REPRESENTATIONS AND WARRANTIES; SPECIAL AND EXTRA SERVICE**

The Traffic Group, Inc. shall provide all work, services, and activities in accordance with the Description of Work set forth in this Agreement, in a manner consistent with all applicable codes, laws, regulations, standards and ordinances ("Standards") for the location of the Project, using all commercially reasonable efforts and in a timely manner. Any request by Client which The Traffic Group, Inc. believes could cause or result in a violation of the applicable Standards, The Traffic Group, Inc. shall so advise Client. If Client disagrees with The Traffic Group, Inc.'s assessment, The Traffic Group, Inc. may terminate this Agreement upon five (5) days-notice without penalty. Client shall remain liable to The Traffic Group, Inc. for all services provided through the date of termination.

OTHER THAN COMPLIANCE WITH THE STANDARDS IN A COMMERCIALY REASONABLE MANNER, THE TRAFFIC GROUP, INC. MAKES NO OTHER REPRESENTATION, EXPRESS OR IMPLIED, AND NO WARRANTY AND/OR GUARANTEE IS INCLUDED OR INTENDED TO BE INCLUDED IN THIS AGREEMENT OR IN RELATION TO THE SERVICES PROVIDED BY THE TRAFFIC GROUP, INC. UNDER THIS AGREEMENT.

The Traffic Group, Inc. will provide certain services in addition to those listed in the Agreement when such services are requested in writing and authorized by the Client and subsequently agreed to by The Traffic Group, Inc. Such services may include special requests, other than those required by the Agreement; additional meetings requested beyond those identified in the Agreement; changes due to causes beyond the control of The Traffic Group, Inc.; changes due to modifications in the Land Use Plan submitted to The Traffic Group, Inc.; special additional services which may be required if the work is suspended, abandoned, or extended; or any other special engineering services not included above which may be requested. Payment to The Traffic Group, Inc. when authorized, as compensation for these services, shall be in accordance with our hourly rates set forth in the Agreement, and under the same invoicing scheduled as set forth herein.

**FILES AND DRAWINGS**

Upon satisfaction of all outstanding invoices, Client shall be entitled to make and retain a copy of all data, files, drawings and, if applicable, reports generated by The Traffic Group, Inc. relating to this Project. It is expressly acknowledged and agreed that the ORIGINAL data, files, drawings and, if applicable, reports, are the property of The Traffic Group, Inc. The Traffic Group, Inc. shall retain all such data, files, and original drawings generated in the performance of the Services for a period of time necessary will remain in possession of The Traffic Group, Inc. for a maximum of five (5) years after being generated.

**LIABILITY FOR ACCURACY OF DATA PROVIDED TO THE TRAFFIC GROUP, INC.**

Client shall provide The Traffic Group, Inc. with all information necessary for rendering the services under the Agreement and the Client shall be liable for the accuracy or completeness of the data provided by the Client or any of Client's agents. Client shall obtain from the owner thereof any and all consents required to reproduce data protected by patent, trademark, service mark, copyright or trade secret, and Client indemnifies and holds The Traffic Group, Inc. harmless from any claims, demands, suits, actions, losses or damages against The Traffic Group, Inc. resulting or arising from the reproduction, use or distribution of such materials.

**LIMITATION OF LIABILITY/WAIVER OF CONSEQUENTIAL DAMAGES AND INDEMNIFICATION/NON-ASSIGNABILITY**

CLIENT AGREES TO ALLOCATE CERTAIN OF THE RISKS ASSOCIATED WITH THE PROJECT BY LIMITING THE TRAFFIC GROUP, INC.'S TOTAL LIABILITY TO CLIENT, SUBJECT TO AVAILABLE INSURANCE PROCEEDS, ARISING FROM THE TRAFFIC GROUP, INC.'S SERVICES, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE TRAFFIC GROUP, INC.'S LIABILITY SHALL BE LIMITED TO THE LESSER OF THE ACTUAL COSTS OF THE TRAFFIC GROUP, INC.'S SERVICES PAID THROUGH THE DATE OF THE EVENT TRIGGERING LIABILITY OR AVAILABLE AND APPLICABLE INSURANCE PROCEEDS.

The Client further agrees that The Traffic Group, Inc. shall not be liable for any special, incidental, indirect, punitive, or consequential damages. Rather, Client's sole remedies, upon proper notice to The Traffic Group, Inc., shall be to (a) permit The Traffic Group, Inc. the opportunity to address any and all claims relating to unsatisfactory services provided the Client provides such notice within 30 days of the completion of such Service; and (b) if Client remains unsatisfied with The Traffic Group, Inc.'s Services, to terminate this Agreement.

Client shall indemnify and hold The Traffic Group, Inc. harmless against any claim, demand, suit, action, loss or damage resulting or arising from injury to or death of any employee or agent of The Traffic Group, Inc. (including consultants, subcontractors, or associates retained by The Traffic Group, Inc. for the purpose of fulfilling the terms of the Agreement) while on Client's property or arising out of any act or omission of the Client, its employees or agents.

No part of the Agreement or any other understanding or agreement between The Traffic Group, Inc. and Client may be assigned by Client without The Traffic Group, Inc.'s express written approval, executed by an authorized officer of The Traffic Group, Inc., such approval to be granted at the sole and absolute discretion of The Traffic Group, Inc.

**CONSENT TO JURISDICTION AND FORUM SELECTION**

The parties hereto agree that all actions or proceedings arising in connection with the Agreement shall be tried and litigated exclusively in the Courts of the State of Maryland, County of Baltimore (not City). The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of the Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the Courts of the State of Maryland shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to the Agreement. The Client agrees to venue in the District or Circuit Court of Maryland for Baltimore County. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

**MISCELLANEOUS PROVISIONS**

The Agreement is binding upon and shall inure to the benefit of the parties hereto, and their respective, successors-in-interest, and assigns. The Agreement shall be governed by the laws of the State of Maryland without regard to any conflicts of laws rules. Whenever possible, each provision of the Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be deemed severable and ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement.

The Agreement constitutes the entire and integrated agreement and understanding between the parties with respect to the subject matter hereof and may only be modified by an agreement signed by all of the parties hereto. A waiver of any term herein or the acquiescence by The Traffic Group, Inc. to insist upon strict compliance with any term or condition recited herein shall not constitute a waiver or any subsequent default or failure, whether similar or dissimilar.