

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
TRANSPORTATION PLANNING STUDY**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter “County”), a body corporate and politic under the laws of the State of Texas, and Transcend Engineers & Planners, LLC, (hereinafter “Consultant”), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Consultant conduct a transportation planning study and develop a prioritized list of future mobility projects to mitigate safety issues and alleviate congestion in Fort Bend County, Commissioner Precinct 3, (hereinafter “Services”); and

WHEREAS, County has determined Consultant is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Consultant have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Consultant represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Consultant shall render Services to County as described in Consultant’s Proposal dated December 4, 2020 attached hereto as Exhibit “A” and included herein for all purposes.

Section 2. Personnel

2.1 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Consultant's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services billed at the applicable rates as described in Exhibit A is three hundred thousand dollars and no/100 (\$300,000.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an amendment executed by the parties.

3.2 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of three hundred thousand dollars and no/100 (\$300,000.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed three hundred thousand dollars and no/100 (\$300,000.00).

Section 5. Time of Performance

Time for performance of the Scope of Services under this Agreement shall begin on Consultant's receipt of a notice to proceed and end no later than September 30, 2021. Consultant shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Consultant's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant, excluding Professional Liability, shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONSULTANT'S LIABILITY, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any

Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

Section 13. Independent Consultant

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a “Notice”) pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County, Commissioner Precinct 3
Attn: Commissioner
22333 Grand Corner Drive
Katy, Texas 77494

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

Consultant: Transcend Engineers & Planners, LLC
Attn: Raj Basavaraju, P.E., PTOE
633 E Fernhust Drive, Suite 1104
Houston, Texas 77450

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker’s Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Standard of Care

Consultant represents it shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Further, Consultant shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

Section 25. Certain State Law Requirements for Contracts

25.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Consultant verifies that if Consultant employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Consultant represents pursuant to Section 2252.152 of the Texas Government Code, that Consultant is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

BY ACCEPTANCE OF CONTRACT, CONSULTANT ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

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IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto.

FORT BEND COUNTY

TRANSCEND ENGINEERS & PLANNERS, LLC

KP George, County Judge



Authorized Agent – Signature

Date

Raj Basavaraju, P.E., PTOE

Authorized Agent – Printed Name

ATTEST:

Principal

Title

Laura Richard, County Clerk

1/20/2021

Date

APPROVED AS TO LEGAL FORM:

Assistant County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

EXHIBIT A

December 4, 2020

Mr. Robert Pechukas
Manager of Policy and Administration
Fort Bend County Precinct 3
22333 Grand Corner Drive
Katy, TX 77494

Subject: Transcend's Proposal for Transportation Planning Study:
Development of Priority Projects List

Dear Mr. Pechukas,

Transcend Engineers & Planners, LLC (Transcend) is pleased to submit this proposal to conduct a transportation planning study and develop a prioritized list of future mobility projects to mitigate safety issues and alleviate congestion in Fort Bend County Precinct 3.

Scope of Work

Transcend will employ data driven approach to review all roadways and intersections in Precinct 3 and identify congestion and safety issues. We will also recommend design and operational improvements using concept plans and provide a prioritized list of projects by future year.

Task 1. Data Collection

Transcend shall review Fort Bend County's Major Thoroughfare Plan, previous mobility studies in Precinct 3 and utilize existing traffic count data from county's and TxDOT's data sources. If needed, Transcend will collect 24-hour traffic counts at 30 locations to understand traffic patterns. Counts obtained during COVID-19 pandemic will be adjusted to reflect typical weekday peak traffic volumes.

Transcend shall also obtain information about newly proposed schools, residential and commercial developments, planned and proposed roadway improvement projects. For conducting safety analysis, Transcend shall obtain vehicular, pedestrian and bicyclist crash data from CRIS online database and Fort Bend County data sources.

Task 2. Needs Assessment

Transcend shall develop a roadway inventory of high, medium and low traffic volumes and overlay this information with high, medium and low crash index. GIS analysis will be conducted to identify crash hotspots experiencing severe congestion. Other issues such as signal timing, speeding, lighting will be identified using resident complaints and field observations. Land use and access management issues shall also be considered and documented. Deliverable for this task shall include needs and issues tabulated for all investigated locations in Precinct 3 that are not previously programmed or planned.

Task 3. Prioritized List of Locations

Using the above assessment, 20 roadway segments and 20 intersections shall be identified that have highest safety and mobility issues with no improvements previously identified. These locations will be prioritized for each future year between January 2021 and December 2024. Transcend shall review these locations with Precinct 3 staff and revise based on mobility improvements identified as part of other capital projects.

Task 4. Safety Analysis

Transcend shall conduct detailed crash analysis for the 20 roadway segments and 20 intersections. Based on identified safety issues, we anticipate that up to 5 of these locations may need Road Safety Audit (RSA)s before countermeasures can be recommended. Average crash rates shall be developed to compare with statewide averages. Using FHWA's Clearinghouse, countermeasures such as turn lanes, median installation, minor geometric modifications, lighting, speed control and signal phasing/timing adjustments will be identified for the prioritized list of locations.

Task 5. Capacity Analysis

Transcend shall conduct operational and capacity analysis for existing and future year conditions for the prioritized list of 20 roadway segments and 20 intersections using Synchro software and Highway Capacity Manual methodologies. Based on performance measures such as volume to capacity ratio and delay experienced by vehicles, capacity improvements such as turn lane additions, signalization, road widening, medians and driveway consolidation shall be recommended. Intersection Control Evaluation, Signal warrant analysis, turn lane analysis will be conducted using FHWA, TxDOT and County guidelines. Low cost innovative intersection ideas will be also be evaluated, as needed.

Task 6. Recommendations

Safety and capacity improvements shall be packaged as feasible short-term and mid-term roadway projects with details such as logical termini, required number of lanes, length of the project, Right-of-Way requirements and preliminary cost estimates. Transcend shall also **develop a dashboard** to serve as decision making tool for Precinct 3.

Task 7. Documentation

Transcend shall document detailed findings and results for traffic and safety analysis along with tables and figures and submit - one draft report and one final report. Transcend shall prepare a Project Infographic Summary sheet for each of the 20 roadway segments and 20 intersections. Transcend shall not be responsible for creating new design plans or drawings for the prioritized projects.

Compensation

Transcend's estimated fixed fee is **\$300,000** which includes traffic count data collection, labor, mileage, and other reimbursable expenses. Cost breakdown by tasks is shown in **Attachment A**. Transcend shall submit monthly invoices as lump sum showing percent work complete or at the end of each submittal, which shall be payable within 60 days of receipt. Transcend shall consider work not specifically stated above as additional with a right to negotiate compensation.

Schedule

Task Description	Deliverable Date
Notice-to-Proceed	1/4/2021
Task 1. Data Collection	1/23/2021
Task 2. Needs Assessment	2/23/2021
Task 3. Prioritized List	3/17/2021
Task 4. Safety Analysis	4/21/2021
Task 5. Capacity Analysis	4/21/2021
Task 6. Recommendations	5/12/2021
Task 7. Draft Report	6/2/2021
Final Report	6/30/2021

Please contact me at 832.492.4499 or at raj@transcendengineers.com with any questions. We appreciate the opportunity to serve Fort Bend County Precinct 3 on this project and look forward to Notice-to-Proceed.

Regards,

Transcend Engineers & Planners, LLC.



Sirisha Pillalamarri, P.E., PTP
Project Manager
Date: 12/04/2020



Raj Basavaraju, P.E., PTOE
Principal
Date: 12/04/2020

Attachment A: Hours Estimate & Cost Breakdown

Task Description	Project Manager	Senior Planner	Senior Engineer	EIT	CAD	Cost
	\$222.00	\$150.00	\$192.00	\$108.00	\$117.00	
Task 1. Data Collection & Summarization	12	16		40		\$21,000.00
Task 2. Needs Assessment	20	120	20	120		\$39,240.00
Task 3. Prioritization	32	40	80	120		\$41,424.00
Task 4. Safety Analysis	40	120	80	144		\$57,792.00
Task 5. Capacity Analysis	80		68	120		\$43,776.00
Task 6. Recommendations	40		120	120	40	\$49,560.00
Task 7. Documentation	40	32	64	120	60	\$45,948.00
Mileage and Other Direct Expenses						\$1,260.00
Total Hours and Cost	264	328	432	784	100	\$300,000.00