

ENGINEERING/ARCHITECTURAL SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter "City," and TranSystems Corporation, hereinafter "Consulting Engineer/Architect." City intends to use the services of Consulting Engineer/Architect for Switzer Road: College Boulevard to Indian Creek Parkway (TH-1625) (hereinafter the "Project"), in Overland Park, Kansas, as follows:

Construction Observation Services

(hereinafter the "Services").

City hereby contracts with Consulting Engineer/Architect for the furnishing of Services in connection with the Project. The Services are more particularly described in Exhibit A, attached hereto and incorporated by reference herein. By executing this Agreement, the Consulting Engineer/Architect represents to City that Consulting Engineer/Architect is professionally qualified to provide these Services for this Project and is licensed to practice engineering/architecture by all public entities having jurisdiction over Consulting Engineer/Architect and the Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words shall have a meaning parallel thereto.

"City" means the City of Overland Park, Kansas.

"Consulting Engineer/Architect" means the company or individual identified above. Consulting Engineer/Architect shall employ for the services rendered, engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

"Contract Documents" means those documents so identified in the Agreement for Construction for this Project, including all City Documents and Information. All terms defined in the General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

"City Documents and Information" means all plans designs, drawings, specifications, documents, and data in whatever medium or format, originated and prepared by the Consulting Engineer/Architect.

"Engineering/Architectural Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consulting Engineer/Architect under this Agreement together

with such other services as City may require pursuant to the terms of this Agreement.

"Project" is as above described.

"Project Manager" means the person employed by City and designated to act as the City's representative for the Project.

SECTION II - COMPENSATION

- A. TOTAL FEE:** City agrees to pay Consulting Engineer/Architect an amount not to exceed Four Hundred Fifty-two Thousand Eight Hundred Seventy and 67/100 Dollars (\$452,870.67), including reimbursables. The fee is based on the performance of the scope of services outlined in Exhibit A and shall be billed using the hourly rates as set forth in Exhibit B attached hereto and incorporated by reference herein. All work shall be completed on or before December 30, 2015.
- B. ADDITIONAL SERVICES:** Consulting Engineer/Architect shall provide, with City's concurrence, services in addition to those listed in Section III when such services are requested or authorized in writing by City. Prior to commencing any additional services, Consulting Engineer/Architect must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as Exhibit B. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consulting Engineer/Architect, providing services necessitated in the event the Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Engineer/Architect, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Consulting Engineer/Architect, as compensation for these services, shall be in accordance with the hourly rate schedule attached as Exhibit B. Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services shall be made available to City, if so requested.
- C. SPECIAL SERVICES:** Consulting Engineer/Architect may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consulting Engineer/Architect shall not be paid extra by City if its appearance is to defend its professional Engineering/Architectural Services. Consulting Engineer/Architect shall not be paid extra by City to appear at eminent domain or appraiser's hearings necessary to acquire Easements and Right-of-Way for

the Project. If Consulting Engineer/Architect is requested, in writing, by City, to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit B.

- D. BILLING:** Consulting Engineer/Architect shall bill City monthly for all completed Services and reimbursable expenses. The bill submitted by Consulting Engineer/Architect shall itemize the Services and reimbursable expenses for which payment is requested. Except as provided in Section II E, below, City agrees to pay Consulting Engineer/Architect within thirty (30) days of receipt of an undisputed invoice.
- E. CITY'S RIGHT TO WITHHOLD PAYMENT:** In the event City becomes credibly informed that any representations of Consulting Engineer/Architect provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consulting Engineer/Architect until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Consulting Engineer/Architect immediately. Consulting Engineer/Architect will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Consulting Engineer/Architect in accordance with the contract payment procedures.
- F. PROGRESS REPORTS:** A progress report must be submitted with each monthly pay request indicating the percentage of design tasks completed to date. This report will serve as support for payment to Consulting Engineer/Architect.
- G. CHANGE IN SCOPE:** For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Engineer/Architect, the Consulting Engineer/Architect shall be compensated for time and expense required to incorporate such modifications at Consulting Engineer/Architect's standard hourly rates per Exhibit B; provided, however, that any increase in contract price or contract time must be approved through a written change order. Consulting Engineer/Architect shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consulting Engineer/Architect's negligence or other actionable fault.
- H. CHANGE ORDERS:** This Agreement may be amended to provide for additions, deletions and revisions in the Engineering/Architectural Services or to modify the terms and conditions thereof by either written amendment or by change order. The contract price and contract time may only be changed by a written change order approved by City, unless it is the result of an emergency situation in which case the Project Manager

may give written approval to be followed by a written and approved change order. If notice of any change affecting the general scope of the Engineering/Architectural Services or provisions of this Agreement, including but not limited to, contract price or contract time, is a requirement of any insurance policy held by Consulting Engineer/Architect as a requirement of this Agreement, the giving of such notice shall be the Consulting Engineer/Architect's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTING ENGINEER/ARCHITECT

Consulting Engineer/Architect shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project which services shall include:

A. CONSTRUCTION PHASE

Services: The Services to be provided during this phase are set out in Exhibit A attached hereto and incorporated herein by reference.

B. GENERAL DUTIES AND RESPONSIBILITIES:

1. Acknowledgement of the General Conditions of the Contract for Construction: In addition to the responsibilities herein set forth, Consulting Engineer/Architect specifically acknowledges receipt of a copy of the General Conditions and agrees to provide the Services in conformance with the same.
2. Personnel: Consulting Engineer/Architect shall assign only qualified personnel to perform its service concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: Thomas G. Swenson. As principal on this Project, this person shall be the primary contact with the City's Project Manager and shall have authority to bind Consulting Engineer/Architect. So long as the individual named above remains actively employed or retained by Consulting Engineer/Architect, he/she shall perform the function of principal on this Project.
3. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Consulting Engineer/Architect or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Consulting Engineer/Architect which is not defined within the scope of services of Consulting Engineer/Architect. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution

of any extra work. Although Consulting Engineer/Architect may assist City in procuring such services of third parties, Consulting Engineer/Architect shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.

4. Subcontracting of Service: Consulting Engineer/Architect shall not subcontract or assign any of the Engineering/Architectural Services to be performed under this Agreement without first obtaining the written approval of City regarding the Engineering/Architectural Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Any person or firm proposed for subcontracting Engineering/Architectural Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V C (8) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide the City with certification thereof.
5. Inspection of Documents: Consulting Engineer/Architect shall maintain all Project records for inspection by City during the contract period and for three (3) years from the date of final payment.

SECTION IV - CITY OF OVERLAND PARK'S RESPONSIBILITIES

- A. **COMMUNICATION**: City shall provide to Consulting Engineer/Architect information and criteria regarding City's requirements for the Project; examine and timely respond to Consulting Engineer/Architect's submissions; and give written notice to Consulting Engineer/Architect, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering/Architectural Services.
- B. **ACCESS**: City will provide access for Consulting Engineer/Architect to enter public and private property as necessary and appropriate for the Consulting Engineer/Architect to provide the Services contemplated herein.
- C. **PROJECT REPRESENTATIVE**: City shall designate a Project Manager to represent City in coordinating this Project with Consulting Engineer/Architect, with authority to transmit instructions and define policies and decisions of City.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

1. Notice: City reserves the right to terminate this Agreement in whole or in part either for cause or for its convenience and without cause or default on the part of Consulting Engineer/Architect, by providing ten (10) days' written notice of such

termination to Consulting Engineer/Architect. Upon receipt of such notice from City, Consulting Engineer/Architect shall, at City's option as contained in the notice: (1) immediately cease all Engineering/Architectural Services; or (2) meet with City and, subject to City's approval, determine what Engineering/Architectural Services shall be required of Consulting Engineer/Architect in order to bring the Project to a reasonable termination in accordance with the request of City. Consulting Engineer/Architect shall also provide to City copies of all drawings and documents completed or partially completed at the date of termination.

If City defaults on its obligation under this Agreement, Consulting Engineer/Architect is entitled to terminate this Agreement if the default is not remedied by the City after the City has been provided thirty (30) days' written notice of the default.

2. Termination for Cause: If this Agreement is terminated for cause, after notice to Consulting Engineer/Architect, City may take over the Engineering/Architectural Services and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Consulting Engineer/Architect, and the Consulting Engineer/Architect shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and completion. When Consulting Engineer/Architect's Services have been so terminated, such termination shall not affect any rights or remedies of the City against Consulting Engineer/Architect then existing or which may later accrue. Similarly, any retention or payment of monies due Consulting Engineer/Architect shall not release Consulting Engineer/Architect from liability.
3. Compensation for Convenience Termination: If City shall terminate for its convenience as herein provided, City shall compensate Consulting Engineer/Architect for all Engineering/Architectural Services satisfactorily completed to date of its receipt of the termination notice and any additional Engineering/Architectural Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
4. Compensation for Cause Termination: If City shall terminate for cause or default on the part of Consulting Engineer/Architect, City shall compensate Consulting Engineer/Architect for the reasonable cost of Engineering/Architectural Services satisfactorily completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages,

neither of which will be allowed. City also retains all its rights and remedies against Consulting Engineer/Architect including but not limited to its rights to sue for damages, interest and attorney fees.

5. Incomplete Documents: Neither Consulting Engineer/Architect, nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Consulting Engineer/Architect having been deprived of the opportunity to complete such documents and certify them as ready for construction.

B. DISPUTE RESOLUTION: City and Consulting Engineer/Architect agree that disputes relative to the Project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consulting Engineer/Architect shall proceed with the Engineering/Architectural Services as per this Agreement as if no dispute existed, and the City shall continue to make payment for Consulting Engineer's/Architect's completed Services; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

C. INSURANCE

1. General: The Consulting Engineer/Architect shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Professional Liability may be written on a "claims made" basis. Consulting Engineer/Architect shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Consulting Engineer/Architect at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

2. Notice of Claim Reduction of Policy Limits The Consulting Engineer/Architect, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consulting Engineer/Architect shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Consulting Engineer/Architect's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Consulting Engineer/Architect shall promptly reinstate the original limits of liability required hereunder and shall furnish

evidence thereof to the City.

3. Commercial General Liability

Limits -

General Aggregate:	\$ 1,000,000
Products / Completed Operations:	\$ 1,000,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy **MUST** include the following conditions:

a. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

b. Name City of Overland Park as "Additional Insured"

4. Automobile Liability: Policy shall protect the Consulting Engineer/Architect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

Limits – (Same as Commercial General Liability)

Combined Single Limits, Bodily Injury and Property Damage - Each Accident

Policy **MUST** include the following condition:

Name City of Overland Park as "Additional Insured"

5. Workers' Compensation: This insurance shall protect the Consulting Engineer/Architect against all claims under applicable state workers' compensation laws. The Consulting Engineer/Architect shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employers Liability -	
Bodily Injury by Accident:	\$ 100,000 Each Accident
Bodily Injury by Disease:	\$ 500,000 Policy Limit
Bodily Injury by Disease:	\$ 100,000 Each Employee

6. Professional Liability: The Consulting Engineer/Architect shall maintain throughout the duration of this Contract, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00).

7. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

- a. Is authorized to do business in the State of Kansas;
- b. Carries a Best's policyholder rating of A- or better; and
- c. Carries at least a Class VIII financial rating; or

- d. Is a company mutually agreed upon by the City and Consulting Engineer/Architect.

8. Subcontractors' Insurance: If a part of the Agreement is to be sublet, the Consulting Engineer/Architect shall either:

- a. Cover all subcontractors in its insurance policies, or
- b. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consulting Engineer/Architect shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

D. INDEMNITY

1. Definition: For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"Loss" means any and all Loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or Loss of, or Loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Engineering/Architectural Services required hereunder.

2. Indemnity: For purposes of this Agreement, Consulting Engineer/Architect hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Consulting Engineer/Architect, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that

the Consulting Engineer/Architect's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consulting Engineer/Architect is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Consulting Engineer/Architect, its affiliates, subsidiaries, or subcontractor/assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consulting Engineer/Architect, its affiliates, subsidiaries, or subcontractor/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

E. AFFIRMATIVE ACTION/OTHER LAWS

1. During the performance of this Agreement, the Consulting Engineer/Architect agrees that:
 - a. Consulting Engineer/Architect shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - b. in all solicitations or advertisements for employees, the Consulting Engineer/Architect shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
 - c. if the Consulting Engineer/Architect fails to comply with the manner in which the Consulting Engineer/Architect reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consulting Engineer/Architect shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
 - d. if the Consulting Engineer/Architect is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Consulting Engineer/Architect shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and
 - e. the Consulting Engineer/Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that

such provisions will be binding upon such subcontractor or vendor.

The provisions of this Section shall not apply to a contract entered into by a Consulting Engineer/Architect:

- who employs fewer than four employees during the term of such contract; or
- whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

2. The Consulting Engineer/Architect further agrees that the Consulting Engineer/Architect shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

- F. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.
- G. APPLICABLE LAW:** This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.
- H. ASSIGNMENT OF AGREEMENT:** This Agreement shall not be assigned or transferred by Consulting Engineer/Architect without the written consent of the City.
- I. NO THIRD PARTY BENEFICIARIES:** Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.
- J. INDEPENDENT CONTRACTOR:** The Consulting Engineer/Architect is an independent contractor and as such is not an agent or employee of the City.
- K. FEDERAL LOBBYING ACTIVITIES: (Only applies to projects receiving federal funds via the City)** 31 USCA Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City's Project Manager and should be

returned to City with other final contract documents. It is the responsibility of Consulting Engineer/Architect to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

- L. COVENANT AGAINST CONTINGENT FEES:** Consulting Engineer/Architect warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consulting Engineer/Architect, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- M. COMPLIANCE WITH LAWS:** Consulting Engineer/Architect shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Engineering/Architectural Services or the Project at the time Services are rendered. Consulting Engineer/Architect shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.
- N. TITLES, SUBHEADS AND CAPITALIZATION:** Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.
- O. SEVERABILITY CLAUSE:** Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.
- P. RESPONSIBILITY CLAUSE:** The Consulting Engineer/Architect shall have no responsibility to supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents. The Consulting Engineer/Architect shall not be responsible for any acts or omissions of the Contractor, any subcontractor, any entity performing any portions of the Work or any agents or employees of any of them. The Consulting Engineer/Architect does not guarantee the

performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

Q. CASH BASIS/BUDGET: Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify contractor of such termination, which shall not constitute a default under the Agreement, at least sixty (60) days prior to the end of the City's then current budget year.

R. EXECUTION OF CONTRACT: The parties hereto have caused this Agreement to be executed in triplicate this _____ day of _____, 2014.

CITY OF OVERLAND PARK, KANSAS

TRANSYSTEMS CORPORATION

Carl Gerlach, Mayor

By: _____
Thomas G. Swenson
Principal/Senior Vice President

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Deputy City Attorney

EXHIBIT A

Basic Services and Other Matters

SCOPE OF SERVICES

The scope of this project is envisioned to include construction observation and inspection services to assist city staff for the City Place CID & Switzer Road Public Improvements.

The Consulting Engineer, TranSystems Corporation, shall furnish qualified staff and perform the various professional duties and services required for construction observation and inspection on the Project in accordance with tasks listed in the current City of Overland Park Project Procedures Manual, and standard public works and development department construction inspection for administration of public improvement projects and CID improvements related to the City Place development.

GENERAL REQUIREMENTS

The Consultant shall perform construction phase services consisting of observation and inspection in conformance with the **applicable City of Overland Park regulations and procedures for construction observation, inspection, and documentation for CID projects and Public Works projects**. Additionally, Consultant will perform plan review and a constructability review. The length and depth of reviews will be based on the hours identified in Schedule B.

CONSTRUCTION SERVICES

- **Pre Construction Activities:** Perform various task activities for both City Place CID & Switzer Road Public Improvements as listed under the work break down structure for Pre Construction as identified in Exhibit B.
- **Construction Activities:** Perform various task activities for both City Place CID & Switzer Road Public Improvements as listed under the work break down structure for Construction as identified in Exhibit B.
- **Post Construction Activities:** Perform various task activities for both City Place CID & Switzer Road Public Improvements as listed under the work break down structure for Post Construction, as identified in Exhibit B.

Completion Time: The estimated hours and fee shown in Exhibit B were developed based on the following assumptions:

1. City Place CID work related to Land Disturbance will begin approximately on, or around, August 28, 2014, which is the date shown in schedule provided by the City and used for estimating the project effort.
2. CID sanitary sewer construction is assumed to occur within a timeframe beginning on October 20 and ending on December 12, 2014.
3. CID Streamway Relocation & BMP Pond Construction Phase is assumed to occur within a timeframe beginning on October 14 and ending on December 8, 2014.

4. CID Construction Phase for Public Sidewalks is assumed to occur within a timeframe beginning on November 5 and ending on December 16, 2014.
5. CID Construction Phase for 113th St & Indian Creek Parkway is assumed to occur within a timeframe beginning on October 27, 2014 and ending on March 13, 2015.
6. CID Construction Phase for Public Trail Systems is assumed to occur within a timeframe beginning on December 23, 2014 and ending on February 2, 2015.
7. CID Construction Phase utility construction for various utilities is assumed to begin September 25, 2014 and continue throughout the entire project duration. The schedule provided shows a completion date of December 17, 2015.
8. CID Construction Phase for Entrance Monuments is assumed to occur within a timeframe beginning on January 7, 2015 and ending on February 17, 2015.
9. Switzer Roadway Public Project Preconstruction Period activities are assumed to occur within a timeframe beginning with the Field Check Review on September 1, 2014 and ending with beginning of the Construction Period on March 3, 2015.
10. Switzer Roadway Public Project Construction Period is assumed to occur within a timeframe beginning on March 3, 2015 and ending on December 30, 2015. This timeframe includes both Construction and Post-Construction activity periods.

TranSystems has developed the hours and fee in Exhibit B based on assumptions from information, including a project schedule provided by the City. The Consulting Engineer understands that services may be needed on an intermittent basis and that the schedule and/or magnitude of scope of work and effort to be performed may change. If any such changes occur, the City and Consulting Engineer may negotiate any required modifications to the scope of services and corresponding fees.

ASSUMPTIONS:

1. Project Manager Kent Higgins, PE will serve as the contact with the City for the project and Field Supervisor.
2. Attend project coordination meetings with City and others as required.
3. Scott Sharp will be assigned as the Lead Inspector for the project.
4. Spencer Olson will serve as an as needed inspection support role and assist Kent Higgins with other tasks.
5. Additional inspection staff will assist on an as needed basis during construction.
6. Fee estimate for hours was based on standard 5-day workweek at 8 hours per day. Standard and customary US Holidays are assumed to be non-working days. No overtime was included in preparation of fee. Time spent performing task will be based on the allotted hours shown for the task for a given classification and hourly rate for the employee performing the assigned task. It is assumed all reviews, pay request estimates, and paper work for the project will be performed during normal working hours.
7. The rates shown in Exhibit B are assumed hourly averaged rates for the years 2014 and 2015. The City will be invoiced at the actual hourly employee rates, for

- hours spent working on the project, including any overtime that may be required due to the Contractor's scheduling of work, times a 2.858 multiplier.
8. Provide construction observation and inspection during the construction phase and close-out period in accordance with City of Overland Park requirements.
 9. TranSystems staff will perform field assignments in accordance with accepted safety practices.
 10. TranSystems will provide staff with transportation, supplies, materials and incidentals as are needed to accomplish the services required.
 11. TranSystems will transmit orders from City of Overland Park to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.
 12. Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials which do not comply with the Contract Documents until any questions at issue can be referred to and be decided by the City Project Manager.
 13. Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress, including Project Engineer/Project Manager and Inspector's diaries.
 14. Confirm that test report records or certificates of compliance for materials tested off the Project site and required prior to the incorporation in the work have been received. TranSystems will review the test results for compliance with project requirements and specifications and immediately notify the City Project Manager of any test reports showing materials that do not meet project requirements or specifications.
 15. Inspector will field measure and compute materials incorporated in the work and items of work completed, and maintain an item account record. Field measuring activities excludes use of professional survey equipment.
 16. Provide measurement and computation of pay items. Unless otherwise indicated in contract documents, Lump Sum items will not be field measured for pay.
 17. Review, or assist in reviewing, all Contractor submittals of records and reports required for CID and Public Improvement funding, as applicable to the Project.
 18. Material Testing is excluded from the scope of services. All Material Testing will be performed by OTHERS.
 19. TranSystems will coordinate necessary materials testing with City's testing consultant to address field and laboratory testing per contract specifications.
 20. The Contractor(s) is/are responsible for the implementation and maintenance of the SWPPP, including addressing non-conformance issues as they may occur.
 21. SWPPP inspections will be performed by the Contractor following project specific requirements as identified in all permits issued for the project, and in conformance with all local, state, and federal rules and regulations. During normal business hours of the Project Working Day period TranSystems will review the project site for conformance with the SWPPP and verify the Contractor is performing required inspections and maintenance. On a monthly basis TranSystems will participate in a joint erosion control inspection with the Contractor and prepare a report of findings, using City inspection forms, for the joint SWPPP inspection. The City Project Manager will be kept informed of the status of the SWPPP and its implementation and maintenance during

construction through regular channels of communication, including project meetings, and immediately notified in writing in the event non-conformance issues are identified.

22. TranSystems is not responsible to continue SWPPP oversight, perform reviews of Contractor inspections, or prepare SWPPP compliance documentation following completion of TranSystems contract with the City for construction observation and inspection.
23. Provide periodic reviews of project traffic control and construction signage, including any required detours.
24. Work associated with utility relocations is assumed to be able to be performed within the hours proposed for construction inspection. It is assumed that no additional project representative will be required for this work. Any additional hours will be considered outside of the scope of this agreement.
25. TranSystems will assist the City during construction with maintaining a hard copy of red-lined project plans for both the City Place CID and Switzer Road Public Improvement projects. At the conclusion of the construction phase the red-lined project plans will be provided to the City for preparation of the project As-Builts by OTHERS.

**City Place, Overland Park, KS
City Place Community Improvement District (CID)
Switzer Road Public Improvements**



**Construction Observation Services - Fee Estimate Summary
EXHIBIT B**

Task	Position	Principal	Project Manager	Lead Inspector	Inspector	Inspector	Hours	RAW LABOR	EXPENSES (Mileage)
		Tom Swenson	Kent Higgins	Scott Sharp	Spencer Olson	TBD			
	Rate	\$122.00	\$60.00	\$24.90	\$26.23	\$30.00			
Pre Construction Activities		2	204	20	196	0	422	\$18,123.08	\$ 151.20
<i>Switzer Road Improvements</i>		1	131	18	118	0	268	\$11,525.34	\$ 100.80
<i>City Place Community Improvement District (CID)</i>		1	73	2	78	0	154	\$6,597.74	\$ 50.40
Construction Task		0	610	2392	844	232	4078	\$125,258.92	\$11,440.80
<i>Switzer Road Improvements</i>		0	310	1180	812	232	2534	\$76,240.76	\$5,846.40
<i>City Place Community Improvement District (CID)</i>		0	300	1212	32	0	1544	\$49,018.16	\$5,594.40
Post Construction		1	70	83	25	0	179	\$10,936.92	\$235.20
<i>Switzer Road Improvements</i>		1	60	57	21	0	139	\$5,692.13	\$117.60
<i>City Place Community Improvement District (CID)</i>		0	10	26	4	0	40	\$5,244.79	\$117.60
SUBTOTALS		3	884	2495	1065	232	4679	\$154,318.92	\$ 11,827.20

				Total Raw Labor	\$154,318.92
Switzer Road Improvements	\$	273,168.42		2.858 Multiplier	\$441,043.47
City Place CID	\$	179,702.25		Total Loaded Labor	\$441,043.47
Total Estimated Fee	\$	452,870.67		Expenses (Mileage)	\$11,827.20
				Total Construction Observation Services Fee	\$452,870.67

Note: Total Fee does not include Material Testing

**City Place, Overland Park, KS
Switzer Road Public Improvements
Construction Observation Services - Fee Estimate**



EXHIBIT B

Task	Position	Principal	Project Manager	Lead Inspector	Inspector	Inspector	Hours	RAW LABOR	EXPENSES
		Tom Swenson	Kent Higgins	Scott Sharp	Spencer Olson	TBD			
	Rate	\$122.00	\$60.00	\$24.90	\$26.23	\$30.00			
Pre Construction							268	\$11,525.34	\$100.80
Plan Review		1	80	16	24	0	121	\$ 5,949.92	\$ 33.60
Review Project Plans			40	8	16		64	\$ 3,018.88	
Review Specifications			8		8		16	\$ 689.84	
Perform Constructibility Review			12	8			20	\$ 919.20	
Utility Review & Coordination			8				8	\$ 480.00	
Prepare and Distribute Review Comments			6				6	\$ 360.00	
Attend Review Meetings (2)			4				4	\$ 240.00	\$ 33.60
Comment Disposition		1	2				3	\$ 242.00	
Project Bidding		0	2	0	0	0	2	\$ 120.00	\$ 33.60
Attend Pre-Bid Meeting			1				1	\$ 60.00	\$ 16.80
Attend Bid Opening			1				1	\$ 60.00	\$ 16.80
Project Award		0	4	0	0	0	4	\$ 240.00	\$ 33.60
Attend Award Consultation Meeting			1				1	\$ 60.00	\$ 16.80
Attend Preconstruction Conference Meeting			2				2	\$ 120.00	\$ 16.80
Prepare & Distribute Preconstruction Meeting Minutes			1				1	\$ 60.00	
Project Set-up		0	11	2	58	0	71	\$ 2,231.14	\$ -
Prepare field books			1	2	8		11	\$ 319.64	
Prepare Pay Estimate Workbook (Excel)			1		12		13	\$ 374.76	
Prepare Submittal Checklist			1		4		5	\$ 164.92	
Perform Quantity Check of Bid Items			4		24		28	\$ 869.52	
Prepare and Distribute Review Comments			2		4		6	\$ 224.92	
Estimate Material Testing Quantities (Frequency)			2		6		8	\$ 277.38	
Submittals		0	34	0	36	0	70	\$ 2,984.28	\$ -
Review Shop Drawings			4		24		28	\$ 869.52	
Review Contractor Material Submittals			2		12		14	\$ 434.76	
Review Contractor Schedule Submittal			4				4	\$ 240.00	
Prepare & Distribute Review Comments (12 Reviews)			12				12	\$ 720.00	
Disposition of Review Comments			12				12	\$ 720.00	
							0	\$ -	
Construction							2534	\$76,240.76	\$ 5,846.40
Construction Administration		0	148	212	12	0	372	\$ 14,473.56	\$ -
Prepare Weekly Construction Progress Reports (45)			45				45	\$ 2,700.00	
Prepare Monthly Pay Estimates (10)			10	40			50	\$ 1,596.00	
Monthly Pay Estimate Reviews with Contractor			10				10	\$ 600.00	
Attend Weekly Progress Meetings (35)			35	35			70	\$ 2,971.50	\$ -
Prepare and Distribute Progress Meeting Minutes			10	25			35	\$ 1,222.50	
Assist with Preparation of Traffic Notifications			4	8			12	\$ 439.20	
Review Contractor Submittals			8		8		16	\$ 689.84	
Maintain Contractor Submittal Checklist			4		4		8	\$ 344.92	
Review Contractor's Schedule for Progress			6				6	\$ 360.00	
Prepare Change Orders			4	12			16	\$ 538.80	
Prepare Deficiency Correction Checklist/Punch List			4	12			16	\$ 538.80	
Coordinate with Material Testing Lab for Project Testing			4	40			44	\$ 1,236.00	
Maintain Material Testing Log			4	40			44	\$ 1,236.00	
Construction Observation		0	162	968	800	232	2162	\$ 61,767.20	\$ 5,846.40
Daily Site Inspection			120	920	800	232	2072	\$ 58,052.00	\$ 5,846.40
Bi-Weekly Verification Review for SWPPP Compliance			26				26	\$ 1,560.00	\$ -
Coordination with City Traffic Services			6				6	\$ 360.00	
Sanitary Sewer Construction Observation/Verification			2	40			42	\$ 1,116.00	
Utility Coordination			8	8			16	\$ 679.20	
							0		

**City Place, Overland Park, KS
Community Improvement District (CID)
Construction Observation Services - Fee Estimate**



EXHIBIT B

Task	Position	Principal	Project Manager	Lead Inspector	Inspector	Inspector	Hours	RAW LABOR	EXPENSES (Mileage)
		Tom Swenson	Kent Higgins	Scott Sharp	Spencer Olson	TBD			
	Rate	\$122.00	\$60.00	\$24.90	\$26.23	\$30.00			
Pre Construction							154	\$6,597.74	\$ 50.40
Plan Review		1	30	0	0	0	31	\$ 1,922.00	\$ 33.60
Review Project Plans			16				16	\$ 960.00	
Review Specifications			1				1	\$ 60.00	
Perform Constructibility Review			8				8	\$ 480.00	
Utility Review & Coordination			1				1	\$ 60.00	
Prepare and Distribute Review Comments			1				1	\$ 60.00	
Attend Review Meetings (2)			2				2	\$ 120.00	\$ 33.60
Comment Disposition		1	1				2	\$ 182.00	
Project Bidding		0	0	0	0	0	0	\$ -	\$ -
Attend Pre-Bid Meeting			0				0	\$ -	
Attend Bid Opening			0				0	\$ -	
Project Award		0	2	0	0	0	2	\$ 120.00	\$ 16.80
Attend Award Consultation Meeting			0				0	\$ -	
Attend Preconstruction Conference Meeting			1				1	\$ 60.00	\$ 16.80
Prepare & Distribute Preconstruction Meeting Minutes			1				1	\$ 60.00	
Project Set-up		0	28	2	50	0	80	\$ 3,041.30	\$ -
Prepare Field Books			1	2	4		7	\$ 214.72	
Prepare Pay Estimate Workbook (Excel)			8		16		24	\$ 899.68	
Prepare Submittal Checklist			8		8		16	\$ 689.84	
Perform Quantity Check of Bid Items			8		16		24	\$ 899.68	
Prepare and Distribute Review Comments			2		4		6	\$ 224.92	
Estimate Material Testing Quantities (Frequency)			1		2		3	\$ 112.46	
Submittals		0	13	0	28	0	41	\$ 1,514.44	\$ -
Review Shop Drawings			4		16		20	\$ 659.68	
Review Contractor Material Submittals			2		12		14	\$ 434.76	
Review Contractor Schedule Submittal			1				1	\$ 60.00	
Prepare & Distribute Review Comments (2 Reviews)			4				4	\$ 240.00	
Disposition of Review Comments			2				2	\$ 120.00	
							0	\$ -	
Construction							1544	\$49,018.16	\$ 5,594.40
Construction Administration		0	148	192	32	0	372	\$ 14,500.16	\$ 588.00
Prepare Weekly Construction Progress Reports (35 weeks)			35				35	\$ 2,100.00	
Review Developer Monthly CID Pay Estimates (10)			10	40			50	\$ 1,596.00	
Monthly CID Estimate Reviews with Developer and City Staff			10				10	\$ 600.00	
Attend Weekly Progress Meetings (35)			35	35			70	\$ 2,971.50	\$ 588.00
Prepare and Distribute Progress Meeting Minutes			10	25			35	\$ 1,222.50	
Assist with Preparation of Traffic Notifications			4				4	\$ 240.00	
Review Contractor Submittals			8		16		24	\$ 899.68	
Maintain Contractor Submittal Checklist			4		16		20	\$ 659.68	
Review Schedule for Progress			4				4	\$ 240.00	
Verification of CID Pay Quantities			16	40			56	\$ 1,956.00	
Prepare Deficiency Correction Checklist/Punch List			4	12			16	\$ 538.80	
Coordinate with Material Testing Lab for Project Testing			4	32			36	\$ 1,036.80	
Maintain Material Testing Log			4	8			12	\$ 439.20	
Construction Observation		0	152	1020	0	0	1172	\$ 34,518.00	\$ 5,006.40
Daily Site Inspection			80	920			1000	\$ 27,708.00	\$ 4,569.60
Bi-Weekly Verification Review for SWPPP Compliance			26				26	\$ 1,560.00	\$ 436.80
Coordination with City Traffic Services			6				6	\$ 360.00	
Sanitary Sewer Construction Observation/Verification			24	100			124	\$ 3,930.00	
Utility Coordination			16				16	\$ 960.00	
							0		

