CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2014, by and between the City of Overland Park, Kansas, (hereinafter, the "City") and **TransCore ITS, LLC**, (hereinafter, the "Consultant").

WITNESSETH:

WHEREAS, the City desires to obtain consulting services in support of a project described as follows:

Traffic Adaptive Pilot Project (TS-0979)

(hereinafter, the "Project"); and

WHEREAS, the City has requested that the Consultant submit an engagement letter to outline services Consultant is proposing to provide; and

WHEREAS, the City and the Consultant desire to enter into an agreement setting forth the terms and conditions of their understanding as regards to the services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1.   SCOPE OF SERVICES

The Consultant agrees to provide the software and consulting services as set forth in Exhibit A, attached hereto and incorporated herein by reference, (hereinafter collectively referred to as the "Services").   The software is subject to the terms and conditions of the software licensing agreement, attached hereto as Exhibit B.

SECTION 2.   SUPPLEMENTAL AGREEMENTS

This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by a written supplemental agreement. If notice of any change in Services affecting the general scope of the Consultant Agreement or provisions of this Agreement, including but not limited to, Agreement price or Agreement time, is a requirement of any insurance policy held by Consultant as a requirement of this Agreement, the giving of such notice shall be the Consultant's responsibility.

SECTION 3.   STATUS

Consultant is an independent contractor and as such is not an agent or employee of the City.

SECTION 4.   COMPENSATION

A.   Total Fee: City agrees to pay Consultant an amount not to exceed **Two hundred thirty-two thousand, one hundred** dollars (**$232,100**), including reimbursable expenses. The fee is based on the performance of the Services, and shall be billed using rates and reimbursable expenses as set forth in Exhibit A. All work shall be completed on or before **July 8, 2016**. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be outlined in a

supplemental agreement as required above and shall be billed at the hourly rates set forth in Exhibit B.

B.   Manner of Payment: Invoices for fees will be submitted every four (4) weeks and are to be paid within thirty (30) days of receipt of undisputed invoice.

SECTION 5.   TERMINATION

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement in whole or in part, with or without cause, subject to written notice to Consultant. If the City terminates the Agreement prior to completion of Services, City shall compensate Consultant for all 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.

SECTION 6.   SUBCONTRACTING OF SERVICES

Consultant shall not subcontract any of the Services to be performed under this Agreement without first obtaining the written approval of City regarding the Services to be subcontracted and the person or firm proposed to accomplish the subcontracted portion of the Services.

Notwithstanding the above, the City hereby approves KLD as a subcontractor as outlined in Exhibit A hereto.

SECTION 7.   OWNERSHIP OF REPORT

The final report and all documents prepared in connection with the Services shall be the property of the City upon completion of the Services. Consultant will have no responsibility to update its report for events and circumstances occurring after the report is accepted as final and complete by the City.

SECTION 8.   INSURANCE

A.   General: Consultant shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Consultant shall provide certificates of insurance and renewals on City provided forms or on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

B.   Notice of Claim Reduction of Policy Limits: Consultant, upon receipt of notice of any claim in connection with the Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Consultant 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 Agreement) if the Consultant's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

C.   Commercial General Liability

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

Policy <u>must</u> include the following:

Name City of Overland Park as "Additional Insured."

D.   Automobile Liability: Policy shall protect the Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

Limits (Same as Commercial General Liability) -
    Combined Single Limits, Bodily Injury, and Property Damage - Each Accident

Policy <u>must</u> include the following:
Name City of Overland Park as "Additional Insured."

E.   Workers' Compensation and Employer's Liability: This insurance shall protect the Consultant against all claims under applicable state workers' compensation laws. The Consultant shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation: Statutory
Employer's 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

If Consultant has no employees, a waiver form provided by the City must be executed (see attached).

F.   Professional Liability: The Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than Five Hundred Thousand Dollars ($500,000) and shall provide the City with certification thereof.

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

1.   Is authorized to do business in the State of Kansas;
2.   Carries a Best's policyholder rating of A- or better; and
3.   Carries at least a Class VIII financial rating; or
4.   Is a company mutually agreed upon by the City and Consultant.

H.   Subcontractor's Insurance: If a part of this Agreement is to be sublet, Consultant shall either:

1.   Cover all subcontractors under its insurance policies; or

2. Require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein.

SECTION 9. INDEMNITY

A. 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 work required hereunder.

B. Indemnity: For purposes of this Agreement, Consultant hereby agrees to indemnify, defend and hold harmless the City, its agents and/or employees 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 Consultant, 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 Consultant's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consultant 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 Consultant, its affiliates, subsidiaries, or 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 Consultant, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

SECTION 10. DISPUTE RESOLUTION

City and Consultant 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 Consultant shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

SECTION 11. AFFIRMATIVE ACTION/OTHER LAWS

A.   During the performance of this Agreement, the Consultant agrees that:

1.   Consultant 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 Agreement because of race, religion, color, sex, disability, national origin, ancestry or age;

2.   in all solicitations or advertisements for employees, the Consultant shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission ("Commission");

3.   if the Consultant fails to comply with the manner in which the Consultant reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consultant 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;

4.   if the Consultant 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 Consultant 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;

5.   the Consultant shall include the provisions of Subsections 1 through 4 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

The provisions of this Section shall not apply to a contract entered into by a Consultant:
- 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.

B.   The Consultant further agrees that the Consultant 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.

SECTION 12.   GENERAL PROVISIONS

A.   This Agreement contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.

B.   Any modification of this Agreement or additional obligation assumed by either party in connection herewith shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

C. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

D. It is the intention of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

E. The titles to sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

SECTION 13.   EXECUTION OF AGREEMENT

The parties hereto have caused this Agreement to be executed on the day and year first above written.

TransCore ITS, LLC   CITY OF OVERLAND PARK, KANSAS

_____   _____
Michael R. Mauritz   Carl Gerlach,
Senior Vice President   Mayor

                                                ATTEST:

                                                _____
                                                Marian Cook
                                                City Clerk

                                                APPROVED AS TO FORM:

                                                _____
                                                Tammy M. Owens
                                                Deputy City Attorney

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF   )
) ss.

COUNTY OF   )

       BE IT REMEMBERED, that on this ___ day of _____, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael R. Mauritz, Senior Vice President of TransCore ITS, LLC, a limited liability company duly organized and existing under and by virtue of the laws of _Delaware_; who is personally known to me to be the Vice President and who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

       IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

                                                 _____

                                                 Notary Public

My Appointment Expires:

_____

Adaptive Traffic Control System
Pilot Project
Scope of Work

October 22, 2013

Prepared for:

City of Overland Park

Prepared by:

Introduction

The purpose of this project is to evaluate the benefit of an Adaptive Traffic Signal Control System (ASCT) for the City of Overland Park. This technology has the potential to provide benefits in solving specific operational issues currently being experienced by the City, which have been identified by a Concept of Operations developed for this purpose. The primary objective of the system is to improve the consistency of travel times on coordinated corridors. In addition, additional tools may be added through the implementation of an ASCT that will help quickly identify and impact real-time system performance.

Also, the City expressed interest in developing an ASCT that is built upon its existing ITS infrastructure – detectors, and controllers -- without any additional investment in new equipment to run such systems. The team (City, TransCore, and KLD) are cognizant of the challenges of developing such a system and so this project is considered a Pilot Project.

This project will be executed in successive phases, subsequent phases only being authorized based on the demonstrated completion of their predecessor. The phase sequence consists of investigating the technical and cost feasibility of proceeding with the remainder of the project, then setting up and executing a number of tests in a simulated environment, and finally deploying and evaluating a live pilot corridor.

Strict project management procedures will be followed during the course of the project in order to control schedule, scope, and budget and to provide maximum probability for the overall success of the project. These include regular project meetings, the frequency of which will be determined as appropriate for each phase and will be no less frequent than monthly. Budget and schedule status reports will be provided on a monthly basis. The cost of project management will be included in the estimates provided during each phase of the project.

1 Phase 1 – Feasibility

1.1 Project Objectives and Baseline

During this task, the team will first meet with the City in person to identify specific operational issues, many of which have already been identified by the City in their Concept of Operations for Traffic Signal Operations. The team will explore operational and technical strategies that may help to address identified operational issues and improvement areas. Based on available information, specific areas or corridors on which to focus may also be identified at this point. The issues and strategies will be used to establish specific objectives and criteria for the remainder of the project.

The team will then assist the City to define the operational baseline for system performance, and then to establish specific measures of effectiveness (MOEs) that will be used as a basis of evaluation. These MOEs will be designed to measure changes to specific operational issues. Once the baselines are established, target improvements to these measures will be estimated in order to set specific expectations on the outcome of the project and determine success.

The team will explore these items with the City during the project kickoff meeting at the City's facilities. The discussion will include a presentation to the City about general benefits

and strategies of Adaptive Signal Control, after which the presentation will be provided to the City for presentation to City management staff and others.

Deliverables

- Project Framework Document
- Benefits and Strategies for Adaptive Signal Control Presentation Materials

1.2 Feasibility Analysis

It is desired to configure and analyze the operation of the proposed solution in a simulated environment prior to deploying it in the field. This process will provide testing ground on which the system can be tested in various configurations and under various circumstances to maximize the probability of success in a real-world deployment. There are four components of the simulation, listed below. See also Figure 1.

- Traffic Micro-simulation Software (VISSIM)
- Virtual Traffic Signal Controllers (VSC)
- Traffic Control System (TransSuite)
- Adaptive Signal Control Technology (ASCT) using the Adaptive Decision Support System (ACDSS) from KLD

In order for the simulation to be successful, the City or the team will need to obtain rights to use VSCs, which are actual traffic signal controller firmware that runs in a software environment. These VSCs will need to be configurable to interface with the simulator with inputs coming from simulated detectors and outputs affecting the simulated traffic signals as if they were running in the field. In addition, TransSuite must be able to interface with the VSCs in the same way as it interfaces with actual field controllers. The ACDSS already interfaces directly with TransSuite.

The cost feasibility of doing a simulation includes the cost to allow TransSuite to interface directly with virtual traffic signal controllers. Please note that although an estimate is provided as part of the project initiation, any discrepancies between TransCore's original assumptions and information uncovered during this investigation will be documented and a request for reconciliation will be submitted.

The technical feasibility is dependent on a defined interface that allows the VSCs to interface both with TransSuite and VISSIM. The report will include a recommendation for which VSC to use for the evaluation.

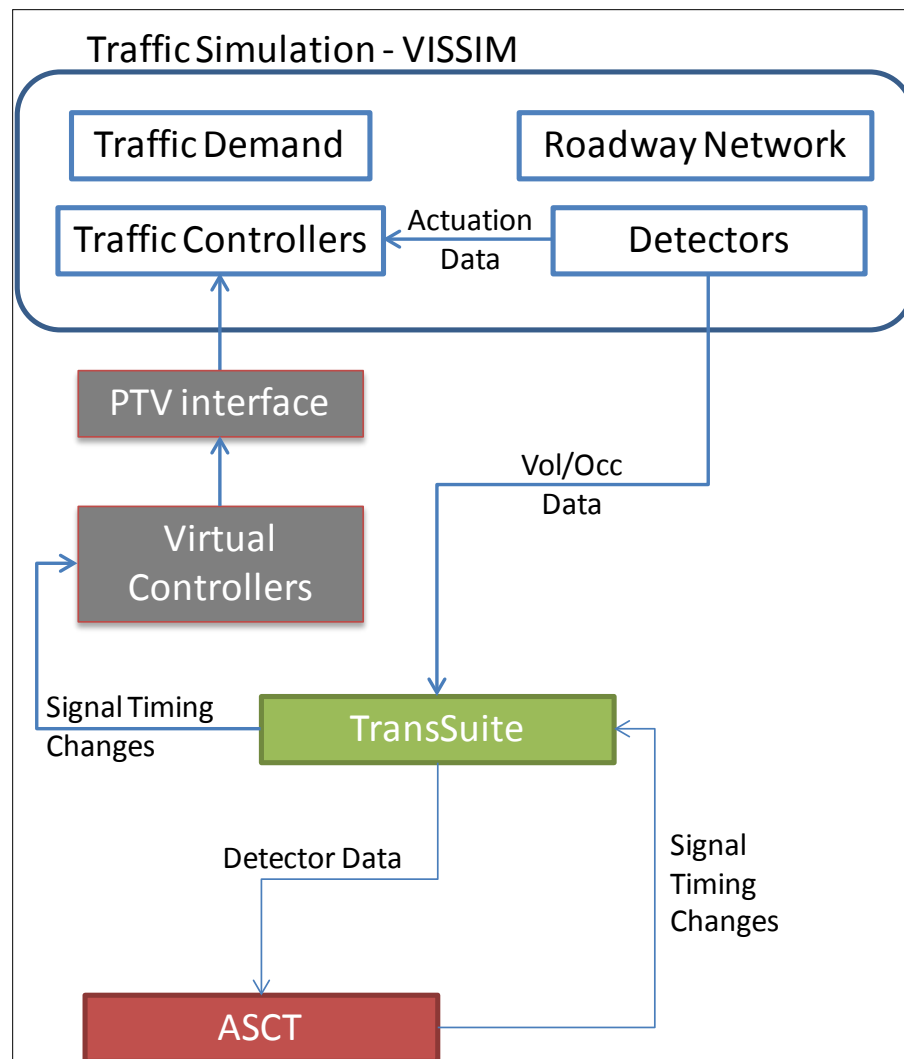**Deliverables**

- Feasibility Report

Figure 1: ASCT Simulation Configuration

2 Phase 2 – Simulation

Once the City determines that the simulation is feasible and the cost is acceptable, the Team will proceed to develop a Simulation, defined in the following steps.

2.1 Define Simulation Scenarios

The Team will work with the City to define various simulation scenarios, designed to measure the ability of the ACDSS to address the specific operational issues defined in the Framework document, using the MOEs also defined therein.

Deliverables

- Defined Simulation Scenarios

2.2 Simulation Interface Development

Based on the requirements set forth in the Framework document, TransCore will provide software interface development work required to enable the full simulation and reporting tools.

<u>Assumptions</u>

- Overland Park will purchase VISSIM with the simulation capability enabled and provide this to TransCore for testing and development purposes (to be returned to the City once development is completed)
- Overland Park will purchase the needed VSCs and provide them to TransCore for testing and development purposes (to be returned to the City once development is completed)
- The VSC will support an external interface for status polling and command reception using either NTCIP dynamic objects or standard NTCIP objects as defined in the VSC MIB
- Database upload/download to the VSC is not supported for this project.
- Development of reporting and management tools is capped at 225 person-hours for development and testing.

<u>Deliverables</u>

- TransSuite software capable of interfacing with VSCs
- TransSuite software capable of using the objects defined in asc3AdaptControl MIB
- Reporting and management tools defined in the Framework document

2.3 Set up Test Environment

TransCore will work with the City to design and implement a test environment for the specific purpose of testing the operation of the ASCT. The City will provide any servers and licenses needed for this purpose. These include:

- Servers (virtual or physical)
    - VISSIM
    - ACDSS
    - TransSuite TCS
    - TransSuite CCS
    - Database
    - Remote Desktop licenses
- Licenses
    - VISSIM
    - ACDSS
    - SQL Server Express (for TransSuite)

No additional license fees will be assessed for the additional TransSuite installation because this is covered under the City's existing license.

A reduced-price evaluation license will be assessed for the KLD ACDSS while this product is being used by the City for simulation, for a period of up to 6 months. If the evaluation is successful and the City chooses to use the ACDSS in the field, this amount will be credited toward a full site license.

Assumptions

- The City will provide any servers and licenses needed for this purpose.
- The City will send the servers to TransCore's Atlanta Technology Center in order to develop and test the software, and to configure test the environment.
- The City will provide remote access into the system for both TransCore and KLD.

Deliverables

- Test Environment Design Document
- Servers fully configured with all required software.

2.4 Simulation Base Model

The City will develop the Simulation base model that will be used as the foundation for the scenarios, including geometric, traffic signal, and vehicular characteristics. This may be based on an existing simulation model, but may also be supplemented with additional count data or other data (collected by the City) that may provide a more accurate representation of current conditions. TransCore and KLD will provide an evaluation of the existing model and provide recommendations for modification or supplementation.

Once the base model is in place, TransCore and KLD will train City personnel in the setting up of a basic adaptive configuration on a selected corridor. KLD will then provide training to the City on the configuration and optimization of the system in order to enable the City to perform a full evaluation.

Assumptions

- The City will provide the data for and develop the base simulation model.

Deliverables

- Recommendations for base model development.
- On-site Training and documentation on the configuration and optimization of the ACDSS

2.5 Simulation

Once the simulation base model is in place, the Team and the City will together evaluate the initial run of the simulation to determine if there are any specific issues or improvements to the process are warranted prior to executing the full suite of simulation scenarios. Once these recommendations are implemented to the satisfaction of the Team, the City will execute the defined simulation scenarios defined and collect the resulting data.

During the course of the simulation runs, the City, at their discretion, may choose to develop additional scenarios based on the results of the defined scenarios as they may enhance the results. TransCore and KLD will be available for consultation during this process.

Assumptions

- TransCore and KLD will execute the first adaptive simulation scenario
- The City will prepare and execute the baseline simulation scenario, and prepare and execute all but the first adaptive simulation scenario and collect the results

Deliverables

- Model refinement recommendations

2.6 Evaluation of Results

Once all of the simulation results are collected, TransCore and KLD will compile an evaluation of the findings. Each operational issue will be described in the report along with lessons learned, performance notes, and recommendations for system, field, configuration, and algorithm enhancements. The report will conclude with a cost/benefit analysis for the deployment of the ACDSS in the field, and will provide recommended deployment areas or corridors prioritized by the benefit that may be achieved for each of them.

Deliverables

- Evaluation Report

3 Phase 3 – Pilot Field Deployment

If the City chooses, the ACDSS will be integrated into the existing production TransSuite system and deployed in the field. The field deployment will include a before-and-after study, and will measure to the extent possible the same or similar MOEs as were evaluated during the simulation process (recognizing that some measures that are available in a simulated environment are either difficult or cost prohibitive to obtain in the field).

3.1 Performance Evaluation

The Team and the City will develop a plan for a Before-and-After study of the ACDSS performance. The City will collect statistically valid sample data in the area or on the corridor where ACDSS will be deployed. This may include travel times collected using the City's Bluetooth sensors, the TransSuite software, and other means as agreed to by the City and the Team.

Once data is collected, the Team will develop a final evaluation document, which will include the results of the deployment as well as any recommendation to the City on further improvements, future deployments, reports, real-time management tools, and any maintenance or operational strategies that may further help the City to refine and improve traffic signal operation in the area. It is not anticipated that this report will be lengthy, but will provide the essence of the results and recommendations.

Assumptions

- The City will provide data collection services and equipment

Deliverables

- Before-and-After Evaluation plan
- Final Evaluation Document

3.2 System Deployment

TransCore and KLD will install the ACDSS into the Overland Park TransSuite production system. The City will provide any field hardware installation or configuration required for the operation of the system. KLD will provide services and any additional required training for the installation, configuration, and optimization of the ASCT system.

<u>Deliverables</u>

- Operational field deployment of ACDSS

4 Phase 4 – System Support

KLD will provide remote troubleshooting and support for up to 60 hours during first year after the Pilot field deployment is completed. All TransSuite support from TransCore will be covered under other general TransSuite Support sources.

5 Schedule

Activity	Schedule (Months)
Phase 1: Feasibility	2
Phase 2: Simulation	6
Phase 3: Pilot Deployment	4
Phase 4: Support	12
Total	**24**

6 Budget

Activity	TransCore	KLD	ACDSS License	Total
Phase 1: Feasibility	$15,200	$12,400		$27,600
Phase 2: Simulation	$59,175	$89,200	$3,125	$152,500
Phase 3: Pilot Deployment	$4,325	$45,000	$9,375	$58,700
Phase 4: Support	$400	$11,300		$11,700
Total	$79,100	$157,900	$12,500	$249,500

7 Terms and Conditions

This Scope of Work and estimate are contingent on the ability to reach mutually agreeable terms and conditions.

Adaptive Traffic Control System
Pilot Project

Category Rates for Additional Support
March 4, 2013

Personnel	Rate
Project Manager	$ 171.57
Sr. Software Engineer	$ 178.04
Software Developer	$ 145.67
Jr. Software Developer	$ 113.30

EXHIBIT B

THIS SOFTWARE LICENSE AGREEMENT (this "Agreement") is made as of the last date of signature below, by and between **TransCore, ITS, LLC** (hereinafter "Licensor" or "TransCore"), a Delaware Limited Liability Company, with principal offices at 8158 Adams Drive, Liberty Centre, Building 200, Hummelstown, PA 17036 and the _____ (hereinafter "Licensee"), with principal offices at _____.

Now Therefore, in consideration of the parties entering into Agreement No. TBD upon Contract Award, the mutual covenants and promises made therein and herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.	**Definitions**	a. "Computer Software" shall mean both source and object code and all data sets and auxiliary files used by such code, along with any media on which they reside and documentation related thereto, together with the proprietary information and trade secrets contained therein.
		b. "Licensee Facilities" shall mean space, environment, and other facilities, which are to be provided by Licensee in connection with the installation, operation, or maintenance of the System.
		c. "Software" shall mean the Computer Software developed and owned by TransCore. This consists of the following modules:
		♦ TransSuite® ATMS Map
		♦ TransSuite® ATMS Explorer
		♦ TransSuite® Traffic Control System (TCS)
		♦ TransSuite® Central Communications Server (CCS)
		♦ TransSuite® Video Control System (VCS)
		♦ TransSuite® Traveler Information System (TIS)
		♦ TransSuite® Event Management System (EMS)
		♦ TransSuite® Unified Controller Manager (UCM)
		♦ TransSuite® Traffic Management System (TMS)
		d. "Specific Equipment" shall mean that which is either provided by TransCore or approved by TransCore for use as a platform for the software and is located at the Licensee's Facilities.
2.	**License**	Licensor grants to the Licensee, its successors and assigns, a limited, non-exclusive, royalty-free, fully paid, license to the Software for Licensee's own operations on the Specific Equipment; provided, however, that Licensee shall have the right to re-locate the Licensed Software to a backup CPU, in the event that the licensed CPU fails or is withdrawn from service. Licensor authorizes the Licensee to copy the Licensed Software solely for its own internal use. The Licensee shall not re-sell, supply or give the Software (source or executable code) to other parties. Licensee shall not reverse compile, reverse engineer, modify, disassemble, translate, copy or in any way duplicate the Licensed Software, in whole or in part. Licensor hereby authorizes Licensee to copy the Software solely for the Licensee's own internal use for restart purposes or to replace damaged copy, provided the Software is used only on the Specific Equipment.
3.	**Specific Rights**	a. The Software and related materials and any copies, in whole or in part made pursuant to this Agreement shall be the sole and exclusive property of TransCore.
		b. Licensee shall not sell, lease, assign, sublicense, or otherwise transfer to any third party, directly or indirectly, the Software or any license or right granted hereunder, in whole or in part.
		c. Licensee shall not export or re-export outside the United States, the Software, in whole or in part.
		d. Licensee shall reproduce and include copyright and proprietary notices on all copies of the Software in the same form and manner that such copyright and proprietary notices are included on the Software by Licensor.
4.	**Non-Disclosure**	a. Licensee acknowledges that the Software constitutes a valuable asset of TransCore and is to be considered proprietary information of TransCore, and that, by virtue of this Agreement, Licensee shall acquire only the right to use the Software under the terms and conditions hereof and shall not acquire any rights of ownership in or title to the Software.
		b. Licensee warrants that all persons who it has authorized to use the Software will observe and perform the covenants set forth in this Article 4. Licensee agrees to maintain the Software in secure premises to prevent any unauthorized person from gaining access thereto and to give TransCore written notice of any unauthorized disclosures or use of the Software as soon as Licensee becomes aware of it.
		c. Licensee shall notify and inform its employees and any third parties having access to the Software of Licensee's limitations, duties and obligations regarding non-disclosure and copying of the Software. The Software shall be used only by employees of the Licensee and any third parties who are necessary to Licensee's exercise of its rights hereunder and then only at the location of the Specific Equipment. Licensee shall take reasonable security measures to protect the Licensed Software from being accessed by unauthorized third parties.
		d. If Licensee violates the provisions of this Agreement, TransCore shall be entitled to pursue equitable relief and/or monetary damages to protect its interest herein.
		e. Notwithstanding any termination provisions of the governing Agreement, the obligations set forth in this Article 4 shall survive the termination of the Agreement.
5.	**Termination**	a. This Agreement and the License to use the Software shall terminate when Licensee discontinues the use of the Software on the Specific Equipment or discontinues the use of the Specific Equipment, whichever first occurs. This Agreement may also be terminated by TransCore if the Licensee fails to comply with any term or condition of this Agreement and fails to correct such noncompliance within 15 days after receipt of TransCore's written notification thereof or such longer period as TransCore may allow in writing.
		b. Within 30 days after any termination of this Agreement, the Licensee shall return to TransCore all copies of the Software supplied or made under this Agreement together with a signed letter certifying that the Licensee has discontinued all further use of the Software and that all copies have been returned to TransCore or that they have been destroyed.
6.	**Warranty**	a. TransCore warrants for a period of one (1) year that the Software will operate according to specifications published by TransCore. If it is determined that the Software does not operate according to such specifications, TransCore's only responsibility will be to apply

reasonable efforts to cure the non-conformance. TransCore does not warrant or guarantee that all software errors will be corrected. After the expiration of the one (1) year period, and if requested by Licensee, TransCore may, if it desires, provide maintenance services for the Software at TransCore's established prices.

b. Any changes, modifications or maintenance or repairs not authorized by TransCore to the software or operating environment to which it has been installed, including additional and/or unauthorized programs to systems hardware and/or workstations that result in system problems, shall automatically void any warranties herein.

c. THE WARRANTIES OF TRANSCORE CONTAINED HEREIN ARE APPLICABLE ONLY IF THE SOFTWARE IS USED ON THE SPECIFIC EQUIPMENT AT THE LOCATION(s) SPECIFIED HEREIN. TRANSCORE MAKES NO WARRANTY, EXPRESS, IMPLIED OR OTHERWISE, IF THE SOFTWARE IS USED ON ANY OTHER EQUIPMENT OR AT A LOCATION OTHER THAN THAT IDENTIFIED.

d. EXCEPT FOR THE EXPRESS WARRANTY STATED ABOVE, TRANSCORE DISCLAIMS ALL WARRANTIES ON THE SOFTWARE FURNISHED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY. THERE SHALL BE NO LIABILITY ON THE PART OF TRANSCORE FOR DAMAGES INCLUDING BUT NOT LIMITED TO SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE EVEN IF TRANSCORE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Miscellaneous

a. This Agreement shall be binding upon the successors and assigns of both parties; provided, however, that no assignment shall be made by either party without the prior consent of the other. Any attempt by either party to assign this Agreement or any of the rights or duties hereunder contrary to the foregoing provision shall be void.

b. Any notice permitted or required under this Agreement shall be deemed given when mailed by certified mail, postage prepaid, or when dispatched by facsimile (and followed by a written confirmation mailed by certified mail, postage prepaid, within 72 hours after such dispatch) or Email. Mail/Email shall be addressed as follows:

TransCore: ATTN: Insert Contract Manager Name and Address, email.

Licensee _____

c. No modification or amendment to this Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound thereby.

d. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected.

e. This Agreement will be interpreted and construed in accordance with the laws of the State of Kansas, without regard to its conflicts of law principles.

f. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which together shall constitute one instrument.

g. This Software License Agreement constitutes the completed and exclusive statement of the Agreement between the parties as it relates to the software use, and supersedes all proposals, oral or written, and all other communications between the parties relating to the software use. No modification of this Agreement shall be effective unless in writing and signed by the parties.