



MASTER AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is entered into this _____ day of September, 2021, between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter referred to as the “Village”), and TranSystems Corporation, a Missouri corporation authorized to conduct business in the State of Illinois (hereinafter referred to as the “Consultant”).

RECITAL

WHEREAS, the Village intends to have professional engineering services performed by Consultant for projects pursuant to Consultant’s Proposal for On-Call Engineering Services dated July 2, 2021, attached hereto and incorporated herein by reference as Attachment A (hereinafter referred to as “Consultant’s Proposal”), as are described in Task Orders in substantially the form attached as Attachment B issued pursuant to this Agreement (hereinafter referred to as “Task Order” or “Task Orders”), and the Village’s Request for Qualifications dated June 15, 2021, incorporated herein by reference as though fully set forth (hereinafter referred to as the “RFQ”).

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

1. RECITAL INCORPORATED.

The above recital is incorporated herein as though fully set forth.

2. SERVICES OF THE CONSULTANT.

2.1. The Consultant’s services shall be rendered in connection with projects pursuant to this Agreement and Task Orders issued pursuant to this Agreement. All services to be provided pursuant to any Task Order shall be completed in accordance with the terms and conditions contained in such Task Order and this Agreement. No services shall be provided under this Agreement without the issuance of a Task Order approved by the Village and Consultant. The Village shall approve the use of subconsultants by the Consultant to perform any of the services that are the subject of this Agreement.

2.2. The terms and conditions set forth in this Agreement shall apply to each Task Order unless specifically modified in such Task Order. In the event of a conflict between this Agreement and a Task Order, the conflicting provision of the Task Order shall take precedence for that Task Order. In the event this Agreement is amended by the Village and Consultant, such amendment shall apply to all Tasks Orders issued after the effective date of the amendment and, unless otherwise specifically provided in such amendment, shall not apply to any Task Orders issued prior to the effective date of the amendment.

2.3. In case of a conflict between provisions of the Consultant's Proposal and this Agreement or the Village's RFQ, this Agreement and/or the Village's RFQ shall control to the extent of such conflict.

2.4 No Task Order shall be issued pursuant to this Agreement after December 31, 2024, unless such date is extended by amendment to this Agreement. The Village reserves the right to employ other engineers on its projects and shall not be obligated to issue any Task Orders pursuant to this Agreement.

2.5. Village Authorized Representative. The Village's Director of Public Works or the Director's designee shall be deemed the Village's authorized representative, unless applicable law requires action by the Corporate Authorities, and shall have the power and authority to make or grant or do those things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by this Agreement. The Consultant is entitled to rely on the full power and authority of the person executing this Agreement on behalf of the Village as having been properly and legally given by the Village. The Village shall have the right to change its authorized representative by providing the Consultant with written notice of such change which notice shall be sent in accordance with Section 18 of this Agreement.

2.6. Consultant's Authorized Representative. In connection with the foregoing and other actions to be taken under this Agreement, the Consultant hereby designates Brian Fairwood as its authorized representative who shall have the power and authority to make or grant or do all things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Consultant and with the effect of binding the Consultant. The Village is entitled to rely on the full power and authority of the person executing this Agreement on behalf of the Consultant as having been properly and legally given by the Consultant. The Consultant shall have the right to change its Authorized Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 18 of this Agreement.

2.7. The Consultant shall be an independent Consultant to the Village. The Consultant shall solely be responsible for the payment of all salaries, benefits and costs of supplying personnel for the services. Nothing contained in this Agreement shall create a

contractual relationship with or a cause of action in favor of a third party against Consultant. The Consultant's services under this Agreement are being performed solely for the Village's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

3. COMPENSATION FOR SERVICES.

3.1. For all services provided which are not covered by a Task Order, the Consultant shall invoice the Village on an hourly basis for direct labor to perform the work at a rate set forth in the Consultant's Proposal. The Village may request an estimate of fee for approval before work commences. If an estimate is provided, the Consultant shall not exceed the estimated fee without prior approval of the Village. For all services provided for each project as described in a Task Order issued pursuant to this Agreement, the Village shall pay the Consultant in accordance with this Agreement and in such Task Order, and Consultant shall accept in full satisfaction for providing, performing, and completing the services, the amount or amounts set forth in such Task Order (hereinafter referred to as "Contract Price"), subject to any additions, deductions, or withholdings provided for in this Agreement. The Consultant shall be paid installments not more frequently than once each month ("Progress Payments"). Payments shall be made within thirty (30) days of receipt by the Village of a pay request/invoice from the Consultant. Payments shall be due and owing by the Village in accordance with the terms and provisions of the Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*, except as set forth herein.

3.2. The Village may, at any time, by written order, make changes within the general scope of this Agreement or a Task Order in the services to be performed by the Consultant. If such changes cause an increase or decrease in the amount to be paid to Consultant or time required for performance of any services under this Agreement or such Task Order, whether or not changed by any order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. No service for which additional compensation will be charged by the Consultant shall be furnished without the written authorization of the Village.

3.3. The Consultant shall, as a condition precedent to its right to receive a progress payment, submit to the Village an invoice accompanied by such receipts, vouchers, and other documents as may be necessary to establish costs incurred for all labor, material, and other things covered by the invoice and the absence of any interest, whether in the nature of a lien or otherwise, of any party in any property, work, or fund with respect to the services performed under such Task Order or this Agreement. In addition to the foregoing, such invoice shall include (a) employee classifications, rates per hour, and hours worked by each classification, and, if the services are to be performed in separate phases, for each phase; (b) total amount billed in the current period and total amount billed to date, and, if the services are to be performed in separate phases, for each phase; (c) the estimated percent completion, and, if the services are to be performed in separate phases, for each phase.

3.4. Notwithstanding any other provision of this Agreement and without prejudice to any of the Village's rights or remedies, the Village shall have the right at any time or times to withhold from any payment such amount as may reasonably appear necessary to compensate the Village for any actual or prospective loss due to: (1) Services that are defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which the Consultant is liable under this Agreement; (3) claims of subconsultants, suppliers, or other persons performing Consultant's Services; (4) delay in the progress or completion of the Services; (5) inability of the Consultant to complete the Services; (6) failure of the Consultant to properly complete or document any pay request; (7) any other failure of Consultant to perform any of its obligations under this Agreement; or (8) the cost to the Village, including reasonable attorneys' fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of the Village's remedies set forth in this Agreement. The Village must notify the Consultant of cause for withholding within fourteen (14) days of receiving invoice.

3.5. The Village shall be entitled to retain any and all amounts withheld pursuant to this Agreement until the Consultant shall have either performed the obligations in question or furnished security for such performance satisfactory to the Village. The Village shall be entitled to apply any money withheld or any other money due the Consultant under this Agreement to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, reasonable attorneys' fees, and administrative expenses incurred, suffered, or sustained by the Village and chargeable to the Consultant under this Agreement.

3.6. The Consultant's services for each project described in a Task Order issued shall be considered complete on the date of final written acceptance by the Village, which acceptance shall not be unreasonably withheld or delayed. As soon as practicable after final acceptance, the Village shall pay to the Consultant the balance of any amount due and owing under such Task Order, after deducting therefrom all charges against the Consultant as provided for in this Agreement ("Final Payment"). The acceptance by Consultant of Final Payment with respect to the all services provided by this Agreement and each project described in a Task Order shall operate as a full and complete release of the Village of and from any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses of, by, or to the Consultant for anything done, furnished for, arising out of, relating to, or in connection with the services under this Agreement or in connection with such Task Order, except for such claims as the Consultant reserved in writing at the time of submitting its invoice for final payment.

4. TERM AND TERMINATION.

4.1. This Agreement shall take effect upon the Effective Date as defined herein and shall continue for a period of three (3) years upon the Consultant's completion of its services pursuant to Section 3.6 above. The Village retains the right to renew this Agreement under the same terms and conditions upon mutual agreement with the Consultant. Any applicable renewal shall be on a yearly basis for no more than two (2) additional terms of one (1) year each.

4.2. Price escalation for hourly rates in the Consultant's Proposal will be allowed and subject to one (1) annual adjustment per year on the Effective Date of this Agreement. The requested increase must be that of the general industry. In this event, written notification stating the requested increase and supporting document justification must be forwarded to the Village. The annual adjustment shall be based upon 100% of the percentage of change of the latest published Index (as defined below) as compared to the Index for the previous year. The Index shall be the United States Department of Labor, Bureau of Labor Statistics, Revised Consumer Price Index for all Urban Wage Earners for Chicago, Illinois - Gary, Indiana - Kenosha, Wisconsin (all items, 1982-84 = 100). Notwithstanding anything contained herein to the contrary, the annual adjustment shall not be greater than five percent (5%) of the previous year's cost for services provided under this agreement in any year. If the Consultant fails to justify the requested increase, the Village reserves the right to reject the request and cancel the balance of the agreement.

4.3. If any price reductions are announced during the Agreement period, the Village shall receive benefit of such reductions. This request shall also be in the form of a written notification and shall become effective thirty (30) days from the date the notice was received by the Village.

4.4. This Agreement or any Task Order under this Agreement may be terminated, in whole or in part, by either party if the other party substantially fails to fulfill its obligations under this Agreement or Task Order through no fault of the terminating party. The Village may terminate this Agreement or any Task Order, in whole or in part, for its convenience. No such termination is effective unless the terminating party gives the other party not less than ten (10) calendar days written notice pursuant to Section 18 below of its intent to terminate.

4.5. If this Agreement or any Task Order is terminated by either party, the Consultant shall be paid for services performed to the effective date of termination, including reimbursable expenses pursuant to this Agreement or such Task Order. In the event of termination, the Village shall receive reproducible copies of drawings, specifications and other documents completed by the Consultant pursuant to the Task Order or this Agreement.

5. INDEMNIFICATION.

5.1. To the fullest extent permitted by law, the Consultant hereby agrees to defend, indemnify and hold harmless the Village and its officers, officials, agents, employees and volunteers against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, cost and expenses, including, but not limited to, reasonable attorney's fees and court costs (hereinafter referred to as "Claims") which may accrue against the Village and its officers, officials, agents, employees and volunteers to the extent arising out of the negligent performance of the work by the Consultant, its employees, or subconsultants, except for the negligence of the Village or its officers, officials, agents, employees and volunteers.

6. INSURANCE.

6.1. The Consultant shall, at the Consultant's expense, secure and maintain in effect throughout the duration of this Agreement, insurance of the following kinds and limits set forth in this Section 6. The Consultant shall furnish Certificates of Insurance to the Village before starting work or within ten (10) days after the notice of award of the Agreement, whichever date is reached first. All insurance policies, except professional liability insurance, shall be written with insurance companies licensed or authorized to do business in the State of Illinois and having a rating of at least A according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless fifteen (15) days prior written notice is given to the Village. This provision (or reasonable equivalent) shall also be stated on each Certificate of Insurance: "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail fifteen (15) days' written notice to the certificate holder named to the left." The Consultant shall require any of its subconsultants to secure and maintain insurance as set forth in this Section 6 and indemnify, hold harmless and defend the Village and its officers, officials, agents, employees and volunteers as set forth in this Agreement.

6.2. The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

(A) Commercial General Liability:

- i. Coverage to include, Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:

General Aggregate	\$ 2,000,000.00
Each Occurrence	\$ 1,000,000.00
Personal Injury	\$ 1,000,000.00
- iii. Cover all claims arising out of the Consultant's operations or premises, anyone directly or indirectly employed by the Consultant.

(B) Professional Liability:

- i. Per Claim/Aggregate \$2,000,000.00
- ii. Cover all claims arising out of the Consultant's operations or premises, anyone directly or indirectly employed by the Consultant.

(C) Workers' Compensation:

- i. Workers' compensation insurance shall be in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees who work on the Project, and in case work is sublet, the Consultant shall require each subconsultant similarly to provide workers' compensation insurance. In case employees engaged in hazardous work under this

Agreement are not protected under workers' compensation insurance, the Consultant shall provide, and shall cause each subconsultant to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(D) **Comprehensive Automobile Liability:**

- i. Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage.
- ii. Limits:
Combined Single Limit \$1,000,000.00

(E) **Umbrella:**

- i. Limits:
Each Occurrence/Aggregate \$2,000,000.00

(F) The Village and its officers, officials, agents, employees and volunteers shall be named as additional insureds on all insurance policies identified herein except Workers' Compensation and Professional Liability. The Consultant shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village, its officers, employees, and volunteers.

6.3. The Village and the Consultant agree to waive against each other all claims for special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.4. The Consultant understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Consultant, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village and its officers, officials, agents, employees and volunteers as herein provided. The Consultant waives and agrees to require its insurers to waive its rights of subrogation against the Village and its officers, officials, employees, agents and volunteers.

7. SUCCESSORS AND ASSIGNS.

7.1. The Village and the Consultant each bind themselves and their partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Except as above, neither the Village nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any

officer or agent of any public body that may not be a party hereto, nor shall it be construed as giving any right or benefits hereunder to anyone other than the Village and the Consultant.

8. FORCE MAJEURE.

8.1. Neither the Consultant nor the Village shall be responsible for any delay caused by any contingency beyond their control, including, but not limited to: acts of nature, war or insurrection, strikes or lockouts, walkouts, fires, natural calamities, riots or demands or requirements of governmental agencies.

9. AMENDMENTS AND MODIFICATIONS.

9.1. This Agreement may be modified or amended from time to time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representative of the Village and the authorized representative of the Consultant.

10. STANDARD OF CARE.

10.1. The Consultant is responsible for the quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports and other professional services furnished or required under this Agreement, and shall endeavor to perform such services with the same skill and judgment which can be reasonably expected from similarly situated professionals.

10.2. It is recognized that neither Consultant nor the Village has control over the costs of labor, material, equipment or services furnished by others or over competitive bidding, market or negotiating conditions, or construction contractors' methods of determining their prices. Accordingly, any opinions of probable project costs or construction costs provided for herein are estimates only, made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified professional, familiar with the industry. Consultant does not guaranty that proposals, bids or actual project costs or construction costs will not vary from opinions of probable cost prepared by Consultant.

10.3. The Consultant shall be responsible for the accuracy of its professional services under this Agreement and shall promptly make revisions or corrections resulting from its errors, omissions, or negligent acts without additional compensation. The Village's acceptance of any of Consultant's professional services shall not relieve Consultant of its responsibility to subsequently correct any such errors or omissions, provided the Village notifies Consultant thereof within one year of completion of the Consultant's services.

10.4. The Consultant shall respond to the Village's notice of any errors and/or omissions within seven (7) days of written confirmation by the Consultant of the Village's

notice. Such confirmation may be in the form of an electronic mail confirmation receipt by the Village, or by actual hand delivery of written notice by the Village to the Consultant.

10.5. The Consultant shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

10.6. The Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the services are provided, performed, and completed in accordance with all required governmental permits, licenses, and other approvals and authorizations that may be required in connection with providing, performing, and completing the services, and with all applicable statutes, ordinances, rules, and regulations, including, but not limited to, the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* The Consultant shall also comply with all conditions of any federal, state, or local grant received by the Village or the Consultant with respect to this Agreement.

10.7. The Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with the Consultant's, or its subconsultants', performance of, or failure to perform, the Services required pursuant to this Agreement or any part thereof.

11. DRAWINGS, DOCUMENTS AND BOOKS AND RECORDS.

11.1. Drawings, plans, specifications, photos, reports, information, observations, calculations, notes and any other reports, documents, data or information, in any form, prepared, collected, or received by the Consultant in connection with any or all of the Services to be provided pursuant to this Agreement ("Documents") shall be and remain the property of the Village upon completion of the project and payment to the Consultant all amounts then due under this Agreement. At the Village's request, or upon termination of this Agreement, the Documents shall be delivered promptly to the Village. The Consultant shall have the right to retain copies of the Documents for its files. The Consultant shall maintain files of all Documents unless the Village shall consent in writing to the destruction of the Documents, as required herein.

11.2. The Consultant's Documents and records pursuant to this Agreement shall be maintained and made available during performance of project services under this Agreement and for three (3) years after completion of the Project. The Consultant shall give notice to the

Village of any Documents to be disposed of or destroyed and the intended date after said period, which shall be at least ninety (90) days after the effective date of such notice of disposal or destruction. The Village shall have ninety (90) days after receipt of any such notice to give notice to the Consultant not to dispose of or destroy said Documents and to require Consultant to deliver same to the Village, at the Village's expense. The Consultant and any subconsultants shall maintain for a minimum of three (3) years after the completion of this Agreement, or for three (3) years after the termination of this Agreement, whichever comes later, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with the Agreement. The Agreement and all books, records and supporting documents related to the Agreement shall be available for review and audit by the Village and the federal funding entity, if applicable, and the Consultant agrees to cooperate fully with any audit conducted by the Village and to provide full access to all materials. Failure to maintain the books, records and supporting documents required by this subsection shall establish a presumption in favor of the Village for recovery of any funds paid by the Village under the Agreement for which adequate books, records and supporting documentation are not available to support their purported disbursement. The Consultant shall make the Documents available for the Village's review, inspection and audit during the entire term of this Agreement and three (3) years after completion of the Project as set forth herein and shall fully cooperate in responding to any information request pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* by providing any and all responsive documents to the Village.

11.3. The Consultant shall have the right to include among the Consultant's promotional and professional materials those drawings, renderings, other design documents and other work products that are prepared by the Consultant pursuant to this Agreement (collectively "Work Products"). The Village shall provide professional credit to the Consultant in the Village's development, promotional and other materials which include the Consultant's Work Products.

12. SAVINGS CLAUSE.

12.1. If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of it requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

13. NON-WAIVER OF RIGHTS.

13.1. No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

13.2. This Agreement shall not prohibit the Consultant from providing engineering services to any other public or private entity or person. In the event that the Consultant provides Services to a public or private entity or person, the Village, at its sole discretion, may determine that such Services conflict with a service to be provided to the Village by Consultant, and the Village may select another engineer and/or land surveyor to provide such services as the Village deems appropriate.

14. THE VILLAGE'S REMEDIES.

14.1. If it should appear at any time prior to final payment that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services to be provided pursuant to this Agreement or such Task order with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement or such Task Order, or has attempted to assign this Agreement or the Consultant's rights under this Agreement, either in whole or in part, or has falsely made any representation or warranty, or has otherwise failed, refused, or delayed to perform or satisfy any other requirement of this Agreement or has failed to pay its debts as they come due ("Event of Default"), and has failed to cure, or has reasonably commenced to cure any such Event of Default within fifteen (15) business days after Consultant's receipt of written notice of such Event of Default, then the Village shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

14.1.1. The Village may require the Consultant, within such reasonable time as may be fixed by the Village, to complete or correct all or any part of the services that are defective, damaged, flawed, unsuitable, nonconforming, or incomplete and to take any or all other action necessary to bring Consultant and the services into compliance with this Agreement and such Task Order;

14.1.2. The Village may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory services or part thereof and make an equitable reduction in the Contract Price of this Agreement or Task Order;

14.1.3. The Village may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement except for amounts due for services properly performed prior to termination;

14.1.4. The Village may withhold any progress payment or final payment from the Consultant, whether or not previously approved, or may recover from Consultant, any and all costs but not exceeding the Contract Price of such Task Order(s), including attorneys' fees and administrative expenses, incurred by the Village as the result of any Event of Default or as a result of actions taken by the Village in response to any Event of Default; or

14.1.5. The Village may recover any damages suffered by the Village as a result of the Consultant's Event of Default.

15. NO COLLUSION.

15.1. The Consultant hereby represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Consultant is contesting, in accordance with the procedures established by the appropriate revenue Act, its liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant hereby represents that the only persons, firms, or corporations interested in this Agreement are those disclosed to the Village prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Consultant has in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the Village for all loss or damage that the Village may suffer thereby, and this Agreement shall, at the Village's option, be null and void and subject to termination by the Village.

16. ENTIRE AGREEMENT.

16.1. This Agreement sets forth all the covenants, conditions and promises between the parties, and it supersedes all prior negotiations, statements or agreements, either written or oral, with regard to its subject matter. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement.

17. GOVERNING LAW AND VENUE.

17.1. This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance.

17.2 Venue for any action brought pursuant to this Agreement shall be in the Circuit Court of Cook County, Illinois.

18. NOTICE.

18.1. Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, by personal service, or by electronic transmission to the persons and addresses indicated below or to such other addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

If to the Village:

Village Engineer
Village of Oak Park
201 South Boulevard
Oak Park, Illinois 60302
Email: mckenna@oak-park.us

If to the Consultant:

Charles J. Stenzel
TranSystems Corporation
1475 East Woodfield Road, Suite 600
Schaumburg, IL 60173
Email: cistenzel@transystems.com

18.2. Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

18.3. Notice by electronic transmission shall be effective as of date and time of electronic transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event electronic notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

19. BINDING AUTHORITY.

19.1. The individuals executing this Agreement on behalf of the Consultant and the Village represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Agreement.

20. HEADINGS AND TITLES.

20.1. The headings or titles of any provisions of this Agreement are for convenience or reference only and are not to be considered in construing this Agreement.

21. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES.

21.1. This Agreement shall be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement.

21.2. A facsimile or pdf/email copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

22. EFFECTIVE DATE.

22.1. As used in this Agreement, the Effective Date of this Agreement shall be the last date of its execution by one of the parties as set forth below.

23. AUTHORIZATIONS.

23.1 The Consultant’s authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by the Consultant’s board of directors or its by-laws to execute this Agreement on its behalf. The Interim Village Manager warrants that she has been lawfully authorized to execute this Agreement. The Consultant and the Village shall deliver upon request to each other copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents which evidence their legal authority to execute this Agreement on behalf of their respective parties.

24. EQUAL OPPORTUNITY EMPLOYER.

24.1. The Consultant is an equal opportunity employer and the requirements of 44 Ill. Adm. Code 750 APPENDIX A and Chapter 13 (“Human Rights”) of the Oak Park Village Code are incorporated herein as though fully set forth. The Consultant shall not discriminate against any employee or applicant for employment because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial status, source of income, disability, housing status, military discharge status, or order of protection status or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization. The Consultant shall comply with all requirements of Chapter 13 (“Human Rights”) of the Oak Park Village Code.

24.2. In the event of the Consultant’s noncompliance with any provision of Chapter 13 (“Human Rights”) of the Oak Park Village Code, the Illinois Human Rights Act or any other applicable law, the Consultant may be declared non-responsible and therefore ineligible for future Agreements or subcontracts with the Village, and the Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

24.3. In all solicitations or advertisements for employees placed by it on its behalf, the Consultant shall state that all applicants will be afforded equal opportunity without discrimination because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial status, source of income, disability, housing status, military discharge status, or order of protection status or physical or mental disabilities that do not impair ability to work.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives on the dates set forth below.

VILLAGE OF OAK PARK

TRANSYSTEMS CORPORATION

By: Lisa Shelly
Its: Interim Village Manager

By: Brian L. Fairwood
Its: Principal

Date: _____, 2021

Date: _____, 2021

ATTEST:

ATTEST:

By: Christina M. Waters
Its: Village Clerk

By:
Its:

Date: _____, 2021

Date: _____, 2021

ATTACHMENT A

DESCRIPTION OF BASIC SERVICES

Consultant shall cooperate and work closely with representatives of Village and other parties involved in each Project delineated and described in a Task Order issued pursuant to the Agreement. Consultant shall meet with the Village and such other parties, and shall provide such consultation, advice, and reports, as required to adequately perform its responsibilities under each such Task Order and the Agreement. For each Project delineated and described in a Task Order issued pursuant to this Agreement, Consultant shall produce and deliver to the Village the results of its Services, plus any reports, documents, data, information, observations, or opinions set forth below that are required to be provided under the Task Order for such Project or requested by the Village, in form or format as set forth below or, if none, in form or format of the Village's choosing.

1. Study and Report Phase. If Study and Report Services are to be provided under a Task Order, such Study and Report Services shall include one or more or all of the following as set forth in the Task Order:
 - a. Review available data and consult with the Village to determine a mutually agreed upon program, schedule and preliminary construction budget.
 - b. Provide analysis of the Village's needs, planning surveys, and site evaluation and comparative studies of prospective sites and solutions.
 - c. Provide economic analysis of various alternatives.
 - d. Prepare, for review and approval by The Village, a report summarizing the Study and Report Services, together with Consultant's opinion of probable Project Costs and Construction Cost of the Project and provide 3 copies and review them in person with the Village.

2. Preliminary Design Phase. If Preliminary Design Services are to be provided under a Task Order, such Preliminary Design Services shall include one or more or all of the following as set forth in the Task Order:
 - a. Determine the general scope, extent and character the Project.
 - b. Prepare preliminary design documents consisting of drawings, specifications, a written description of the Project and other documents appropriate for Project.
 - c. Furnish 3 copies of the Preliminary Design Documents, together with Consultant's revised opinion of probable Project Costs and Construction Cost of the Project, for review and approval by the Village, and review them in person with the Village.

3. Final Design Phase. If Final Design Services are to be provided under a Task Order, such Final Design Services shall include one or more or all of the following as set forth in the Task Order:
 - a. On basis of accepted Preliminary Design Documents and the revised opinion of probable Project Costs and Construction Cost of the Project, prepare pricing and quantity proposal forms, final drawings, and specifications for incorporation in the construction contract documents. Such drawings and specifications shall show the general scope, extent and character of the work to be furnished and performed by the construction contractor.
 - b. Assist the Village by providing all required criteria, descriptions and design data and consulting with officials and the Village to obtain permits and to prepare other bidding/negotiation and construction contract documents.
 - c. Furnish 3 copies of the proposal forms, drawings and specifications, together with Consultant's revised opinion of probable Project Costs and Construction Cost of the Project, based upon the drawings and specifications and the other bidding/negotiation and construction contract documents, for review and approval by the Village, and review them in person with the Village.

4. Bidding or Negotiating Phase. If Bidding or Negotiating Services are to be provided under a Task Order, such Bidding or Negotiating Services shall include one or more or all of the following as set forth in the Task Order:
 - a. Assist the Village in advertising for and obtaining bids or negotiating proposals. Maintain a record of prospective bidders to whom bidding documents have been issue and conduct pre-bid or negotiation conferences.
 - b. Issue addenda as appropriate and approved by the Village.
 - c. Consult with and advise the Village as to the acceptability of contractors, subcontractors, suppliers and other persons if such acceptability is required by the construction contract documents.
 - d. Consult with the Village as to acceptability of proposed substitute materials and equipment.
 - e. Conduct bid openings, prepare bid or negotiation tabulation sheets, and assist the Village in evaluating bids or proposals and in assembling and awarding construction contracts.

5. Construction Phase. If Construction Services are to be provided under a Task Order, such Construction Services shall include one or more or all of the following as set forth in the Task Order:
- a. Furnish advice and consulting services during the construction period.
 - b. Review, return and comment on shop drawings and other equipment drawings furnished by contractors for materials and equipment to be incorporated into the work. Submittals shall be returned within 15 days of receipt by Consultant.
 - c. Consult and advise on the interpretation of the construction contracts.
 - d. Provide a representative to observe the construction of the work on a daily basis; such representative to be acceptable to the Village at all times. On the basis of such observation, Consultant may disapprove of or reject construction work while it is in progress if it does not conform to the construction contract or will prejudice the integrity of the design concept.
 - e. Assist the Village and field personnel in checking laboratory tests of construction materials and equipment which are to be incorporated into the work.
 - f. Review contractors' breakdown of cost, material quantities and scheduling.
 - g. Prepare monthly estimates and certification of construction progress payments, and report to the Village as required to keep the Village informed on the progress of construction and to allow the Village to perform its obligations under the construction contracts.
 - h. Prepare and submit proposed change orders to the Village for its consideration, approval or denial. Consultant shall, when requested, submit recommendations on proposed change orders.
 - i. Maintain daily records of construction, including logs of weather conditions, accident reports, work accomplished, manpower, equipment and materials used, and problems encountered.
 - j. Schedule and attend preconstruction and job conferences and promptly prepare and circulate minutes thereof to all participants.
 - k. Maintain files of correspondence, reports of job conferences, field orders, addenda, change orders, shop drawings, samples, progress reports, product data, submittals, handbooks, operations and maintenance manuals, instructions and other project-related documents.
 - l. Conduct final inspection of the construction work, and prepare punch lists for corrections and recommend, when the construction work is complete, final payment to the construction contractors.

- m. Prepare and continuously update drawings of record and submit 2 set(s) of reproducible drawings of record along with CAD and pdf formats to the Village within 90 days from the completion of the construction contract.
6. Operational Phase. If Operational Services are to be provided under a Task Order, such Operational Services shall include one or more or all of the following as set forth in the Task Order:
- a. Provide assistance in the closing of any financial, refinancing or related transaction for the Project.
 - b. Assist the Village in training the Village's personnel to operate and maintain the Project and develop systems and procedures for operation, maintenance and recordkeeping for the Project.

ATTACHMENT B

FORM OF TASK ORDER

Task Order No. _____

In accordance with Section 2 of the Agreement between the Village of Oak Park (hereinafter referred to as the "Village") and TranSystems Corporation (hereinafter referred to as the "Consultant") for Professional Engineering Services, dated September ____, 2021 (the "Agreement"), the Village and Consultant agree as follows:

1. **Project:**

[Insert Title, Description and Scope of the Project]

2. **Services of Consultant:**

A. Basic Services:

[Incorporate applicable Attachment A paragraphs -- either by reference or in their entirety]

B. Additional Services:

[Describe additional services to be provided or state "none"]

3. **Approvals and Authorizations:** Consultant shall obtain the following approvals and authorizations:

[List or state "none"]

4. **Commencement Date:**

- the date of execution of this Task Order by the Village.
- _____ days following execution of this Task Order by the Village.
- _____ days following issuance of Notice to Proceed by the Village.
- _____, 202__.

5. **Completion Date:**

For use with single phase projects or multiple phase projects with single completion date:

- _____days following the Commencement Date plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.
- _____, 202__, plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.

For use with multiple phase projects with separate completion dates:

- A. Study and Report Phase: _____days following the Commencement Date plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.
- B. Preliminary Design Phase: _____days following issuance of Notice to Proceed by Owner plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.
- C. Final Design Phase: _____days following issuance of Notice to Proceed by Owner plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.
- D. Bidding or Negotiating Phase: _____days following issuance of Notice to Proceed by Owner plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.
- E. Construction Phase: _____days following completion by, and final payment to, the construction contractor plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.
- F. Operational Phase: _____days following issuance of Notice to Proceed by Owner plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.
- G. _____ Phase: _____days following issuance of Notice to Proceed by Owner plus extensions, if any, authorized by a change order issued pursuant to Section 3.2 of the Agreement.

6. **Submittal Schedule:**

Submittal:

Due Date:

7. **Key Project Personnel:**

Names:

Telephone and Email:

8. **Contract Price:**

PREFERRED METHOD--BILLING RATE TASK ORDER

For use with single phase projects or multiple phase projects with single not to exceed cost limitation:

For providing, performing, and completing all Services, an amount equal to Consultant's Direct Labor Costs for all Services rendered by principals and employees engaged directly on the Project, plus an amount equal to the actual costs of all Reimbursable Expenses.

Notwithstanding the foregoing, the total Contract Price shall not exceed

\$_____, except as adjusted by a change order issued pursuant to Section 3.2 of the Agreement.

For use with multiple phase projects with separate not to exceed cost limitations:

For providing, performing, and completing each phase of Services, an amount equal to Consultant's Direct Labor Costs for all Services rendered by principals and employees engaged directly on the Project, plus an amount equal to the actual costs of all Reimbursable Expenses, but not to exceed, in each phase of Services, the following not to exceed amount set forth opposite each such phase except as adjusted by a change order issued pursuant to Section 3.2 of the Agreement:

<u>Phase</u>	<u>Not to Exceed</u>
Study and Report	\$
Preliminary Design	\$
Final Design	\$
Bidding/Negotiation	\$

<u>Phase</u>	<u>Not to Exceed</u>
Construction	\$
Operational	\$
_____	\$

OTHER OPTIONS

LUMP SUM TASK ORDER

For use with single phase projects or multiple phase projects with single lump sum cost:

For providing, performing, and completing all Services, the total Contract Price of:

_____ Dollars and _____ Cents
 (in writing) (in writing)

_____ Dollars and _____ Cents
 (in figures) (in figures)

For use with multiple phase projects with separate lump sum amounts:

For providing, performing, and completing each phase of Services, the following lump sum amount set forth opposite each such phase:

<u>Phase</u>	<u>Lump Sum</u>
Study and Report	\$
Preliminary Design	\$
Final Design	\$
Bidding/Negotiation	\$
Construction	\$

Operational \$
 _____ \$

COST PLUS FIXED FEE TASK ORDER

For use with single phase projects or multiple phase projects with uniform pricing:

For providing, performing, and completing all Services, a fixed fee of \$_____ plus an amount equal to Consultant's Direct Labor Costs times a factor of % for all Services rendered by principals and employees engaged directly on the Project.

Notwithstanding the foregoing, the total Contract Price shall not exceed \$_____, except as adjusted by a change order issued pursuant to Section 3.2 of the Agreement.

For use with multiple phase projects with separate pricing:

For providing, performing, and completing each phase of Services, the following fixed fee set forth opposite each such phase, plus an amount equal to Consultant's Direct Labor Costs times the following factor set forth opposite each such phase, but not to exceed, in each phase of Services, the following not to exceed amount set forth opposite each such phase except as adjusted by a change order issued pursuant to Section 3.2 of the Agreement:

<u>Phase</u>	<u>Fixed Fee</u>	Direct Labor <u>Cost Factor</u>	<u>Not to Exceed</u>
--------------	------------------	------------------------------------	----------------------

Study and Report	\$	%	\$
Preliminary Design	\$	%	\$
Final Design	\$	%	\$
Bidding/Negotiation	\$	%	\$
Construction	\$	%	\$
Operational	\$	%	\$

Task Order No. _____

<u>Phase</u>	<u>Fixed Fee</u>	<u>Direct Labor Cost Factor</u>	<u>Not to Exceed</u>
_____	\$	%	\$

DIRECT COST TASK ORDER

For use with single phase projects or multiple phase projects with uniform pricing:

For providing, performing, and completing all Services, an amount equal to Consultant's Direct Labor Costs times a factor of _____% for all Services rendered by principals and employees engaged directly on the Project, plus an amount equal to the actual costs of all Reimbursable Expenses.

Notwithstanding the foregoing, the total Contract Price shall not exceed

\$ _____, except as adjusted by a change order issued pursuant to Section 3.2 of the Agreement.

For use with multiple phase projects with separate pricing:

For providing, performing, and completing each phase of Services, an amount equal to Consultant's Direct Labor Costs times the following factor set forth opposite each such phase, plus an amount equal to the actual costs of all Reimbursable Expenses, but not to exceed, in each phase of Services, the following not to exceed amount set forth opposite each such phase except as adjusted by a change order issued pursuant to Section 3.2 of the Agreement:

<u>Phase</u>	Direct Labor Cost	
	<u>Factor</u>	<u>Not to Exceed</u>
Study and Report	%	\$
Preliminary Design	%	\$
Final Design	%	\$
Bidding/Negotiation	%	\$
Construction	%	\$

Task Order No. _____

Operational % \$

% \$

PERCENTAGE OF CONSTRUCTION COST TASK ORDER

For providing, performing, and completing all Services, an amount equal to _____% of the Construction Cost of the Project.

Notwithstanding the foregoing, the total Contract Price shall not exceed \$_____, except as adjusted by a change order issued pursuant to Section 3.2 of the Agreement.

9. **Payments:**

PREFERRED METHOD--BILLING RATE TASK ORDER

For purposes of payments to Consultant, the value of the Services shall be determined as follows:

Direct Labor Costs shall mean the billing rates assigned to all Consultant personnel as set forth in the Agreement, including all professionals whether owners or employees, engaged directly on the Project.

Reimbursable Expenses shall mean the actual expenses incurred by Consultant directly or indirectly in connection with the Project, including expenses for transportation, telephone, postage, computer time and other highly specialized equipment, reproduction and similar Project related items.

OTHER OPTIONS:

For use with Lump Sum Task Orders:

Consultant shall, not later than 10 days after execution of this Task Order and before submitting its first pay request, submit to the Village a schedule showing the value of each component part of such Services in form and with substantiating data acceptable to the Village ("Breakdown Schedule"). The sum of the items listed in the Breakdown Schedule shall equal the amount set forth in the Schedule of Prices. An unbalanced Breakdown Schedule providing for overpayment of Consultant on component parts of the Services to be performed first will not be accepted. The Breakdown Schedule shall be revised and resubmitted until acceptable by the Village. No payment shall be made for Services until Consultant has submitted, and the Village has approved, an acceptable Breakdown Schedule.

The Village may require that the approved Breakdown Schedule be revised based on developments occurring during the provision and performance of the Services. If Consultant fails to submit a revised Breakdown Schedule that is acceptable to the Village, the Village shall have the right either to suspend Progress and Final Payments for Services or to make such Payments based on the Village's determination of the value of the Services completed.

For purposes of determining the amount to be paid to Consultant in the event of any termination pursuant to Section 4.3 of the Agreement, Direct Labor Costs and Reimbursable Expenses shall mean_____.

For use with Cost Plus Fixed Fee Task Orders:

Direct Labor Costs shall mean salaries and wages paid to all Consultant personnel as set forth in the Agreement, including all professionals whether owners or employees, engaged directly on the Project, but shall not include indirect payroll related costs or fringe benefits.

The charge on account of the fixed fee shall be determined by the Village on the basis of Consultant's estimate of the proportion of total Services or, if separate fixed fees are provided for different phases of Services, the proportion of total Services in that phase, actually completed at the time of invoicing.

For use with Direct Cost Task Orders:

Direct Labor Costs shall mean salaries and wages paid to all Consultant personnel as set forth in the Agreement, including all professionals whether owners or employees, engaged directly on the Project, but shall not include indirect payroll related costs or fringe benefits.

Reimbursable Expenses shall mean the actual expenses incurred by Consultant directly or indirectly in connection with the Project, including expenses for transportation, telephone, postage, computer time and other highly specialized equipment, reproduction and similar Project related items.

For use with Percentage of Construction Cost Task Orders:

The Construction Cost of the Project for purpose of determining payment of the Contract Price to Consultant means the total cost to the Village, as estimated by Consultant or as bid by the Contractor engaged to perform the Project, whichever is less, of all the elements of the Project designed or specified by Consultant; provided, however that Construction Cost of the Project shall not include Consultant's compensation and

expenses, cost of land, rights-of-way, or compensation for or damages to, properties, nor the Village's legal, accounting, insurance counseling, or auditing services, or interest and finance charges incurred in connection with the Project or other costs that are the responsibility of the Village pursuant to the Agreement.

Payments for each phase of Services shall be based upon the following percentage of the total cost or estimated Construction Cost of the Project set forth opposite each such phase:

Study and Report	_____%
Preliminary Design	_____%
Final Design	_____%
Bidding/Negotiation	_____%
Construction	_____%
Operational	_____%
_____	_____%

Prior to completion of construction and final payment to the construction contractor, the estimated Construction Cost of the Project shall be based upon the construction contract price at the time of the award.

Prior to award of a construction contract, the estimated Construction Cost of the Project shall be based upon the lesser of (i) the most recent Consultant's opinion of probable Construction Cost of the Project submitted to, and approved by, the Village or (ii) the lowest bona fide bid received from a responsive and responsible bidder for such work or, if the work is not bid, the lowest bona fide negotiated proposal for such work from a responsive or responsible person.

Prior to submission and approval of Consultant's opinion of probable Construction Cost of the Project in the Study and Report Phase, progress payments shall be based upon salaries and wages paid to all Consultant personnel engaged directly on the Project and actual expenses incurred by Consultant directly or indirectly in connection with the Project.

Upon completion and final acceptance of each phase of Services, the Village shall pay such additional amount, if any, or be entitled to credit against future progress payments such amount, if any, as may be necessary to bring the total compensation paid on account of such phase to the foregoing percentages of the total or estimated Construction Cost of the Project, as the case may be.

For purposes of determining the amount to be paid to Consultant in the event of any termination pursuant to Section 4.3 of the Agreement, Direct Labor Costs and Reimbursable Expenses shall mean_____.

10. **Modifications to Contract:**

[Describe Contract modifications or state "none"]

11. **Attachments:**

[List or state "none"]

12. **Designated Representative for Task Order:**

If to the Village:

Village Engineer
Village of Oak Park
201 South Boulevard
Oak Park, Illinois 60302
Email: mckenna@oak-park.us

If to the Consultant:

Charles J. Stenzel
TranSystems Corporation
1475 East Woodfield Road, Suite 600
Schaumburg, IL 60173
Email: cjstenzel@transystems.com

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Task Order to be signed by their duly authorized representatives on the dates set forth below. Acceptance and approval of this Task Order, including the attachments listed above, shall incorporate this Task Order as part of the Agreement.

VILLAGE OF OAK PARK

TRANSYSTEMS CORPORATION

By:
Its:

By:
Its:

Date: _____, 2021

Date: _____, 2021

ATTEST:

ATTEST:

By:
Its:

By:
Its:

Date: _____, 2021

Date: _____, 2021