

THE STATE OF TEXAS   §

COUNTY OF DALLAS   §

**Professional Services Contract**  
**with TranSystems Corporation d/b/a**  
**TranSystems Corporation Consultants**

THIS CONTRACT is entered into on this 18th day of October, 2016, by and between the **CITY OF CARROLLTON, TEXAS**, a municipal corporation located in Dallas County, Texas, (hereinafter referred to as “City”), acting by and through its City Manager or his designee, and **TranSystems Corporation d/b/a TranSystems Corporation Consultants** (“hereinafter referred to as “Consultant”) whose address is 3030 LBJ Freeway, Suite 900, Dallas, TX 75234.

W I T N E S S E T H:

WHEREAS, City desires to obtain professional services from Consultant for the design of a hike and bike trail along the Furneaux Creek corridor between Old Denton Road and the Trinity Mills DART Station; and

WHEREAS, Consultant is an architectural, engineering, professional planning, urban design, or landscape architecture firm qualified to provide such services and is willing to undertake the performance of such services for City in exchange for fees hereinafter specified; NOW, THEREFORE,

THAT IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

**I.**

**Employment of Consultant**

Consultant will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering and planning professions, both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If Consultant is representing that it has special expertise in one or more areas to be utilized in this Contract, then Consultant agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

**II.**

**Scope of Services**

Consultant shall perform such services as are necessary to prepare plans and specifications for hike and bike trail along the Furneaux Creek corridor between Old

Denton Road and the Trinity Mills DART Station specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

### **III. Payment for Services**

Total payment for services described herein shall be a sum not to exceed One Hundred Fifty-Six Thousand and Seven Hundred and Four Dollars (\$156,704.00). This total payment for services includes Consultant's ordinary expenses. Additional expenses, which are extraordinary in nature, shall be approved in advance by City in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the City pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses not approved in writing in advance by the City shall remain the sole responsibility of the Consultant.

Consultant will bill City on a percent complete basis in accordance with Attachment "B"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, Consultant will not provide such additional services until authorized by City in writing to proceed. The scope of services shall be strictly limited. City shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless City shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month Consultant will submit to City an invoice supporting the percentage complete for which payment is sought. Each invoice shall also state the percentage of work completed on the Project through the end of the then submitted billing period, the total of the current invoice amount and a running total balance for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice City shall make monthly payments in the amount shown by Consultant's approved monthly statements and other documentation submitted.

Nothing contained in this Contract shall require City to pay for any work that is unsatisfactory as determined by City or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which City may have if Consultant is in default, including the right to bring legal action for damages or for

specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

**IV.**  
**Revisions of the Scope of Services**

City reserves the right to revise or expand the scope of services after due approval by City as City may deem necessary, but in such event City shall pay Consultant equitable compensation for such services. In any event, when Consultant is directed to revise or expand the scope of services under this Section of the Contract, Consultant shall provide City a written proposal for the entire costs involved in performing such additional services. Prior to Consultant undertaking any revised or expanded services as directed by City under this Contract, City must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by Consultant that any compensation not specified in Paragraph III herein above may require Carrollton City Council approval and is subject to the current budget year limitations.

**V.**  
**Term**

This Contract shall begin on the date first written above, and shall terminate when City has approved the Project as being final or otherwise terminates this Contract as provided herein.

**VI.**  
**Contract Termination Provision**

This Contract may be terminated at any time by City for any cause by providing Consultant thirty (30) days written notice of such termination. Upon receipt of such notice, Consultant shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

**VII.**  
**Ownership of Documents**

All materials and documents prepared or assembled by Consultant under this Contract shall become the sole property of City and shall be delivered to City without restriction on future use. Consultant may retain in its files copies of all drawings, specifications and all other pertinent information for the work. Consultant shall have no

liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

## VIII.

### **Insurance Requirements**

- A. Before commencing work, Consultant shall, at its own expense, procure, pay for and maintain during the term of this Contract the following insurance written by companies approved by the state of Texas and acceptable to the City. Consultant shall furnish to the City of Carrollton Engineering Director certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be provided to the City.
1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
  2. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
  3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
  4. Professional Liability Insurance to provide coverage against any claim which the consultant and all consultants engaged or employed by the consultant become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$1,000,000 per claim, \$1,000,000 annual aggregate.

**NOTE:** If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *thirty-six (36) months* following completion of the contract and acceptance by the City of Carrollton.

- B. With reference to the foregoing required insurance, the consultant shall endorse applicable insurance policies as follows:
1. A waiver of subrogation in favor of City of Carrollton, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
  2. The City of Carrollton, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
  - 3.. All insurance policies shall be endorsed to the effect that City of Carrollton will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the policies.
- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

## **IX.**

### **Right to Inspect Records**

Consultant agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions relating to this Contract. Consultant agrees that City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that City shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. City shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

## **X.**

### **Successors and Assigns**

City and Consultant each bind themselves and their successors, executors, administrators and assigns to the other party to this contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of

this Contract. Neither City nor Consultant shall assign or transfer its interest herein without the prior written consent of the other.

**XI.**  
**CONSULTANT's Liability**

Acceptance of the final plans by the City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by City for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by City for any defect in the designs, working drawings, specifications or other documents and work prepared by said Consultant, its employees, associates, agents or sub-consultants.

**XII.**  
**INDEMNIFICATION**

**CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM CONSULTANT'S PERFORMANCE UNDER THIS CONTRACT OR WHICH ARE CAUSED BY THE INTENTIONAL WRONGFUL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS") SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 (A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).**

**BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.**

**INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.**

In its sole discretion, the City shall have the right to approve counsel to be retained by Consultant in fulfilling its obligation to defend and indemnify the City. Consultant shall retain approved counsel for the City within seven (7) business days after receiving written notice from the City that it is invoking its right to indemnification under this Contract. If Consultant does not retain counsel for the City within the required time, then the City shall have the right to retain counsel and the Consultant shall pay these attorneys' fees and expenses. The City retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so.

### **XIII.**

#### **Independent Contractor**

Consultant's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of City in the performance of this Contract. No term or provision of or act of Consultant or City under this Contract shall be construed as changing that status. Consultant will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

### **XIV.**

#### **Default**

If at any time during the term of this Contract, Consultant shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then City shall have the right, if Consultant shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy due to Consultant's nonperformance under this Contract, the cost to City to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to Consultant hereunder, Consultant shall be liable for and shall reimburse City for such excess. Consultant's liability under this provision shall be limited to the total dollar amount of this Contract.

City's remedies for Consultant's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at City's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to City; or,
- (c) Monetary damages in an amount not to exceed the greater of:
  - (1) The amount of any applicable insurance coverage Consultant is required to purchase and maintain under this Contract plus any deductible amount to be paid by Consultant in conjunction with said coverage regardless of whether Consultant has actually purchased and maintained said coverage; or,
  - (2) The total dollar amount of this Contract.

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

#### **XV. Changes**

City may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between City and Consultant shall be incorporated by written modification to this Contract.

#### **XVI. Conflict of Interest**

Consultant covenants and agrees that Consultant and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by Consultant pursuant to this Contract will be conducted by employees, associates or subcontractors of Consultant.

#### **XVII. Confidential Information**

Consultant hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. Consultant shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning City of Carrollton, its affiliates and subsidiaries, and all oral and written information concerning City or its activities, that is of a non-public, proprietary or confidential



nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by Consultant or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of Consultant, or are required to be disclosed by a governmental authority.

**XVIII.**  
**Mailing Address**

All notices and communications under this Contract to be mailed to City shall be sent to the address of City's agent as follows, unless and until Consultant is otherwise notified:

Fernando Villarreal, Jr., P.E.  
City of Carrollton  
P.O. Box 1100535  
Carrollton, Texas 75011.

Notices and communications to be mailed or delivered to Consultant shall be sent to the address of Consultant as follows, unless and until City is otherwise notified:

Garry D. Kraus, P.E.  
TranSystems Corporation  
d/b/a TranSystems Corporation Consultants  
3030 LBJ Freeway, Suite 900  
Dallas, Texas 75234

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

**XIX.**  
**Applicable Law**

The Contract is entered into subject to the Carrollton City Charter and ordinances of City, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Consultant will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Consultant's income. Situs of this Contract is agreed to be Dallas County, Texas, for all purposes, including performance and execution.

**XX.**  
**Severability**

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**XXI.**  
**Remedies**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

**XXII.**  
**Entire Agreement**

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

**XXIII.**  
**Non-Waiver**

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

**XXIV.**  
**Headings**

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

**XXV.**  
**Venue**

The parties to this Contract agree and covenant that this Contract will be enforceable in Carrollton, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Dallas County, Texas.

**XXVI.**  
**No Third Party Beneficiary**

For purposes of this Contract, including its intended operation and effect, the parties (City and Consultant) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with City or Consultant or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

**CITY OF CARROLLTON**

By: \_\_\_\_\_  
Marc Guy  
Assistant City Manager

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

ATTEST:

\_\_\_\_\_  
Laurie Garber  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Meredith A. Ladd  
City Attorney

TranSystems Corporation d/b/a  
TranSystems Corporation Consultants  
(Consultant's Name)

By: \_\_\_\_\_  
Name: Garry D. Kraus, P.E.  
Title: Senior Associate Vice President  
Date Signed: \_\_\_\_\_

THE STATE OF TEXAS                   §  
COUNTY OF \_\_\_\_\_               §

This instrument was acknowledged before me on the \_\_\_\_\_ day of, \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ in his capacity as \_\_\_\_\_  
of \_\_\_\_\_, a \_\_\_\_\_ Corporation,  
known to me to be the person whose name is subscribed to the foregoing instrument, and  
acknowledged that he executed the same on behalf of and as the act of \_\_\_\_\_  
\_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

**FURNEAUX CREEK TRAIL  
OLD DENTON ROAD TO TRINITY MILLS DART STATION**

**SCOPE OF SERVICES**

1. **EXHIBIT.** This is an exhibit attached to, made a part of and incorporated by reference into the Agreement between CITY and UNDERSIGNED providing for Professional Services.
2. **DESCRIPTION OF PROJECT: Furneaux Creek Trail – Old Denton Road to Trinity Mills DART Station**
  - a. **Project Site.** The Project consists of a hike & bike trail extending generally along the Furneaux Creek between Old Denton Road and the Trinity Mills DART Station. Connections to the Trinity Mills Station and the existing Furneaux Creek Hike & Bike Trail at Old Denton Road are a part of the project.
  - b. **Planned Improvements.** Improvements associated with the hike & bike trail as provided in this contract include, but are not limited to, the following:
    - (1) *A 12 foot wide concrete path including necessary local drainage improvements and grading to provide a hike and bike trail meeting ADA requirements.*
    - (2) *Connections to the Trinity Mills DART Station and a connection to the Furneaux Creek Hike & Bike Trail at Old Denton Road.*
    - (3) *Two low water crossings of the “pilot channel” between Old Denton Road and Dickerson Parkway with associated necessary hydraulic studies.*
    - (4) *An access connection to Dickerson Parkway and a trailhead at the Dickerson Parkway Bridge.*
    - (5) *Wayfinding signage along the trail*

**3. LIST OF PROFESSIONAL SERVICES.** UNDERSIGNED shall provide or arrange for services to be provided as listed below and as further described in this exhibit.

- a. Research and Base Map Preparation
- b. Topographic Field Surveying
- c. Boundary Ownership Analysis and Parcel Map Preparation
- d. Geotechnical Investigations and Report
- e. Preliminary & Primary Design
- f. Final Design (Plan Preparation)
- g. Certain Administrative and Project Observation Services during the Construction Phase

**4. PROFESSIONAL SERVICES.** UNDERSIGNED shall prepare plans, drawings, studies, details, specifications, estimates and other documents in the performance of Professional Services described below. The UNDERSIGNED shall be responsible for the coordination and management of all drawings and design documents relating to the UNDERSIGNED's design and used on the Project, regardless of whether such drawings and documents are prepared or performed by the UNDERSIGNED, by the UNDERSIGNED's consultants, or by others. The UNDERSIGNED shall be responsible for coordination and internal verification of all drawings including the accuracy of all dimensional and layout information contained therein. UNDERSIGNED in performance of their duties is also responsible that the design, plans and related documents comply with the City's General Design Standards, City Code of Ordinances, City landscape requirements, applicable state and federal laws, regulations and statutes and applicable hike & bike trail standards.

**a. Research and Base Map preparation**

Research existing conditions along the potential hike & bike trail alignment including property ownership from plats and County Appraisal District, municipal and franchise utility locations, right of ways, roadway plans, and the most current

existing aerial topography. Prepare a base map from the information received and field verify the accuracy of the map through limited on site measurements and observation. No detailed property or topographic surveys will be done at this time.

**b. Topographic Field Surveying.**

Based upon the approved alignment, complete topographic surveys along the length of the project. Survey width will generally be from the southern bank of Furneaux Creek to the toe of the slope on the southern floodway embankment. Cross sectioning shall be at 100 feet intervals. Data to be obtained will include all above ground features within the project area. Topography of intersecting roadways up to 100 feet from the centerline of the proposed hike & bike trail and all utilities will be included. All utility information within the proposed project area will be included. The depths and/or flow lines of water service lines, irrigation main lines and valves, sanitary sewer lines, and storm sewer lines and other utilities will be surveyed. All survey data shall be acquired based on benchmarks and coordinate system currently utilized by City of Carrollton.

**c. Boundary Ownership Analysis and Parcel Preparation**

Complete property ownership analysis to determine property lines and adjoining to assure that trail is not encroaching on properties along Furneaux Creek. Complete a centerline metes and bounds easement description for the length of the proposed trail. Prepare individual metes and bounds property descriptions and sketches for the proposed trail where it crosses other properties (two are anticipated). It is assumed no easement descriptions will be needed where the trail lies on city of Carrollton property. A preliminary assessment will be made of the properties lying adjacent to Furneaux Creek and Dickerson Parkway. If this preliminary assessment shows that the proposed trail lies on city property or easement, no additional research will be done for these properties. Any additional research would be extra services.

**d. Geotechnical Investigations and Report.** UNDERSIGNED will coordinate the provision of geotechnical investigations and laboratory analysis as necessary for the

design of the Trail Project. Principal items of interest are field explorations and laboratory testing to determine subsurface conditions along the trail length that affect design. A total of 8 borings are proposed, at 10 to 15 feet depth.

e. **Preliminary & Primary Design.** UNDERSIGNED agrees to perform the design in accordance with the guidelines established by the CITY of Carrollton Engineering Department to include the following:

- (1) *Conduct Project initiation meeting with CITY Staff to establish the design intent, and obtain necessary related information.*
- (2) *Prepare plans for the desired improvements including:*
  - i. *Plan and profile of the proposed hike & bike trail. The basic trail design will be from Old Denton Road to the Trinity Mills Station via the Furneaux Creek Channel. A trail head and access to Dickerson Parkway will be included.*
  - ii. *Drainage design for all cross drainage and drainage improvements required to accommodate the trail. Drainage design is assumed to consist primarily of extension and connection of drainage facilities within the area of the hike and bike path. It does not include any off site drainage extensions. Drainage designs will include an analysis of the drainage contributory to the existing "pilot channel" between Old Denton Road and Dickerson Parkway. This analysis will be conducted in order to design the two "low water" crossings of the "pilot channel".*
  - iii. *Utility adjustments necessary to construct the trail to include water and sewer adjustments and coordination of any franchise utility adjustments by the franchise utility.*
- (3) *The designs shall comply with the City's General Design Standards and prepared on 22" by 34" plan and plan/profile sheets at an appropriate scale.*
- (4) *Prepare anticipated estimates of probable construction cost.*



- (5) *Upon completion of the plans, UNDERSIGNED shall thoroughly check the plans for accuracy and correctness.*
- (6) *Upon completion of UNDERSIGNED'S field check, UNDERSIGNED shall deliver two (2) full scale (22"x34") and two (2) half-scale (11"x17") sets of prints of the plans to the CITY for review. UNDERSIGNED shall not proceed further with the design until written approval of the design and construction cost estimate is given by the CITY.*
- (7) *UNDERSIGNED shall be required to do all design work for the Project to the satisfaction of and as may be required by the CITY as established in the scope of services.*
- (8) *The UNDERSIGNED shall make plan submittals at the approximate 60% (preliminary) and 90% (primary) design levels. Level of plan detail for each submittal shall be consistent with the associated level of design.*

f. **Final Design (Plan Preparation).** UNDERSIGNED agrees to complete the design in one bidding package in accordance with the guidelines established by the CITY of Carrollton Engineering Department. Such documents shall be sufficient for a contractor experienced and knowledgeable in construction of the project type to provide a qualified bid and complete the work. Electronic copies shall be made available during design upon request of the City in a format compatible with AutoCAD 2000 or later. Final plan submittal shall be in reproducible hard copy, electronic format compatible with AutoCAD 2000 or later, AND electronic files of each sheet in either tiff or Adobe Acrobat (pdf) format. Bidding package shall include, but not be limited to, the following:

- (1) *Items required by CITY as outlined by the scope of work shall be inked on the original tracings by UNDERSIGNED. Completed plans must be clearly read and understood when reproduced at one-half scale by Xerox method.*
- (2) *UNDERSIGNED shall prepare a separate cover sheet.*

- (3) *UNDERSIGNED shall prepare details or typical sections as may be required by CITY to accomplish the work covered by this contract.*
- (4) *UNDERSIGNED shall complete any design of non-standard structures required for this Project. UNDERSIGNED shall deliver to CITY complete copies of design calculations for any and all non-standard structures designed by UNDERSIGNED. UNDERSIGNED'S seal and signature shall appear on all design calculations.*
- (5) *UNDERSIGNED shall thoroughly check plans for completeness and accuracy.*
- (6) *UNDERSIGNED shall seal each sheet in the plan set. Consultant shall also sign the cover sheet.*
- (7) *UNDERSIGNED shall prepare two sets of construction specifications and contract documents. A draft set of specifications will be submitted to the CITY for review. Upon receipt, the UNDERSIGNED will incorporate the review comments into the documents. One final set of construction specifications and contract documents will be delivered to the CITY for final review before the CITY prints bid packets. The specifications shall set forth in detail the requirements for construction of the Project, including the quality levels of materials and workmanship, and responsibilities of the City, Engineer, and Contractor during construction of the Project. The specifications shall incorporate applicable sections of the North Central Texas Council of Government's Standard Specifications for Pubic Works Construction, applicable sections of the City of Carrollton's General Design Standards with other necessary sections generated by the UNDERSIGNED.*
- (8) *Upon completion of Plan Preparation, UNDERSIGNED shall deliver to CITY original tracings of construction plans, construction cost estimates, special provisions, preliminary plans, copies of all field work, and two (2) full-scale and (2) half-scale sets of prints.*
- (9) *UNDERSIGNED shall prepare an itemized bid tab.*

- (10) *UNDERSIGNED shall assist the CITY's Project Representative with addenda, pre-bid conference and pre-construction conference.*
- (11) *The UNDERSIGNED and City may agree on a fixed limit of construction cost for the project. The UNDERSIGNED and City together shall work together to:*
- i. Determine materials, equipment, and construction methods to be included in the contract documents;*
  - ii. Make reasonable adjustments in project scope of the to attain such fixed limit; and,*
  - iii. Provide for contractor's "alternate bids" to adjust construction cost to such fixed limit.*

*If the lowest qualified bid exceeds 25% of an agreed upon construction budget limit, then the City shall take one of the following actions:*

- i. Give written approval of an increase in such fixed limit,*
- ii. Authorize re-bidding the project within a reasonable time, or*
- iii. Cooperate in revising the scope and quality of the project as necessary to reduce the probable construction cost to the level of the prescribed budget.*

*If the project is revised pursuant to this method, the UNDERSIGNED, shall, as part of these basic services, modify the drawings and specifications as necessary to bring the probable construction cost within the fixed limit. Providing this service shall be the limit of the UNDERSIGNED's responsibility in this regard, and having done so, the UNDERSIGNED shall be entitled to his basic service fees in accordance with this Agreement, whether or not a construction contract is awarded or construction of the project commences*

- (12) *The CITY shall apply, and pay for the Texas Accessibility Review and Inspection permit, as necessary for this project. UNDERSIGNED shall address and resolve all accessibility issues related to design.*

**g. Certain Administrative and Project Observation Services During the Construction Phase.** During the construction phase of the Project, UNDERSIGNED

agrees to perform certain administrative and Project observation services. These services are limited to the following with the understanding that the CITY will employ an in-house capital-improvements coordinator as the CITY's Project Representative and will utilize CITY inspectors to oversee construction of the Project:

**(1) Design Review and Construction Evaluation**

- i. *The UNDERSIGNED shall review and make recommendations to the CITY regarding Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information and design concepts expressed in the Contract Documents. Shop Drawings and other submittals related to Work designed or certified by the Contractor's design professionals shall bear such professional's written approval and seal or certification (when applicable) when submitted to the UNDERSIGNED.*
- ii. *The UNDERSIGNED shall assist the CITY in reviewing and making recommendations on properly prepared, timely requests by the Contractor for Change Orders. A properly prepared request for a Change Order shall be accompanied by sufficient supporting information to permit the CITY and UNDERSIGNED to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications.*

*All change orders involving monetary issues shall be made in writing to the CITY's Engineering Department. The UNDERSIGNED shall have authority to order minor changes in the Work, which are consistent with the intent of the Contract Documents, and not involving an adjustment in the Contract Sum or an extension of the Contract Time provided the CITY's Engineering Department is notified in writing prior to the change. Notification shall include the specific item that changed, reason for the change and confirmation that it neither increased nor decreased the Contract Sum or schedule. This authority does not include substitution of major Project components or materials.*

- iii. *The UNDERSIGNED shall review timely and appropriate requests by the Contractor for additional information about the Contract Documents. The UNDERSIGNED shall consult and assist the CITY in issuing advice and instructions to the Contractor, but all such instruction shall be issued through the CITY, unless otherwise instructed by the CITY.*
- iv. *The UNDERSIGNED shall endeavor to interpret the requirements of the Contract Documents to assist the CITY in evaluating the performance of the Contractor. The UNDERSIGNED shall make recommendations, when requested, on claims of the CITY or Contractor relating to the Project.*

*Interpretations and recommendations of the UNDERSIGNED shall be consistent with the intent of, and reasonably inferable from the Contract Documents by persons knowledgeable about the specific area of construction. When making such interpretations and recommendations, the UNDERSIGNED shall not show partiality to either CITY or Contractor. However, the UNDERSIGNED shall not provide any such interpretations or recommendations directly to the Contractor without prior written permission from the CITY.*

*Whenever deemed necessary or advisable, the UNDERSIGNED shall advise the CITY of the need to reject Work that does not conform to the Contract Documents, or request inspection or testing of Work in accordance with appropriate provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed.*

- v. *An average of one site observation visit and report per month conducted concurrently with the CITY'S Project Representative. A maximum of twelve (12) site observation visits will be provided for the Project.*

As described in Section 5, **(EMPLOYMENT OF CONTRACTOR BY CITY)**, Project observation visits will be performed on the jobsite to observe the status of the Project and to ascertain whether there is substantial conformance with the construction documents.

- vi. One observation visit and report (punch list) for the purpose of assisting the CITY in determining the status of Project Completion as outlined below.
- vii. One observation visit and report for the purposed of verifying completion of punch list items.
- viii. Provision of a set of reproducible Record Drawings indicating changes and variations from the plans as constructed by the Contractor. Record Drawings produced by the UNDERSIGNED will be strictly based on marked-up drawings provided by the CITY's Contractor.
- ix. The UNDERSIGNED shall have no authority to make changes to the Work. The UNDERSIGNED may make recommendations for the purpose of enhancing and adapting the design for site conditions, such as vegetation, terrain and subsurface geology in accordance with the Change Orders subsection of this Scope above. If deemed necessary or appropriate by the UNDERSIGNED, he shall prepare supplemental drawings or field sketches as information for the Contractor. All change recommendations shall be submitted to and approved by the City.
- x. Questions, clarifications, corrections or additions during construction resulting from deficiencies in the construction documents are included as Basic Services and are not considered Construction Administration.

(2) **Processing Contractor's Payment Applications**

*The CITY shall review, process and authorize the Contractor's payment applications, using CITY forms.*

**(3) Project Completion**

*The CITY of Carrollton does not recognize substantial completion. The UNDERSIGNED shall assist the CITY to determine the date(s) of Completion.*

*The UNDERSIGNED shall participate in a Project Close-out inspection when the Contractor informs the CITY that, in its opinion, the Project is complete. The UNDERSIGNED shall assist the CITY in checking conformance of the Work with the requirements of the Contract Documents, and assist in preparing a "Punch List" of items to be completed or corrected.*

*The UNDERSIGNED shall participate in a Final Completion inspection with the CITY's Contract Administrator or Designated Representative to assist in reviewing the "Punch List" to verify that necessary items have been be completed or corrected.*

*The UNDERSIGNED's responsibility to provide Basic Services for the Construction Phase under this Agreement terminates at the issue of the contractor's final Certificate of Payment.*

**5. EMPLOYMENT OF CONTRACTOR BY CITY.**

- a. It is understood that the Contractor employed to carry out and install the Work set forth in the contract documents, plans, and specifications prepared by UNDERSIGNED will be an independent Contractor, responsible to the CITY for the proper execution of those contract documents. UNDERSIGNED does not guarantee, nor is responsible for, the performance, superintendence, methods, sequences, or techniques of construction of or by the Contractor who has been

employed to perform and carry out the Work. UNDERSIGNED is not responsible for the Contractor's safety precautions and safety obligations in connection with the Work.

- b. When requested by the CITY, UNDERSIGNED and subconsultants may make visits to the jobsite for Project observation purposes. Such jobsite visits typically consist of visual observation of materials, equipment, or construction work for the purpose of ascertaining for the CITY that the Work is in substantial conformance with the contract documents and with the design intent. The UNDERSIGNED shall endeavor to keep the CITY informed of observations concerning the progress and quality of Work. The UNDERSIGNED shall report to the CITY any observed deviations from the Contract Documents, and significant deviations from the construction schedule. A jobsite review by UNDERSIGNED and subconsultants shall not be relied upon by the CITY or the Contractor as an acceptance of the Work, nor shall it be construed to relieve the Contractor in any way from his obligations and responsibilities under the construction contract. Specifically, but without limitations, a jobsite review does not require UNDERSIGNED and subconsultants to assume responsibilities for the means and methods of construction, nor for safety on the jobsite.
- c. The UNDERSIGNED's responsibility is limited to immediately reporting unusual, unacceptable or unsafe, construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the Work to the CITY at the time such activity is observed. Initial verbal notification is permitted provided it is followed by written notification.

**6. CITY RESPONSIBILITIES.** The CITY will provide information regarding objectives and requirements for the Project.

- a. The CITY will designate a single representative to act in its behalf, with respect to the Project who shall coordinate internal review of documents submitted by the UNDERSIGNED and, in accordance with Article II of the Agreement for Professional Services and to the extent allowed by law, shall render decisions pertaining thereto



- promptly to avoid unreasonable delay in the progress of the UNDERSIGNED'S services.
- b. The CITY agrees to report promptly in writing to the UNDERSIGNED any fault or defect in the UNDERSIGNED'S services or non-conformance with the provisions of this agreement.
  - c. The CITY will provide UNDERSIGNED with CITY construction standards to include design details and specifications, and CITY review procedures, as may be required for this Project.
  - d. The CITY will provide available prints or reproducible copies of other site conditions information if available in its files to include - CITY plans, base maps, zoning maps, legal descriptions, plats, subdivision and street plans, aerial photographs, topographic maps, utility locations, and the like as are related and significant to the performance of the Professional Services.
  - e. The CITY will negotiate the costs, easements and routing for off-site utility services and for primary electric power service to serve the Site and this Project. UNDERSIGNED will provide preliminary plans and coordinate power needs for the Project with the electric power service provider of the CITY'S choice.
  - f. The CITY'S Project Representative will pay for and will coordinate the printing production and assembly of bidding documents and project manual, the bidding process, evaluation of bidders, award of the contract and administration of the construction contract to include observation and supervision and inspection of construction, except for certain limited services to be provided by UNDERSIGNED during the construction phase as described above.
  - g. The CITY'S Project Representative will coordinate and process permits or approvals or studies that may be required by others with jurisdiction over this Project, except for those specifically the responsibility of UNDERSIGNED as stated above.
  - h. The CITY will ensure that a qualified representative or inspector is on the Project for detailed daily or otherwise frequent inspections of the works in progress after a contract for construction is let.

- i. Upon receipt of the UNDERSIGNED'S recommendation for such, the CITY'S Project Representative will be responsible for the final review and processing of payment requests submitted by the Contractor.
- j. The CITY or its designee will be responsible for the reports and the payment of fees for regulatory agencies' requirements not covered by this Scope of Services.
- k. CITY staff will be responsible for making all presentations to CITY Council, associated CITY boards or other public meetings.

**7. SCHEDULE & TIME FOR COMPLETION.** UNDERSIGNED agrees to complete and submit all work required by CITY as follows:

- a. **Research & Base Map Prep.** These services will be complete within two (2) weeks of authorization to begin Professional Services (Project Commencement)
- b. **Topographic Field Surveying.** These services will be complete within six (6) weeks of authorization to begin topographic surveying which shall coincide with CITY approval of the final alignment. These services may be delayed if rainfall and muddy site conditions prevent the conduct of field operations.
- c. **Geotechnical Investigation and Report.** These services will be complete within four (4) weeks of authorization to begin Geotechnical Services which shall coincide with CITY approval of the final alignment. This schedule may be delayed if rainfall and muddy site conditions prevent the conduct of field operations.
- c. **Preliminary Design.** These services will be complete within eight (8) weeks of CITY'S approval of final alignment and subsequent authorization to begin Preliminary Design.
- d. **Primary Design.** These services will be complete within four (4) weeks of CITY approval of the Preliminary Design and subsequent authorization to begin Primary Design.
- e. **Final Design (Plan Preparation).** These services will be complete within two (2) weeks of CITY approval of the Primary Design and subsequent authorization to begin Plan Preparation.

- f. **Certain Administrative and Project Observation Services during the Construction Phase.** These services will commence with CITY'S award of the construction contract to a Contractor. Services will then be provided for a period not to exceed twelve (12) calendar months.
- g. **Time Period through completion of Plan Preparation services.**
  - (1) *All time periods are exclusive of additional time required by the CITY for decision intervals and to schedule meetings with and presentations for stakeholders, outside governmental agencies, the Park Board and CITY Council.*
  - (2) *If, through no fault of UNDERSIGNED, professional services through the completion of Plan Preparation, ready for CITY review, have not been completed within ten (10) calendar months of the date of this Agreement, the terms of this Agreement will be renegotiated.*

**8. REVISIONS TO FINAL PLANS.** After acceptance of the final documents by CITY, UNDERSIGNED agrees to perform such services as may be required by CITY to correct errors or omissions on the original documents prepared by UNDERSIGNED and to change them as required to correct such errors or omissions.

**9. POTENTIAL ADDITIONAL DESIGN SERVICES.** Additional services, new design or re-design may be requested and may be performed for the convenience of the CITY shall be authorized in writing, and shall be performed with additional compensation for UNDERSIGNED. Additional services and compensation shall be as negotiated between UNDERSIGNED and CITY and agreed upon in a separate or supplemental agreement after authorization of the CITY staff or CITY Council of the CITY of Carrollton.

Additional services to be provided should the city of Carrollton request them include but are not limited to:

- (1) *Boundary surveys of property adjacent to the Furneaux Creek Channel and*

*Dickerson Parkway should initial investigations show it is necessary.*

- (2) Boundary and topographic survey of the supplementary route along Dickerson Parkway from Furneaux Creek to the abandoned DART Bus Terminal.*
- (3) Design of the hike & bike trail along the supplementary route along Dickerson Parkway from Furneaux Creek to the abandoned DART Bus Terminal.*
- (4) Assisting the city of Carrollton with acquisition of parcels for easements or right of way.*
- (5) Landscaping design.*
- (6) Preparation of drainage studies other than analysis of drainage contributory to the "pilot channel".*
- (7) Preparation of individual property descriptions and sketches for property acquisition or easement in addition to the number identified herein.*
- (8) Preparation for and attendance at a public meeting.*

**10.** UNDERSIGNED agrees that CITY may review any and all work performed by UNDERSIGNED on this Project.

**END OF EXHIBIT A**

**FURNEAUX CREEK TRAIL  
OLD DENTON ROAD TO TRINITY MILLS DART STATION**

**COMPENSATION**

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement between CITY and UNDERSIGNED providing for Professional Services.
2. UNDERSIGNED will accomplish the work presented in Exhibit "A" of this Agreement. Payment for all services, consultants and expenses described in Exhibit "A" shall be in the amount not to exceed **ONE HUNDRED FIFTY-SIX THOUSAND SEVEN HUNDRED FOUR** dollars and no cents (**\$156,704.00**) detailed as follows.

Research/Base Map prep & Schematic/Alignment Study	3%	\$ 4178
Survey	21%	\$ 33,284
Geotechnical Investigations and Report	3%	\$ 4475
Preliminary & Primary Design	44%	\$ 69,632
Final Design (Plan Preparation)	18%	\$ 28,608
Construction Administration	8%	\$ 12,352
Project Reimbursables	3%	\$ 4175
<b>Total Fee for All Services, Consultants &amp; Expenses</b>		<b>\$ 156,704</b>

3. The aforementioned fee includes allowances for optional items. The UNDERSIGNED agrees to only proceed with charges against these elements with the prior written approval of the CITY. Should these services be deemed unnecessary, the amounts listed will be deducted from the contract at the close of the project.
4. The maximum overall fee established herein shall not be exceeded without written authorization from the CITY, based on increased scope of services.
5. UNDERSIGNED will invoice the CITY for the value of partially completed services, according to the services accomplished each month on a percent complete basis of each task in the overall project. Payments on account for basic services shall be made monthly within thirty (30) days of invoice. All invoices will be accompanied by a status report on all completed work.
6. The undertaking of UNDERSIGNED to perform professional services under this Agreement extends only to those services specifically described herein. If, upon the request of the

**EXHIBIT B** to Agreement for Professional  
Services between the City of Carrollton, Texas  
(CITY) and TranSystems Corporation dba  
TranSystems Corporation Consultant  
(UNDERSIGNED), dated October 18, 2016.

CITY, UNDERSIGNED agrees to perform additional services ("Supplementary Services") hereunder, the CITY shall pay UNDERSIGNED for the performance of such Supplementary Services an amount (in addition to all other amounts payable under this Agreement) equivalent to (i) the hours expended by personnel for additional services multiplied by the hourly rates to be agreed upon at the time of such services, plus (ii) expenses so incurred by UNDERSIGNED in providing such services. UNDERSIGNED agrees to submit a written opinion of probable costs for additional services. The CITY is only liable to pay for said services after agreeing in writing to pay the cost submitted in the opinion.

**END OF EXHIBIT B**