



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
May 23, 2019

Department Safety & Code Enforcement

Director Approval David Cowan

AGENDA ITEM Approving an agreement between the City of Independence and TranSystems Corporation for design of the 2019 mill and overlay Americans with Disability Act (ADA) sidewalk/ramps project.

SUMMARY RECOMMENDATION Authorize Mayor to sign the agreement with TranSystems for design of curb ramps and sidewalks related to the milling and overlay projects on the following streets:

1. South 17th Street West Main to Cherry
2. Laurel Street 8th to 10th
3. 19th Street Pine to Sycamore.

BACKGROUND Title II of the ADA requires state and local governments ensure that persons with disability have access to the pedestrian routes in the public right of way. An important part of this obligation, whenever streets, roadways, or highways are altered, is to provide accessible curb ramps and walkway. Staff has reviewed these areas with the DOJ to ensure we have met the requirements per the ADA.

In 2018 City Staff projected, for the 2019 Capital Improvement Plan (CIP), the ADA costs for 17th Street at \$85,000, and 19th Street at \$15,000, but also placed \$200,000 in the CIP for projects to cover engineering and additional mill and overlay projects or complaints in 2019. The ADA curb ramps and sidewalks will be completed after the mill and overlay.

BUDGET IMPACT The projected cost of ADA work related to the 2019 mill and overlay work is:

- Engineering Services \$ 61,000 (not to exceed amount)
- 17th Street \$100,000
- 19th Street \$ 30,000
- Laurel Street \$ 70,000

Total cost of the ADA work for the 2019 mill and overlay project is estimated at \$261,000. The City budgeted \$300,000 in the 2019 Capital Budget.

SUGGESTED MOTION I move to approve an agreement with TranSystems for engineering related services for the 2019 ADA Mill and Overlay projects, with a not-to-exceed amount of \$61,000.

SUPPORTING DOCUMENTS Contract – TranSystems.

City of Independence, KS Overlay Project and ADA Ramps:

17th St. (Main to Cherry); Laurel St. (8th to 10th); 11th St. (Pine to Sycamore)

THIS AGREEMENT between the CITY OF INDEPENDENCE, KANSAS (OWNER) and TRANSYSTEMS CORPORATION (ENGINEER);

WITNESSETH

WHEREAS, OWNER requires the services, from time to time, of ENGINEER for project and/or tasks which may include various engineering disciplines, surveying, planning or architecture;

WHEREAS, ENGINEER can provide such services either through staff in its Independence, Kansas office, or remotely through other offices;

NOW THEREFORE IN CONSIDERATION OF THE PROMISES CONTAINED IN THIS AGREEMENT, OWNER AND ENGINEER AGREE AS FOLLOWS:

ARTICLE I
EFFECTIVE DATE

The effective date of this agreement shall be _____.

ARTICLE II
GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Kansas.

ARTICLE III
SERVICES TO BE PERFORMED BY ENGINEER

The ENGINEER will perform the SERVICES by providing advice, analysis, and recommendations. Project Design Services are included in this AGREEMENT, and if desired by OWNER. The SERVICES which the ENGINEER agrees to furnish are indicated in EXHIBIT A 'SCOPE OF SERVICES.' Changes in the indicated SCOPE OF SERVICES shall be subject to re-negotiation and implemented through an amendment to each REQUEST FOR SERVICES.

ARTICLE IV
BASIS OF PAYMENT

The work done by the ENGINEER will be done on an hourly basis including all reimbursables. If on an hourly basis, the basis of the charges shall be EXHIBIT B – SCHEDULE OF RATES AND EXPENSES. The City may elect to assign specific tasks and to request from the Engineer a mutually agreed to 'not to exceed' fee for that task. Payments as described hereinafter shall represent full compensation to the ENGINEER for all payroll costs, expenses, current overhead, profit and all of the costs in connection with the performance of these SERVICES.

ARTICLE V
OWNER'S RESPONSIBILITIES

If any project or task specific responsibilities are applicable, they shall be identified in the REQUEST FOR SERVICES for that particular project or task.

ARTICLE VI
STANDARD OF CARE

The ENGINEER shall exercise the same degree of care, skill and diligence in the performance of the SERVICES as is ordinarily possessed by a professional ENGINEER in similar circumstances. No other warranty is included in this AGREEMENT.

ARTICLE VII
LIABILITY AND INDEMNIFICATION

The ENGINEER agrees to protect, indemnify and hold the OWNER, its officers, and employees free and harmless from any losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character resulting from the error, omission, or negligence of the ENGINEER, its agents, or employees in the performance of the ENGINEER's duties under this AGREEMENT. ENGINEER further agrees to investigate, handle, respond to, provide defenses for and defend any such claim, even if such claim is groundless, false or fraudulent. The ENGINEER is not required to defend the OWNER, its officers, Commissions, agents or employees from claims that the OWNER was negligent, nor to indemnify and hold harmless OWNER from liability base on OWNER's negligence.

ARTICLE VIII
INSURANCE

During the performance of the SERVICES under this AGREEMENT, the ENGINEER shall maintain the following insurance:

- A. General liability insurance with a combined single limit of \$1 million for each occurrence and \$1 million in the aggregate.
- B. Automobile liability insurance with a combined single limit of \$1 million for each accident.
- C. Workers' Compensation insurance in accordance with statutory requirements and employers' liability insurance, with a limit of \$500,000 for each occurrence and \$500,000 in aggregate.
- D. Professional liability insurance with a limit of \$1 million dollars annual aggregate.

The ENGINEER shall furnish OWNER a certificate of insurance which shall include a provision that such insurance shall not be cancelled without at least thirty days written notice to the OWNER.

If OWNER purchases, or causes contractor to purchase, a builders' risk or other property insurance for the project, OWNER shall require that the ENGINEER be included as a named insured on such policy without liability for payment of premiums. ENGINEER shall ensure these provisions are included in the Construction Contract.

OWNER shall require all project contractors under contract with OWNER to include OWNER and ENGINEER as additional insured on their General Liability insurance policies. Further, OWNER shall obtain and maintain for the benefit of ENGINEER the same indemnities and insurance benefits obtained for the protection of the OWNER from any construction contractor and subcontractor insurance certificates evidencing the required coverages. ENGINEER will ensure that these provisions are included in the Construction Contract.

ARTICLE IX
LIMITATIONS AND RESPONSIBILITIES

The ENGINEER shall not be responsible for the construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with any future project which may be related to these services in any way and shall not be responsible for the failure of any design builder, contractor, subcontractor, vendor or other participant, not under contract to ENGINEER, to fulfill contractual responsibilities to the OWNER or to comply with federal, state, or local laws, regulations or codes; or procuring permits, certifications, and licenses required for any construction unless such responsibilities are specifically assigned to the ENGINEER in EXHIBIT A, Scope of Services.

ARTICLE X
OPINIONS OF COST AND SCHEDULE

Since ENGINEER cannot control the cost of labor, materials and equipment furnished by others or control the resources provided by others to meet project schedules, ENGINEER's opinion of probable cost and project schedules shall be made on the basis of experienced and qualifications as a professional ENGINEER. ENGINEER does not guarantee the proposal, bids or actual project costs will not vary from ENGINEER's cost estimates or that actual schedules will not vary from ENGINEER's projected schedules.

ARTICLE XI
REUSE OF DOCUMENTS

All documents, including but not limited to drawings, specifications and computer software prepared by the ENGINEER pursuant to this AGREEMENT are instruments of these SERVICES. Any reuse without prior written verification or adaptation by ENGINEER for the specific purposes intended will be at OWNER's sole risk and without any liability or legal exposure to the ENGINEER. The OWNER shall, indemnify, and hold harmless the ENGINEER against all claims, losses, damages, injuries, and expenses including attorney fees resulting from such reuse.

ARTICLE XII
OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Engineering documents, drawings and specifications prepared by the ENGINEER as part of the SERVICES shall become the property of the OWNER when the ENGINEER has been compensated for all SERVICES rendered, provided, however, that ENGINEER shall have the unrestricted right to their use. ENGINEER shall however retain its right in its standard drawing details, specifications databases, computer software, and other proprietary property. Rights to intellectual property, including software, developed,

utilized or modified in the performance of the SERVICES shall remain the property of the ENGINEER.

ARTICLE XIII TERMINATION

This AGREEMENT may be terminated by either party upon thirty days written notice should the other party fail to perform in accordance with this Agreement through no fault of the other or the PROJECT is stopped by conditions beyond the control of the OWNER.

The AGREEMENT may be terminated by the OWNER for its convenience by giving thirty days written notice to the ENGINEER. Due to the nature of these consulting services, and as long as the compensation is on an hourly basis, work will stop immediately upon receipt of a termination or suspension notice from the OWNER.

In the event of termination, the ENGINEER shall be paid in full for any work authorized and satisfactorily performed up to the termination date. If no termination is implemented, relationships and obligations created by this AGREEMENT shall terminate upon the completion of all applicable requirements of this AGREEMENT. Upon termination, the OWNER will be provided all documents and drawings.

ARTICLE XIV DELAY IN PERFORMANCE

Except for the OWNER's payment obligation, neither OWNER nor ENGINEER shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the non performing party. For the purposes of this AGREEMENT, such circumstances include, but are not limited to: abnormal weather conditions, floods, earthquakes, fire epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns and other labor disturbances, sabotage, judicial restraint and inability to procure permits, licenses, authorization for any local, state or federal agency for any of the supplies, materials, access or services required to be provided by either owner or engineer under this agreement.

Should circumstances occur, the non performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party, describe the circumstances preventing continued performance, and the efforts being made to resume performance under this AGREEMENT. The ENGINEER may request re-negotiation of the compensation in the event such circumstances occur.

ARTICLE XV PRE-EXISTING CONTAMINATION

Anything herein to the contrary notwithstanding, title to, ownership of, and legal responsibility for any and all pre-existing contamination shall at times remain with OWNER. "Pre-existing contamination is any hazardous or toxic substance, material or condition at the project site which is shown to exist as of the date of the AGREEMENT. The OWNER agrees to release, defend, indemnify, and hold the ENGINEER harmless from and against any and all liability which may in any manner arise from such pre-existing contamination and then only to the extent such liability is not caused by ENGINEER's negligence, acts, or omissions.

In the event that ENGINEER discovers any hazardous or toxic substance on the PROJECT site not brought to such site by ENGINEER or OWNER's benefit or at OWNER's request, ENGINEER shall so advise OWNER. OWNER shall undertake any abatement and disposal of all hazardous or toxic substance or materials, including, but not limited to, asbestos, polychlorinated biphenyl's (PCB), radioactive material, and other toxic substances, encountered by ENGINEER in the performance of the SERVICES which may be required by applicable law or regulation.

ARTICLE XVI
COMMUNICATIONS

Any communications required by the Agreement shall be made in writing to the address specified below:

If to ENGINEER:
TranSystems Corporation
115 S. Sixth Street, Suite B
Independence, KS 67301
Attn: Shawn Turner

If to OWNER:
City of Independence
811 West Laurel
Independence, KS 67301
Attn: David Cowan

Nothing contained in this article shall be construed to restrict the transmission of routine communications between representatives of the ENGINEER and OWNER.

ARTICLE XVII
WAIVER

A waiver by either the ENGINEER or OWNER of any breach of this AGREEMENT shall be in writing. Such waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE XVIII
SEVERABILITY

In case any one or more of the provisions contained in this AGREEMENT, shall, for any reason, be held to be invalid, illegal, or unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this AGREEMENT. This AGREEMENT shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

ARTICLE XIX
SUCCESSORS AND ASSIGNS

OWNER and ENGINEER each bind itself and its directors, officers, partners, successors, administrators, assigns and legal representative to the other party to this AGREEMENT and to the directors, officers, partners, successors, executors, administrators, assigns and legal representatives of such other party in respect to all provisions of this AGREEMENT.

ARTICLE XX
ASSIGNMENT

Neither OWNER nor ENGINEER shall assign any rights or duties under this AGREEMENT without the prior written consent of the other party. Unless otherwise stated in the written consent to assign, no assignment shall release or discharge the assignor from any obligations under this AGREEMENT. Nothing contained in this article shall prevent ENGINEER from employing independent consultants, associates and subcontractors to assist in the performance of the services provided, however the OWNER has the right to reasonably reject independent consultant(s), associate(s), hired or employed by ENGINEER.

ARTICLE XXI
DISCRIMINATION PROHIBITED

In performing the SERVICES required hereunder, the ENGINEER shall not discriminate against any person on the basis of race, color, religion, sex, notional origin or ancestry, age or physical handicap.

ARTICLE XXII
COMPLETION SCHEDULE

The ENGINEER will start performance of the SERVICES within 10 days of receipt of notice to proceed. The completion of the services will be dependent on the OWNER's funding schedule.

ARTICLE XXIII
CHANGES OF SCOPE

In the event that additional services are required through changes in scope, or other unusual or unforeseen circumstances are encountered or for other consulting services, ENGINEER shall upon written authorization by the OWNER perform the additional services as mutually agreed by both parties by supplemental agreement.

ARTICLE XXIV
THIRD PARTY RIGHTS

Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than the OWNER and ENGINEER.

ARTICLE XXV
VENUE

In the event of any litigation between the parties relating to or arising from this AGREEMENT, the parties stipulate and consent to exclusive venue in the Montgomery County District Court sitting in Independence, Kansas.


ARTICLE XXVI
ENTIRE AGREEMENT

This AGREEMENT represents the entire and integrated AGREEMENT between the OWNER and ENGINEER. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

IN WITNESSETH WHEREOF, the OWNER and ENGINEER have executed this AGREEMENT effective as of the date first written above.

OWNER
THE CITY OF INDEPENDENCE, KS

ENGINEER
TRANSYSTEMS CORPORATION



Shawn Tuner,
Vice President

ATTEST:

David Schwenker, City Clerk

EXHIBIT "A"
SCOPE OF SERVICES
Independence Mill and Overlay

I. Design Services

- a. Design services are to be completed on a schedule so that the project can be bid in June, 2019.
- b. Preparation of plans, specifications and contract documents for a mill and overlay project, including replacement of curb ramps to meet ADA requirements, and assist the City in obtaining and awarding bids. The area of the project will be limited to:
 - 17th Street: Main to Cherry
 - Laurel Street: 8th to 10th Street
 - 19th Street: Pine to Scycamore

2. Construction Related Engineering Services

- a. Provide oversight of construction activities, , milling, overlay, ADA ramp installation, and pavement marking for an anticipated construction period of 60 calendar days.
- b. Assist the City in contract administration related to the bid, including conducting a pre-construction conference and reviewing and approving pay requests.
- c. Assist the City in conducting a final inspection of the project.

Fee/Basis of Payment

EXHIBIT "B"

To complete the scope of services outlined in Exhibit A, the fee for services will be \$19,000 for design and \$42,000 for construction related engineering services. Invoicing for TranSystems employees will be based on actual time and expenses, and invoiced based on the attached hourly rate schedule, with a maximum fee of \$61,000.

Schedule of Rates

Classification	Rate	Classification	Rate
Administrative II	\$85.00	Planner I	\$88.00
Architect II	\$94.00	Planner II	\$90.00
Architect IV	\$229.00	Planner III	\$138.00
Construction Services I	\$58.00	Planner IV	\$246.00
Construction Services II	\$78.00	Surveyor I	\$56.00
Construction Services III	\$105.00	Surveyor II	\$76.00
Construction Services IV	\$155.00	Surveyor III	\$96.00
Construction Services V	\$225.00	Surveyor IV	\$110.00
Engineer I	\$90.00	Surveyor V	\$160.00
Engineer II	\$115.00	Scientist II	\$99.00
Engineer III	\$155.00	Technician I	\$78.00
Engineer IV	\$260.00	Technician II	\$82.00
Engineer V	\$350.00	Technician III	\$103.00
Civil Engineer I	\$90.00	Technician IV	\$112.00
Civil Engineer II	\$115.00	Technician V	\$162.00
Civil Engineer III	\$155.00		
Civil Engineer IV	\$260.00		
Civil Engineer V	\$350.00		
Electrical Engineer IV	\$220.00		
Structural Engineer II	\$133.00		
Structural Engineer III	\$181.00		
Structural Engineer IV	\$220.00		
Structural Engineer V	\$288.00		

- Sub-contracted labor, material testing equipment, printing and technical photography, and all other direct job costs to be paid at cost.
- Vehicle mileage to be paid at the current IRS rate per mile.
- The rates set forth on this initial Schedule of Rates shall be the rates provisions in effect from the date of this Agreement until December 31, 2017. TranSystems will revise the Schedule of Rates annually and will submit the revised Schedule of Rates which shall automatically become effective with regard to this Agreement and the Services performed under this Agreement on January 1st of the next calendar year.