

ENGINEERING/ARCHITECTURAL SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter "City," and HNTB Corporation hereinafter "Consulting Engineer/Architect." City intends to construct an improvement project in Overland Park, Kansas, described as follows:

103rd and Connell Flood Control Project (SD-1281) (hereinafter the "Project")

City hereby contracts with Consulting Engineer/Architect for the furnishing of professional engineering/architectural services in connection with the Project, for the furnishing of such engineering/architectural services more particularly described in Exhibit A, attached hereto and incorporated by reference herein, in consideration of these premises and of the mutual covenants herein set forth. By executing this Agreement, the Consulting Engineer/Architect represents to City that Consulting Engineer/Architect is professionally qualified to do this Project and is licensed to practice engineering/architecture by all public entities having jurisdiction over Consulting Engineer/Architect and the Project.

SECTION I - DEFINITIONS

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

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

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

"Construction Cost" means and includes the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Consulting Engineer/Architect's fee, or other payments to the Consulting Engineer/Architect and shall not include cost of land or Rights-of-Way and Easement acquisition.

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

in this Agreement shall prevail in the interpretation of this Agreement.

"Engineering/Architectural Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Engineering/Architectural Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consulting Engineer/Architect under this Agreement together with such other services as City may require pursuant to the terms of this Agreement.

"Project" is as above described.

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

"Right-of-Way" and "Easements" means and includes street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

"Traffic Control Plan" means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection.

SECTION II - COMPENSATION

A. TOTAL FEE

City agrees to pay Consulting Engineer/Architect an amount not to exceed One Hundred Forty Five Thousand Six Hundred Fifteen and no/100 Dollars (\$145,615.00), including reimbursables. The fee is based on the performance of the scope of services outlined in this Agreement, and shall be billed using hourly rates and equipment charges as set forth in Exhibit B attached herewith, plus direct expenses. All work shall be completed on or before November 22, 2013.

B. REIMBURSABLE EXPENSES

The Consulting Engineer/Architect shall be reimbursed at the actual cost, not to exceed Forty Three Thousand Five Hundred Ninety and no/100 Dollars (\$43,590.00), for the following: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City; (g) sub-consultant costs (labor and expenses) as outlined in Exhibits C and D

attached hereto and incorporated by reference herein, and (h) other costs as authorized by City.

C. ADDITIONAL SERVICES

Consulting Engineer/Architect shall provide, with City's concurrence, services in addition to those listed in Section III when such services are requested or authorized in writing by City. Prior to commencing any additional services, Consulting Engineer/Architect must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as Exhibit B. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consulting Engineer/Architect, providing services necessitated in the event the Engineering/Architectural Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Engineer/Architect, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Consulting Engineer/Architect, as compensation for these services, shall be in accordance with the hourly rate schedule attached as Exhibit B. Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services shall be made available to City, if so requested.

D. SPECIAL SERVICES

Consulting Engineer/Architect may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consulting Engineer/Architect shall not be paid extra by City if its appearance is to defend its professional Engineering/Architectural Services. Consulting Engineer/Architect shall not be paid extra by City to appear at eminent domain or appraiser's hearings necessary to acquire Easements and Right-of-Way for the Project. If Consulting Engineer/Architect is requested, in writing, by City, to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit B.

E. BILLING

Consulting Engineer/Architect shall bill City monthly for all completed services and reimbursable expenses. The bill submitted by Consulting Engineer/Architect shall itemize the services and reimbursable expenses for which payment is requested. Except as provided in Section II F, below, City agrees to pay Consulting Engineer/Architect within thirty (30) days of receipt of an undisputed invoice.

F. CITY'S RIGHT TO WITHHOLD PAYMENT

In the event City becomes credibly informed that any representations of Consulting Engineer/Architect provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consulting Engineer/Architect until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Consulting Engineer/Architect immediately. Consulting Engineer/Architect will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Consulting Engineer/Architect in accordance with the contract payment procedures.

G. PROGRESS REPORTS

A progress report must be submitted with each monthly pay request indicating the percentage of design tasks completed to date. This report will serve as support for payment to Consulting Engineer/Architect.

H. CHANGE IN SCOPE

For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Engineer/Architect, the Consulting Engineer/Architect shall be compensated for time and expense required to incorporate such modifications at Consulting Engineer/Architect's standard hourly rates per Exhibit B; provided, however, that any increase in contract price or contract time must be approved through a written change order. Consulting Engineer/Architect shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consulting Engineer/Architect's negligence or other actionable fault.

I. CHANGE ORDERS

This Agreement may be amended to provide for additions, deletions and revisions in the Engineering/Architectural Services or to modify the terms and conditions thereof by either written amendment or by change order. The contract price and contract time may only be changed by a written change order approved by City, unless it is the result of an emergency situation in which case the Project Manager may give written approval to be followed by a written and approved change order. If notice of any change affecting the general scope of the Engineering/Architectural Services or provisions of this Agreement, including but not limited to, contract price or contract time, is a requirement of any insurance policy held by Consulting Engineer/Architect as a requirement of this Agreement, the giving of such notice shall be the Consulting Engineer/Architect's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTING ENGINEER/ARCHITECT

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

A. CONCEPT STUDY

1. Services: The services to be provided during this phase are set out in Exhibit A attached hereto and incorporated herein by reference.
2. Concept Study Documents: Consulting Engineer/Architect shall furnish the City six (6) copies of the above preliminary design documents, unless otherwise noted in Exhibit A.
3. Preliminary Cost Estimate: Consulting Engineer/Architect shall furnish City an estimate of probable Construction Cost based on the concept study. Consulting Engineer/Architect's estimate of probable Construction Cost is to be made on the basis of Consulting Engineer/Architect's experience and qualifications and represent Consulting Engineer/Architect's best judgment as an experienced and qualified design professional, familiar with the construction industry.
4. Budget: Consulting Engineer/Architect shall advise City if, in its opinion, the amount budgeted for construction is not sufficient to adequately design and construct the improvement as requested.

B. GENERAL DUTIES AND RESPONSIBILITIES

1. Responsibilities under the General Conditions of the Contract for Construction: In addition to the responsibilities herein set forth, Consulting Engineer/Architect agrees to be responsible for those matters identified in the General Conditions as being responsibilities of the Consulting Engineer/Architect. Consulting Engineer/Architect specifically acknowledges receipt of a copy of the General Conditions and acceptance of the responsibilities as set forth therein.
2. Personnel: Consulting Engineer/Architect shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: Michael R. Hess, P.E. As principal on this Project, this person shall be the primary contact with the City's Project Manager and shall have authority to bind Consulting Engineer/Architect. So long as the individual named above remains actively employed or retained by Consulting Engineer/Architect, he/she shall perform the function of principal on this Project.
3. Subsurface Borings & Material Testing: If tests, additional to those provided for

in Exhibit A, are required for design, Consulting Engineer/Architect shall prepare specifications for the taking of the additional borings. Such Subsurface Borings and Testing, as defined herein, shall be provided by Consulting Engineer/Architect or its subcontractors and compensated as an Additional Service.

4. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Consulting Engineer/Architect or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Consulting Engineer/Architect which is not defined within the scope of services of Consulting Engineer/Architect. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution of any extra work. Although Consulting Engineer/Architect may assist City in procuring such services of third parties, Consulting Engineer/Architect shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.
5. Subcontracting of Service: Consulting Engineer/Architect shall not subcontract or assign any of the Engineering/Architectural Services to be performed under this Agreement without first obtaining the written approval of City regarding the Engineering/Architectural Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Any person or firm proposed for subcontracting Engineering/Architectural Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V D (8) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide the City with certification thereof.
6. Endorsement: Consulting Engineer/Architect shall sign and seal all final plans, specifications, estimates and engineering data furnished by him/her. Any review or approval by City of any documents prepared by the Consulting Engineer/Architect, including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent

with City's construction program and intent and shall not be construed as approval of same by City. No review of such documents shall relieve Consulting Engineer/Architect of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

7. Inspection of Documents: Consulting Engineer/Architect shall maintain all Project records for inspection by City during the contract period and for three (3) years from the date of final payment.

SECTION IV - CITY OF OVERLAND PARK'S RESPONSIBILITIES

A. COMMUNICATION

City shall provide to Consulting Engineer/Architect information and criteria regarding City's requirements for the Project; examine and timely respond to Consulting Engineer/Architect's submissions; and give written notice to Consulting Engineer/Architect, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering/Architectural Services.

B. ACCESS

City will provide access for Consulting Engineer/Architect to enter public and private property as necessary and appropriate for the Consulting Engineer/Architect to provide the services contemplated herein.

C. DUTIES

City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Exhibit A as City's responsibility.

D. PROGRAM AND BUDGET

City shall provide full information, including a program which shall set forth City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria.

E. BONDS

City shall furnish all bond forms required for the Project.

F. PROJECT REPRESENTATIVE

City shall designate a Project Manager to represent City in coordinating this Project with Consulting Engineer/Architect, with authority to transmit instructions and define policies and decisions of City.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

1. Notice: City reserves the right to terminate this Agreement in whole or in part

either for cause or for its convenience and without cause or default on the part of Consulting Engineer/Architect, by providing ten (10) days' written notice of such termination to Consulting Engineer/Architect. Upon receipt of such notice from City, Consulting Engineer/Architect shall, at City's option as contained in the notice: (1) immediately cease all Engineering/Architectural Services; or (2) meet with City and, subject to City's approval, determine what Engineering/Architectural Services shall be required of Consulting Engineer/Architect in order to bring the Project to a reasonable termination in accordance with the request of City. Consulting Engineer/Architect shall also provide to City copies of all drawings and documents completed or partially completed at the date of termination.

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

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

satisfactorily completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consulting Engineer/Architect including but not limited to its rights to sue for damages, interest and attorney fees.

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

B. DISPUTE RESOLUTION

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

C. OWNERSHIP OF ENGINEERING/ARCHITECTURAL DOCUMENTS

All Engineering/Architectural Documents prepared in connection with this Project shall be the property of the Consulting Engineer/Architect, whether the Project for which they are made is executed or not, however, the Consulting Engineer/Architect will provide City a copy of all final documents, including but not limited to prints and reproductions. Reports, plans, specifications and related documents are Consulting Engineer/Architect's copyrighted instruments, and Consulting Engineer/Architect at his/her option may so identify them by appropriate markings. Provided that Consulting Engineer/Architect is paid in full for its services, then City may subsequently reuse these final documents without any additional compensation or agreement of Consulting Engineer/Architect, however, such reuse without written verification or adaptation by Consulting Engineer/Architect for the specific purpose intended by City shall be at City's sole risk and without liability or legal exposure to Consulting Engineer/Architect whatsoever. City does not take any responsibility for the reuse of documents by others.

D. INSURANCE

1. General

The Consulting Engineer/Architect shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to)

of such types and in at least such amounts as required herein. Professional Liability may be written on a "claims made" basis. Consulting Engineer/Architect shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Consulting Engineer/Architect at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

2. Notice of Claim Reduction of Policy Limits

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

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

3. Commercial General Liability:

Limits –

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

Policy MUST include the following conditions:

- a. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- b. **NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"**

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

Limits (Same as Commercial General Liability) -

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

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"

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

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

6. Professional Liability

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

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

- a. Is authorized to do business in the State of Kansas;
- b. Carries a Best's policy holder rating of A- or better; and
- c. Carries at least a Class VIII financial rating, or
- d. Is a company mutually agreed upon by the City and Consulting Engineer/Architect.

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

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

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

E. INDEMNITY

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

"Loss" means any and all Loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with

any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or Loss of, or Loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Engineering/Architectural Services required hereunder.

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

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Consulting Engineer/Architect's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consulting Engineer/Architect is not responsible.

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

F. AFFIRMATIVE ACTION/OTHER LAWS

1. During the performance of this Agreement, the Consulting Engineer/Architect agrees that:
 - a. Consulting Engineer/Architect shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the

present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

- b. in all solicitations or advertisements for employees, the Consulting Engineer/Architect shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
- c. if the Consulting Engineer/Architect fails to comply with the manner in which the Consulting Engineer/Architect reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consulting Engineer/Architect shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
- d. if the Consulting Engineer/Architect is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Consulting Engineer/Architect shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and
- e. the Consulting Engineer/Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

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

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

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

G. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes

all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

H. APPLICABLE LAW

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

I. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by Consulting Engineer/Architect without the written consent of the City.

J. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

K. INDEPENDENT CONTRACTOR

The Consulting Engineer/Architect is an independent contractor and as such is not an agent or employee of the City.

L. WORK PRODUCT FORMAT

1. Project Drawings: Project drawings which are developed by Consulting Engineer/Architect through the use of a Computer Aided Drafting (CAD) System shall be made available to City by providing a Microsoft compatible compact disc. However, due to the potential that the information set forth on the electronic media (disk) can be modified by City, or City consultants, unintentionally or otherwise, Consulting Engineer/Architect shall remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. For documentation purposes, two sets of an original electronic media (disk) and two (11" x 17" size or larger) duplicate hard copy sets will be prepared. One set will be given to City and one set will be retained by Consulting Engineer/Architect. If City provides such electronic media (disk) to others for any purpose, City shall require the electronic media (disk) to be returned to City upon completion of such use. City recognizes that use of such electronic media (disk) will be at City's sole risk and without any liability risk or legal exposure by Consulting Engineer/Architect.
2. Project Documentation: All documentation provided to the City other than Project drawings shall be furnished on a Microsoft compatible compact disc.
3. "Record" Drawings: Following construction, City will provide copies of changes and alterations made in the field during construction to Consulting Engineer/Architect to provide "record" drawings, unless Consulting

Engineer/Architect has provided a floppy disk to City on which City can make changes. Consulting Engineer/Architect has the right to rely on the information provided by the City in preparing such documents, and shall have no independent duty to verify its accuracy.

M. FEDERAL LOBBYING ACTIVITIES

(Only applies to projects receiving federal funds via the City)

31 USCA Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City's Project Manager and should be returned to City with other final contract documents. It is the responsibility of Consulting Engineer/Architect to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

N. COVENANT AGAINST CONTINGENT FEES

Consulting Engineer/Architect warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consulting Engineer/Architect, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

O. COMPLIANCE WITH LAWS

Consulting Engineer/Architect shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Engineering/Architectural Services or the Project at the time Services are rendered. Consulting Engineer/Architect shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

P. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

Q. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in triplicate this _____ day of _____, 2013.

ENGINEERING/ARCHITECTURAL SERVICES COMPANY

By: _____
Michael R. Hess, P.E.
Vice President

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

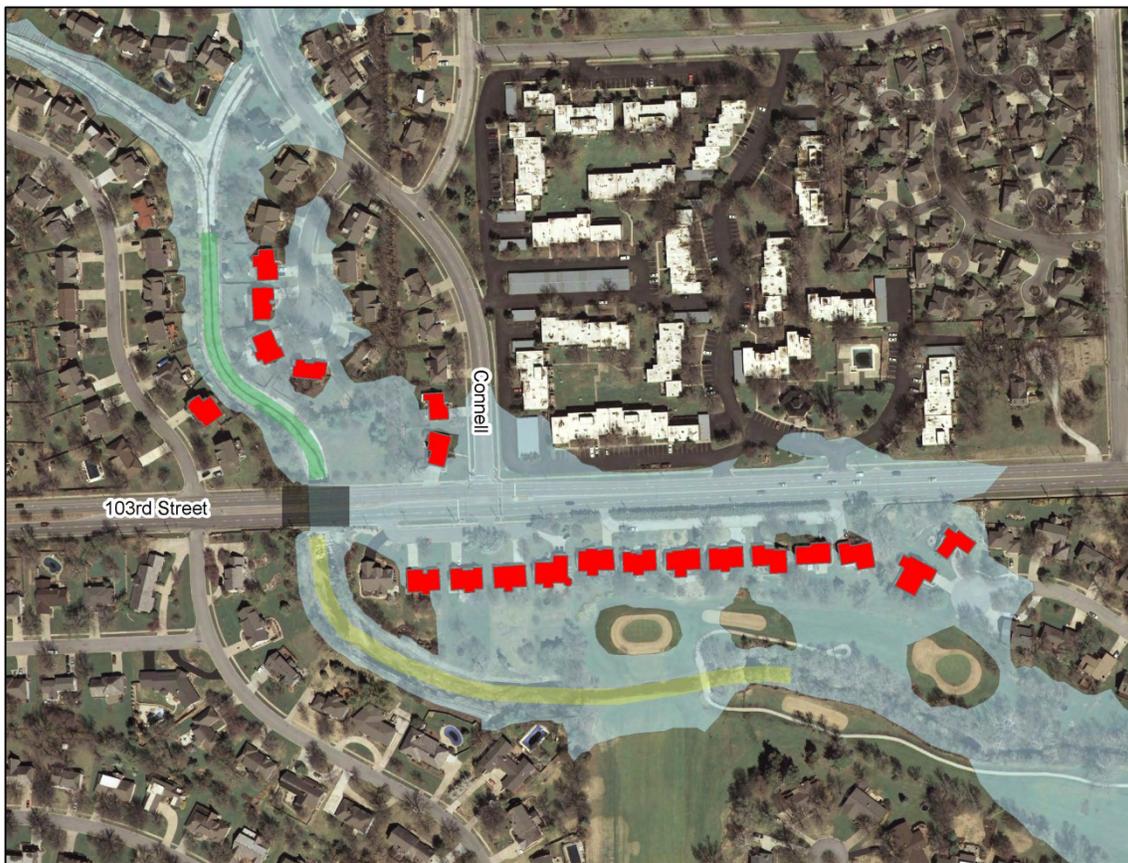
ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Deputy City Attorney

103rd and Connell – Flood Control Project: This project is being administered by the City of Overland Park and is funded jointly by the City and the Johnson County Stormwater Management Program. The project goals are: (1) eliminate 100 year flooding of 20 habitable structures; (2) eliminate 100 year overtopping of 103rd Street. All improvements will meet the project specific design criteria established by the City and HNTB. The project is on Indian Creek Tributary 5 and work will mostly be confined to the channel from approximately 600 feet upstream (north) of 103rd Street and 1100 feet downstream (south and east) of 103rd Street. The figure below shows the 20 structures projected to flood in the 100-year storm in red, the existing 100-year floodplain in light blue, and the project limits shaded along the channel. In addition to the channel work, a new bridge structure will be included in the concepts studied at 103rd Street.



The initial contract for this project is to complete a concept study. At the completion of the concept phase, final design and construction engineering services will be added to the contract through a supplemental agreement.

HNTB's scope of services is outlined in Exhibit B and generally includes: Project Meetings, Public Involvement, Data Collection, Hydraulic Modeling, Bridge TS&L Studies, Storm Sewer Evaluation, and a Concept Study Memo. In addition to HNTB's services, Kaw Valley Engineering, Inc. is provided Survey and Geotechnical Services as outlined in their proposals included with Exhibit B.

Schedule: The concept study phase of the project is to be completed by November 22, 2013.

103rd & Connell - Flood Control Project

Item of Work	Project Manager	Senior Engineer	Project Engineer	Engineer	Junior Engineer	Senior Technician	Total
Concept Phase	\$ 225.00	\$ 190.00	\$ 145.00	\$ 105.00	\$ 80.00	\$ 110.00	
Management / Meetings / Public Involvement							
Management / Meetings							
Develop Project Design Criteria	1		2		4		7
Project Kick-Off Meeting	3	3	8				14
Survey and Geotechnical Coordination		4	16				20
Existing Conditions Update Meeting and Concept Evaluation Discussion (Held at HNTB Office)	4	4	8		8		24
Final Concept Evaluation Meeting (Held at HNTB Office)	4	4	8		8		24
Subtotal	12	15	42		20		89
Public Involvement							
Meeting with Brookridge to present proposed concept. Grade control structure options on Brookridge property will be discussed at the meeting (includes preparation)	4	8	16		8	8	44
Public Informational Meeting at end of Concept Phase (includes exhibit preparation)	6	6	16		8	8	44
Subtotal	10	14	32		16	16	88
Concept Study							
Data Collection							
Obtain AIMS data from City and shift into project coordinates			2		4	8	14
Obtain and review as-built drawings from City			2		4		6
Obtain and review City records of property owner complaints in project area.			2		4		6
Project Team Field Visit (HNTB and City)	4	4	4	4	4		20
Review utilities in the project area and make preliminary contact with utility representatives to discuss potential relocations.	2		8		8		18
Subtotal	6	4	18	4	24	8	64
Hydraulic Modeling - Existing Conditions							
Update Indian Creek Watershed Study model with survey data obtained for project, and create Corrected Effective and Existing Pre-Project models.	2		16		40		58
Create depth of flooding table with LO and LAG surveys	1		2		8		11
Hydraulic Modeling - Proposed Alternatives							
Develop up to three (3) alternatives for the project - All alternatives will alleviate flooding of 103rd Street and the homes in the project area.	12		36		60		108
Determine permitting requirements for alternatives and make initial contact with the COE.	1		4		4		9
Prepare Concept Level Construction Cost Estimates for each Alternative	2		12		12		26
Prepare Concept Design Exhibits	2		4		12	24	42
Preliminary review of upstream UM-8 project identified in the Indian Creek Watershed Study to confirm that the proposed solution at 103rd and Connell does not impact the ability to fix upstream problems.	2		8		16		26
Senior Technical Review		8					8
Subtotal	22	8	82		152	24	288
Bridge - Type, Size & Location Study							
Site visit and collection of project information.		2		4			6
Perform TS&L studies for three (3) structural alternatives & develop preliminary cost estimates.		24		36			60
Subtotal		26		40			66
Storm Sewer Evaluation - Existing Conditions							
Review as-built drawings for storm sewers for information on original design.	1		8		8		17
Develop existing conditions storm sewer model to determine capacity of pipe system.	2		8		24		34
Site visit to field check existing conditions and perform qualitative evaluation of inlets upstream of pipe systems to determine if inlets capture enough flow to run pipe systems at full flow	4		4		4		12
Determine overflow swale capacity	1		4		8		13

Exhibit B

Item of Work	Project Manager	Senior Engineer	Project Engineer	Engineer	Junior Engineer	Senior Technician	Total
Concept Phase	\$ 225.00	\$ 190.00	\$ 145.00	\$ 105.00	\$ 80.00	\$ 110.00	
Storm Sewer Evaluation - Proposed Conditions							
Determine inlet/pipe or overflow swale improvements necessary to alleviate habitable structure flooding from storm sewer systems.	2		12		24		38
Cost estimates for proposed solution alternative.	1		4		4		9
Subtotal	11		40		72		123
Concept Study Memo							
Develop Concept Study memo to document alternatives considered and final recommendation for project. Memo to serve as means to update Johnson County PES. Memo to include summary of existing conditions, proposed alternatives with cost estimates, concept exhibits, and final recommendation.	4	4	20	8	40		76
QA/QC	8	8					16
Subtotal	12	12	20	8	40		92

TOTAL HOURS	73	79	234	52	324	48	810
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TOTAL LABOR DOLLARS	\$ 102,025
HNTB EXPENSES (MILEAGE, PRINTING, PUBLIC MTG EXHIBITS, AND MISC)	\$ 750
KAW VALLEY ENGINEERING - SURVEY SERVICES (SEE ATTACHED)	\$ 28,345
KAW VALLEY ENGINEERING - GEOTECHNICAL SERVICES (SEE ATTACHED)	\$ 14,495
TOTAL PROJECT FEE	\$ 145,615

ASSUMPTIONS:

1. Up to three (3) Proposed Alternatives will be developed to alleviate flooding of 103rd Street and the 20 habitable structures identified as flooding in the Indian Creek Watershed Study.
2. Storm sewer and overflow swale capacity to be calculated in addition to Indian Creek Trib 5 work to determine if localized flooding could occur to the habitable structures that are the subject of the study.
3. Structural evaluation of existing retaining walls along Indian Creek will not be performed as a part of this study.
4. O&E reports will not be ordered for the concept phase. Property boundaries will be established using plat dimensions and existing easements will be provided by the City.
5. Additional pick-up surveys and proposed easements to be completed during design phase of project.
6. Additional geotechnical investigations may be required for final design and final geotechnical engineering report to be completed during design phase of project.
7. Traffic analysis not included with the study. Concept study will assume full closure of 103rd Street during construction.

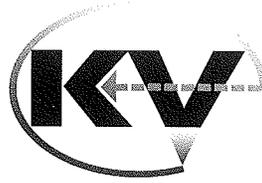
Exhibit B

HNTB SCHEDULE OF HOURLY CHARGES

Rates are effective for services from
June 1, 2013 through December 31, 2013

Position Classification	Hourly Billing Rate
Project Manager	\$ 225.00
Senior Engineer	\$ 190.00
Project Engineer	\$ 145.00
Engineer	\$ 105.00
Junior Engineer	\$ 80.00
Senior Technician	\$ 110.00
Technician	\$ 95.00
Office Business Manager	\$ 140.00
Project Analyst	\$ 95.00

14700 W. 114th Terrace
 Lenexa, Kansas 66215
 www.kveng.com



Tel: 913-894-5150
 Fax: 913-894-5977
 E-mail: LX@kveng.com

KAW VALLEY ENGINEERING, INC.

May 15, 2013

C13P7247

Mr. Timothy Morgan
 HNTB Corporation
 7400 West 129th Street, Suite 100
 Overland Park, Kansas 66213

**RE: PROPOSAL FOR SURVEY SERVICES
 STORM WATER IMPROVEMENTS - WEST 103RD STREET & CONNELL DRIVE
 OVERLAND PARK, KANSAS**

Dear Mr. Morgan:

Kaw Valley Engineering, Inc. (KVE) is pleased to provide this proposal for surveying services of the tributary to Indian Creek. The base survey area and identified houses for elevations surveys are depicted on Exhibit A; the extended topographic area and storm sewer structure requirements are depicted on Exhibit B; and the sanitary structure requirements are depicted on Exhibit C.

The services required will be a complete topographic/mapping survey and property basemap development. The following tasks will be performed:

- Establish project control – tied to Johnson County horizontal and vertical benchmark system
- Utility locates – includes contacting Kansas One-Call, WaterOne, and the City of Overland Park
- Storm Sewers and Sanitary Sewers (top elevations, FLs, pipes in/out, sketches) – see attached Exhibit C (15 manholes) – see Exhibit B for storm sewer extents (assume 30 inlets/manholes)
- Full Topographic Survey Limits – outlined in red on attached Exhibit A
- Additional grade shots to produce contours – area hatched in green outside of full topo area on attached Exhibit A
- Structure LAD and LO Surveys (34 houses) – shown in blue on attached Exhibit A
- Street Centerline Shots – 50-foot intervals along West 103rd Street and Connell Drive outside of topo area as shown on attached Exhibit A (approximately 40 shots)
- Connell RCB – shoot flowline and provide size – north of project limits
- West 103rd Street, existing triple 12-ft. x 8-ft. RCBs (sketch will be provided):
 - Obtain flowline elevations at inlet and outlet ends of the box structure.
 - Verify existing box dimensions: opening size, wingwall lengths, concrete floor extensions, width of interior walls, and hubguard width.
 - Tie down location: inside of hubguards at each end and at centerline of box.
 - Locate any intersecting storm pipes; up from floor, along length of box.
- Boring Locations

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Junction City, Kansas • Kansas City, Missouri • Salina, Kansas

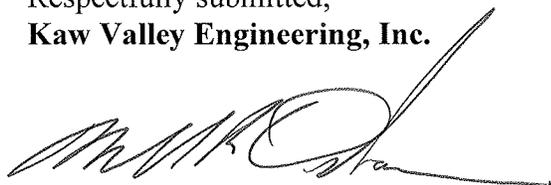
- Drafting – CADD drawings of:
 - Topographic file
 - Contour file
 - Utility file
 - Existing property boundary, right-of-way, and easements established (City providing O&Es, KVE will produce line work for all properties adjacent to project (approximately 50 properties)

The following is a breakdown of the fees associated with the services outlined:

Survey Services	Quantity	Unit Price	Extension
Route Survey:			
Principal	5	\$175	\$ 875.00
Survey Crew	156	\$110	\$17,160.00
Registered Land Surveyor	43	\$95	\$4,085.00
Engineering Technician	83	\$75	\$6,225.00
		Total	<u>\$28,345.00</u>

If you have any questions concerning this proposal, please do not hesitate to contact me at (913) 894-5150.

Respectfully submitted,
Kaw Valley Engineering, Inc.



Michael R. Osbourn, P.E.
 Principal

MRO/srh

Attachments: Exhibit A
 Exhibit B
 Exhibit C

EXHIBIT C

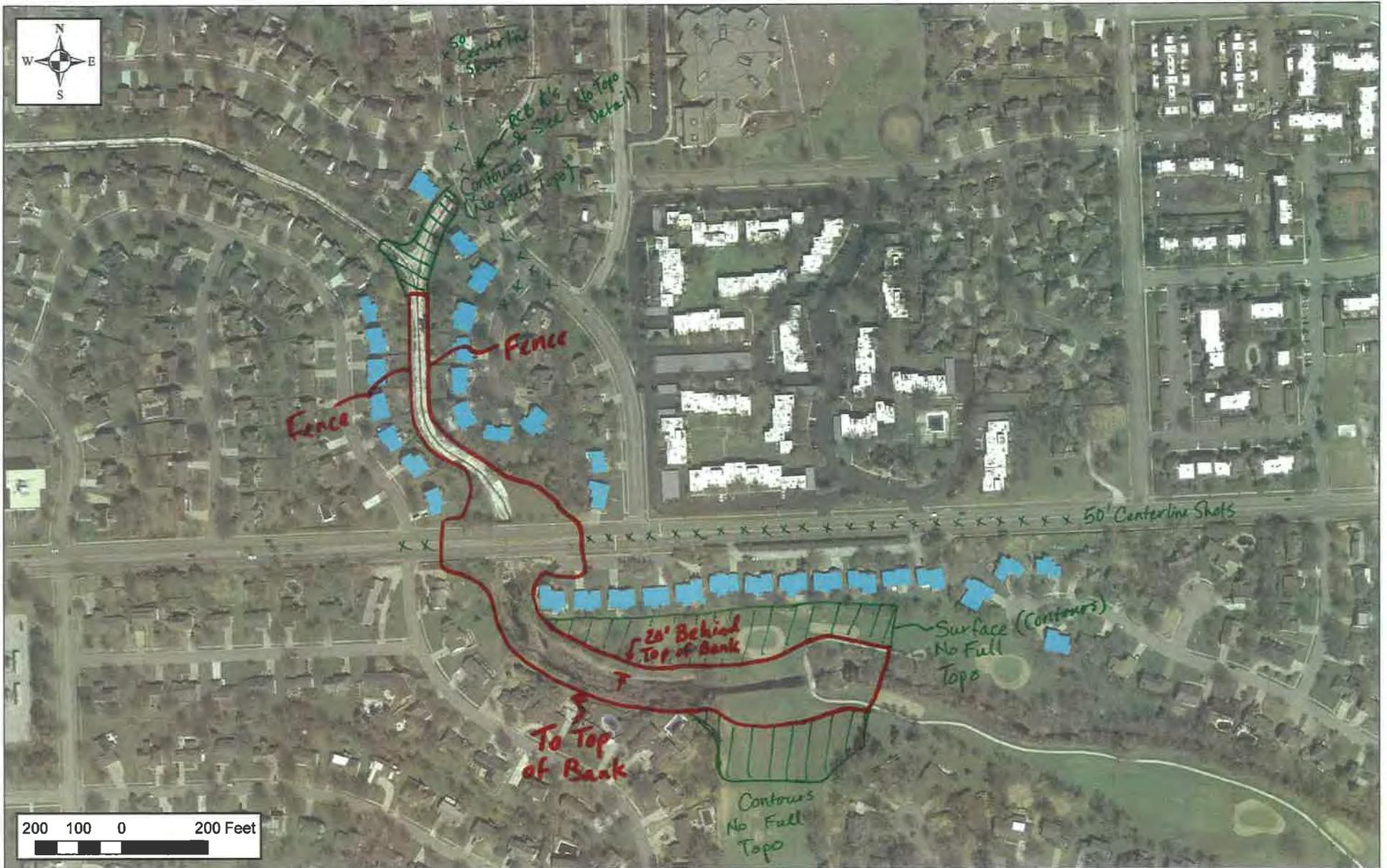
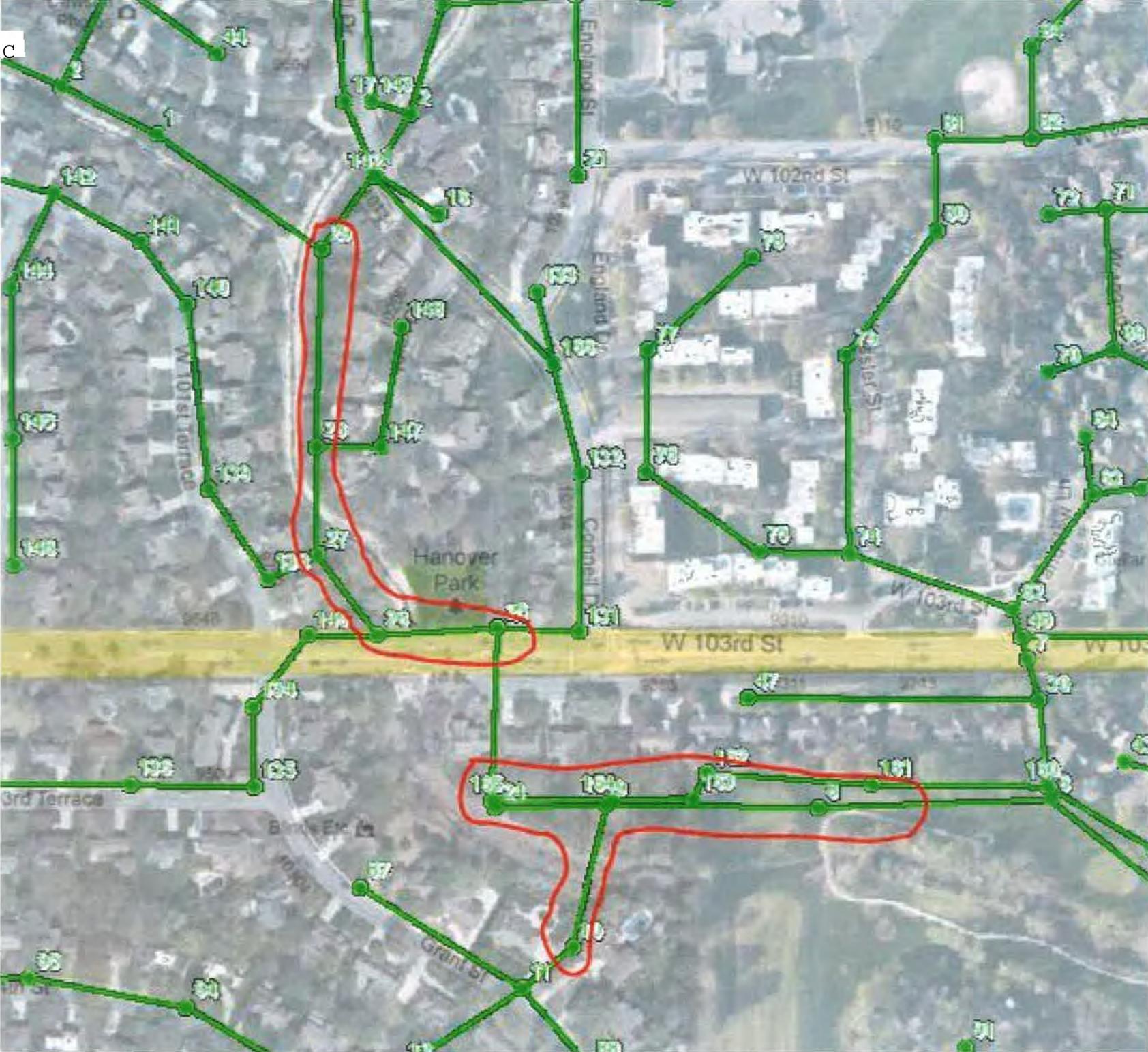


EXHIBIT C







May 23, 2013

KAW VALLEY ENGINEERING, INC.

C13P7247-R

Mr. Timothy Morgan
HNTB Corporation
7400 West 129th Street, Suite 100
Overland Park, Kansas 66213

**RE: PROPOSAL FOR GEOTECHNICAL SERVICES
STORM WATER IMPROVEMENTS - WEST 103RD STREET & CONNELL DRIVE
OVERLAND PARK, KANSAS**

Dear Mr. Morgan:

In response to your request, Kaw Valley Engineering, Inc. (KVE) is pleased to submit the following proposal for geotechnical services for the above referenced project. The scope of services outlined below (the "Services") will be performed in accordance with the fee basis, time schedule and other pertinent information described herein.

PROJECT DESCRIPTION

The proposed project is to consist of the design of storm water improvements including a free span bridge on West 103rd Street and channel deepening efforts.

SCOPE OF SERVICES

The purpose of the Services will be to develop preliminary design and construction recommendations for geotechnical aspects of the project as defined in the project description. The preliminary geotechnical recommendations will be based on the soil, rock and groundwater conditions encountered in the borings at the time of exploration. You will be advised during the course of the exploration if conditions requiring additional exploration are present.

Geotechnical Field Exploration and Laboratory Testing

The geotechnical evaluation will consist of drilling eight (8) borings for the free span bridge. The planned depth for these borings is variable with several borings being cored into underlying bedrock. An additional ten (10) borings will be drilled to variable depths for the channel deepening. A geologist will log the borings in the field. Field services will include traffic control for the bridge borings on West 103rd Street.

Soil samples will be obtained from the borings at nominal intervals of 5 feet or detected changes in soil strata. Samples will be obtained by standard penetration test methods or 3-inch O.D. thin-walled Shelby tubes, as soil conditions warrant. Rock coring will be performed utilizing NQ2 equipment.

The groundwater level will be observed in each boring at the time of drilling and approximately 24 hours after completion, or upon leaving the project site, whichever is sooner, unless it is necessary to backfill a boring immediately after drilling.

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Junction City, Kansas • Kansas City, Missouri • Salina, Kansas

Laboratory tests such as moisture content, dry density, Atterberg limits, and unconfined compressive strength of soil and rock will be performed to establish physical and engineering characteristics of the soil and bedrock stratum.

Initial Data Presentation

Initial data presentation will be provided for evaluation of foundation design recommendations. The presentation will include:

- Documentation of the field and laboratory phase of the exploration.
- Summarization of the soil, rock and groundwater conditions and their effect on the proposed construction.
- Detailed boring logs and site plan indicating boring locations.
- Identification of possible areas where deleterious materials may be encountered, their effect on construction, and methods of remedial treatment.
- Suitability of on-site material for use as fill and its effect on foundation and slab-on-grade performance.
- Recommendations for site grading including excavation, site preparation, fill placement, compaction, subgrade protection, and anticipated problems.
- Discussion of unusual site features which require additional consideration.

Other illustrations will be included as necessary to clarify engineering recommendations.

EXPLORATION, UTILITY VERIFICATION, AND SITE ACCESS

Site Access

By execution of this agreement, the Client grants or agrees to obtain access to the site for all equipment and personnel necessary for Kaw Valley Engineering, Inc. to perform the Services. It is anticipated that the borings will be accessible to a truck mounted drill rig. If additional work to allow rig access is required, further fees will apply and will be quoted to you separately.

Borings will be backfilled with drill cuttings or bentonite, as appropriate. Excess drill cuttings will be mounded over the borehole in grassed areas. When borings are made in paved areas, the excess cuttings will be removed from the boring location to a designated on-site location. Borings located in asphalt or concrete will be patched with a similar material. Borings filled with cuttings may slump and may require periodic filling by the client or owner.

Boring Location

Borings will be located in the field by measurements from on-site physical features. Elevations will be determined by differential leveling, utilizing a fixed monument on site as a benchmark if available.

Utilities

Utility companies will be notified to identify, to the extent possible, the location of underground utilities and other subterranean structures. Public utilities will not provide information beyond service connections. Information between service connections and a structure must be provided by the owner or his representative.

SCHEDULE AND FEE BASIS

We will proceed with this project within one week of receipt of written authorization if weather and site conditions permit and a drill rig is available. The preliminary geotechnical report will be issued within ten working days of the completion of the fieldwork. We anticipate the fieldwork to take six days.

We will perform the Geotechnical Services described herein for the following fees:

Services	Unit	Quantity	Unit Price	Extension
Field Activities:				
Drill Crew	Hour	56	\$145.00	\$8,120.00
Geologist	Hour	56	\$85.00	\$4,760.00
Data Production:				
Geotechnical Engineer	Hour	5	\$125.00	\$ 625.00
Administration	Hour	2	\$45.00	\$ 90.00
			Subtotal	<u>\$13,595.00</u>
Expenses:				
Traffic Control	Lump Sum	1	\$900.00	\$ 900.00
			Subtotal	<u>\$ 900.00</u>
			Total	<u><u>\$14,495.00</u></u>

Additional work performed outside of the Scope of Services will be charged in accordance with the attached rate schedules.

We appreciate the opportunity to be of service to you. If you have any questions or comments, please do not hesitate to contact us at (913) 894-5150.

Respectfully submitted,
Kaw Valley Engineering, Inc.



Michael R. Osbourn, P.E.
 Principal

MRO/srh

Attachment: 2013 Standard Hourly Rate Schedule

J:\SERVICES\Projects\C13_7247\Geotechnical\Proposal\05-23-13 Rev Proposal Design of Stormwater Improvements.docx



KAW VALLEY ENGINEERING
Consulting Engineers

This rate schedule is updated once each year in January, and the current rates in effect at the time of service shall apply.

2013 Standard Hourly Rate Schedule
 Lenexa, Kansas Office

Design Services

Principal	175.00
Project Manager.....	130.00
Senior Design Engineer	120.00
Project Design Engineer	100.00
Staff Engineer	85.00
Geotechnical Engineer.....	125.00
Materials Engineer	125.00
Registered Geologist	90.00
Senior Design Technician.....	75.00
Senior Drafting Technician	70.00
Drafting Technician II	65.00
Drafting Technician I.....	60.00
Administrative Assistant II.....	45.00
Administrative Assistant I.....	40.00

Field Services - Surveying

Manager of Field Services	90.00
Professional Land Surveyor.....	95.00
Survey Crew Leader (Research and Computations).....	70.00
1-Person Survey Crew with Equipment	110.00
2-Person Survey Crew with Equipment.....	135.00
3-Person Survey Crew with Equipment.....	160.00

Field Services – Construction Materials

Supervisor Construction Materials.....	85.00
Senior Engineer Technician.....	70.00
Engineer, Technician II	65.00
Engineer, Technician I.....	60.00
AWS Technician	95.00

In addition to the above, reimbursement shall be made for expenses incurred in connection with the project such as filing fees, print, research materials, equipment rental, mileage, per diem, postage and handling, and any other related expenses will be billed at their direct cost. Subcontracted labor, technical photography, and other direct job costs will be billed at their direct cost.

PRINTING

Miscellaneous Expenses	At direct cost
Mylar (24" x 36").....	\$ 20.00
Mylar (30" x 42").....	30.00
Vellum (24" x 36")	4.00
Vellum (30" x 42")	5.00
Bond (24" x 36")	3.50
Bond (30" x 42")	4.25
8½" x11" / 11"x17" Copies	0.20/page

EQUIPMENT

Vehicle Mileage (Truck or Auto)	\$ 0.50/mile
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