

ENGINEERING/ARCHITECTURAL SERVICES AGREEMENT

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

2013 Preliminary Engineering Studies – 89th Street - Outlook to Reed (SD-1134)

(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 Fifty Two Thousand One Hundred and no/100 Dollars (\$52,100.00), including reimbursables. The fee is based on the performance of the scope of services outlined in Exhibit A, attached hereto and incorporated by reference herein, 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 December 31, 2013. Payment to Consulting Engineer/Architect shall not exceed the following percentages without prior written consent of City:

Preliminary Design Phase	100%
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B. REIMBURSABLE EXPENSES

The Consulting Engineer/Architect shall be reimbursed at the actual cost, not to exceed Three Thousand Four and no/100 Dollars (\$3,000.00), 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, and (g) 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. PRELIMINARY DESIGN PHASE

1. Services: The services to be provided during this phase are set out in Exhibit A attached hereto and incorporated herein by reference.
2. Preliminary Design 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 preliminary design. 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: Pete Zanoni. 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 City Documents and Information prepared by Consulting Engineer/Architect in contemplation of, or in the course of, or as a result of this Agreement or work on the Project, shall be promptly furnished to the City. All City Documents and Information shall be the exclusive property of the City and shall be deemed to be "Works for Hire." Consulting Engineer/Architect hereby assigns all right, title and interest in and to the City Documents and Information, including but not limited to, all copyright and patent rights in and to the City Documents and Information. Neither party grants to the other any express or implied licenses under any patents, copyrights, trademarks, or other intellectual property rights, except to the extent necessary to complete its obligations to the other under this Agreement

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:	\$1,000,000
Products / Completed Operations Aggregate:	\$1,000,000
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 out of 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:

a. **NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”**

5. Workers' Compensation

This insurance shall protect the Consulting Engineer/Architect 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.

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.

BURNS & MCDONNELL

By: _____
Pete Zanoni.
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

EXHIBIT "A"

ENGINEERING SCOPE OF SERVICES

FOR

89TH STREET, REEDS TO OUTLOOK STORM SEWER IMPROVEMENTS PES (SD-1134)

The Scope of Services for this project includes the preparation of a Preliminary Engineering Study (PES) for the City of Overland Park (City) that meets the requirements of the Johnson County Stormwater Management Program (County SMP). The existing stormwater system to be included within this PES is described below.

Study Area:

The project will consist of field work for the area generally bounded by Reeds Road on the east, Outlook Drive on the west, 88th Street on the north, and 89th Terrace on the south. The project involves the design for the replacement of the existing enclosed system beginning with 88th Street, working downstream to 89th Terrace/Reeds Road.

The Consultant Engineer shall complete the following tasks:

Phase 1 - Data Collection

- 1.1 **Kick-Off Meeting** - Attend a kick-off meeting with representatives of the City of Overland Park to introduce the project team, establish the goals of the project, design criteria and request existing information (i.e. existing studies, designs and As Constructed Plans).
- 1.2 **Information Review** - Review available information as provided by the City and the County, including existing studies, As Constructed Plans, AIMS data, GIS shape files and other available information available from the City pertinent to this project.
- 1.3 **Site Investigation** - A site visit will be performed noting the existing area, conditions and issues to be included within the PES. Photographs will be taken noting these areas and the condition of the existing structures.
- 1.4 **Utility Coordination** - Contact area utility companies for the purpose of collecting available mapping for locations of existing facilities. Develop a contact listing of companies within the area. Discuss potential future upgrades and changes within the study area currently under consideration by the companies. The following utilities shall be contacted: Electric, Telephone, Cable Television, Gas, Water and Sewer.
- 1.5 **Topographic Survey** - A topographic survey will be completed to supplement existing available survey data from the City and AIMS. Topographic information will also be obtained for existing structures included within the flood prone areas. This will include sheds, garages and the lowest opening elevations of all homes directly adjacent to the storm sewer system being studied. Existing utilities will be marked and locations will be included for comparison with existing mapping information received from the utility companies. Top and invert elevations of the existing system will be gathered for comparison with existing As Constructed plans as supplied by the City.
- 1.6 **Property Information** - Property ownership information will be collected and utilized for future communications concerning public meetings and survey notifications. This

information will be collected from the Johnson County Appraiser's office and subdivision plat information as provided by the City.

Phase 2 - Public Involvement Activities

- 2.1 Public Meetings** - Prepare for and attend one (1) public meeting with the neighborhood residents to explain the project and receive public comments. The meeting times and places will be determined during meetings with the City. City staff will be responsible for mailing meeting invitations and providing a location for the meeting.

Phase 3 - Complete SMAC Preliminary Engineering Study

The PES shall include the following information as required by the Johnson County Storm Water Management Program (County SMP); including the Program assigned project number, signed and sealed by a Kansas registered Professional Engineer. This project shall be studied utilizing the City of Overland Park design standards, APWA Section S600 as modified by the City of Overland Park and the Johnson County SMP Guidelines.

- 3.1 Flood Problem Rating Table** - Information originally submitted to the County SMP when the City requested consideration for funding of the PES. This information shall be supplied by the City.
- 3.2 Background** - Prepare a brief description of the project location, purpose of the study, and scope of the project. Additionally identifying the upstream and downstream effects within adjacent cities.
- 3.3 Existing Conditions** - Describe the existing conditions of the study area. This shall include, but is not limited to, the watershed, major drainage ways, drainage structures and flow constrictions. A summary of flooding issues in the area as identified by the City and residents in the area, and a summary of streets that are affected by the current conditions. Additional pertinent information such as soil types, depth to bedrock, utilities, right-of-way and easement information applicable to the proposed project area will be summarized.
- 3.4 Standards** - Identify applicable City, County, State and Federal design and construction standards, including APWA Section 5600.
- 3.5 Utility Contacts** - Provide a summary of the utility contacts and a summary of information obtained during the Data Collection phase.
- 3.6 Permits** - Summarize Federal, State and local permits required, if any, necessary for the proposed project.
- 3.7 Conformance with Watershed Studies** - Explain how the project's hydrologic and hydraulic calculations are consistent with the results of the existing Johnson County Indian Creek Watershed Study.
- 3.8 Project Limits** - Provide a description of the location and extent of the proposed project and the impacts to the upstream and downstream areas. Establish whether or not the project is located within the study limits of the Johnson County watershed studies.

3.9 Hydrology and Hydraulics - Complete a hydrologic and hydraulic analysis of the existing and proposed system. Describe the methodologies used and in the analysis and explain the basis of the selected approach.

a. Hydrology - Develop existing and proposed runoff flows for the 10% (10 year) and 1% (100 year) storm events, at a minimum for each subarea of the watershed for the study area. Provide the appropriate parameters used for the flow calculations, including runoff coefficients, curve numbers (if applicable), time of concentration, percent imperviousness, rainfall intensities and rainfall hyetographs. The project is contained within the Johnson County Indian Creek Watershed study area, and the 1% (100 year) storm event shall be reviewed for conformance with the SMP requirements.

b. Hydraulics - Develop existing and proposed hydraulic grade lines for the 10% (10 year) and 1% (100 year) storm events, at each structure, enclosed pipeline and open channel.

3.10 Field Investigation - Provide a description of the results of the field work performed, including the surveying, geotechnical investigations, etc.

3.11 Improvement Alternatives - The PES shall include at least three improvement alternatives. The first alternative must consider acquisition of all flood-prone buildings and must provide an overall solution that meets or exceeds the current Program-adopted standards and specifications. The remaining two alternatives must provide a level of protection similar to the first alternative. If the City believes that the infrastructure or buildings cannot be reasonably or feasibly protected without an expenditure of funds that would significantly exceed the anticipated benefit, an additional alternative can be presented that does not meet the current Program-adopted standards and specifications. In this case only, the standards that cannot be met must be identified and the extent of "non-compliance" must be clearly explained and discussed. A summary of the alternatives will be provided that includes the following items for each item along with other pertinent information:

a. Facilities - Describe the existing conveyance facilities included as part of the alternative.

b. Road/traffic - Describe any modifications to the existing roads and provide a description of the traffic control during construction.

c. Utilities - Identify potential utility relocations based upon discussions with the utility companies.

d. Right-of-Way/Easements - Describe required changes to existing rights-of-way and easements.

e. Preliminary Drawings - Develop drawings in adequate detail to estimate opinions of probable cost which can be used for comparison of costs.

f. Opinion of Probable Costs - Prepare an opinion of cost for the proposed improvements.

g. Relationship to Other City Stormwater Facilities - Describe how the recommended improvements will interface with the existing stormwater facilities.

h. Effects on Surrounding Cities - Summarize the effects on cities upstream and downstream from the project site.

- 3.12 Evaluation of Alternatives** - List the advantages and disadvantages of each alternative evaluated.
- 3.13 Recommended Alternative** - Describe the recommended alternative, including the types of improvements, project limits, and project benefits. Develop a work schedule for completing the design phase and estimate the duration of the construction phase.
- 3.14 Acceptance of PES by Upstream and Downstream Cities** - Include correspondence from cities within the upstream and downstream impact limits accepting the PES recommendations.

89th Street, Reeds to Outlook Storm Sewer Improvements PES (SD-1134)

Exhibit B

Breakdown of Cost of Engineering Services.

Burns & McDonnell Engineering Company, Inc.

Personnel Classification	Project Manager	Project Engineer	Associate Engineer	Design Technician	Survey Technician	Survey Crew	Admin. Asst.	Total Hours	Total Fee \$	Expenses (\$9.95 Tech Charge)	Total Amount \$	Notes
Hourly Rate	\$173	\$150	\$XX	\$110	\$XX	\$XX	\$80					
TASK DESCRIPTIONS												
PHASE 1 - DATA COLLECTION												
Attend & Document Project Kick-off Meeting	2	3						5	\$796	\$54	\$850	includes travel
Collect Existing AIMS Data, Utilities, Environmental data & Studies		6						6	\$900	\$60	\$960	
Document Design Standards & Permitting Requirements								0	\$0	\$0	\$0	
Perform Topographic Site Survey to Supplement AIMS Data								0	\$0	\$0	\$0	see Subconsultant Survey Fee below
Develop Base Map				4				4	\$440	\$40	\$480	
Site Investigation and Documentation	2	4						6	\$946	\$60	\$1,006	
Phase 1 Subtotals	4	13		4				21	\$3,082	\$214	\$3,296	
PHASE 2 - PUBLIC INVOLVEMENT ACTIVITIES												
Resident Questionnaires, Review												
Public Meetings (1)	4	4		4				12	\$1,732	\$244	\$1,976	includes travel and boards
Phase 2 Subtotals	4	4		4				12	\$1,732	\$244	\$1,976	
PHASE 3 - COMPLETE SMAC PRELIMINARY ENGINEERING STUDY												
<u>Hydrologic & Hydraulic Analysis</u>												
Hydrologic Review and Updates		16						16	\$2,400	\$159	\$2,559	
Hydraulic Model Review		8						8	\$1,200	\$80	\$1,280	
Conduct & Document City Coordination Meetings								0	\$0	\$0	\$0	
Quality Control Reviews	2							2	\$346	\$20	\$366	
<u>Solution Alternatives Development</u>												
SMP Problem Ratings		4						4	\$600	\$40	\$640	
Develop and Evaluate Alternatives		12						12	\$1,800	\$119	\$1,919	
Solution Modeling and Hydraulic Profile Analysis		16						16	\$2,400	\$159	\$2,559	
Estimate Alternate Costs		8						8	\$1,200	\$80	\$1,280	
Conduct Field Check, City Review Meeting	2	3						5	\$796	\$57	\$853	includes travel
Quality Control Reviews	2							2	\$346	\$20	\$366	
Final Report and Recommendations		40						40	\$6,000	\$593	\$6,593	final report write-up, includes final report printing costs
Document Methodology, Conditions, Findings & Recommendations		4						4	\$600	\$40	\$640	
Develop Final Opinion of Construction Costs		8						8	\$1,200	\$80	\$1,280	
Conduct & Document City Review Meeting; Incorporate Comments	2	3						5	\$796	\$252	\$1,048	includes travel, includes prelim report printing costs
Final Report Preparation		40		16				56	\$7,760	\$557	\$8,317	drawings/exhibits for the 3 alternatives
Quality Control Reviews	4							4	\$692	\$40	\$732	
Phase 3 Subtotals	12	162		16				190	\$28,136	\$2,295	\$30,431	
Administration							8	8	\$640	\$80	\$720	
Project Management	18							18	\$3,114	\$179	\$3,293	
Engineering Subtotal	38	179		24			8	249	\$36,700	\$3,000	\$39,700	
Survey									\$12,400		\$12,400	
Total All Phases	38	179		24			8	249	\$49,100	\$3,000	\$52,100	