

CONTRACT  
for  
ENGINEERING SERVICES

between  
SEDGWICK COUNTY  
and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.  
303 S. Topeka, Wichita, Kansas

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and

between

SEDGWICK COUNTY

Party of the First Part, hereinafter called the  
"COUNTY"

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Party of the Second Part, hereinafter called the  
"CONSULTANT"

WITNESSETH:

WHEREAS the COUNTY wishes to construct drainage improvements identified as "Proposed Improvements – Phase 1" in Section 9 of a study report titled "Drainage Project No. D-21," produced by PEC, submitted to Sedgwick County in October, 2011, hereinafter called the PROJECT, and

WHEREAS, the COUNTY now desires to proceed with preparation of final plans for construction of the PROJECT, and

WHEREAS, the COUNTY is authorized by law to employ Consulting Engineers to assist in the preparation of engineering plans, specifications, and estimates of probable cost for the PROJECT.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

A. BASIC DESIGN SERVICES

The CONSULTANT shall provide engineering and technical services as required for the development and completion of final construction documents for the PROJECT. Plans and specifications shall be prepared in accordance with format and detail requirements defined by current "Sedgwick County Public Works Design Requirements and Scope of Services."

The PROJECT limits shall extend from the existing RCB bridge crossing 87<sup>th</sup> Street South approximately 430' west of Meridian to 71<sup>st</sup> Street South, approximately ¾ mile west of Meridian. The PROJECT scope shall include the following:

1. Survey services of sufficient detail to develop base sheets for construction plans; including: research existing AVL files; recover and establish horizontal control; traverse through found control with GPS equipment throughout the PROJECT corridor; recover existing benchmarks, set additional benchmarks for construction; topographic data collection for proposed improvements.
2. Prepare Field Check Plans, Right-of-Way Plans, Office Check Plans, and Final Plans, Specifications and Estimates (P.S. and E.)  
Preparation of plans task shall include:
  - a. Development of construction plans, including plan, profile, horizontal alignment with appropriate control, typical sections, and cross sections of sufficient detail to construct the channel from 87<sup>th</sup> Street to 71<sup>st</sup> Street.
  - b. Development of plans to construct a new RCB structure to cross 79<sup>th</sup> Street approximately ½ mile west of Meridian. Plans shall include: structural and pavement details for the RCB, storm sewer plans to build a 24" RCP connecting the retention ponds north of 79<sup>th</sup> Street to the new RCB, plans to handle 79th Street traffic during construction.

- c. Development of plans to construct a new RCB to cross 71<sup>st</sup> Street approximately ¾ mile west of Meridian.
  - d. Development of plans to construct a pump station north of 79<sup>th</sup> Street. The pump station will be designed to replace natural drainage currently passing through the wetland reserve north of 79<sup>th</sup> Street. The source of the pumped water will be the Country Lakes Addition stormwater retention ponds.
  - e. Prepare right-of-way and permanent easement descriptions.
  - f. Identification of utility conflicts and coordination of conflict resolution.
  - g. Prepare estimates of probable construction costs for the PROJECT.
3. Identify and delineate any wetlands within the project corridor. PEC has received a proposal from Geotechnical Services to assist with this effort (see Attachment A).
  4. Assist COUNTY with preparation of applicable permit requests from state and federal agencies to construct the PROJECT. Permits from these agencies are anticipated: the U.S. Army Corps of Engineers (USACE), the Kansas Department of Agriculture – Division of Water Resources (DWR), the Kansas Department of Health and Environment (KDHE) and the Natural Resources Conservation Service (NRCS).

B. CONSTRUCTION CONTRACT ADMINISTRATION SERVICES

When requested by the COUNTY, the CONSULTANT shall provide the following construction contract administration services for the PROJECT. Any work performed under this provision will be undertaken only after preparation and execution of a mutually acceptable supplemental agreement. Typically, these services shall consist of the following:

1. Provide one or more representatives to attend the Pre-Construction Conference.
2. Review shop drawings.

3. Provide on-call interpretation of the contract documents and be available to confer with COUNTY about questions which may arise during construction of the PROJECT.
4. Participate in final inspection of the constructed PROJECT.

II. DESIGN AND PLAN DEVELOPMENT

A single set of PROJECT plans shall be developed in accordance with the following procedure:

A. PRELIMINARY PLAN DEVELOPMENT

1. Conduct surveys to obtain field data as necessary to complete the engineering design.
2. Prepare roadway, RCB and channel construction plans suitable for presentation and use at Field Check of the PROJECT, including:
  - a. Plan and profile sheets, typical sections, cross sections, drainage plans, preliminary RCB details, detour plan sheets, roadway improvements as required.
  - b. Identify potential utility conflicts and initiate coordination between COUNTY and affected utility companies.
  - c. Establish project rights-of-way, and easement requirements.
3. Prepare preliminary unit price construction cost estimate.
4. Field Check.
  - a. Submit required sets of preliminary plans and cost estimates to the COUNTY.
  - b. Provide representative(s) to participate in a Field Check of the PROJECT with the COUNTY.

B. FINAL CONTRACT DOCUMENTS

When authorized by the COUNTY, the CONSULTANT shall prepare final plans for the PROJECT in accordance with the design concepts approved at Field Check. All items associated with PROJECT shall be combined into one set of plans.

1. Submit Right-of-Way Plans.

- a. Prepare right-of-way plans and right-of-way descriptions, and submit required sets of documents to the COUNTY.
- b. Prepare right-of-way inserts as required.
2. Submit Office Check Plans.
  - a. Submit required sets of plans to COUNTY for Office Check of PROJECT.
  - b. Participate in review discussion of Final P.S. and E. as requested.
  - c. Prepare updated unit price estimate of probable construction cost of the PROJECT.
3. Revise plans per Office Check review, and deliver final tracings, original manuscript of supplemental specification and final cost estimate to the COUNTY.

III. THE CONSULTANT AGREES:

- A. To perform the various technical and professional services outlined herein in the "Scope of Services," as may be required to obtain the approval of the COUNTY.
- B. To prepare, at the CONSULTANT'S expense, revised documents as requested by representatives of the COUNTY, made necessary by negligent errors or omissions of the CONSULTANT, at any time prior to final acceptance of the constructed PROJECT.
- C. Submit Preliminary Plans of sufficient detail for the COUNTY'S use in acquiring rights-of-way required in connection with the PROJECT by the date outlined below, and submit Final Plans for construction to the COUNTY for approval by the date noted below; recognizing both schedules are exclusive of time required for reviews by the approving parties and delays beyond the CONSULTANT'S control.

PLAN DEVELOPMENT SCHEDULE

Right-of-way Plans: 3/1/2013  
Final P.S.&E.: 6/31/2013

- D. To furnish the COUNTY complete original materials for the PROJECT, including all reports, design calculations, tracings, drawings, and specifications as required by the COUNTY.

All project drawings associated with this project shall be submitted digitally within the following guidelines:

1. AutoCAD DWG, DXF or DXB format, with DWG (latest version available) being the desired format of submission.
  2. All entities shall be created BYLAYER, with color and linetype BYLAYER. A discerning method of layer naming shall be used.
  3. Any referenced information external to the drawing (cells, blocks, xrefs, shapes, or non-standard fonts) shall be included.
  4. Any coordinate information (Point number, Northing, Easting, Elevation and Description) shall be included as point blocks within the drawings, AutoDesk civil file format or as a delimited ASCII file.
  5. Submit on CD-ROM medium. Medium must be labeled with the Sedgwick County project number, project year and vendor name. Include the number of CD-ROMs and total submitted, e.g., 1 of 4, 2 of 4, etc.
- E. That the COUNTY shall, at all reasonable times, have access to the CONSULTANT'S offices located at 303 S Topeka in Wichita, Kansas, to inspect and review all plans, books, records, correspondence, instructions, receipts, vouchers, and memoranda of every description pertaining to the work hereunder.
- F. To accept compensation for work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be complete and sufficient payment for all work performed, equipment or material used, and services rendered in connection with such work.
- G. The CONSULTANT will not, without prior written approval from the COUNTY, exceed the upper limit of the engineering fee described and agreed to by the parties herein. Failure to receive written approval will result in loss of compensation for this work by the CONSULTANT.

- H. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work performed under this Contract, including Title VI of the Civil Rights Act of 1964.
- I. The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY shall have the right to annul this Contract without liability, or, in the COUNTY'S discretion to deduct from the Contract the price of consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- J. The CONSULTANT warrants that the firm or any person involved with the administration of federal funds is not under suspension, debarment, voluntary exclusion or determination of ineligibility, now or within the last three (3) years, does not have a proposed debarment pending nor been indicated, convicted or had a civil judgment rendered involving fraud or official misconduct within the past three (3) years.
- K. The CONSULTANT hereby expressly agrees to save the COUNTY and the COUNTY'S authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgments and damages to persons or property caused by the CONSULTANT, its agents, employees or subcontractors which may result from negligent acts, errors, mistakes or omissions from the CONSULTANT'S operation in connection with the services to be performed hereunder, but only to the extent of the CONSULTANT's proportion of responsibility.
- L. The records and books of the CONSULTANT pertaining to work covered by this Contract shall be available to representatives of the COUNTY for audit for a period of three (3) years after the date of final payment under this Contract.

- M. To prepare an estimated schedule for performance of component tasks for the PROJECT (may be bar chart or other acceptable method) and report actual progress at monthly intervals.
- N. The CONSULTANT accepts full responsibility for payment of Unemployment Insurance, Worker's Compensation, and Social Security as well as all income tax deductions and any other taxes or payroll deductions required by law for his employees engaged in the work authorized by this Contract.
- O. That disputed matters arising under this Contract will be submitted to a Review Committee for resolution. The Review Committee will be comprised of one representative from each of the contracting parties and a third member chosen by the party representatives. The Review Committee shall make its own rules of procedure and shall have authority to examine records kept by the COUNTY and the CONSULTANT. In determining the findings, the majority vote of the Review Committee shall govern. The decision of the Review Committee shall be advisory only and it shall not be binding upon the parties.
- P. To provide traffic control signing on or along any street or highway where the CONSULTANT has crews working. The size, shape, color and placement of all signs shall comply with the Manual on Uniform Traffic Control Devices for Streets and Highways as approved by the American Association of State Highway Officials and the Department of Transportation, Federal Highway Administration.
- Q. To observe the Nondiscrimination Provisions contained in Exhibit B, attached hereto and incorporated herein.

IV. THE COUNTY AGREES:

- A. To employ the CONSULTANT to perform the services described herein for the fee stipulated in Section IV, Paragraph F.
- B. To notify the CONSULTANT in writing when work on the PROJECT may proceed.
- C. To review the CONSULTANT'S preliminary concepts and/or layouts prior to detail progress of the work.

- D. To review the preparation of alternative concepts, engineering reports, plans, specifications, and estimates for the PROJECT prepared by the CONSULTANT. Periodic reviews of the CONSULTANT'S work may be made by the COUNTY as may be deemed necessary or advisable. It is understood that the COUNTY shall check the general design features of the concepts and plans and that the CONSULTANT shall be responsible for the completeness and accuracy of the data provided and all details, dimensions, and quantities shown thereon.
- E. To assist with the recovery of section corners for survey purposes by providing excavation equipment, pavement patching material and office record information as may be applicable or required to effect the best possible project survey.
- F. To pay the CONSULTANT for Engineering Services as follows:  
Compensation for Design Services shall be on the basis of the CONSULTANT'S actual cost plus a net fee amount for profit of \$15,670.00, not to exceed the sum total of \$136,290.00, and shall generally be in accordance with Exhibit A appended hereto.
- G. That during the progress of work covered by this Contract, partial payments may be made to the CONSULTANT within thirty (30) days of receipt of proper billing, but at intervals of not less than one calendar month. Progress billing shall be supported by a progress schedule acceptable to the COUNTY, and shall include a statement of the percentage of work completed and the actual costs incurred during the billing period. Accumulated partial payments shall not exceed ninety-five percent (95%) of the total fees earned prior to approval and acceptance of completed work by the COUNTY. Partial payments due shall be defined as the accumulated total fees less the total of previous payments times ninety-five percent (95%).

The voucher for final payment of design services for the PROJECT due under the provisions of this Contract may be submitted after the COUNTY'S award of a construction contract for the PROJECT.

- H. In the event that a construction contract has not been awarded for the PROJECT within six (6) months from the date of approval of construction plans by the COUNTY, the voucher for final payment of design services may be submitted without further delay.
- I. To pay the CONSULTANT for authorized extra work and such payments shall be in addition to and exclusive of fees stipulated in paragraph 6 above.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the services to be performed by the CONSULTANT under the terms of this Contract are personal and cannot be assigned, sublet, or transferred without the written consent of the COUNTY.
- B. That the right is reserved to the COUNTY to terminate this Contract at any time, upon written notice, in the event the COUNTY determines that the PROJECT is to be abandoned or indefinitely postponed, or the services of the CONSULTANT are unsatisfactory, or failure by the CONSULTANT to comply with all the terms and provisions of this Contract, including but not limited to the timely prosecution and completion of the work within the time limits specified in this Contract; PROVIDED, however, that in the event of termination, the CONSULTANT shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Contract.
- C. Authorization for any appropriate Extra Work under the terms of this Contract shall be evidenced by the COUNTY in writing. No extra work shall be compensated without written consent from the COUNTY.  
At the discretion of the COUNTY and in accordance with the terms of this Contract, work not specified in this Contract or which is considered to be beyond the extent of a reasonable exploration of alternates and/or "trial and error" solutions may be classed as Extra Work. Extra Work will usually be of limited extent and may consist of, but is not necessarily limited to:

1. The introduction of new items of work beyond the stated or implied scope of the Contract.
  2. Redesign and/or detailing based on changes of concept after prior approval and authorization to proceed, and causing appreciable loss of work accomplished.
- D. That the overhead rate for all design services work shall be fixed at 150 percent for the duration of the Contract.
- E. That an extension of time shall be granted to the CONSULTANT for delays recognized by the COUNTY as unavoidable, provided such extension of time shall be requested by the CONSULTANT in writing, stating the reasons therefor.
- F. That specifications as mentioned in this Contract shall be construed to mean the "Kansas Department of Transportation 2007 Standard Specifications for State Road and Bridge Construction", and any approved Supplemental Specifications applicable to said PROJECT.
- G. That reproducible final plans required under provisions of this Contract shall not contain so called "stick-up" notes or additives.
- H. That all reports, plans, drawings, digital drawing files, and documents pertaining to the PROJECT mentioned herein shall become the property of the COUNTY upon the completion thereof in accordance with the terms of this Contract, without restrictions as to their further use.
- I. That should the State legislature enact a sales tax on professional services during the term of this Contract and said tax becomes applicable to all or part of this Contract, the CONSULTANT shall be compensated for said tax as an addition to the fee limitations set forth herein.
- J. That should the COUNTY at any time be unable to appropriate sufficient funds for the work covered by this Contract, for whatever reason, the CONSULTANT shall reserve the right to cease work on the PROJECT until sufficient monies are available.
- K. That this contract does not include services which may otherwise be required in conjunction with:
1. Preparation of an environmental assessment or impact statement.

2. Right-of-way acquisition negotiations or utility accommodation/relocation agreements, or design.
3. Design of new or rehabilitated span bridge structures.
4. Environmental or mitigation design required by permitting agencies.
5. Redesign of proposed improvements substantially different from that previously reviewed and approved by the COUNTY.
6. Payment of permitting fees which shall be the COUNTY'S responsibility.
7. Studies or assessments including, but not limited to: Wildlife Habitat/Biological assessments, or Archeological/Historical resource evaluations or assessments.

VI. CONTRACT DOCUMENTS:

The Contract Documents shall be defined as the Notice to Proceed, the Contract and attached Exhibits, and all Supplemental Agreements.

The Contract Documents comprise the entire Contract between the COUNTY and the CONSULTANT. They may be altered only by Supplemental Agreement.

It is further agreed that this Contract and all contracts entered into under the provision of this Contract shall be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the COUNTY and the CONSULTANT have executed this agreement as of the date first written above.

RECOMMENDED FOR APPROVAL

SEDGWICK COUNTY, KANSAS

By: \_\_\_\_\_  
David C. Spears, P.E.  
County Engineer

By: \_\_\_\_\_  
Tim R. Norton  
Chairman, Board of County Commissioners

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

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


ATTEST:

\_\_\_\_\_  
Kelly B. Arnold, County Clerk

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

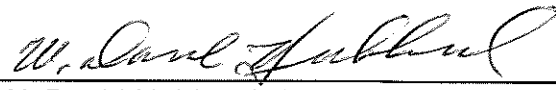
(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Robert W. Parnacott, Assistant County Counselor

Date: 9/5/12

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By:   
\_\_\_\_\_  
W. David Hubbard, P.E.  
Executive Vice President

Date: 4-13-12

ATTEST:

  
\_\_\_\_\_  
Richard A. Schlitt, P.E., Secretary/Treasurer

Date: 4/13/2012

# ENGINEERING FEE ESTIMATE

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

ENGINEERS

WICHITA, KANSAS

PROJECT: D-21 Drainage Project Phase I Design Services

LOCATION Sedgwick County

PROJECT NO 32-08520-001-024

DATE 4-12-12

## (I) SALARY COSTS

POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPALS	\$46.00	24	\$1,104.00	
2. PROJECT MANAGER	\$40.00	100	\$4,000.00	
3. PROJECT ENGINEER	\$34.00	125	\$4,250.00	
4. DESIGN ENGINEER	\$28.00	450	\$12,600.00	
5. DESIGN TECHNICIAN	\$26.00	375	\$9,750.00	
6. DRAFTER	\$21.00	250	\$5,250.00	
7. CHIEF OF SURVEYS	\$37.00	8	\$296.00	
8. SURVEYOR, PARTY CHIEF	\$27.00	80	\$2,160.00	
9. SURVEYOR, INSTRUMENT MAN	\$21.00	64	\$1,344.00	
10. SURVEYOR, AIDE	\$16.00	64	\$1,024.00	
11. FIELD ENGINEER				
12. INSPECTOR, ENGINEER				
13. INSPECTOR, TECHNICIAN				
14. LAB TECHNICIAN				
15. SPECIFICATION TECHNICIAN				
16. STENO & CLERICAL				
17. OTHER				
18. OTHER				
SUBTOTAL		1540		\$41,778.00

(II) OVERHEAD 1.50 X (I) \$62,667.00

(III) SUBTOTAL (I + II) \$104,445.00

(IV) FIXED FEE \$15,670.00

## (V) DIRECT COSTS

1. GPS EQUIPMENT PER HOUR	\$50.00	18	\$900.00	
2. CAD PER HOUR	\$18.00	500	\$9,000.00	
3. SURVEY TRUCK TRAVEL PER MILE	\$0.60	460	\$276.00	
4. PER DIEM, PER MAN DAY				
5. DESIGNER TRAVEL PER MILE	\$0.55	180	\$99.00	
6. PRINTING (PLANS & SPECS., ETC.)	@ Cost	\$1,700.00	\$1,700.00	
7. GEOTECHNICAL SERVICES, INC. (SEE ATTACHMENT "A")	L.S.	\$4,200.00	\$4,200.00	
SUBTOTAL				\$16,175.00

(VI) TOTAL FEE FOR PROJECT (III + IV + V) \$136,290.00

**CONTRACT FOR CONSULTANT SERVICES**

**PROJECT NO D-21**

**NON DISCRIMINATION PROVISIONS**

- A. The CONSULTANT agrees to comply with and/or to the following additional provisions with respect to his performance and obligation under this Agreement:
1. The CONSULTANT shall observe the provisions of the Kansas Acts Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin or ancestry;
  2. In all solicitations or advertisements for employees, the CONSULTANT shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission;
  3. If the CONSULTANT fails to comply with the manner in which the CONSULTANT reports to the Kansas Human Rights Commission in accordance with the provisions of KSA 44-1031, and amendments thereto, the CONSULTANT shall be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by the COUNTY;
  4. If the CONSULTANT is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, the CONSULTANT shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the COUNTY;
  5. The CONSULTANT shall include the provision of the above paragraphs 1 through 4, inclusively, in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

April 13, 2012

Professional Engineering Consultants, P.A.  
303 S. Topeka  
Wichita, KS 67202  
Attn: Philip Frazier, P.E.

**SUBJECT:** Proposal for Wetland Determination  
D-21 Drainage Study Phase I  
Haysville, Sedgwick County, Kansas  
GSI Proposal No. P117538

Dear Mr. Frazier:

Geotechnical Services, Inc. (GSI) is pleased to present this proposal to provide a preliminary wetland determination for the referenced project.

GSI is committed to providing a high level of service to its clients. If a change in the proposed scope of work is requested, we are prepared to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions beyond that which is described in this proposal may result in additional risks assumed by the owner/client and may require adjustments to our fee.

#### **PROJECT DESCRIPTION**

We understand that a wetland determination is requested for the area potentially impacted by drainage improvements proposed for Phase I of the referenced project. Phase I scope of work will include construction of approximately 10,000 linear feet of concrete channel, extending north from 87<sup>th</sup> Street South to 71<sup>st</sup> Street South.

#### **SCOPE OF SERVICES**

We propose to conduct a Routine Level 3 Wetland Determination. The Level 3 Wetland Determination is a combination of "no on-site evaluation necessary" and "on-site evaluation necessary" wetland determination procedures for areas of 5-acres or more. The area of interest will extend 50 feet in both directions from the centerline of the proposed channel.

Work completed as a part of the wetland determination will include:

- The review of National Wetland Inventory Maps, County Soil Maps, USGS Topographic Maps, local Hydric Soils Listings, Stream Gauge Data, and other readily available information regarding the project site and surrounding area;
- An on-site determination and delineation to identify potential Waters of the United States, including wetlands along the proposed construction route, and;
- Preparation and submittal of a Preliminary Wetland Determination report indicating general boundaries of identified wetland and other potential Waters of the United States. Two bound copies of the final report will be submitted upon completion.

### **SCHEDULE**

Weather permitting we can begin our wetland determination within 10 working days of receiving your notice to proceed. The final report will be completed within 15 working days of project initiation. We will provide verbal updates as information is developed in order to expedite the project schedule.

### **FEES AND CONDITIONS**

Our services will be performed in accordance with the attached General Conditions. We propose to complete the professional services for the Preliminary Wetland Determination for a lump sum fee of \$4,200.00.

If any significant changes are made in the scope of services described above, or if the encountered field conditions are significantly different from those anticipated, additional study and analyses may be required. Any work required beyond the scope of that proposed above will be undertaken only after receiving your prior authorization and after an adjustment has been made to our fee to cover the additional work.

Please note that our fees are due within 30 days of the presentation of our report. If payment within 30 days is not possible, we should be contacted prior to commencing work to develop an acceptable payment schedule.

### **LIMITATIONS**

It is possible that on-site evaluation will identify wetland or waters of the United States to an extent not revealed by the preliminary data review performed in preparation of this proposal. If this occurs, the client will be contacted and notified of the findings to discuss additional costs that may be incurred. Work beyond the scope of this proposal will not be completed without the express consent of the client.

Preliminary wetland determinations are subject to review and consent by the USACE. A determination by GSI that no jurisdictional waters of the United States are present on a tract of land is not an authorization to proceed with activities that may impact the aquatic resource.

### **CLOSURE**

GSI appreciates the opportunity to submit this proposal, and we look forward to working with you on this project. If you have any questions or need additional information, please contact GSI's Wichita office.

Respectfully submitted,  
Geotechnical Services, Inc.



Gregg L. Armstrong  
Senior Environmental Scientist



David A. Edwards, P.E.  
Senior Vice President

Enclosures: General Conditions and Service Agreement

**GEOTECHNICAL SERVICES, INC.**

**GSI Proposal Number P117538**

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**PARTIES**

This Agreement is made this 13<sup>th</sup> day of April, 2012 between

Professional Engineering Consultants, P.A.      and  
303 South Topeka.  
Wichita, Kansas 67202

Geotechnical Services, Inc.  
4503 East 47th Street South  
Wichita, KS 67210-1651

hereinafter called "Client"

hereinafter called "Consultant"

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**PROJECT DESCRIPTION**

Client engages Consultant to provide services in connection with:  
Preliminary Wetland Determination Services for Phase I of the D-21 Drainage Study, Haysville,  
Sedgwick County, Kansas.

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**SCOPE OF SERVICES**

Consultant agrees to perform services as follows:  
Perform preliminary wetland determination in accordance with attached Proposal No. P117538.  
Client agrees that all services not expressly included are excluded from Consultant's Scope of  
Services.

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**COMPENSATION**

Client agrees to compensate Consultant for such services as follows:  
In accordance with Proposal No. P117538 with a lump sum cost of \$4,200.00.

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Client and Consultant acknowledge that each has read and agrees to the attached **General  
Conditions**, which are incorporated herein and made a part of this Agreement and apply to all  
services performed by Consultant.

Client: Professional Engineering Consultants, P.A.      Consultant: Geotechnical Services, Inc.

Signature: Richard A. Schlitt

Signature: \_\_\_\_\_

Print Name: Richard A. Schlitt

Print Name: David A. Edwards, P.E.

Title: Secretary / Treasurer

Title: Senior Vice President

Date: 4/16/2012

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

## GENERAL CONDITIONS

### SECTION 1: Independent Contractor

Geotechnical Services, Inc. (GSI) shall perform its services, drilling work or construction material testing work that requires providing only a technician (CMT Technician Work), as the case may be, as an independent contractor, with all of its employees under its sole discretion and control.

### SECTION 2: Client Responsibilities

Unless otherwise agreed, the Client will furnish GSI with right-of-access to the site to conduct its services or drilling work. As applicable, Client shall provide and deliver all samples for testing or provide instruction to GSI on their storage or shipment to Client; but, in either case, such samples remain the property of the Client. Client further agrees to meet its obligations under Sections 3 through 5 of these general conditions.

### SECTION 3: Site Conditions

The Client is responsible for providing accurate information of all underground structures and utilities located at the site. In performing its services or drilling work, GSI will take all reasonable precautions to avoid damage or injury to underground structures or utilities. The Client also agrees to defend, indemnify and hold GSI harmless from any claims, payments or other liability, including costs and attorney fees, incurred by GSI for damages to underground structures or utilities which are not called to GSI's attention or correctly shown on the plans furnished to GSI.

To the extent enforceable, the Client must advise GSI of any known or suspected hazardous substances which may impact the services or drilling work that will be provided by GSI. For purposes of this section and Section 13, "hazardous substances" means any toxic substance, chemical, radioactivity, pollutant or any material that is identified now or in the future as hazardous under any federal, state or local law or regulation or is subject to special handling, disposal or clean-up. If during the course of providing its services or drilling work, GSI observes or suspects the existence of unanticipated hazardous substances, GSI may at its option terminate any further services or work on the project and notify Client of this condition. Services or work will be resumed only after a renegotiation of GSI's scope of services or work and its fees. If such renegotiation does not lead to an amendment to this Agreement that is satisfactory to GSI, GSI may at its option terminate this contract. Client further agrees that GSI is not, and has no responsibility as, a handler, generator, operator, treator, storer, transporter or disposer of any known or unknown hazardous substances found at the site. Therefore, Client shall undertake or arrange for the handling, removal, treatment, storage, transportation and disposal of all hazardous substances found or identified at the site.

### SECTION 4: Schedule and Change Orders

The schedule for GSI's services, drilling work or CMT Technician Work is set forth in GSI's proposal. If Client makes a request for additional services or work, alters the planned deliverables or suspends GSI's services or work for any period of time or there are delays that occur due to causes not under GSI's control, the parties agree to equitably adjust the time for completion and the compensation for such services or work, including any necessary demobilization and subsequent remobilization, via a written change order. Unless otherwise agreed by the parties, such change orders must be in place before any services or work can recommence.

### SECTION 5: Reports and Invoices

GSI will furnish 3 copies of any report to the Client. Additional copies will be furnished at the expense of the Client. GSI will submit invoices to the Client monthly and a final bill upon completion of its services or work, all on a time and material or rate basis. Payment is due upon presentation of GSI's invoice and is

past due 30 days from the invoice date. Client agrees to pay a finance charge of 1 1/2% per month, but not exceeding the maximum rate allowed by law on past due accounts.

### SECTION 6: Ownership of Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by GSI are instruments of service. Therefore, they shall remain the property of GSI unless there are other contractual arrangements made with Client.

### SECTION 7: Confidentiality

GSI shall hold in confidence all business or technical information obtained from the Client or its affiliates provided that they are identified in writing by the Client as "confidential" at the time they are given to GSI or generated in the performance of its services or work.

GSI shall not disclose such information without the Client's consent except to the extent required for: 1) Performance of services or work under this Agreement; 2) Compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) Compliance with any court order, other governmental directive, or other compulsory process such as a subpoena; and/or 4) Protection of GSI against claims or liabilities arising from performance of services or work under this agreement. These obligations shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

### SECTION 8: Testing and Observation

Client acknowledges that testing and observation are discrete procedures, are not continuous or exhaustive, and are being conducted to reduce the Client's risks; but, they cannot eliminate them. Therefore, these procedures indicate the conditions only at the locations, depths and times they were performed. But, in performing any of its services, drilling work or CMT Technician Work, GSI will not be responsible for:

- the quality and completeness of the Client or Client's contractor's work, as the case may be,
- Client's or Client's contractor's work adhering to the project documents,
- defects discovered in the Client's or Client's contractor's work,
- supervising or directing the work performed by Client or Client's contractor, and
- Client's or Client's contractor's means and methods.

Likewise, Client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by GSI and that the data, interpretations, and recommendations of GSI are based solely upon the data available to GSI. GSI will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

### SECTION 9: Warranties

GSI warrants that its professional consulting services under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. For its drilling work or CMT Technician Work, GSI warrants they will be performed in a workmanlike manner. No other warranties, express or implied, are made or intended by the proposal for these consulting services or work or by furnishing oral or written reports of the findings made.

### SECTION 10: Limitation of Liability

## GENERAL CONDITIONS

GSI's total aggregate liability to Client and all third parties, including all construction contractors and subcontractors at the site, arising out of its performance or breach of this Agreement shall not exceed \$50,000 or GSI's total fee for the services or work performed under this Agreement, whichever is less. Notwithstanding any other provision of this Agreement to the contrary, GSI shall have no liability to the Client for contingent, consequential or other indirect damages including, without limitation, damages for loss of use, revenue or profit; operating costs and facility downtime; or other similar business interruption losses, however they may be caused. The limitations and exclusions of liability set forth in this Section shall apply regardless of the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of GSI, its employees, consultants or subcontractors.

### SECTION 11: Insurance

GSI represents that it and its staff are protected by worker's compensation insurance. GSI has coverage under public liability and property insurance policies which GSI deems to be adequate. It is the policy of GSI to require certificates of insurance from all consultants or subcontractors employed by GSI. Certificates for all such policies of insurance will be provided to Client upon request in writing. Client also agrees to protect its employees by worker's compensation insurance, including waiving its rights against GSI for any claims for injuries to its employees.

### SECTION 12: Termination and Suspension

This Agreement may be terminated by either party upon 7 days written notice in the event of substantial failure by the other party to perform according to the terms of this Agreement. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. Client may elect to suspend GSI's services or work upon written notice. In the event of termination or suspension, GSI shall be paid for services or work performed to the effective date of termination or suspension plus reasonable termination or suspension expenses. These expenses shall include all direct costs of GSI required to complete analyses and records necessary to complete its files and may also include a report of the services or work performed to the effective date of termination or suspension.

### SECTION 13: Indemnity

Subject to the other terms of this Agreement, GSI agrees to indemnify and hold Client harmless from third party property damages and bodily injury to the extent they are proximately caused by GSI's negligence in performing its services or work.

Since GSI's compensation under this Agreement is not commensurate with the potential risk of injury or loss that may be caused by exposures to hazardous substances or other dangerous substances or conditions, the Client waives any claim against GSI and agrees, to the extent enforceable, to defend, indemnify and save GSI, its employees and consultants or subcontractors harmless from any claim, liability, defense costs, attorney fees or expert witness fees for injuries or losses sustained by any party from such exposures allegedly arising out of GSI's performance of its services or work.

### SECTION 14: Dispute Resolution Procedures

If a dispute arises out of this Agreement that does not involve termination or suspension, the parties will endeavor to settle it by direct discussions between their authorized representatives. If they are not able to resolve the dispute, the parties will endeavor to settle the dispute by mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association. If the dispute cannot be settled by mediation within 60 days of its request, either party may take whatever action allowed by law.

Unless otherwise agreed in writing by the parties, GSI will continue to perform its services or work and Client will continue to make payment per the terms of this Agreement during these dispute proceedings.

### SECTION 15: Safety & Restoration

GSI is solely responsible for the health and safety of its employees, and disclaims any responsibility or authority over the safety of any third parties engaged in the performance of any work for the Client at the site. Therefore, GSI will provide its employees all personal protective clothing and equipment that is required to perform their services or work safely and according to all applicable local, state and federal laws and regulations.

While GSI will take all reasonable precautions to minimize any property damage at the site, Client understands that in the normal course of GSI performing its services or work some property damage may occur. Therefore, Client waives any such claims against GSI.

### SECTION 16: Miscellaneous Provisions

Neither party may assign its interest in this Agreement without the written consent of the other party. This Agreement is for the exclusive benefit of Client and GSI and not for the benefit of any third party except to the extent specifically provided in this Agreement.

These general conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding GSI's services or work. This Agreement represents the entire agreement between the parties and supersedes all prior written or oral negotiations. If any provision of this Agreement is found to be unenforceable, that provision will be deemed stricken and reformed to comply with the law.

If it is necessary for GSI to retain counsel to enforce any provision of these general conditions, Client agrees to pay all attorney's fees and cost incurred by GSI. Client consents to the jurisdiction, law and venue of the location of the site where the services or work are performed or GSI's offices, if the services or work is exclusively performed there.

The parties' rights and remedies regarding this Agreement, whether in contract, tort or otherwise, shall be exclusively those expressly set forth in this Agreement. The waiver of any term or breach of this Agreement by either party will not operate as a subsequent waiver of the same term or breach.