

MEMORANDUM OF AGREEMENT
BETWEEN
DEPARTMENT OF THE ARMY
AND
THE CITY OF KANSAS CITY, MISSOURI

May '89

1. PURPOSE. This Memorandum of Agreement documents the terms of the agreement under which the Department of the Army will perform study, design, and construction work for the City of Kansas City, Missouri (hereafter referred to as the City), comprising all studies, design and construction necessary to integrate certain features of the City's Park Plan into the design of the authorized Brush Creek flood control project and additional studies and design of the City's flood control project upstream and downstream of the Federal project.

2. AUTHORITY.

a. Congress authorized the U.S. Army Corps of Engineers to construct a flood control project on Brush Creek and Tributaries, Missouri and Kansas in Section 401 of the Water Resources Development Act of 1986 (P.L. 99-662).

b. Congress appropriated funds for the U.S. Army Corps of Engineers to proceed with Planning, Engineering and Design of the Brush Creek project in House Joint Resolution 395, approved December 22, 1987 (P.L. 100-202).

c. The U.S. Army Corps of Engineers may perform work for others using contributed funds under the provisions of ER 1140-1-211, Support for Others: Reimbursable Work.

d. Studies and design related to the City's flood control project have been accomplished under a Memorandum of Agreement between the Department of the Army and the City entered December 31, 1986.

e. Congress authorized the U.S. Army Corps of Engineers to design and construct additional elements to flood control project authorized in P.L. 99-662 in Section 208 of the Water Resources Development Act of 1988 (P.L. 100-676).

f. The Department of the Army is authorized to provide engineering and design services to the City under 31 USC 6505 et seq. and has special competence to provide such engineering and design services. The Department of the Army has conducted engineering and design studies of the City's proposed extensions to the Federal project, and substantial data have been developed to support future engineering activities.

3. SCOPE. The City has produced a Park Plan to enhance the recreational and esthetic values of the City's flood control project and the Federal project combined. A new Memorandum of Agreement is needed to address the task of integrating features of the park plan with the features of the flood control project. Park plan features will be studied and integrated with project designs for the Federal project and the City's project upstream and downstream. This Memorandum of Agreement addresses future studies and design of the Total Project including certain features of the Park Plan and preparation of Plans and Specifications and, construction of the City's Project.

4. DEFINITIONS.

a. The term "FEDERAL PROJECT" as used herein means the Brush Creek Flood Control project authorized in the Water Resources Development Act of 1986. The Federal Project is bounded upstream by Roanoke Parkway and downstream by Tracy Avenue (See Tab A).

b. The term "CITY'S PROJECT" as used herein means the extensions of the flood control project upstream and downstream of the Federal Project to include the following portions of Brush Creek: (1) between State Line Road and Roanoke Parkway (upstream of the Federal project), and (2) between Tracy Avenue and Woodland Avenue (downstream of the Federal project) (See Tab A).

c. The term "TOTAL PROJECT" as used herein means the Federal Project combined with the City's Project. The Total project is continuous from State Line Road to Woodland Avenue.

d. The term "PARK PLAN" as used herein means the Parks and Recreational Development Plan developed by the City for the Brush Creek area including features and locations unrelated to flood control.

e. The term "SPECIAL FEATURES" as used herein means those features of the Park Plan that replace features of the Federal Project or that would be incorporated in Plans and Specifications for the Federal project to accomplish construction as part of the Federal construction contract. Other Park Plan features that may be incorporated in the Total Project are not Special Features because they would not be part of a construction contract involving Federal financial participation.

5. UNDERSTANDING.

a. WHEREAS, the Department of the Army and the City intend to enter into an agreement for non-Federal cooperation and cost sharing in the Federal project, as described in Section 221 of the Flood control Act of 1970, 42 USC 1962d-5b.; and

b. WHEREAS, the City, by letter of February 19, 1985, expressed interest in participating in a joint effort with the Department of the Army to provide increased flood protection along reaches of Brush Creek upstream and downstream of the Federal project; and

c. WHEREAS, the City and the Department of the Army entered an agreement on December 31, 1986, under which study and design of certain features of the City's extension of the Federal project would be funded by the City but accomplished by the U.S. Army Corps of Engineers to ensure reasonable and quick results consistent with the Federal project; and

d. WHEREAS, the proposed extensions to the Federal project by the City would be continuous and integrated with the Federal project; and

e. WHEREAS, the City proposes a Parks and Recreational Development Plan (hereafter called Parks Plan) for the Brush Creek area including the location of the Federal project; and

f. WHEREAS, the City by letter dated July 13, 1988, requests that the Federal construction design for the project include certain Special Features outlined in the Parks Plan; and

g. WHEREAS, compatibility among the Special Features, the Federal Project, and the City's Project must be verified during engineering studies and design; and

h. WHEREAS, incorporation of Special Features in the Federal construction contract is advantageous to both parties; and

i. WHEREAS, the City will contribute funds to cover all costs associated with incorporation of the Special Features of its Parks Plan, contemplated initial construction will include retaining walls and a wider and deeper channel than was proposed in the original Federal Flood Control Project. Plans will be developed in sufficient detail to permit the addition to the basic park plan and subsequent construction of four low water dams, lakes, fountain and other park amenities at a later date.

j. NOW, THEREFORE, the Parties agree as follows:

6. OBLIGATIONS OF THE DEPARTMENT OF THE ARMY. The Department of the Army shall:

a. Furnish, subject to the conditions herein, all services, labor, tools, and equipment necessary to accomplish the services as stated in this agreement;

b. Accept from the City annual advance payments for the services; and

c. Provide a final accounting at the end of the work as stated in paragraph 12, Maintenance of Records, and return any unused balance to the City.

7. PAYMENT. The payment to the Department of the Army from the City for the services as stated in this Agreement will be made annually in advance of the performance of the work.

8. PROJECT MANAGEMENT. The Department of the Army will name a Life Cycle Project Manager to the project to define the project in terms of scope, cost, and schedules. The Life Cycle Project Manager will assure the project execution conforms to the agreed upon definition and be the primary interface with the City in project execution. The City will designate an official who will be the liaison between the Department of the Army and the City and be the point of contact for coordinating engineering and design reviews during the studies, construction, and the payment between the City and the Department of the Army.

9. TERMINATION. This memorandum of Agreement may be terminated by either the Department of the Army or the City by providing 30 days written notice. In the event of termination by the City, the City shall be responsible for the costs incurred by the Department of the Army related to this Agreement up to the effective date of termination and for the costs of closing out or transferring any ongoing contracts. The Department of the Army shall retain

contract responsibilities for contracts awarded by the Department of the Army until such contracts have been financially closed out.

10. APPEALS AND CLAIMS. Appeals and claims on contracts awarded by the Department of the Army will be resolved through use of the U.S. Army Corps of Engineers Board of Contract Appeals.

11. DISPUTES. Parties to this agreement must first seek in good faith to resolve any issues through negotiation or through other forms of nonbinding alternative dispute resolution.

12. MAINTENANCE OF RECORDS. The Department of the Army and the City shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Memorandum of Agreement to the extent and in such detail as will properly reflect the total study costs. The Department of the Army and City shall maintain such books, records, documents and other evidence for inspection and audit by authorized representatives of the parties to this Memorandum of Agreement.

13. RELATIONSHIP OF PARTIES. The parties to this agreement act in an independent capacity in the performance of their respective functions under this agreement, and neither party is to be considered the officer, agent, or employee of the other.

14. OFFICIALS NOT TO BENEFIT. No member of or delegate to the Congress, or other elected official, shall be admitted to any share of the agreement, or any benefit that may arise therefrom.

15. SPECIFIC SERVICES TO BE PROVIDED.

a. Tab B, attached hereto and made a part of this Memorandum of Agreement, identifies the services to be provided by the Department of the Army to the City under this Agreement, and to estimated cost of those services except the construction cost estimate which will be added by modification after design is complete. The costs are subject to adjustment to costs actually incurred.

b. Except for the outfalls to the Brush Creek channel, the services provided by the Department of the Army for the City's Project will not include engineering and design of any bridge, street, or utility.

c. Tab B and such modifications as may be mutually agreed to by the Department of the Army and the City shall direct the work to be performed. Modifications proposed by either party shall be in writing. Proposed modifications shall be either accepted or rejected by the other party within 30 days of receipt.

16. EFFECTIVE DATE. This Memorandum of Agreement shall become effective upon signature by the Department of the Army and the City of Kansas City.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed.

U.S. DEPARTMENT OF THE ARMY

CITY OF KANSAS CITY, MISSOURI

BY: *Robert H. Ryan*
ROBERT H. RYAN
Brigadier General, USA
Commanding

BY: *George L. Satterlee*
GEORGE L. SATTERLEE
Director of Public Works
Kansas City, Missouri

DATE: 3 March 1989

DATE: 5-5-89

APPROVED AS TO FORM AND LEGALITY:

BY: *[Signature]*
City Attorney
Kansas City, Missouri

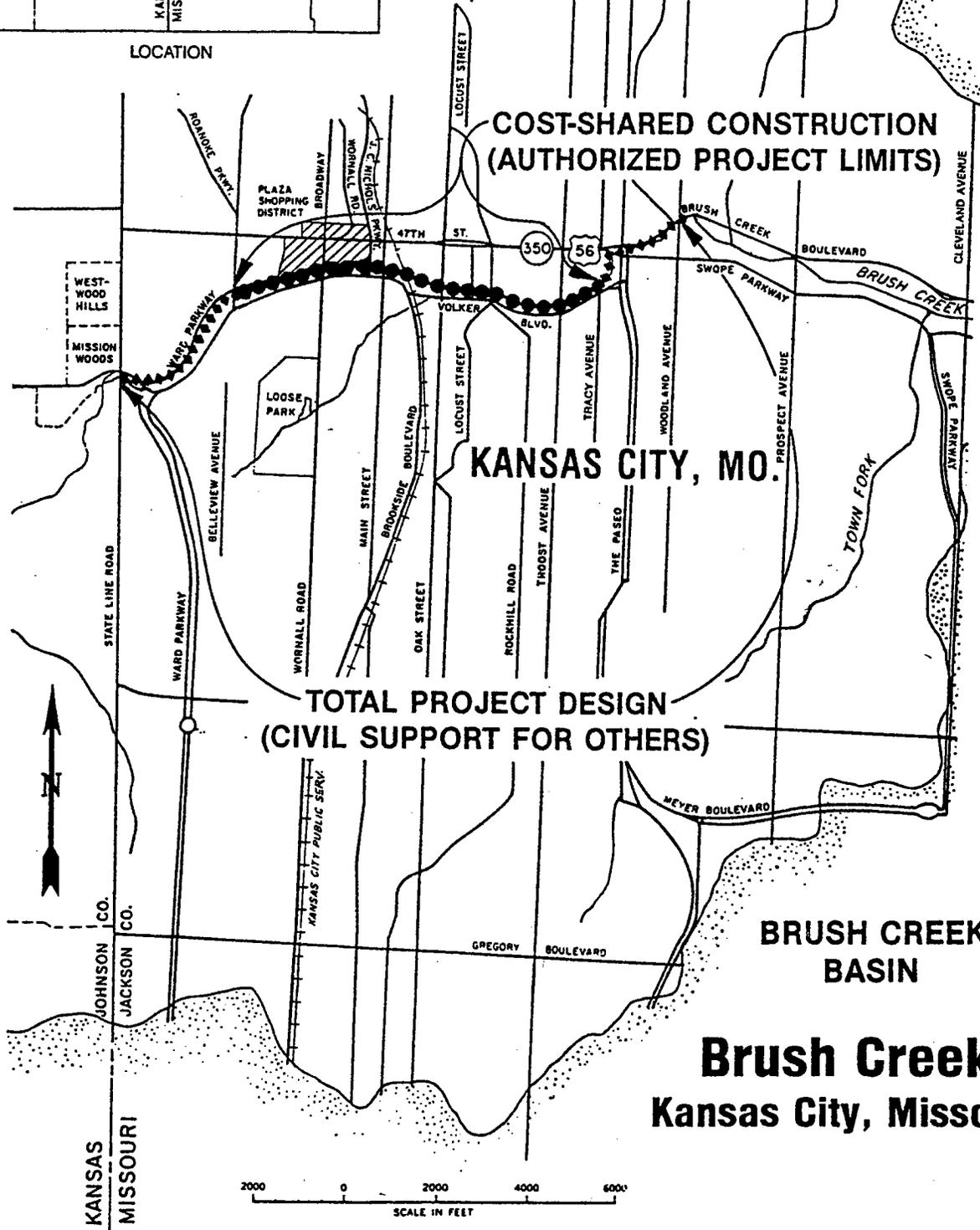
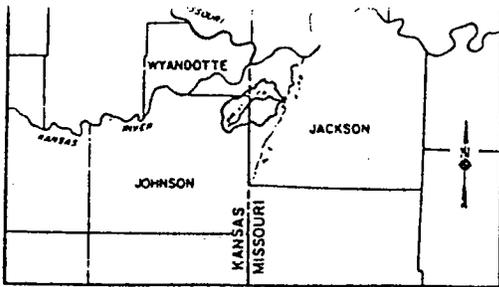
DATE: 5-5-89

ATTEST:

Catherine [Signature]
City Clerk

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which the above amount is chargeable and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the above obligation, and that the account has been encumbered by the estimated amount set forth above for the purpose described hereon.

GLENN E. DECK
DIRECTOR OF FINANCE
BY: *[Signature]*
ASSISTANT DIRECTOR
OF FINANCE
DIRECTOR OF FINANCE



TAB B
SPECIFIC SERVICES TO BE PROVIDED

1. GENERAL: The Army shall perform the work and services required to complete the redesign of the Federal Flood Protection Project to incorporate the city's proposed Park Development Plan and also to complete the engineering design of the city's Upstream and Downstream reaches of its flood protection project incorporating the Park Plan.

2. SPECIFIC SERVICES: The following is an outline of the specific services to be provided by the Government for the city, and the estimated cost for these services:

a. Prepare a General Design Memorandum (GDM) which would provide a detailed documentation of the Hydraulic impact of the Total Park Plan on the Flood Protection Project (Project) and a detailed design of the Modified Project between Roanoke and Tracy Avenues.

b. Complete additional design efforts and prepare Plans and Specifications for construction of the Upstream Reach of the city's Project. Upon completion of this phase, the project would be ready to advertise for construction.

c. Complete additional design efforts and prepare Plans and Specifications for construction of the Downstream Reach of the city's project. Upon completion of this phase, the project would be ready to advertise for construction.

3. SPECIAL CONSIDERATIONS:

a. The Army shall establish the base costs for completing construction of the Federal Flood Protection Project without any Park Plan and it will be documented in a formal report designated as the Authorized Project Report. These costs will identify all engineering and design costs such as preparing the plans and specifications and engineering during constructing, separated from the estimated construction costs. These costs will then be used to establish the pro rate share of funds the Army shall contribute toward design and construction of the Modified Federal Project between Roanoke and Tracy Avenue.

b. The following is a list of the estimated cost to the city for the specific services:

| <u>Feature</u> | <u>Cost</u> <u>(\$1,000)</u> |
|---|---------------------------------|
| 1. General Design Memorandum (GDM) | 650 |
| 2. Design, Plans, and Specifications of the Upstream Reach | 310 |
| 3. Design, Plans, and Specifications of the Downstream Reach | 410 |

| <u>Feature</u> | <u>Cost (\$1,000)</u> |
|----------------------------|---------------------------|
| 4. Project Management | 140 |
| 5. Upstream Construction | * |
| 6. Downstream Construction | <u>*</u> |
| Total | 1,510 |

*Cost will be added by modification after Design is complete.

c. The design work for the city can be further delineated by fiscal year as follows:

| <u>FY</u> | <u>COST</u> |
|----------------|-------------|
| (1 Oct-30 Sep) | (\$1,000) |
| 89 | 400 |
| 90 | 670 |
| 91 | 0 |
| 92 | <u>440</u> |
| | \$1,510 |

These are estimates of design requirements and may vary as schedules and work progresses.