



MEMORANDUM
Public Works Department

TO: City Manager **Memo Number:** 2011-353
SUBJECT: IL92 & I-280 Development **Date:** 12/14/11
Project 2653

The City of Rock Island, the Casino Rock Island and the RiverStone Group are collaborating on the preparation of a large site for commercial development in the northeast corner of the intersection of the Rock Island Parkway with Interstate 280. In order proceed with the development, the site needs to be provided with a city street access, city water and city sanitary sewer.

The Illinois Department of Transportation has granted contingent approval of a new city street connecting the site to the Rock Island Parkway. The construction of the new street will require a modification to a small portion of the levee that provides flood protection to the Big Island area. The flood protection system modifications must be approved by the US Army Corps of Engineers (Corps) and the levee owners; the Village of Milan and the Big Island River Conservancy District.

The Public Works Department solicited the attached engineering services proposal in the amount of \$93,000 from HNTB Corporation for development and submittal of the levee modification permits. HNTB was selected for this work because of its specific experience with the Corps levee modification permitting process.

The RiverStone Group will reimburse the City for one-half the cost of the engineering services contract with HNTB. The City share of the cost will be paid from the General Fund contingency. It is difficult to predict the length of the contract because progress depends heavily upon the times used by others to review documents. However, the agreement assumes that the permit can be ready to submit to the Corps in approximately five months.

The Public Works Department is also soliciting a proposal for the preliminary design of the water and sanitary sewer service to the site and a recommendation for that work will be prepared for the City Council in the next few weeks.

RECOMMENDATION:

The Public Works Department recommends that the City Council approve the proposal for engineering services from HNTB Corporation in the amount of \$93,000 and authorize the City Manager to execute the contract documents.

SUBMITTED BY: Michael J. Kane, P.E., City Engineer
Robert T. Hawes, P.E., Assistant City Manager/Public Works Director

APPROVED: Thomas Thomas, City Manager

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between the City of Rock Island, Illinois (Owner) and HNTB Corporation, for the following reasons:

1. Owner intends to obtain permits for modification of the Milan-Big Island Flood Protection project (the Project); and,
2. Owner requires certain professional engineering services in connection with the Project (the Services); and,
3. HNTB is prepared to provide the Services.

In consideration of the promises contained in this Agreement, Owner and HNTB agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be _____.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Illinois.

ARTICLE 3 - SCOPE OF SERVICES

HNTB shall provide the Services described in Attachment A, Scope of Services.

ARTICLE 4 - SCHEDULE

HNTB shall exercise its reasonable efforts to perform the Services described in Attachment A according to the Schedule set forth in Attachment B.

ARTICLE 5 - COMPENSATION

- A. Owner shall pay HNTB in accordance with Attachment C, Compensation.
- B. Notwithstanding anything to the contrary in this Agreement or Attachment C, should the Services under this Agreement include products or services that are commercially priced by HNTB, such amounts shall be invoiced to Owner at the catalog price(s) offered by HNTB and are not subject to audit on the basis of costs incurred.
- C. Invoices shall be due and payable upon receipt. Owner shall give prompt written notice of any disputed amount and shall pay the remaining amount. Invoice amounts not paid within 30 days after receipt shall accrue interest at the rate of 1.5% per month (or the maximum rate permitted by law, if less), with payments applied first to accrued interest and then to unpaid principal. Owner shall pay HNTB's reasonable attorneys' fees incurred in connection with any litigation instituted to recover invoice amounts.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- A. Owner shall be responsible for all matters described in Attachment D, Owner's Responsibilities.
- B. Owner hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by Owner to HNTB. If Owner does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to HNTB, Owner shall obtain a license or right to use, including the right to sublicense to HNTB. Owner hereby grants HNTB the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. Owner represents that HNTB's use of such documents will not infringe upon any third parties' rights and Owner will indemnify and protect HNTB from any infringement claims arising from HNTB's use of any plans, documents or other materials provided to HNTB in the performance of its Services hereunder.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

- A. Having considered the potential liabilities that may exist during the performance of the Services, the relative benefits and risks of the Project, and HNTB's fee for the Services, and in consideration of the promises contained in this Agreement, Owner and HNTB agree to allocate and limit such liabilities in accordance with this Article.
- B. HNTB agrees to indemnify and hold the Owner harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by

HNTB's negligent acts, errors, or omissions arising out of its performance of the Services. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of HNTB and Owner, they shall be borne by each party in proportion to its own negligence.

C. To the fullest extent permitted by law, the total aggregate liability of HNTB and its subconsultants to Owner for all judgments, losses, damages, and expenses resulting in any way from the performance of the Services shall not exceed the total compensation actually received by HNTB under this Agreement.

D. To the fullest extent permitted by law, HNTB shall not be liable to Owner for any consequential damages resulting in any way from the performance of the Services.

E. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

A. During the performance of the Services under this Agreement, HNTB shall maintain the following insurance:

(1) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

(2) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

(3) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.

(4) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

B. HNTB shall, upon written request, furnish Owner certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to Owner. Owner shall require all Project contractors to include Owner, HNTB, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both Owner and HNTB, each to the same extent.

C. HNTB and Owner waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, and employees for damages covered by property insurance during and after the completion of the Services. If the Services result in a construction phase of the Project, a similar provision shall be incorporated into all construction contracts entered into by Owner and shall protect Owner and HNTB to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

A. HNTB shall not be responsible for (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to HNTB, to fulfill contractual responsibilities to Owner or to comply with federal, state, or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to HNTB in Attachment A, Scope of Services.

B. In the event the Owner requests HNTB to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to HNTB for review at least 15 days prior to the requested date of execution. HNTB shall not be required to execute any certificates or documents that in any way would, in HNTB's sole judgment, (1) increase HNTB's legal or contractual obligations or risks; (2) require knowledge, services or responsibilities beyond the scope of this Agreement; or (3) result in HNTB having to certify, guarantee or warrant the existence of conditions whose existence HNTB cannot ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because HNTB has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, HNTB's opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. HNTB does not guarantee that proposals, bids, or actual Project costs will not vary from HNTB's cost estimates or that actual schedules will not vary from HNTB's projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by HNTB as deliverables pursuant to the Scope of Services are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by HNTB for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to HNTB. Owner shall indemnify and hold harmless HNTB and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle HNTB to additional compensation at rates to be agreed upon by Owner and HNTB.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by HNTB and furnished to Owner as part of the Services shall become the property of Owner; provided, however, that HNTB shall have the unrestricted right to their use. HNTB shall retain its copyright and ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of HNTB.

ARTICLE 14 - TERMINATION AND SUSPENSION

A. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

B. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to HNTB. HNTB shall terminate or suspend performance of the Services on a schedule acceptable to Owner, and Owner shall pay HNTB for all the Services performed plus termination or suspension expenses. Upon restart of suspended Services, an equitable adjustment shall be made to HNTB's compensation and the Project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

A. Neither Owner nor HNTB shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or HNTB under this Agreement. HNTB shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

B. Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 16 - NOTICES

A. Any notice required by this Agreement shall be made in writing to the address specified below:
Owner: Director of Public Works, City of Rock Island, 1309 Mill Street, Rock Island, IL 61201

HNTB: 111 North Canal Street, Suite 1250, Chicago, IL 60606

B. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Owner and HNTB.

ARTICLE 17 - DISPUTES

A. In the event of a dispute between Owner and HNTB arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

B. Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.

C. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

A. HNTB hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations.

B. HNTB affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is HNTB's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of

employment.

C. HNTB further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-100 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

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

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, including Attachments A, B, C, and D incorporated by this reference, represents the entire and integrated agreement between Owner and HNTB. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

Owner and HNTB each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither Owner nor HNTB shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, HNTB may assign its rights to payment without Owner's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent HNTB from engaging independent consultants, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of Owner and HNTB. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and HNTB.

IN WITNESS WHEREOF, Owner and HNTB have executed this Agreement. The individuals signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement and bind the parties for whom they sign.

(Owner)
Signature _____
Name _____
Title _____
Date _____

David P. Crosson
(HNTB)
Signature 
Name DAVID P. CROSSON
Title VICE PRESIDENT
Date 12-13-11

ATTACHMENT A SCOPE OF SERVICES

Permit for Modification of Flood Protection Project City of Rock Island Commercial Development on Big Island, IL

Background

The City of Rock Island, Illinois, plans to develop 80 acres of undeveloped land currently owned by RiverStone, Inc. on the north east quadrant of Interstate-280 and Illinois 92. The land is located within the Big Island River Conservancy District and is protected from flooding via the Milan-Big Island Flood Protection project constructed by the U.S. Army Corps of Engineers in the 1980's.

Missman, Stanley & Associates has prepared conceptual drawings for access to the site from Illinois Highway 92. These drawings were used to obtain Intersection Design Study (IDS) permission from the Illinois DOT.

The project will:

- require relocation of the levee that parallels Ill 92 and I-280
- require a sanitary sewer crossing, and possibly a waterline crossing, through the line of protection.
- place fill within a ponding area designated as a part of the flood protection project

The city desires HNTB to provide consulting services to obtain necessary permits from the Corps of Engineers, the Big Island Conservancy District, and the Village of Milan for modification of the flood protection system. Since a Federally-constructed levee will be modified, the Corps will require a Section 408 permit. It is likely the Corps will determine that this project will be determined to be a "major modification" since the modification involves relocation of the levee and penetration of the levee. As owners of the levee, the Big Island River Conservancy District and the Village of Milan will need to concur in the modifications.

Proposed Work

HNTB will:

- Attend an initial meeting with city of Rock Island staff and RiverStone personnel to discuss background of project and anticipated permit requirements
- Coordinate with Big Island River Conservancy District on requirements for the modifications to the flood protection system
- Conduct H&H review of impact to ponding area and recommend mitigation actions if necessary
- Prepare 50% design drawings for relocation of levee as called for in the IDS concept drawings
- Prepare Section 408 permit package, including associated documentation, for the city to submit to the Corps of Engineers, Big Island River Conservancy District and the Village of Milan as described in Corps Memoranda: CECW-PB Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineer Projects, dated 23 October 2006 and 17 November 2008.

It is anticipated that the Section 408 permit package will require the following:

- Written request for approval of the project modification
- Technical Analysis and Adequacy of Design

- Geotechnical Evaluation
 - Structural
 - Hydraulic and Hydrology
 - Operation and Maintenance Requirements
 - Real Estate Analysis
 - Discussion of Residual Risk
 - Discussion of Executive Order 11988 Considerations
 - Environmental Protection Compliance (list may not be all inclusive)
 - National Environmental Policy Act
 - Endangered Species Act
 - Fish and Wildlife Coordination Act
 - Clean Air Act
 - HTRW
 - National Historic Preservation Act
 - Noise Control Act
 - Agency Technical Review (ATR)
 - Type II Independent External Peer Review (IEPR)
- Continued coordination with the Corps of Engineers (anticipated bi-weekly contacts) during their review of the Section 408 permit

ATTACHMENT B

SCHEDULE

Day 1	Client awards Contract to HNTB
Day 8	Initial meeting with city and RiverStone (1 week)
Day 22	Initial Coordination with Milan and Big Island (2 weeks)
Day 29	Meeting with Corps (1 week)
Day 64 weeks)	Completion of 50% Levee Design and Ponding Area Analysis (5
Day 120	Complete Section 408 permit package (8 weeks)
Day 127	IEPR (1 week)
Day 134	Client completes review of permit package (1 week)
Day 141	Submit Section 408 package to Corps (1 week)
	Continued coordination with Corps during their review of the permit package (anticipated bi-weekly contacts over a 3-month period)

ATTACHMENT C
COMPENSATION
(Lump Sum)

Section 1 - Basis of Compensation

1.1 For performing the Services identified within Attachment A - Scope of Services, the City of Rock Island (*Client*) shall pay HNTB a lump sum amount of \$ 93,000.00 dollars. HNTB may alter the compensation distribution between individual phases, tasks or work assignments to be consistent with the Services actually rendered, within the total lump sum amount.

1.2 The lump sum includes compensation for the Services, subconsultant costs, if any, and appropriate factors for labor, overhead, profit, and Reimbursable Expenses.

1.3 Although HNTB recognizes and accepts the ordinary risks and/or benefits of a lump sum fee structure, the parties agree to negotiate adjustment of the lump sum amount if there has been, or is to be, a material change in the: (a) scope, complexity or character of the Services or the Project; (b) conditions under which the Services are required to be performed; or (c) duration of the Services, if a change in the Schedule warrants such adjustment in accordance with the terms of this Agreement.

Section 2 – Additional Services

2.1 Any services rendered by HNTB beyond those described in Attachment A - Scope of Services shall be compensated on the same basis set forth in Section 1

2.2 HNTB's estimate of the amount that will become payable for Additional Services is only an estimate. If it becomes apparent that this estimated compensation amount will be exceeded, *Client* shall agree in writing to additional compensation exceeding said estimated amount.

Section 3 - Other Payment Provisions

3.1 Progress Payments: *Client* shall make monthly periodic progress payments for Services. The amounts due for Additional Services will also be invoiced monthly. Invoices shall be due and payable upon receipt.

ATTACHMENT D OWNER'S RESPONSIBILITIES

City of Rock Island will:

- Provide conceptual drawings and IDS approval documentation.
- Design the sanitary sewer and waterline crossings and provide drawings that will be included with the permit application.
- Obtain any Section 404 permits in case it is determined by the Corps that there is filling of wetlands involved with this project.
- Coordinate any zoning changes that may be necessary.
- If required by the Corps of Engineers, will arrange for an Independent External Peer Review of the Section 408 permit request package.

Owner shall perform and provide the following in a timely manner so as not to delay the Services of HNTB, and HNTB may rely on the accuracy and completeness of the following:

1. Authorize HNTB in writing to proceed [authorization to proceed is given by the execution of this Agreement].
2. Place at HNTB's disposal all available information pertinent to the Project, including previous reports, drawings, specifications or any other data relative to the design or construction of the Project.
3. Designate in writing a person to act as Owner's representative, such person to have complete authority to transmit instructions, receive information, and interpret and define Owner's decisions with respect to HNTB's Services for the Project.
4. Render decisions and approvals as promptly as necessary to allow for the expeditious performance of HNTB's Services.
5. Obtain, arrange, and pay for all surveys, advertisements for bids, permits, licenses, easements, rights-of-way, and access necessary for the performance of HNTB's Services.
6. Make Owner's facilities available to HNTB as required for performance of the Services under this Agreement, and provide labor and safety equipment required for access.
7. Give prompt written notice to HNTB whenever Owner becomes aware of any development that does or may affect the scope or timing of HNTB's Services, or any defect in the Services of HNTB or its subconsultants.
8. Advise HNTB of the identity and scope of services of any independent consultants retained by Owner to provide services in regard to the Project.

Unless otherwise provided in this Agreement, Owner shall bear all costs incident to compliance with the above items.