



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

April 24, 2014

Regulatory Branch
(NWK-2011-01067)

Mr. David Flick, Principal
Terra Technologies
1920 West 143rd Street, Suite 140
Leawood, Kansas 66224

Dear Mr. Flick:

Permit No. NWK-2011-01067 has been executed. One copy is enclosed for your records and one copy has been retained for our files. When you are ready to begin work, it is necessary that you contact Ms. Kailey Rippen at (816)-389-2123 or via e-mail at kailey.j.rippen@usace.army.mil.

Special Condition "a" of the permit requires the permittee to sign and return the enclosed "Compliance Certification" upon completion of the authorized work and required mitigation.

You are reminded that Special Condition "b" of the permit states that the permittee must complete all elements of the mitigation plan proposed in the September 2013 Mitigation Plan for the Coffee Creek NWK-2011-1067 Mitigation Site, incorporated by reference to this permit. The plan includes the enhancement of 837 linear feet of intermittent tributary with riparian corridor and enhancement/creation of 2.0 acres of wetland and upland mosaics.

Sincerely,

David R. Hibbs
Regulatory Program Manager
Regulatory Branch

Enclosures

Copies Furnished (electronically w/enclosures):

U.S. Environmental Protection Agency,
Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service, Manhattan, Kansas
Kansas Department of Wildlife, Parks and Tourism
Kansas Department of Health and Environment
Kansas Department of Agriculture

DEPARTMENT OF THE ARMY PERMIT

Permittee City of Overland Park, Kansas

Permit No. 2011-1067

Issuing Office U.S. Army Engineer District, Kansas City

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: This permit authorizes the placement of 493 linear feet (LF) of intermittent tributary 1 to Negro Creek and 1,444 LF of Negro Creek into a reinforced concrete box (RCB) culvert. Additionally, this permit authorizes the construction of 83 LF of concrete channel, 71 LF of concrete flume and 80 LF of angular rock fill in Negro Creek and the construction of 64 LF of concrete channel into intermittent tributary 2 to Negro Creek.

Permit Drawing(s): Location map, Project Design map, Plan View map: 3 Sheets dated, 9 April 2014.

Project Location: The project is located in Section 8, Township 14 south, Range 25 east, in Overland Park, Johnson County, Kansas. (USGS Quad: Stilwell.)

(38.85149°, -94.66531°)

Mitigation Site Location: The mitigation site is located in Section 19, Township 14 south, Range 24 east, in Olathe, Johnson County, Kansas. (USGS Quad: Ocheltree.)

(38.82431°, -94.79284°)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

See continuation sheet, pages 4 and 5, of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

☐ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).

☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

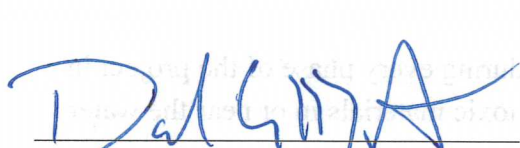
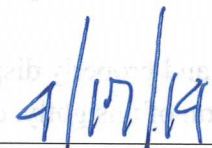
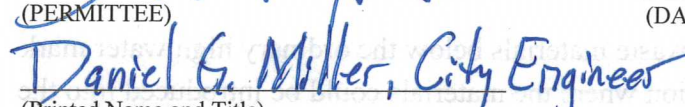
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- You fail to comply with the terms and conditions of this permit.
- The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- Significant new information surfaces which this office did not consider in reaching the original public interest decision.

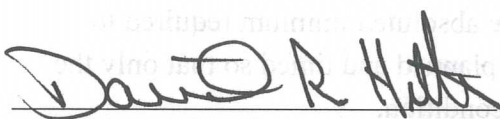
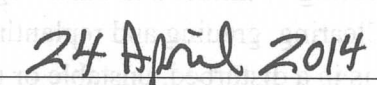
Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


(PERMITTEE) 
(DATE)

(Printed Name and Title)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.


(DISTRICT ENGINEER) 
(DATE)
ANDREW D. SEXTON, COLONEL
BY: David R. Hibbs, Regulatory Program Manager

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFeree)

(DATE)

Special Conditions:

- a. You must sign and return a "Compliance Certification" after you complete the authorized work and any required mitigation. Your signature will certify that you completed the work in accordance with this permit, including general and specific conditions, and that any required mitigation was completed in accordance with the permit conditions.
- b. The permittee must complete all elements of the mitigation plan proposed in the September 2013 Mitigation Plan for the Coffee Creek NWK-2011-1067 Mitigation Site, incorporated by reference to this permit. The plan includes the enhancement of 837 linear feet of intermittent tributary with riparian corridor and enhancement/creation of 2.0 acres of wetland and upland mosaics.
- c. If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.
- d. You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching.
- e. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a nonwetland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.
- f. You must excavate, dredge and/or fill in the watercourse in a manner that will minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.
- g. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body.
- h. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- i. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.
- j. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work. Clearing, grading and replanting should be planned and timed so that only the smallest area necessary is in a disturbed, unstable or unvegetated condition.
- k. Upon completion of earthwork operations, you must seed, replant or otherwise protect from erosion all fills in the water or on shore, and other areas on shore disturbed during construction. If seeding does not successfully vegetate the disturbed areas by the end of the first growing season, you must implement alternate measures, such as placing riprap, slope terracing with untreated railroad ties, gabions or concrete blocks, or additional vegetative plantings, to protect the disturbed areas from further erosion. You must contact the Kansas City District, Regulatory Branch prior to beginning work on any additional erosion control measures so that a determination can be made whether further authorization is required.

1. You must use only graded rock, quarry-run rock and/or clean concrete rubble for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume. If you use concrete rubble, you must break all large slabs to conform to the well graded requirement, and remove all exposed reinforcement rods, trash, asphalt, and other extraneous materials before you place the rubble in the water of the United States.

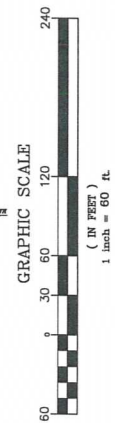


APPLICATION NO. 2011-1067
CITY OF OVERLAND PARK PUBLIC WORKS DEPARTMENT
STORM DRAINAGE IMPROVEMENTS
JOHNSON COUNTY, KANSAS
SHEET 1 OF 3
DATED 09 APRIL 2014

APPLICATION NO. 2011-1067
CITY OF OVERLAND PARK PUBLIC WORKS DEPARTMENT
STORM DRAINAGE IMPROVEMENTS
JOHNSON COUNTY, KANSAS
SHEET 2 OF 3
DATED 09 APRIL 2014



DATED 09 APRIL 2014



Possible Jurisdictional US Waters/Type	General Fill		RCB		Angular Rock		Concrete		Do Not Disturb		Impact Total (Acres)
	Length	Width	Length	Width	Length	Width	Length	Width	Length	Width	
Intermittent #1			493	7							0.08 (acres)
Intermittent #2							64	Verifies	685	10	0.01 (acres)
Perennial #1	534	15	503	15	80	Verifies	71	15	192	15	0.89 (acres)

RCB = Reinforced Concrete Box



October 6, 2013

Ms. Kailey J. Rippen
Regulatory Project Manager
U.S. Army Corps of Engineers
Kansas City District, Regulatory Branch
601 East 12th Street, Room 402
Kansas City, Missouri 64106

Section 401 Water Quality Certification

RE: PN2011-1067: Applicant: City of Overland Park Public Works Department 8500 Santa Fe Drive,
Overland Park, Kansas 66212.

Dear Ms. Rippen:

On October 4, 2013, the Kansas Department of Health and Environment (KDHE) received, from the U.S. Army Corps of Engineers, Kansas City District, a request for Section 401 Water Quality Certification for the proposed Section 404 project as described below.

Description from the U.S. Army Corps of Engineers, Kansas City District/KDHE Joint Public Notice dated June 17, 2012: "Proposed: The City is proposing to construct storm water improvements to reduce the risk of property from overbank flooding. The natural stream channels in the project area are undersized to convey local and upstream runoff. The applicant has proposed to pipe approximately 493 linear feet (LF) of intermittent tributary 1 to Negro Creek and 1,444 LF of Negro Creek. The applicant proposes to construct 83 LF of concrete channel, 71 LF of concrete flume and 80 LF of angular rock fill in Negro Creek and construct 64 LF of concrete channel into intermittent tributary 2 to Negro Creek."

WETLANDS/AQUATIC HABITAT: No wetlands will be impacted by the proposed project located in Section 8, Township 14 South, Range 25 East, in Overland Park, Johnson County, Kansas. USGS Quad: Stilwell Latitude: 38.85149; Longitude: -94.66531

"APPLICANT'S STATEMENT OF AVOIDANCE, MINIMIZATION, AND COMPENSATORY MITIGATION FOR UNAVOIDABLE IMPACTS TO AQUATIC RESOURCES: The applicant proposes to minimize impacts to downstream receiving waters by incorporating on-site best management practices. Unavoidable impacts of the project are proposed to be mitigated through an approved mitigation bank."

The Kansas Department of Health and Environment has reviewed the project and information provided by the U.S. Army Corps of Engineers, Kansas City District and has determined the project has the following water pollutant discharge sources:

1. Construction activities including grading and filling, equipment and materials storage, equipment fueling and maintenance, etc
2. Loss of riparian vegetation for natural filtration of overland flow.

Discharges from these sources if not minimized or otherwise controlled may cause violations of the provisions of Kansas Water Quality Standards found at KAR 28-16-28 et seq. Negro Creek is described in the Kansas Surface Water Register [KAR 28-16-28(g)] as having designated uses, the basis of Kansas water quality standards. Those designated uses are as follows: Primary contact recreation stream segment is by law or written permission of the landowner open to and accessible by the public, expected aquatic life, food procurement, drinking water supply, groundwater recharge, industry supply, irrigation supply, livestock watering. The small tributary to Negro Creek is not identified in the Kansas Surface Water Register [KAR 28-16-28(g)] as having designated uses, however the water quality best management practices included in this certification will also be effective for the small tributary.

KDHE has reviewed the certification request materials and associated documents, in response to the joint public notice of the project and find there is a potential for significant water quality impacts. Therefore, KDHE issues this Section 401 Water Quality Certification subject to the conditions enumerated throughout this letter.

Pursuant to Clean Water Act Section 401 and KAR 28-16-28f (c), the Kansas Department of Health and Environment finds this project, including mitigation, will not result in a violation of Kansas Water Quality Standards and hereby issues a Water Quality Certification for execution and subsequent, subject to the following:

KDHE CONDITIONS

1. A copy of this water quality certification shall be posted on site during construction.
2. The City of Overland Park shall implement good housekeeping practices to assure conditions do not cause:
 - a. Surface waters of the state within and below the project area to offal, grass clippings, discarded building or construction materials, car bodies, tires, wire and other unwanted or discarded materials[KAR 28-16-28e(b)(1 and 3)].
3. The City of Overland Park shall avoid or control the discharge of suspended solids from construction activities and removal of riparian vegetation so that they may not cause:
 - a. Surface waters of the state within and below the project to have floating debris, scum, foam, froth and other floating materials directly or indirectly attributable to the project [KAR 28-16-28e(b)(4)].
 - b. Surface waters of the state within or below the project to have deposits of sludge or fine solids [KAR 28-16-28e(b)(6)].
 - c. Alteration of the natural appearance of surface waters of the state within or below the project by the addition of color-producing or turbidity-producing substances of artificial origin [KAR 28-16-28e(b)(8)].
 - d. Construction activities disturbing one acre or more are subject to the National Pollutant Discharge Elimination System (N.P.D.E.S.) storm water permit requirements of 40 C.F.R. 122.26. The City of Overland Park shall contact Mr.

Larry Hook at 785/296-5549, lhook@kdheks.gov; Bureau of Water - Industrial Programs (BOW IP) for instructions or visit KDHE's website: www.kdheks.gov/stormwater. This permit requires a Stormwater Pollution Prevention Plan (SWP3) be prepared and submitted to KDHE BOW IP.

4. The City of Overland Park shall avoid or control the discharge of *Escherichia-coli* bacteria from the daily wastewater associated with manned operations and maintenance, so that the project does not cause the *Escherichia-coli* bacteria concentration of Negro Creek to exceed a geometric mean of 427 organisms per 100 milliliters during the period of April through October 31 and geometric mean of 3,843 organisms per 100 milliliters during the period of November 1 through March 31.
5. The City of Overland Park shall avoid or control the discharge of nutrients from construction activities, removal of permanent riparian vegetation, so that the project does not cause:
 - a. Any surface waters of the state within and below the project to have floating debris, scum, foam, froth and other floating materials directly or indirectly attributable to the project [KAR 28-16-28e(b)(4)].
 - b. Any surface waters of the state within and below the project to contain taste and odor producing substances at concentrations which interfere with the production of potable water by conventional water treatment processes, impart an unpalatable flavor to edible aquatic or semi-aquatic life or terrestrial wildlife or that result in noticeable odors in the vicinity [KAR 28-16-28e(c)(2)(D)].
 - c. Alteration of the natural appearance of surface waters of the state within or below the project by the addition of color-producing or turbidity-producing substances of artificial origin [KAR 28-16-28e(b)(8)].
 - d. The concentration of dissolved oxygen in Negro Creek to be lower than 5.0 mg/L.
 - e. The introduction of plant nutrients into streams, lakes, or wetlands from artificial sources shall be controlled to prevent the accelerated succession or replacement of aquatic biota or the production of undesirable quantities or kinds of aquatic life [KAR 28-16-28e(c)(2)(A)].
 - f. The introduction of plant nutrients into surface waters designated for primary or secondary contact recreational use shall be controlled to prevent the development of objectionable concentrations of algae or algal by-products or nuisance growths of submersed, floating, or emergent aquatic vegetation [KAR 28-16-28e(c)(7)(A)].
6. The City of Overland Park shall avoid or control the discharge of toxic substances, oil and grease and other fluids from construction activities, so that the project does not cause:

- a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [KAR 28-16-28e(b)(1)].
 - b. Any surface waters of the state within and below the project area to have toxic substances, radioactive isotopes, and infectious microorganisms in concentrations or in combinations that jeopardize the public health or the survival or well-being of livestock, domestic animals, terrestrial wildlife or aquatic or semi-aquatic life [KAR 28-16-28e(b)(2)].
 - c. Any surface waters of the state within and below the project area to have a visible oil and grease film or sheen on the water surface or on submerged substrate or adjoining shore lines, nor have a sludge or emulsion deposit below the water surface of adjoining shorelines [KAR 28-16-28e(b)(5)].
 - d. The pH in Negro Creek to be below 6.5 or above 8.5.
 - e. Concentrations of substances that bio-accumulate in the tissues of edible organisms to exceed a cancer risk level of (10^{-6}) in persons consuming organisms taken from Negro Creek [KAR 28-16-28e(c)(4)(B)].
 - f. The concentration of dissolved oxygen in Negro Creek to be lower than 5.0 mg/L.
 - g. In Negro Creek any substance derived from an artificial source that, alone or in combination with other synthetic or naturally occurring substances, causes toxic, carcinogenic, teratogenic, or mutagenic effects in humans shall be limited to non-harmful concentrations in surface waters [KAR 28-16-28e(c)(3)(C)].
7. The City of Overland Park shall prepare a written project water quality protection plan describing the actions that will be taken to comply with Certification Conditions 2, 3, 4, 5, and 6. This condition may be waived depending on the content of the "stormwater pollution prevention plan" prepared pursuant to condition 3d. It is suggested that the stormwater pollution prevention plan's description of BMPs, include a. through g. of the following. The KDHE BOW Watershed Management Section shall be notified (by email) when the SWP3 is submitted to BOW IP.
- a. **Erosion Control:** Measures to control erosion and minimize silt from leaving the site is required.
 - b. **Solid Waste:** All waste materials produced by the construction project shall be disposed of in accordance with the provisions of the Kansas solid waste management statutes and regulations (K.S.A. 65-3401 and K.A.R. 28-29-1 et. seq.) or applicable local rules. Good house-keeping including personal refuse such as food containers, sacks etc. shall be addressed. Good house- keeping practices described above should also be incorporated into

operations and management of wetlands and other structures once constructed to the extent practicable.

- c. **Fuels: Chemicals and Maintenance Areas:** All fuels and chemicals necessary to complete the project shall be stored in such a manner that accidental spillage is minimized or can be temporarily contained before reaching the water body. Equipment maintenance areas shall also be located in this manner.
 - d. **Spills:** Should a spill of fuel or discharge of pollutants occur, the local emergency staff should be contacted first by dialing 911. The Kansas Department of Health and Environment shall then be notified immediately: (785) 296-1679 (24 hours a day.) These incidences should also be reported to the National Spill Response Center (1-800-424-8802). *Hazardous materials spills and air releases that meet federal reportable quantities must also be reported to Kansas Division of Emergency Management (800-275-0297).* These reporting numbers shall be posted in several locations around the site. A Spill Prevention and Response Plan should be prepared. This should include reportable quantity limits (see www.kansas.gov/kdem).
 - e. **Materials** used to stabilize channel or wetland detention banks shall be free of pollutants which can wash or leach into waters of the state.
 - f. **Floating Debris:** The City of Overland Park shall take appropriate measures to capture any floating debris released to surface waters as a result of this project.
 - g. **Velocity increase shall not cause bank instability and accelerated erosion downstream.**
8. This certification does not relieve the City of Overland Park of the responsibility for any discharge into waters of the state. The Kansas Department of Health and Environment retains the option of revoking or revising this certification any time an inappropriate discharge may occur. As provided by K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines up to \$10,000 per violation with each day the violation occurs constituting a separate violation.
9. If the City of Overland Park believes the conditions of this certification will result in impairment of important social and economic development, the City of Overland Park is advised of the variance provisions of KAR 28-16-28b (jjj) and KAR 28-16-28f (e).

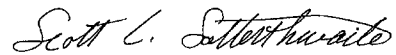
Ms. Rippen (PN2011-1067)

October 6, 2013

Page 6 of 6

Questions concerning this certification may be directed to Mr. Scott Satterthwaite, 785-296-5573 or by email at: ssattert@kdhe.state.ks.us.

Sincerely,

A handwritten signature in cursive script that reads "Scott L. Satterthwaite".

Scott L. Satterthwaite, M.S.

Non-point Source Pollution Control Specialist

Bureau of Water-Watershed Management Section

EC: KDHE- Hook, Rowlands, Stiles
Chad Voigt- DWR

COMPLIANCE CERTIFICATION

Special condition "a" of this permit document requires that you submit a signed certification regarding the completed work and any required mitigation. This certification page satisfies this condition if it is provided to the Kansas City District at the address shown at the bottom of this page upon completion of the project.

APPLICATION NUMBER: NWK-2011-01067

APPLICANT: Mr. Dan Miller
City of Overland Park, Public Works Department
8500 Santa Fe Drive
Overland Park, Kansas 66212

PROJECT LOCATION: The project is located in Section 8, township 14 south, Range 25 east, in Overland Park, Johnson County, Kansas.

- a. I certify that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions.
- b. I certify that any required mitigation was completed in accordance with the permit conditions.
- c. Your signature below, as permittee, indicates that you have completed the authorized project as certified in paragraphs a and b above.

(PERMITTEE)

(DATE)

Return this certification to:

U.S. Army Corps of Engineers
Kansas City District, OD-R
601 East 12th Street, Suite 402
Kansas City, MO 64106-2824