

**AGREEMENT
FOR
PROFESSIONAL CONSULTANT SERVICES
BETWEEN
CITY OF BROKEN ARROW
AND
SW CIVIL SOLUTIONS, LLC**

**FOR
EVENTS PARK – POND & DAM BREACH ANALYSIS
PROJECT #2452030**

1.0 Professional Consulting Firm:

1.1 Name: SW Civil Solutions, LLC
1.2 Telephone No: 918-933-9437
1.3 Address: 1725 W. Austin Street
Broken Arrow, OK 74011

2.0 Project Name/ Location: Events Park – Pond and Dam Breach Analysis

3.0 Statement of Purpose: CONSULTANT understands that the OWNER has retained their professional services in order provide an updated H&H and Dam Breach Analysis Report for submittal to OWRB. These documents shall include, but not be limited to, the following: hydrologic & hydraulic review, dam breach review, and updated report.

4.0 Agreement Summary:

4.1	Agreement Amount:	H&H/Dam Breach Analysis	\$ 6,500.00
		OWRB Submittal	\$ 1,500.00
		TOTAL AGREEMENT AMOUNT	\$ 8,000.00

4.2 Agreement Time: 88 Calendar Days

5.0 Agreement Approved by the Owner on: February 16th, 2024

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EVENTS PARK – POND & DAM BREACH ANALYSIS
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This AGREEMENT, including Attachment A through Attachment E, between the City of Broken Arrow (OWNER) and SW CIVIL SOLUTIONS, LLC (CONSULTANT);

WITNESSETH:

WHEREAS, OWNER intends to perform a review of the existing pond and dam breach analysis performed by Mehlburger Brawley in 2014, and provide an updated report and dam breach analysis (PROJECT) for which, OWNER has requested that CONSULTANT provide certain professional services as required and,

WHEREAS, CONSULTANT is qualified and capable to provide the professional services required;

NOW, therefore, in consideration of the promises contained in this AGREEMENT, OWNER and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

This AGREEMENT shall be effective upon signature of both parties.

ARTICLE 2 - GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Oklahoma and venue for any action concerning this Agreement shall be in the District Court of Tulsa County, Oklahoma.

ARTICLE 3 - SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT shall perform the SERVICES described in Attachment A, Scope of Services. CONSULTANT and OWNER agree CONSULTANT'S work performed under this AGREEMENT are performed as an independent contractor. If construction phase services are included, the CONSULTANT shall be the OWNER'S agent and representative to observe, record and report with respect to all services that are required or authorized by the construction documents. OWNER and CONSULTANT agree that the services to be performed under this Agreement by the CONSULTANT shall be as an independent contractor.

ARTICLE 4 – ORGANIZATION OF SUBMITAL DOCUMENTS

CONSULTANT shall prepare the documents as described in Attachment B as part of this Agreement.

ARTICLE 5 - COMPENSATION

OWNER shall pay CONSULTANT in accordance with Attachment C, Compensation.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment D, OWNER'S Responsibilities and Special Conditions.

ARTICLE 7 - STANDARD OF CARE

CONSULTANT shall perform the SERVICES undertaken in a manner consistent with the prevailing accepted standard for similar services with respect to projects of comparable function and complexity, and with the applicable state laws, as well as the specific codes, regulations, design criteria and construction specifications adopted by the owner and other governing policies published and generally considered authoritative by CONSULTANT'S profession that are in effect at the time of performance of these SERVICES. CONSULTANT is obligated to perform professional services in accordance with the foregoing standard with respect to the laws, codes, regulations, design criteria and construction specifications that are applicable pursuant to this AGREEMENT.

ARTICLE 8 - LIABILITY

8.1 General. Having considered the potential liabilities that may exist during the performance of these SERVICES, the benefits of the PROJECT, and CONSULTANT'S fee for the SERVICES; and in consideration of the promises contained in this AGREEMENT, OWNER and CONSULTANT agree to allocate and limit such liabilities in accordance with Article 10.

8.2 Indemnification. CONSULTANT agrees to defend, indemnify, and hold harmless OWNER, and its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by the negligent or intentional acts, errors, or omissions of CONSULTANT, its agents or employees. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of OWNER and CONSULTANT, or their agents or employees, then they shall be borne by each party in proportion to each entity's own negligence.

8.3 Consequential Damages. OWNER shall not be liable to CONSULTANT for any special, indirect, or consequential damages resulting in any way from the performance of the SERVICES such as, but not limited to, loss of use, loss of revenue, or loss of anticipated profits.

8.4 Survival. Upon completion of all SERVICES, obligations, and duties provided for in this AGREEMENT, or if this AGREEMENT is terminated for any reason, the terms and conditions of this Article 8 shall survive.

ARTICLE 9 - INSURANCE

During the performance of the SERVICES under this AGREEMENT, CONSULTANT shall maintain the following insurance:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate;
- (2) Automobile Liability Insurance, with a combined single limit of not less than \$1,000,000 for each person, not less than \$1,000,000 for each accident and not less than \$1,000,000 for property damage; and
- (3) Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

CONSULTANT shall furnish OWNER certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days written notice to OWNER. All PROJECT sub-consultants shall be required to name OWNER and CONSULTANT as certificate holders on their certificate of insurance for the PROJECT, and shall be required to indemnify OWNER and CONSULTANT to the same extent. CONSULTANT shall be held responsible to submit certificates of insurance for sub-consultants to OWNER prior to the sub-consultant's release to commence work.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the construction of the PROJECT; or (2) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services.

ARTICLE 11 - LIMITATIONS OF RESPONSIBILITIES FOR ACTS OF OTHERS

CONSULTANT shall not at any time supervise, direct, control or have authority over any work performed by any employee, contractor or other agent of OWNER. CONSULTANT shall not be responsible for the acts or omissions of any employee, contractor or other agent associated with the PROJECT except for its own employees, subcontractors and other agents.

ARTICLE 12 - OPINIONS OF COST AND SCHEDULE

Since CONSULTANT 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, CONSULTANT'S opinion of probable costs and of PROJECT schedules shall be made on the basis of experience and qualifications as a professional. CONSULTANT does not guarantee that proposals, bids, or actual PROJECT costs will conform to OWNER'S cost estimates or that actual schedules will conform to OWNER'S projected schedules.

ARTICLE 13 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and details, reports, etc. prepared by CONSULTANT pursuant to this AGREEMENT are instruments of service in respect to the PROJECT. They are not intended or represented to be suitable for reuse by CONSULTANT or others on extensions of the PROJECT or on any other project. Any reuse or adaptation without prior written verification by the OWNER for the specific purpose intended will be at CONSULTANT'S sole risk and without liability or legal exposure to the OWNER. CONSULTANT shall defend, indemnify, and hold harmless the OWNER against all claims, losses, damages, injuries, and expenses, including attorney's fees, arising out of or resulting from such reuse.

ARTICLE 14 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by CONSULTANT as part of the SERVICES shall become the property of OWNER. CONSULTANT shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the SERVICES shall remain the property of CONSULTANT, but shall be provided to the OWNER, at no additional expense to the OWNER.

ARTICLE 15 - TERMINATION

This AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the either party to perform in accordance with the terms of this AGREEMENT. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

OWNER may suspend performance of this AGREEMENT for OWNER'S convenience upon written notice to CONSULTANT. Upon restart, an equitable adjustment may be made to CONSULTANT'S compensation, if the period of suspension has created an economic hardship for the CONSULTANT.

ARTICLE 16 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this AGREEMENT, such circumstances include, but are not

limited to, abnormal weather conditions such as floods, earthquakes, fire; civil disturbances such as war, riots, or other civil epidemic; power outages, strikes, lockouts, work slowdowns, or other labor disturbances; sabotage; judicial restraint, and 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 CONSULTANT under this AGREEMENT.

Should such circumstances occur, the non-performing 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 17 - WAIVER

A waiver by either OWNER or CONSULTANT 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 18 - 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 this AGREEMENT 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 19 - INTEGRATION

This AGREEMENT represents the entire and integrated AGREEMENT between OWNER and CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

To the extent permitted by Article 22, OWNER and CONSULTANT each binds itself and its successors and assigns to the other party to this AGREEMENT.

ARTICLE 21 - ASSIGNMENT

Neither OWNER nor CONSULTANT shall assign its duties under this AGREEMENT without the prior written consent of the other party. 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 CONSULTANT from employing independent sub-consultants, associates, and sub-contractors to assist in the performance of the SERVICES. However, third party entities must comply with Article 9.

ARTICLE 22 - THIRD PARTY RIGHTS

Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

ARTICLE 23 - COMPLETION

CONSULTANT shall complete the services within the time frame outlined on Attachment E, Schedule, subject to conditions which are beyond the control of the CONSULTANT.

ARTICLE 24 - IMMIGRATION COMPLIANCE

24.1 Consultant shall demonstrate that he:

- 24.1.1 Has complied, and shall at all times during the term of this Contract, comply in all respects with all immigration-related laws, statutes, ordinances and regulations including without limitation, the Immigration and Nationality Act, as amended, the Immigration Reform and Control Act of 1986, as amended, and the Oklahoma Taxpayer and Citizen Protection Act of 2007 (Oklahoma HB 1804) and any successor laws, ordinances or regulations (collectively, the "Immigration Laws"); and
- 24.1.2 Has properly maintained, and shall at all times during the term of this Contract, maintain any and all employee records required by the U.S. Department of Homeland Security ("DHS"), including, without limitation, properly completed and maintained Form I-9s for each of the Consultants employees; and
- 24.1.3 Has verified the employment eligibility for all employees hired on or after July 1, 2008 through DHS's E-Verify system, and shall at all times continue to verify the employment eligibility of all employees hired during the term of this Contract; and
- 24.1.4 Has required, and will at all times during the term of this Contract, require any sub-contractor utilized, hired or sub-contracted for by Consultant for the completion or undertaking of any duties, tasks or responsibilities under this Contract, to comply the requirements and obligations imposed by the Immigration Laws and set forth in Paragraph (I), parts (a), (b) and (c), above, with regards to each of the sub-contractor's employees.

24.2 Consultant will indemnify, defend and hold harmless City against any loss, cost, liability, expense (including, without limitation, costs and expenses of litigation and reasonable attorney's fees) demands, claims, actions, causes of action, liabilities, suits, damages, including special and consequential damages that arise from or in connection with, directly or indirectly, Consultants failure, deliberate or negligent, to fulfill its obligations and representations regarding verifying the employment eligibility of its employees and the employees of any subcontractor utilized by Consultant as set forth more fully in Paragraph 24.1 above.

ARTICLE 25 - COMMUNICATIONS

Any communication required by this AGREEMENT shall be made in writing to the address specified below:

OWNER:	City of Broken Arrow 485 N. Poplar Avenue Broken Arrow, OK 74012 Contact: Mr. Kenneth D. Schwab, P.E., S.E., CFM Acting Engineering Division Manager
CONSULTANT:	SW Civil Solutions, LLC 1725 W. Austin St., Broken Arrow, OK 74011 918-933-9437
Contact Name: Sarah A. Walters, P.E., CFM Managing Member	

ATTACHMENT A
TO
AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
SW CIVIL SOLUTIONS, LLC (CONSULTANT)
FOR
EVENTS PARK – POND & DAM BREACH ANALYSIS
PROJECT NO. 2452030

SCOPE OF SERVICES

The following scope of services shall be made a part of the AGREEMENT dated the 3rd day of January, 2024.

1.0 PROJECT UNDERSTANDING

- 1.1 CONSULTANT understands that the OWNER has retained their professional services to provide a review of the existing pond in Events Park and a dam breach analysis performed by Mehlburger Brawley in 2014 and provide an updated report to be submitted to OWRB for Dam Classification. These documents shall include, but not be limited to, the following: Hydrologic and hydraulic analysis and reporting.
- 1.2 The CONSULTANT is required to keep the OWNER apprised of the PROJECT costs and advise the OWNER of necessary cost reduction measures, if required, during the course of the PROJECT.

2.0 PROJECT SCOPE

- 2.1 The project consists of an updated hydrologic & hydraulic analysis of the existing pond and dam breach analysis report for Events Park to the City for review and submittal to OWRB.

3.0 SCOPE OF SERVICES

- 3.1 ADMINISTRATIVE/MANAGERIAL DUTIES: CONSULTANT shall be responsible to perform the following tasks throughout the course of the PROJECT:
 - 3.1.1 Document all meetings, conferences, coordination, phone conversations, etc. and send documentation to OWNER within three (3) calendar days.
 - 3.1.2 Meet with the Owner in a Pre-Design Conference in order to determine design criteria, requirements and codes and other critical design features of the Project such as preferred alignment as well as project schedule and milestone dates.
 - 3.1.3 Provide Owner with a list of all proposed sub-consultants and tasks sub-consultants are responsible to perform.
 - 3.1.4 Meet with the Owner to discuss review comments on each phase of the project, and incorporate appropriate comments into following phase.

- 3.2 HYDROLOGY & HYDRAULICS/DAM BREACH REPORT: Upon receiving the written Notice to Proceed, the Consultant shall perform the following tasks in accordance with the schedule provided in Attachment E:
 - 3.2.1 Provide an updated hydrologic & hydraulic analysis and dam breach analysis report.
- 3.3 OWRB DAM CLASSIFICATION SUBMITTAL: Upon receiving the written Notice to Proceed, CONSULTANT shall perform the following tasks in accordance with the schedule provided in Attachment E:
 - 3.3.1 Address any comments from the City on the Report Submittal and resubmit (if necessary)
 - 3.3.2 Assist City with OWRB Dam Classification Submittal

**ATTACHMENT B
TO
AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
SW CIVIL SOLUTIONS, LLC (CONSULTANT)
FOR
EVENTS PARK – POND & DAM BREACH ANALYSIS
PROJECT NO. 2452030**

ORGANIZATION OF SUBMITTAL DOCUMENTS

The CONSULTANT shall prepare the following documents as described as a part of the AGREEMENT dated the 3rd day of January, 2024.

- 1.0 H&H/DAM BREACH ANALYSIS REPORT:** The CONSULTANT shall submit an updated report with exhibits showing drainage areas, calculations, and inundation areas.
- 2.0 OWRB DAM CLASSIFICATION SUBMITTAL:** The CONSULTANT shall address any comments provided by the City on the updated H&H/Dam Breach Analysis Report and assist with Dam Classification submittals to OWRB.

**ATTACHMENT C
TO
AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
AND
SW CIVIL SOLUTIONS, LLC (CONSULTANT)
FOR
EVENTS PARK – POND & DAM BREACH ANALYSIS
PROJECT NO. 2452030**

COMPENSATION AND ADDITIONAL SERVICES

The following compensation and hourly rates shall apply as described in Attachment D and shall be made a part of the AGREEMENT dated the 3rd day of January, 2024.

1.0 BASIC COMPENSATION

The basic compensation for the Professional Consultant to perform all duties and responsibilities associated with the Scope of Services as described in Attachment A shall be in accordance with the following payment breakdown:

- 1.1 H&H/Dam Breach Analysis Payment: The OWNER shall pay the CONSULTANT a lump sum amount of \$ 6,500.00 for the completion of the Preliminary Phase. This amount includes all labor, material, overhead and profit associated with the Scope of Services.
- 1.2 OWRB SUBMITTAL: The OWNER shall pay the CONSULTANT a lump sum amount of \$1,500.00 for the completion of the Final Phase. This amount includes all labor, material, overhead and profit associated with the Scope of Services.
- 1.3 The OWNER may negotiate other professional services fees with the CONSULTANT at the OWNER'S discretion.

2.0 ADDITIONAL SERVICES BASED ON TIME

Additional services based on time shall be billed at an hourly rate of \$125.00/Hour. This rate includes all salaries, benefits, overhead and other indirect costs including federal, state, and local taxes, plus profit and effective as of January 1, 2024 for architectural / engineering services.

3.0 REPRODUCTION

All charges for reproduction shall be included in Basic Compensation Fee of the Professional Consultant. No separate payment will be made for these expenses.

4.0 MILEAGE

All direct costs shall be included in the Basic Compensation of the Professional Consultant. No separate payment will be made for these expenses.

5.0 DIRECT COSTS

All direct costs shall be included in the Basic Compensation of the Professional Consultant. No separate payment will be made for these expenses.

6.0 ADJUSTMENT CLAUSE

The rates and costs described in this AGREEMENT shall not be revised annually, unless mutually agreed upon by both parties.

**ATTACHMENT D
TO
AGREEMENT FOR CONSULTING SERVICES
BETWEEN
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SW CIVIL SOLUTIONS, LLC (CONSULTANT)
FOR
EVENTS PARK – POND & DAM BREACH ANALYSIS
PROJECT NO. 2452030**

OWNER'S RESPONSIBILITIES AND SPECIAL CONDITIONS

The following list of special OWNER'S responsibilities and contract special conditions shall be made a part of this AGREEMENT dated the 3rd day of January, 2024.

1.0 OWNER'S RESPONSIBILITIES

- 1.1 OWNER shall furnish to CONSULTANT all available information pertinent to the PROJECT including previous reports and any other data relative to design and construction of the PROJECT;
- 1.2 OWNER shall furnish to CONSULTANT all public utility information available relative to the design and construction of the PROJECT.
- 1.3 OWNER shall furnish to CONSULTANT list of codes adopted by the municipality as well as subdivision regulations, design criteria and construction standards and specifications that may be pertinent to the design and construction of the PROJECT;
- 1.4 OWNER shall be responsible for all permit fees and for all reproduction costs associated with the bidding of the final approved construction documents required for the construction of this PROJECT;
- 1.5 OWNER shall be responsible for all land/easement acquisition costs and filing of the required legal documents, if necessary; and
- 1.6 OWNER shall examine all studies, reports, sketches, estimates, specifications, plan drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the SERVICES of the CONSULTANT.

2.0 SPECIAL CONDITIONS

- 2.1 None

**ATTACHMENT E
TO
AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
BETWEEN
CITY OF BROKEN ARROW (OWNER)
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SW CIVIL SOLUTIONS, LLC (CONSULTANT)
FOR
EVENTS PARK – POND & DAM BREACH ANALYSIS
PROJECT NO. 2452030**

PROJECT SCHEDULE

The following schedule shall be made a part of the AGREEMENT dated the 3rd day of January, 2024.

1.0 H&H/DAM BREACH ANALYSIS REPORT SUBMITTAL:

- 2.1 Notice to Proceed: March 4th, 2024
- 2.2 Hydrologic & Hydraulic/Breach Analysis Report: March 4th – March 29th, 2024
- 2.4 Owner Review: April 1 – April 26, 2024

2.0 OWRB DAM CLASSIFICATION SUBMITTAL:

- 2.1 Address Any Comments on the H&H Report & Prepare Documents for OWRB Submittal: April 29 – May 10th, 2024
- 2.2 OWRB Submittal/Owner Review: May 13th – May 31st, 2024