

**CONTRACT**  
**CITY OF BROKEN ARROW**  
**37<sup>TH</sup> STREET REGIONAL DETENTION AREAS – WETLAND & STREAM MITIGATION**  
**PLANNING & PERMITTING**  
**PROFESSIONAL SERVICES AGREEMENT**  
**PROJECT NO. SW1312B**

**1. Architect/Engineer Firm:**

- a. Name: Kleinfelder (“Consultant”)
- b. Telephone No.: (918) 627-6161
- c. Address: 10835 E. Independence St., Suite 102, Tulsa, OK 74116

**2. Project Title and Location:** 37<sup>th</sup> Street Regional Detention Areas - Wetland & Stream Mitigation Planning & Permit

**3. Contract for:** Kleinfelder will provide services to include wetland mitigation planning and Section 404 permitting with the US Army Corp of Engineers (USACE). The scope of work is provided in the Special Provisions attached to this Professional Services Agreement.

**4. Contract Data:**

- a. Contract Amount: Time and Materials not to exceed Twenty Six Thousand Nine Hundred Dollars and no cents (\$26,900).
- b. Liquidated Damages: N/A.
- c. The total time allowed for contract completion is Three hundred and sixty five (365) calendar days, assuming a potential mitigation site can be identified in the first eight (8) weeks of the planning process.

**5.** The City of Broken Arrow (“City”), represented by the City Manager, and the Consultant, identified in paragraph 1 agree to perform this contract in accordance to the Standard of Care and in strict accordance with the clauses, provisions, and the documents identified as follows, all of which are made part of this contract. In the event of conflict, these documents shall be interpreted in the following order:

- a. This Contract
- b. Duly Authorized Change Orders arising out of this Contract
- c. Special Provisions set out in this Contract
- d. General Provisions set out in this Contract
- e. RFP for this Contract
- f. Consultant’s Proposal for this Contract

**6. Contract approved by the City Manager on:** 04-17-18

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The City of Broken Arrow, an Oklahoma Municipal Corporation (City) and Kleinfelder, Inc. with its principal place of business located at 10835 East Independence St., Suite 102, Tulsa, OK 74116, hereby enter into the following Contract:

The City Manager representing the City desires to employ the professional services of the Consultant to provide services to include wetland mitigation planning and Section 404 permitting with the US Army Corp of Engineers (USACE), as outlined in the work plan.

The Consultant shall perform all duties, responsibilities and requirements set out in the Professional Services Contract SW1312B, 37<sup>TH</sup> Street Regional Detention Areas – Wetland & Stream Mitigation Planning & Permitting Special Provisions Attachment, attached hereto and made a part hereof.

These duties, responsibilities and requirements shall begin upon the execution of this Contract and shall be completed within three hundred and sixty five (365) calendar days, assuming there are no delays in receiving information from the City.

It is agreed that the Consultant shall be compensated on a time and materials basis at a not to exceed fee of Twenty Six Thousand Nine Hundred Dollars (\$26,900) for the entire Scope of the Professional Services rendered. The Consultant shall submit invoices, requesting payment for services rendered to the City Engineer monthly, in accordance with the percentage of work completed. The invoices shall be in a format satisfactory to the City Engineer. Payment will be made following the first eligible City Council meeting occurring after the date on the invoice.

The Consultant agrees that this professional service shall be treated as an important service to the City and also agrees to commit the time necessary to perform the professional services in a professional manner.

The parties agree that the Consultant's position is not a traditional City employee position, therefore the foregoing constitutes all the benefits and other forms of compensation due the Consultant, acting in the role of an independent contractor, and therefore ineligible for all other benefits paid to regular full-time City employees. The Consultant agrees to abide by and comply with all of the City's Administrative Policies.

The Consultant shall acquire all insurance policies required for professional liability insurance, auto insurance, and/or health insurance. The Consultant shall be responsible for his own vehicle expenses and any other indirect costs incurred in fulfilling the stated contract requirements.

The Consultant will perform its services in a manner consistent with that level of care and skill ordinarily exercised by other members of Consultant's profession practicing in the same locality, under similar conditions and at the date the services are provided ("Standard of Care"). Consultant makes no representation, guarantee or warranty, express or implied, regarding the services, or any communication (oral or written), certification, report, opinion, or instrument of service provided pursuant to this Agreement.

Consultant agrees to indemnify City from and against all liabilities, losses or damages caused by the negligence or other fault of Consultant and its employees, agents, representatives, sub-contractors, and all others for whom Consultant is legally responsible (the "Consultant Parties"), but only to the proportional extent caused by the negligence or other fault of the Consultant Parties when compared to the negligence or other fault of all other persons and entities. Neither party shall be liable to the other for consequential damages, including but not limited to loss of profits, loss of use, incidental, indirect, collateral, punitive, exemplary, multiple or other special damages.

The foregoing Professional Services Contract supersedes all previous negotiations and may not be modified except by a written order executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives on the dates set forth below.

Approved as to form:

City of Broken Arrow, Oklahoma  
A Municipal Corporation

Gesli Myers  
Assistant City Attorney

By: \_\_\_\_\_  
Michael L. Spurgeon  
City Manager

Attest:

Date \_\_\_\_\_

\_\_\_\_\_  
City Clerk [Seal]

Kleinfelder, Inc.

By: [Signature]  
10835 E. Independence St., Suite 102  
Tulsa, ~~OK~~ 74116

Attest:

[Signature]  
Corporate Secretary (Seal) Deborah Buteau  
Date: 3.26.2018

**VERIFICATIONS**

State of Oklahoma )  
                                  ) ss.  
County of Tulsa    )



Before me, a Notary Public, on this    day of                                    20  , personally appeared                                   , known to me to be the (President, Vice-President, Corporate Officer, Member, Partner or Other:                                    (Please circle or specify)) of Kleinfelder, Inc. and to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

See attached Certificate

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Diego )  
On March 26, 2018 before me, Jill A. Geldmacher, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared John A. Murphy  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jill A. Geldmacher  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Professional Services Agmt Document Date: \_\_\_\_\_  
Number of Pages: 13 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: John A. Murphy  
 Corporate Officer — Title(s): CFO  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: Kleinfelder, Inc.

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**CITY OF BROKEN ARROW  
PROFESSIONAL SERVICES AGREEMENT  
37<sup>TH</sup> STREET REGIONAL DETENTION AREAS – WETLAND & STREAM MITIGATION  
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**SPECIAL PROVISIONS ATTACHMENT**

**SP - 1.0 SCOPE OF THE PROJECT:**

1.1. Kleinfelder will provide services to include wetland mitigation planning and Section 404 permitting with the US Army Corp of Engineers (USACE). The scope of work is provided below and a detailed description of work is included in the attached proposal.

**SP- 2.0 SERVICES OF THE CITY: THE CITY WILL:**

2.1. Furnish to Consultant all data, in its possession, necessary for the service provider to complete the contract requirements.

2.2. Designate in writing a person to act as its representative in respect to the work to be performed under this agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this agreement.

2.3. The City will provide access to the Project Site and Project Site plans that accurately identify the project area and limits of disturbance.

**SP -3.0 SCOPE OF SERVICES: THE CONSULTANT SHALL:**

Kleinfelder proposes to the following tasks. Details of each task can be found under SCOPE OF WORK in the Consultant's proposal attachment:

- Task 1 - City and Agency Coordination
- Task 2 - Plan Review and Impact Calculations
- Task 3 - Pre-Application Meeting with USACE
- Task 4 - Research and Review of Potential Mitigation Sites and Alternatives
- Task 5 - Preparation of Conceptual Mitigation Plan
- Task 6 - Preparation of Section 404 Individual Permit Application Package
- Task 7- Agency Coordination during Permitting and Meeting (if necessary); Project Management.

**Activities not covered by this scope of work:**

The USACE and other regulatory agencies may require, as a condition to their permits, the preparation of additional documents or additional studies. Kleinfelder will provide a cost estimate to cover the additional work, if required, at the request of the City. The proposal and cost estimate does not include the following:

1. The design, planning, implementation, monitoring/reporting, and adaptive management of stream enhancement or restoration mitigation activities.
2. Biological monitoring services that may be required by the USACE or USFWS.
3. Informal/Formal Section 7 Consultation with the USFWS.
4. Protocol surveys for T&E species are not included in this scope but can be provided at the request of the City.
5. Cultural Resources Survey (which may be required for permitting). A cultural survey can be conducted for an additional fee.
6. Informal/Formal Section 106 Consultation with the SHPO.
7. Phase I or II Hazardous Materials assessment of the mitigation site.
8. Additional meetings with regulatory agencies not outlined in the attached proposal.
9. Long term management, stewardship or financing of the mitigation site.
10. Permit application fees, mitigation bank fees, conservation easement fees and/or site acquisition fees.
11. Implementation fees such as construction costs, costs of plants and trees, etc.
12. Mitigation monitoring and reporting.
13. Preparation of detailed mitigation plan that includes grading and construction plans, survey, etc.
14. Hydrology studies or analysis.

**Assumptions:** This proposal and cost estimate are based on the following assumptions:

1. It is assumed that up to four (4) mitigation site alternatives will be reviewed.
2. The USACE will concur with the findings of the previous Wetland and Stream delineation report submitted by Kleinfelder.
3. Kleinfelder is not responsible for project delays due to consultation and coordination with agencies.
4. The City will provide access to the Project Site and Project Site plans that accurately identify the project area and limits of disturbance.
5. It is assumed all necessary engineering information will be provided by the City that is necessary for mitigation planning and permitting. This includes providing cubic yardage of fill, hydrology information, etc.

**ATTACHMENT**

**KLEINFELDER FEE & SCOPE PROPOSAL**





August 28, 2017  
Proposal No.: LOCALMKT.WEOH

Ms. Geneva Nicholls, PE  
Project Engineer  
City of Broken Arrow  
485 North Poplar Avenue  
Broken Arrow, Oklahoma 74013

**RE: Proposal and Cost Estimate for  
Wetland and Stream Mitigation Planning and Permitting  
Project located on 209<sup>th</sup> East Avenue  
between East 51<sup>st</sup> Street and East Albany Street (East 61<sup>st</sup> Street),  
Wagoner County, Oklahoma  
Coordination, Conceptual Mitigation Planning, and Section 404 Permitting**

Dear Ms. Nicholls:

As requested, Kleinfelder has prepared this proposal to provide environmental services to the City of Broken Arrow (Client/City) relating to the above referenced project in Wagoner County, Oklahoma. The following sections provide our understanding of the proposed project, scope of work, fee and schedule.

## **BACKGROUND AND PROJECT UNDERSTANDING**

Kleinfelder conducted a wetland and stream delineation for an approximate 28.4-acre tract of land and documented the findings in a Wetland and Stream Delineation report dated March 8, 2017. Based upon the previous assessment, approximately 1.16 acres of forested wetland, 0.91 acres (1,086 linear feet) of perennial stream (Adams Creek) and 0.05 acres (758 linear feet) of an un-named tributary were identified within the Study Area for the project.

The City prepared a permit for this project, and submitted it to the U.S. Army Corps of Engineers (USACE) (date of submittal unknown). An email from Mr. David Carraway of the USACE was sent to the City on July 19, 2017 requesting that several items in the permit information be addressed. It is our understanding that assistance from Kleinfelder is requested for wetland mitigation planning and Section 404 permitting with the (USACE).

In order to accomplish these goals, Kleinfelder proposes to perform the following tasks which are discussed in detail below. All of the tasks are provided on a time and materials basis. Tasks will be provided until the budget is reached, at which time work will cease until additional budget is secured (if necessary).

## SCOPE OF WORK

### Task 1 – Client and Agency Coordination

Coordination with the City, the USACE, etc. as needed during the mitigation planning and permitting process. Information will be needed from the City regarding alternatives analysis, avoidance and minimization measures that have been considered, and construction information such as cubic yardage of fill materials, etc.

#### ***Deliverables:***

- Updates via email or phone, as warranted.

### Task 2 – Plan Review and Impact Calculations

Kleinfelder will review project information, including the construction plans, and will compare the wetland and stream areas to the construction plans. Calculations will be prepared of the acreage of impacts.

#### ***Deliverables:***

- Acreage calculation of potentially jurisdictional areas that will be impacted by the proposed detention facility.

### Task 3 – Pre-Application Meeting with USACE

This task will involve preparation of meeting materials and a pre-application meeting with the USACE to discuss the site and mitigation alternatives.

#### ***Deliverables:***

- Handouts for the pre-application meeting.

### Task 4 – Research and Review of Potential Mitigation Sites and Alternatives

Research will be conducted of potential mitigation site alternatives. A review will be conducted of available mitigation alternatives such as wetland and stream mitigation banks or In-Lieu Fee Programs, privately owned properties, and properties currently owned by the City. It is anticipated that three or four alternatives will be researched and reviewed.

- Brief report to describe mitigation site alternatives.

### Task 5 – Preparation of Conceptual Mitigation Plan

Once the preferred mitigation option has been selected by the City, Kleinfelder will prepare a Conceptual Compensatory Mitigation Plan that will include the impacts, mitigation ratios, and proposed mitigation site for the impacts. The plan will be conceptual in nature and will not include grading plans, detailed planting drawings, surveys, etc. The budget includes addressing one round of comments from the USACE and/or other agencies.

#### ***Deliverables:***

- Draft Conceptual Compensatory Mitigation (with figures and tables).

Task 6 – Preparation of Section 404 Permit Application Package

Once the Conceptual Compensatory Mitigation Plan has been reviewed and approved, the Permit Application package will be prepared for submittal to the USACE. The type of permit will be determined by the impacts that are calculated as part of Task 2 above.

If an Individual Permit is required, the USACE will prepare a public notification of the permit and undertake interagency coordination with the United States Fish and Wildlife Service, the ODEQ (for the 401 Water Quality Certification), the State Historic Preservation Office (SHPO), and other agencies if necessary.

Task 7 – Agency Coordination During Permitting and Meeting (if necessary); Project Management

Kleinfelder will interact with the USACE and other agencies as requested by the USACE during the permitting process.

**SCHEDULE**

It is anticipated that the mitigation planning and Permitting process would take three to four months to complete for a Nationwide Permit, and approximately twelve to eighteen months to complete if an Individual Permit is required. This timeline assumes that a potential mitigation site can be identified within the first eight weeks of the planning process.

**COSTS**

The anticipated fees for the task outlines above are provided below, and will be conducted on a time and materials basis. Kleinfelder will not exceed these amounts without prior approval from the Client. Once the time and materials budget has been reached, work will stop until additional budget is approved.

The estimated project budget is summarized in the following table.

<b>TABLE 1: PROPOSED PROJECT BUDGET</b>		
Task 1 – Client and Agency Coordination		\$1,200
Task 2 – Plan Review and Impact Calculations		\$1,700
Task 3 – Pre-Application Meeting with USACE		\$1,700
Task 4 – Research and Review of Potential Mitigation Sites and Alternatives		\$6,500
Task 5 – Preparation of Conceptual Mitigation Plan		\$7,000
Task 6 – Preparation of Section 404 Individual Permit Application Package		\$4,200
Task 7 – Agency Coordination During Permitting and Meeting (if necessary); Project Management		\$4,600
<i>All direct costs passed through our accounting system will include a 10% handling fee</i>	<b>TOTAL</b>	<b>\$26,900</b>

## **ASSUMPTIONS**

This proposal and cost estimate are based on the following assumptions:

1. It is assumed that up to four (4) mitigation site alternatives will be reviewed.
2. The USACE will concur with the findings of our previous Wetland and Stream delineation report.
3. Kleinfelder is not responsible for project or permitting delays due to consultation and coordination with the USACE, other agencies and the mitigation site landowner.
4. Kleinfelder is not responsible for scheduled construction delays due to agency review or public comment.
5. Project plans will be provided that clearly show the construction limits, and no substantial design changes will be made that will affect the mitigation planning and permitting process. Any changes to the project plans that would affect the acreage of jurisdictional waterbodies will require additional analysis. If changes occur to the project plans, Kleinfelder will provide a separate scope and cost to perform this analysis at the request of the Client.
6. It is assumed that all necessary engineering information will be provided by the City that is necessary for mitigation planning and permitting. This includes providing cubic yardage of fill, hydrology information, etc.

## **ACTIVITIES OR COSTS NOT COVERED BY THIS SCOPE OF WORK**

The USACE and other regulatory agencies may require, as a condition to their permits, the preparation of additional documents or additional studies. Kleinfelder will provide a cost estimate to cover the additional work, if required, at the request of the Client. Items not contained within this proposal include but are not limited to:

1. The design, planning, implementation, monitoring/reporting, and adaptive management of stream enhancement or restoration mitigation activities.
2. Biological monitoring services that may be required by the USACE or USFWS.
3. Informal/Formal Section 7 Consultation with the USFWS.
4. Protocol surveys for T&E species are not included in this scope but can be provided at the request of the Client. If there are plans to conduct grading activities prior to May of 2018, an American Burying Beetle survey should be conducted prior to the end of the active season which ends in mid-September 2017.
5. Cultural Resources Assessments are not included in this scope but can be provided at the request of the Client.
6. Informal/Formal Section 106 consultation with the SHPO.
7. Phase I or II Hazardous Materials Assessment of the mitigation site.
8. Additional meetings with Regulatory Agencies not outlined in this scope.
9. Long term management, stewardship or financing of the mitigation site.
10. Permit application fees, mitigation bank fees, conservation easement fees, and/or site acquisition fees are not included the fees included in this proposal.

11. Implementation fees such as construction costs, costs of plants and trees, etc. are not included in this proposal.
12. Mitigation monitoring and reporting are not included in the scope of this proposal. These services can be provided for an additional fee.
13. Preparation of detailed mitigation plan that includes grading and construction plans, surveys, etc.
14. Any services not specifically outlined in this proposal.
15. Hydrology studies or analysis. These services can be provided as an additional service if needed.

## **LIMITATIONS**

This report may be used only by the Client and only for the purposes stated within a reasonable time from its issuance. Land or facility use, on- and offsite conditions, regulations, or other factors may change over time, and additional work may be required with the passage of time. Any party other than the client who wishes to use this report shall notify Kleinfelder of such intended use. Based on the intended use of the report, Kleinfelder may require that additional work be performed and that an updated report be issued. Non-compliance with any of these requirements by the client or anyone else will release Kleinfelder from any liability resulting from the use of this report by any unauthorized party and client agrees to defend, indemnify, and hold harmless Kleinfelder from any claim or liability associated with such unauthorized use or non-compliance.

Kleinfelder will perform its services in a manner consistent with the standards of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the services will be performed. No warranty or guarantee, express or implied, is part of the services offered by this proposal.

The safety of our employees is of paramount concern to Kleinfelder. You will be notified if the location of your project represents a potential safety concern to our employees. Unsafe conditions for fieldwork will require a modification of our estimated scope of services and associated fees. We will advise you of the additional costs necessary to mitigate these unanticipated conditions, if applicable.

Kleinfelder offers a range of investigative and engineering services to suit the varying needs of our clients. Although risk can never be eliminated, more detailed and extensive investigations yield more information, which may help the client understand and manage the degree of risk. Since such detailed services involve greater expense, our clients participate in determining the level of service, which provide adequate information for their purposes at an acceptable level of risk.

Acceptance of this proposal will indicate that the Client has reviewed the scope of service and determined that it does not need or want more services than are being proposed at this time. Any exceptions should be noted and may result in a change in fees.

## **CLOSING REMARKS**

It is our understanding that the City will provide a contract for review and execution by Kleinfelder. Kleinfelder will begin work on this project once a mutually agreeable contract is executed and in place. This proposal is valid only if authorized within thirty (30) days from the listed proposal date.

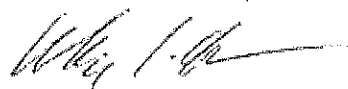
We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you should have any questions or comments regarding this proposal, please contact either of the undersigned.

Sincerely,

**KLEINFELDER, INC.**



Brent H. Neece  
Senior Professional/ Project Manager



Adam Peterson  
Senior Ecologist