

**CONTRACT AMENDMENT
CITY OF BROKEN ARROW
23rd STREET IMPROVEMENTS BETWEEN KENOSHA & HOUSTON STREET
ARCHITECT/ENGINEER CONTRACT NUMBER ST0914**

1. Architect/Engineer Firm:

- a. Name: Infrastructure Solutions Group, LLC dba Mehlburger Brawley
- b. Telephone No.: (918) 664-5500
- c. Address: 3840 S. 103rd E. AVE, SUITE 227, TULSA, OK. 74146

2. Project Title and Location: 23rd Street Widening Between Kenosha and Houston Street, Broken Arrow, Oklahoma – Amendment to add a lane to the Highway 51 Roadway either side of 23rd Street.

3. Contract Amendment for: the Preliminary and Final Design to add an additional lane under the 23rd Street Bridge on Highway 51 to minimize repetitive congestion and construction delays. The work shall consist of survey, preliminary layout, detailed plans and construction documents to be included in the 23rd Street Improvement Plans to ODOT.

4. Contract Data:

- a. Original Contract Amount: Four Hundred Ten Thousand Dollars and no cents (\$410,000)
- b. Amendment No. 1 Amount: Seven Hundred Eighteen Thousand Four Hundred Fifteen Dollars and no cents (\$718,415.00)
- c. Contract Amendment No. 2 Amount: One hundred ten thousand and no cents (\$110,000.00).
- d. Liquidated Damages: For each and every calendar day that the services remain incomplete beyond the time set for completion, the sum of \$50.00.
- e. The total time allowed for Contract Amendment completion is 150 calendar days.
- f. The estimated construction cost for this project is \$17,146,117.00

5. Contract Documents and Priority: The City of Broken Arrow (“City”), represented by the City Manager, and the Architect/ Engineer firm, identified in paragraph 1 (“A/E”) agree to perform this Contract 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 Amendment
- 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. A/E’s Proposal for this Contract
- g. Federal Assurances as included in Exhibit “A” attached.

6. Contract approved by the City Council on: _____

GENERAL CONDITIONS

GC - 1.0. DEFINITIONS

1.1. A/E: The term A/E used in these provisions refers to Infrastructure Solutions Group LLC, dba Mehlburger Brawley, the Architect/ Engineer firm that is a party to the Contract of which these clauses are a part.

1.2. Contract Administrator (CA): The CA for this Contract will deal with the A/E in the day-to-day operations and questions concerning the Contract. This person is empowered to deal with technical aspects of the Contract with the A/E. This person may not enter into and/or terminate the Contract or change orders associated with the Contract nor authorize additional payment, nor change the terms of the Contract without the written approval of the City Manager or the City Council. The CA for the City of Broken Arrow shall be the Director of Engineering and Construction unless otherwise designated in writing.

GC - 2.0. SCOPE

2.1. These "General Conditions" are general in scope. The provisions herein may refer to conditions which will not be encountered in the performance of the work included in this Contract, and which are not applicable thereto. Any requirements, provisions or other stipulations of these Contract documents, which pertain to a nonexistent condition and are not applicable to the work to be performed hereunder, shall have no meaning in this Contract.

2.2. Should anything be omitted from the provisions, which is necessary to a clear understanding of the work, or should it appear that various instructions are in conflict, the contractor shall request written instruction for clarification for such omissions or discrepancies.

GC - 3.0. CONTRACT DOCUMENTS

3.1. It is understood and agreed that the Contract and all documents listed in paragraph 5 of the Contract, together with any and all duly authorized change orders are each and all included in this Contract, incorporated by reference for all purposes, and the work shall be done in full compliance and accord herewith.

GC -4.0. GRATUITIES

4.1. City employees are expressly prohibited from soliciting or accepting and contractors are expressly prohibited from offering any rebate, money, entertainment, gift, or gratuity (excepting mementos and novelties of nominal value) from any person, company, firm, or corporation to which any contract is, or might be awarded. The City will not tolerate circumstances that produce, or reasonably appear to produce, conflict between the personal interest of an employee and the interest of the City. Accordingly, the City may terminate, at no charge to the City, this Contract if it is found that rebates, money, entertainment, gifts or gratuities were offered to a City employee or elected official.

GC - 5.0. SUSPENSION OF WORK

5.1. Time is of the essence in this Contract.

5.2. The CA may issue a written order to the A/E to suspend, delay or interrupt, all or any part of the work of this Contract for the period of time that the CA determines appropriate for the convenience of the City.

5.3. If the performance of all or any part of the work is, for an unreasonable period of time suspended, delayed or interrupted by order of the CA or by the CA's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made in the time of performance and for any increase in the actual cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustments shall be made under this clause for any suspension, delay, or interruption to the extent that performance was suspended, delayed, or interrupted due to the fault or negligence of the A/E, whether or not the CA also ordered a suspension delay and interruption of work, for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract. Such adjustments will be negotiated in good faith. No increase in cost may exceed twenty-five thousand dollars and no cents (\$25,000.00) unless said increase is agreed to in writing by the City Council prior to the time when the costs are incurred.

GC - 6.0. NON-DISCRIMINATION

6.1. The contractor who employs those who furnish labor or materials in the performance of the work to be done under this Contract shall not practice discrimination by reason of race, color, sex, religion or national origin. The A/E who employs those who furnish labor or materials in the performance of this work shall not practice discrimination by reason of disability, if such disabled employees may safely perform the bona fide duties of employment.

6.2. Applicable rules, regulations and relevant orders of the Secretary of Labor shall be followed.

GC - 7.0. LAWS AND ORDINANCES

7.1 During the period of this Contract, the A/E shall be and remain fully informed of all City, County, State, and Federal regulations and laws which in any way limit or control the actions or operations of those engaged upon the work or affecting the materials supplied to or by them. The A/E shall at all times observe and comply with all applicable ordinances, laws, and regulations; and shall protect and indemnify the City and the City's officers and agents against any claims or liability based on any violation of the same. All such applicable laws and ordinances are a part of this Contract as though fully set forth herein.

7.2. This Contract shall be construed under the laws of the State of Oklahoma.

7.3. Exclusive Original Jurisdiction for any action relating to this Contract shall be solely in the state courts of Oklahoma.

GC - 8.0. THE CITY'S RIGHTS IN DRAWINGS AND OTHER DATA

8.1. The City shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this Contract, including the right to use same on any other City design or construction without additional compensation to the A/E. The A/E hereby grants to the City a paid up license to all such works to which the A/E may assert or establish any claim under design pattern or copyright laws. The A/E agrees to furnish the original or copies of all such works on the request of the City for a period of three (3) years after the completion of the Project. Unless otherwise provided in this Contract, the A/E shall have the right to retain copies of all works beyond such period. The City shall not hold the A/E liable for any site adaptation and reuse of the subject plans in which the A/E is not involved. (Note specific language for this clause concerning proprietary information shall be submitted by the A/E and negotiated prior to the execution of this Contract.)

GC - 9.0. DESIGN WITHIN FUNDING LIMITATIONS

9.1. The A/E shall complete the design services required under this Contract so as to permit the award of a construction contract, using the standard City of Broken Arrow procedures for the construction of the facilities designated, at a price that does not exceed the estimated construction contract price set forth in paragraph 4d of the form of the Contract. When this is not possible the A/E shall notify the City to consider appropriate adjustments. When bids or proposals for the construction contract are received that exceed the estimated price, the A/E shall perform such redesign and other services as are necessary to permit the contract award within funding limitation. These additional services shall be performed at no increase in the price of this Contract.

9.2. The A/E will promptly advise the CA if the A/E finds that the Project being designed will exceed, or is likely to exceed, the funding limitations and the A/E is unable to design a usable facility within the funding limitations. Upon receipt of such information, the CA shall review the A/E's revised estimate of construction costs. The City may, if it determines that the estimated construction contract price set forth in this Contract is so low that the award of a construction contract not in excess of such an estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph 4d of the Contract, or the City may adjust such estimated construction contract price or the City may cancel the Project. When bids or proposals are not solicited or are unreasonably delayed, the City shall prepare an estimate of constructing the designs submitted and such estimate shall be used in lieu of bids and proposals to determine compliance with the funding limitation.

GC - 10.0. RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR

10.1. The A/E shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the A/E under this Contract. The A/E shall, without additional compensation, correct or revise any of its errors or deficiencies in its designs, drawing, specifications and other services.

10.2. Neither the City's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the A/E shall be and remain liable to the City in accordance with applicable laws for all damages to the City caused by the A/E's omissions or performance of any of the services furnished under this Contract.

10.3. The rights and the remedies of the City provided under this Contract are in addition to any other rights and remedies provided by law.

10.4. If the A/E is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

GC - 11.0. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

11.1. The design of the architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered within the State of Oklahoma to practice in that particular professional field. Said professionals shall be employees of or subcontractors to the A/E firm.

GC - 12.0. WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS

12.1. The extent and character of the work to be done by the A/E shall be subject to the general oversight, and approval of the CA.

12.2. The City will provide the A/E a notice to proceed for each phase of the Contract. Any work accomplished by the A/E prior to the receipt of the notice to proceed is at the A/E's own risk. Optional portions of this Contract will not start until the City issues a notice to proceed for that option.

GC - 13.0. CONTRACTOR ADMINISTRATION AND COORDINATION REQUIREMENTS

13.1. The A/E shall furnish sufficient technical, supervisory, and administrative personnel at all times to insure prosecution of the work in accordance with the delivery schedule.

13.2. The A/E shall appoint a Project coordinator or manager to serve as a single point of contact and liaison between the A/E and the City for all work required under the Contract. Upon award of the Contract, the A/E shall immediately provide the CA with the name of the individual so designated, in writing. The A/E's Project coordinator or manager will be responsible for the complete coordination of all work developed under the Contract. All work will be accomplished with adequate internal controls and review procedures, designed to eliminate conflicts, errors and omissions, and insure the technical accuracy of all designs, drawings and specifications.

13.3. Professional skills and management practices are required in the performance of this Contract. Accordingly, the A/E shall establish an effective quality control program to provide end products that meet or exceed professional standards and comply with these Contract requirements.

13.4. The A/E shall be required to attend meetings and conferences with the City.

13.4.1. Meetings shall be held promptly when requested by the City or the A/E for discussion of questions and problems relating to the work required under the Contract.

13.4.2. The A/E or its appropriate representative(s) shall attend and participate in all design conferences, including site criteria, pre-design, plan-in-hand, or other conferences pertinent to the work under the Contract as directed by the CA.

13.4.3. The A/E shall promptly provide a record, entitled "Confirmation Notices" that consists of all substantive conferences, meetings, discussion, verbal directions, telephone conversations, etc., participated in by the A/E or his representative(s) on matters relative to the Project and the work. The Confirmation Notices shall be numbered sequentially and shall fully identify participating personnel, subject discussed and any conclusions reached and a reproducible copy shall be forwarded to the CA within seven (7) calendar days after the event that prompted the preparation of the Confirmation Notice. The A/E shall not be required to obtain specific written approval for routine communication of drawings, sketches, photographs, etc., to utilities and other entities with which this type of communication is required for the performance of the Contract.

13.5. The A/E or its representative(s) shall visit the site of the Project as necessary and required during the preparation and accomplishment of the work. All work and data developed under this Contract shall be related to current site conditions and to other proposed work within the specific Project area. The A/E, if required by the CA, shall take photographs or arrange for taking photographs of the site and structures in connection with the Project as necessary to portray the initial conditions affecting the design. One copy each of all photographs taken shall be furnished the CA at the time of the first review of the Project. All travel, costs and expenses incurred by the A/E or his representative(s), including consultants, for such site visits are included in the price of the Contract in paragraph 4.a. of the Contract

13.6. A progress report shall be submitted to the CA once each month during the Contract period. The report shall give the status, on a percentage basis, of the total amount of work completed and other narrative information as required by the City.

13.7. If this Contract results in the City or any of its Trusts or Authorities awarding a Construction Contract, A/E shall provide a Construction Contract in the following format:

13.7.1. The City's Construction Contract format will be supplied to and used for the bid documents. The base construction contract language will be supplied in Microsoft Word format.

13.8. If this Contract is to result in a construction contract to be awarded by an entity other than the City or any of its Trusts, then that entity's format may be used. If the entity does not have a format, then the City's format may be used.

13.9. All drawings shall conform to Oklahoma Department of Transportation Drafting Standards. The City may make modifications to this requirement.

13.10. All reports and bid documents will be reproduced on 8-1/2 x 11 bond paper and bound on the left hand side. Pages will be sequentially numbered, tabs for various sections will be inserted, and a table of contents will be provided at the front of the document. All reports will contain an executive summary immediately following the table of contents. Hard covers are not required however, a cover of heavy stock with the Project identifying information will be placed on the front and a plain heavy stock sheet on the back.

13.11. The A/E will reproduce design documents to comply with the submittal requirements as set out in the Contract Special Provisions

13.12. The A/E shall be required to submit its documents for review by the City.

13.12.1. Generally the A/E shall provide documents for review and the City and its Trusts and or authorities will be allowed a reasonable review period (normally 15 working days), after which a review

meeting will be held and problems resolved. The A/E will prepare a deficiency list, which identifies corrective actions, for approval by the City or its Trusts. Upon receipt and written approval, the A/E will be informed to proceed. Design Projects will normally include three (3) reviews as listed below. The City and its trusts shall review all drafts and approve the final draft of reports prior to publication.

13.12.2. The A/E shall submit its designs for reviews in the following manner:

13.12.2.1. Preliminary/ 35% Design Review: This review will take place when the basic design concept is established, site plan is ready, major engineering calculations are complete, and a plan (layout) drawing is ready for review.

13.12.2.2. Final/90% Design Review: This review will take place when all calculations and drawings are completed and the bid documents (including specifications) are in draft form.

13.12.3. A Contract review is a check to ensure that the comments from the final review are incorporated in the Contract documents.

13.12.4. A reasonable time for review by the city or other entities will not be counted against actual Contract completion time. This time period is defined as the period from the distribution of review plans until the end of the review meeting.

13.13.5. Neither the A/E or its representatives shall release any sketch, photograph, report, or other material of any nature obtained or prepared under this Contract without the specific written approval of the CA; however, the A/E shall have at all times the right to include any sketches, drawings, photographs, or other depictions of this Project in their promotional and marketing materials.

GC - 14.0. CHANGES

14.1. The City Manager may at any time, by prior written order, make changes within the general scope of this Contract and authorize expenditures up to twenty-five thousand dollars (\$25,000) for services performed. Only the City Council may authorize expenditures over twenty-five thousand dollars (\$25,000.00).

14.2. If any change order causes an increase or decrease in the cost or the time required for, performance of any part of the work under this Contract, the CA shall provide the A/E with a written equitable adjustment in the Contract price, the delivery schedule, or both.

14.3. The A/E must assert its request for an adjustment under this clause within 30 days from the date of receipt of the written order; no such requests or claims may be submitted, considered, or paid after the final Contract payment has been accepted.

14.4. Failure to agree on any adjustment shall be a dispute under the disputes clause. However, nothing in this clause shall excuse the A/E from performing as required by this Contract and all written orders, which may be issued by the CA.

14.5. No services for which an additional cost or fee shall be claimed by the A/E or furnished by the A/E without the prior written authorization of the City Manager. Only the City Council may authorize expenditures in excess of twenty-five thousand dollars (\$25,000.00).

GC - 15.0. DISPUTES

15.1. All disputes arising or relating to this Contract shall be resolved under this clause. A dispute may be resolved through mutual agreement between the CA and the A/E, but when agreement is not possible the dispute may be certified as a Disputed Claim and resolved using the following paragraphs.

15.2. "Disputed Claim" as used in this clause, means a written demand by one of the contracting parties seeking the payment of money, the adjustment or interpretation of Contract terms, or other relief arising under or relating to this Contract. A Disputed Claim arising under this Contract may be resolved under this Contract clause, which provides for the relief sought by the claimant.

15.2.1. A written demand by the A/E seeking the payment of money exceeding fifty thousand dollars (\$50,000.00) must also be certified as described below. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a Disputed Claim by complying with the submission and certifying requirements herein in the event of a dispute over liability or amount.

15.3. A certified Disputed Claim by the A/E shall be made in writing and submitted to the City Manager for a written decision. A certified Disputed Claim by the City against the A/E shall be subject to a written decision by the City Manager.

15.4. For all A/E certified Disputed Claims, the City Manager shall, if requested in writing by the A/E, render a decision within 60 days of the request. For A/E certified Disputed Claims over \$50,000.00, the City Manager must, within 60 days, decide the Disputed Claim or notify the A/E of the date by which the decision will be made.

15.5. The City Manager's decision shall be final. The A/E may appeal any unfavorable decision to the City Council. The parties mutually agree to proceed to mediation or arbitration pursuant to this Contract or unless adjudicated in a court of law.

15.6. The A/E shall proceed diligently with performance of the Contract pending final resolution of any request for relief, and comply with the decision of the City Manager.

15.7. The City and A/E may endeavor to resolve Disputed Claims and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

15.8. Nothing contained in this Contract shall bar a party from instituting legal or equitable proceedings.

GC - 16.0. SUBCONTRACTORS, OUTSIDE ASSOCIATES AND CONSULTANTS

16.1. Subcontractors, outside associates or consultants used by the A/E in connection with providing the services in this Contract are limited to individuals or firms that were specifically identified and agreed to, in writing, during contract negotiations. The A/E shall obtain the CA's written consent before making any substitution of these subcontractors, associates or consultants.

GC - 17.0. TERMINATION

17.1. The City may terminate this Contract in whole or in part, for the City's convenience or because of the failure of the A/E to fulfill the Contract obligations, by delivering to the A/E a notice of termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the A/E shall immediately discontinue services as directed, and deliver to the CA all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in progress.

17.2. If the termination is for the convenience of the City the City Manager shall make an equitable adjustment in the Contract price, but shall allow no anticipated profit on unperformed services.

17.3. If the termination is for failure of the A/E to fulfill the Contract obligation, the City may complete the work by contract or otherwise and the A/E shall be liable for any additional cost incurred by the City.

17.4. If, after termination for failure to fulfill Contract obligations, it is determined the A/E had not failed, the rights and remedies of the A/E are limited to and calculated the same as if the termination had been issued for the convenience of the City.

17.5. The rights and remedies of the City provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract. Any waiver of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure to require exact, full, and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Contract or stopping the City from enforcing the full provisions thereof.

GC - 18.0. PAYMENT

18.1. As consideration for performance under this Contract, the A/E shall be paid in accordance with this Contract; said consideration shall constitute complete payment for all services under this Contract, all expenditures, which may be made, and expenses incurred, except as are otherwise expressly provided herein.

18.2. Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the A/E under this Contract. The A/E shall submit monthly statements based upon this estimate of the proportion of the total services actually completed at the time of billing. The CA shall verify, by in-house or on-site inspection, the status of the work prior to each payment.

18.3. Upon approval of the estimate by the CA, payments upon properly executed vouchers shall be made to the A/E, within five working days after the next City Council meeting. Payment may be made in full during any month or months in which the CA determines that performance of the work completed is satisfactory. When the CA determines that progress has been less than satisfactory, the City may withhold up to fifteen

percent (15%) of the current amount otherwise due to the A/E. When the CA determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the City, the City may release the excess amount to the A/E.

18.4. Upon satisfactory completion by the A/E and acceptance by the CA of the work performed by the A/E during each phase of this Contract and in accordance with Special Provisions, the A/E shall be paid the balance of any money due for the work under that phase, including any retained percentages relating to that phase.

18.5. Before settlement upon termination of the Contract, and as a condition precedent thereto, the A/E shall execute and deliver to the CA a release of all claims for compensation against the City or its Authorities arising under or by virtue of work under this Contract, other than any claims that are specifically excepted by the A/E from the operation of the release in amounts stated in the release.

18.6. Notwithstanding any other provision in this Contract, and specifically paragraph 18.3 of this clause, progress payments shall not exceed ninety percent (90%) of the work completed on phases not completed.

18.7. Liquidated Damages: In the event of failure on the part of the A/E to complete the work within the times set out in this Contract, the A/E shall pay to the City of Broken Arrow, for each and every calendar day that the services remain uncompleted beyond the time set for completion, the liquidated damages as stated in paragraph 4b of the form of the Contract. This sum may be deducted from money due or to become due the A/E as compensation under this Contract. Notwithstanding the above, the A/E shall not be responsible to City for any delays caused by the City or Acts of God.

GC - 19.0. ADMINISTRATION AND PAYMENT INFORMATION

19.1. The point of contact for Administration and Technical Information is:

City of Broken Arrow
City Engineer
P.O. Box 610
Broken Arrow, Oklahoma 74013
(918) 259-8414

GC - 20.0. NOTICES

20.1. Any notices or other communications hereunder may be given to the A/E at the address given in the Contract and to the City in care of the CA. Personal delivery or first class mail of any notice, letter, or other communication, shall be deemed sufficient service thereof and the date of said service shall be the date of receipt of such delivery or mailing.

GC - 21.0. THIRD PARTY RIGHTS

21.1. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than City and its Trusts and A/E.

GC - 22.0. INDEPENDENT CONTRACTORS

22.1. This Contract is by and between the City and the A/E and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the City and the A/E nor between the City and any officer, employee, contractor or representative of A/E. No joint employment is intended or created by this Contract for any purpose. A/E agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation of or construction under this Contract. A/E understands and agrees that all persons furnishing services in implementing this Contract are, for purposes of Worker's Compensation liability, employees solely of the A/E and not of the City. The A/E shall bear the sole responsibility and liability for furnishing and shall furnish Workers' Compensation benefits to any person for injuries from or connected with services performed pursuant to this Contract.

GC - 23.0. INDEMNIFICATION

23.1. As partial consideration for being awarded this Contract, the A/E agrees to indemnify, defend (at the City's option), and hold harmless the City, its employees, officials, agents, representatives and volunteers from and against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the negligent acts, omissions, or willful misconduct of A/E, its employees, agents, officers, contractors, or subcontractors, or A/E's performance or failure to perform under the terms and conditions of this Contract. Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of the sole negligence or willful misconduct of the City and in accordance with the terms, conditions and exceptions contained in the Governmental Tort Claims Act. The indemnification and defense obligations set forth herein shall survive the termination of this Contract.

GC - 24.0. INSURANCE

24.1. Without limiting the City's right to indemnification, it is agreed that the A/E and each of its contractors and subcontractors shall obtain insurance in no less than or in terms more restrictive than the following:

24.2. The A/E shall carry and keep in force during this Contract, policies of insurance in minimum amount as set forth below or as required by the laws of the State of Oklahoma, whichever is greater. The A/E shall include the City, its officials, representatives, agents and employees as Additional Insured on all required insurance policies (except for workers compensation and professional liability insurance). The A/E shall require its contractors and subcontractors to list the City as Additional Insured, and shall submit a certificate of insurance to the City's Risk Manager prior to allowing any contractors or subcontractors to commence work. The A/E shall arrange for certificates of insurance and endorsements to be issued to the City by each Insurer, showing that the Additional Insured has been added to the policy. The A/E shall maintain the Insurance set forth in this schedule with insurers that carry a Best's "A" or equivalent rating and which are licensed and admitted to write insurance business in Oklahoma. Prior to commencing any activities under this Contract, the A/E shall deliver to the City insurance certificates confirming the existence of the insurance required by this Contract, and including the applicable clauses described above. With respect to the interests of any Additional Insured's under the insurance policy (ies) required, such insurance shall not be invalidated by any action or inaction of the A/E and shall insure such Additional Insured regardless of any breach or violation by the A/E of any warranty, declaration or condition contained in such insurance. Failure of the A/E to obtain and maintain any required insurance shall not relieve the A/E from any liability hereunder.

24.2.1. Such coverage shall not be canceled or the limits reduced by endorsement without giving the City

at least thirty (30) days prior written notification thereof. The insurers shall have no recourse against the Additional Insured or loss payees for payment of any insurance premium. Any loss payable shall be adjusted with the Named Insured and Additional Insured and paid to the Named Insured and Additional Insured as their interests appear on all required insurance policies other than Worker's Compensation Insurance Coverage and Employees Liability Coverage.

24.2.2. Public Liability, Contractual Liability and Automobile Liability (Owned, Hired, and Non-Owned)

24.2.2.1. Comprehensive or Commercial General Liability Insurance covering all premises and operations including, but not limited to, independent contractors, contractors' risk, and products and completed operations, to be extended by the endorsements listed below. The applicable limit of liability shall not be less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate.

24.2.2.2. Worker's Compensation Insurance Coverage in compliance with the Worker's Compensation Laws of the State of Oklahoma.

24.2.2.3. Employer's Liability Insurance Coverage of not less than One Million Dollars (\$1,000,000.00), each accident, and One Million Dollars (\$1,000,000.00) policy limit for disease.

24.2.2.4. Comprehensive Automobile Liability Insurance applicable to all owned, hired and non-owned vehicles in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

Bodily Injury, each person	\$1,000,000.00
Bodily Injury, each occurrence	\$1,000,000.00
Property Damage, Aggregate	Replacement Value

24.2.3. The A/E will carry and keep in force during this Contract and for a period of not less than one (1) years from and after substantial completion of this Project Professional Liability Insurance in limits of not less than One Million Dollars (\$1,000,000.00) aggregate annual limit of liability. A certificate showing the A/E is carrying the above-described insurance in at least the above-specified minimum amounts shall be furnished to the City prior to the execution of the Contract.

24.3. If the Services result in a construction phase of the Project, similar provisions shall be incorporated into all construction phase contracts entered into by City and shall protect City and A/E to the same extent.

GC - 25.0. LAWS

25.1. This Contract shall be construed under the laws of the State of Oklahoma. This Contract is not a waiver of any permit, inspection or other legal requirements, and does not assure approval based upon any circumstances other than compliance with the law. Developer shall conform to and abide by all Federal, State and local laws and regulations.

GC – 26.0. SEVERABILITY

26.1. If any section, sentence, clause or phrase of this Contract or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Contract or any part thereof.

GC – 27.0. HEADINGS, CAPTIONS EXHIBITS AND SPECIAL PROVISIONS

27.1. The captions in this Contract are for reference only and shall not limit the meaning of the provisions of this Contract. The Exhibits and Special Provisions referred to herein and attached to this Contract are incorporated into this Contract and made a part hereof.

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**CONTRACT AMENDMENT
ARCHITECT/ENGINEER CONTRACT
SPECIAL PROVISIONS ATTACHMENT
23rd STREET WIDENING BETWEEN KENOSHA AND HOUSTON STREET**

**SPECIAL PROVISIONS
PROJECT NO. ST0914**

SP - 1.0. SCOPE OF THE PROJECT

- 1.1. The Project shall consist of the Final Design for the 23rd Street improvements between Kenosha and Houston Street. Project includes widening of 23rd Street to 5 lanes (4 traffic lanes and a center turn lane), replacing the bridge over the Broken Arrow Expressway State Highway 51, sidewalks, and bicycle trail. The intersections at Houston Street, College Street, and Sidney Avenue will also be improved. All design and specifications shall conform to the 2009 edition of the ODOT Standard Specifications as modified by the City of Broken Arrow Codes and Standard Construction Specifications.
- 1.2. This Contract Amendment shall be for the preliminary and final design of an additional lane on the Highway 51, 1,500 feet either side of the 23rd Street Bridge. All work shall be conducted within existing ROW and design and specifications shall conform to the 2009 edition of ODOT Standard Specifications.

SP - 2.0. PROJECT IDENTIFICATION

2.1. Preliminary and Final Design and Document Preparation for the additional work noted by this agreement in Section 3.

SP - 3.0. DELIVERY PAYMENT SCHEDULE

3.1.

<u>Project</u>	<u>Time for Completion</u>	<u>Payment</u>
Preliminary Design and Report	365 Calendar Days	\$410,000.00
Contract Amendment 1 - Final Design & ROW	365 Calendar Days	\$718,415.00
Contract Amendment 2 – Preliminary and Final Design	150 Calendar Days	\$110,000.00
Contract Amendment 3 – Sidney St. Modifications	<u>120</u> Calendar Days	\$27,000.00

TOTAL	1000 Calendar	\$1,265,415.00.00
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3.2. In the event that the construction contractor does not complete all work in the construction contract within the time for completion set out in the construction contract documents, or as may be extended by the City, the A/E shall be paid, in addition to the lump sum, the lump sum of not applicable (N/A) for each and every working day, or portion thereof, beyond the aforesaid time for completion and until such time as all work included in the construction contract is complete. It is mutually agreed that this daily sum will be funded from any liquidated damages which may be assessed against the Contractor and in no event shall exceed the amount of such liquidated damages actually collected by the City. The City may in its sole discretion choose to compromise or waive the amount of liquidated damages due from the construction contractor. **(This section applies only when the A/E is to accomplish construction inspection.)**

SP - 4.0. SERVICES OF THE CITY: THE CITY WILL:

- 4.1. Furnish to A/E all available information pertinent to the Project; include previous reports and any other data relative to design and construction of the project.
- 4.2. Furnish and make all provisions for the A/E to enter upon public or private property as required for the A/E to perform his services under this Contract.
- 4.3. The City Engineer is the City representative in respect to the work to be performed under this Contract and 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 Contract.
- 4.4. Furnish legal assistance as required in the preparation, review and approval of Construction Documents for contracts the City is a party to, not for contracts between the A/E and its subcontractors.
- 4.5. Furnish assistance in locating existing underground City utilities and in expediting their relocation.
- 4.6. Furnish equipment and personnel to excavate utilities for the purpose of location.

SP - 5.0. UTILITY LOCATIONS

5.1. It shall be the responsibility of the A/E to locate all known utility facilities and services within the project right-of-way, with sufficient accuracy so that the project can be designed and constructed without conflict with utility facilities and services. Utility facilities and services to be located are defined as follows:

- 5.1.1. Any pipe, pipeline, storm sewer, or sanitary sewer, above ground or underground, active or abandoned;
- 5.1.2. Any electrical conductor or conduit, above ground or underground, active or abandoned;
- 5.1.3. Any telephone, television, fire alarm, or telegraph conductor or conduit, above ground or underground, active or abandoned.
- 5.1.4. Any appurtenance to the above.

5.2. A utility facility or service shall be considered to be a "known" utility facility or service if after proper investigation and coordination the A/E is advised by the City or any other party of its existence in the general area of the project or if its probable existence would be reasonably apparent from a thorough above ground examination of the project site by the A/E. It is mutually agreed that the following do not fall within the definition of "known utilities and facilities" to be located as set out above:

- 5.2.1. Rock and ledges or boulders;
- 5.2.2. Unknown underground obstructions such as isolated concrete footings, which are not apparent by visual inspection of the ground surface and/or are not detectable by means other than excavation.

5.3. The A/E shall request the excavation exposure of underground utilities and appurtenances as defined above and that the A/E will thereupon determine by topographical surveys the horizontal and vertical location of such utilities within the limits of the project. If a utility will not locate its lines the A/E will notify the City for resolution of the problem.

SP - 6.0. SCOPE OF SERVICES: THE A/E WILL:

6.1. Final Design & ROW Acquisition Document Preparation: This phase shall include necessary project planning and development of a final design to 100% overall design level. Design shall be sufficiently developed to determine any additional Right of Way (ROW) necessary for the project and a detailed construction cost estimate. In addition the A-E will:

6.1.1. Complete and comply with the Federal Assurances included and attached as Exhibit "A" to this contract.

6.1.2. Confer with the City to review project requirements and discuss scheduling of the project.

6.1.3. Establish horizontal and vertical control necessary for the design and construction of the project including the establishment of reference points and benchmarks at each end and at interim points of the project and setting PK nails at each station throughout the project. This contract does include the staking of proposed right-of-way.

6.1.4. Research and field-verify, as able, the horizontal and vertical locations of all utilities within the project boundary, which may be in conflict with the project.

6.1.5. Meet with the City to determine preferred alignment and method of street drainage.

6.1.6. Coordinate with utilities companies concerning upcoming projects and schedules.

6.1.7. Investigate the drainage capacity and possible upsizing of the existing cross road culverts. If bridge-size structures (20 ft or greater of opening) are required, prepare hydraulic modeling for design and prepare hydraulic report for review by City staff.

6.2 Phase I(b)- Right of Way (ROW) Acquisition Document Preparation:

6.2.1 Includes preparation of necessary ROW acquisition documents to the point that the City may begin ROW acquisition. This work will include providing acquisition documents pertaining to all required permanent and temporary easements and takings, exhibits, including descriptions and plats per the City requirements. These ROW services include assistance with uncovering pertinent issues with each parcel, appraisals, and business and residential relocation identification.

6.2.2 All work associated with this item will be performed in accordance with the Uniform Relocation Act.

6.2.3 The scope of work for this phase does not include cost of land or improvements, legal or environmental costs, or demolition and site clearance.

6.3 Final Design

6.3.1 Confer with City regarding details of the final design of the project.

6.3.2. Make additional field surveys necessary for the final design of the project.

6.3.3. Make any additional soils investigations necessary to complete the design phase of the project.

6.3.4. Review previously provided descriptions of required permanent and temporary easements and takings and provide and revised exhibits, including descriptions and plats (per City requirements), to the City. Initial right-of-way width will be a minimum of 60 feet each side of section line. If acquisition becomes difficult or costly, right-of-way will be reduced and descriptions re-written.

6.3.5. Meet with utility companies and City of Broken Arrow departments to arrange for the relocation of utility facilities and services in conflict with the project. Review relocation plans and Contracts submitted by the companies and City of Broken Arrow departments and when complete to the satisfaction of the A/E, submit the relocation plans and agreements to the City for approval and execution. Obtain releases for non-relocated facilities.

6.3.6. Prepare final construction drawings. Prepare detailed Contract drawings in conformance with appropriate drafting standards.

6.3.7. Prepare final quantity estimates.

6.3.8. Prepare final estimate of construction costs.

6.3.9. Prepare original specifications; Contract documents other than drawings and estimates on 8-1/2" x 11" plain white bond paper. All documents shall be suitable for original camera-ready copy.

6.3.10. Prepare Contract proposals in units compatible with Broken Arrow specifications.

6.3.11. When plans are 90% complete, submit six (6) bound sets of 1/2 size drawing prints; six (6) sets of project manuals, updated cost estimate and Final Contract Documents with specifications; and six (6) sets of 1/2 size prints of Final City Utility Relocation Plans, if required, to the City for distribution and review. Additional copies will be furnished as requested.

6.3.12 Final Plans shall include, but are not limited to:

6.3.12.1. Cover Sheet indicating "Final Plans"

6.3.12.2. Pay Quantities and Notes

6.3.12.3. Right-Of-Way Plan (based on Tulsa or Wagoner County Tax Maps).

6.3.12.4. Drainage Areas

6.3.12.5. Drainage Structure Chart

6.3.12.6. Typical Sections

6.3.12.7. Plan and Profiles (including utility locations)

6.3.12.8. Cross Sections (including utility locations)

6.3.12.9. Standard Details

6.3.12.10 Striping and Signage Plan

6.4. Final Construction Manual shall include:

6.4.1. Standard City of Broken Arrow Proposal Information and Documents

- 6.4.2. Standard City of Broken Arrow Contract Bonds and Documents
- 6.4.3. Standard City of Broken Arrow General Conditions
- 6.4.4. Standard City of Broken Arrow Control of Equipment Specifications
- 6.4.5. Special Provisions (modified for the project)
- 6.4.6. Construction Specifications (modified for the project)
- 6.4.7. Materials Specifications (modified for the project)

6.4.7.1. Submit bound sets of ½ size prints, to all private utilities. Digital copies of the plans shall be supplied to the utilities at their request and the City’s approval.

6.4.7.2 Incorporate final review comments and furnish six (6) sets of ½ size drawings, project manuals, updated cost estimate and Contract Documents with specifications to the City for a compliance review. Additional copies will be furnished as requested.

6.4.7.3 Incorporate compliance comments and submit one (1) full size set of reproducible final drawings with A/E seal/signature, project manuals, project cost estimate and Contract Documents with specifications on paper; one (1) set of final drawings on electronic media (AutoCAD 2005 or earlier version); one (1) set of final drawings, with A/E seal/signature, in TIFF (tagged image file format) or PDF (portable document format) on electronic media; one (1) master set of project manuals, updated cost estimate and Contract Documents with final specifications on electronic media, in Word format.

6.4.7.4. Assist the City as required in advertising for bids for construction.

6.4.7.5. Conduct a pre-bid conference. (if required)

6.4.7.6. Serve as the technical question point of contact during bidding and if required, prepare any necessary addenda to clarify Contract documents.

6.4.7.7. Document all meetings, conferences, coordination, etc. and send documentation to the City within three calendar days.

6.5. Record Drawing Production:

6.5.1. Attend meeting with the City at which City provides markups and explains changes made to the project during construction of the project.

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6.5.2. Incorporate changes into the drawings and produce Record Drawings.

6.5.3. Submit one (1) set of full size reproducible Record Drawings; one (1) set of Record Drawings in AutoCAD 2005 format (or earlier version) and one (1) set of Record Drawings in TIFF (tagged image file format) or PDF (portable document format) on electronic media.

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

City Attorney

By: _____
Michael Spurgeon, City Manager

Attest:

City Clerk

Date 7/14/17

Infrastructure Solutions Group, LLC
dba Mehlburger Brawley

By: Dale Burke
Dale Burke, President

VERIFICATIONS

State of Oklahoma)
) ss.
County of Tulsa)

Before me, a Notary Public, on this 14th day of July, 2017, personally appeared Dale Burke, known to me to be the President, Vice-President, Corporate Officer, Member, Partner or Other: _____ (Please circle or specify) of Infrastructure Solutions Group LLC, dba Mehlburger Brawley. 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:

7/1/18

Kayla Satoris
Notary Public



