

**AMENDMENT NO. 1
TO
PROFESSIONAL SERVICES AGREEMENT
CITY OF BROKEN ARROW
37TH STREET REGIONAL DETENTION AREAS – WETLAND & STREAM
MITIGATION PLANNING & PERMITTING
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: 37th Street Regional Detention Areas - Wetland & Stream Mitigation Planning & Permit.

3. Amendment for: Additional wetland & stream delineation and report for the regional detention areas 5, 6 and 7 off 37th St from Omaha St to Albany St.

4. Contract Data:

- a. Contract Amount: \$26,900.00 (Time and Materials not to Exceed)
- b. Amendment Amount: \$ 6,900.00 (Lump Sum)
- c. Total Not to Exceed: \$33,800.00
- d. Liquidated Damages: N/A.
- e. The total time allowed for contract completion (including Amendment No. 1) is 30 calendar days.

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 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 Amendment to this Contract
- c. Consultant's Letter Agreement

6. Amendment approved by the City Manager on: _____

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed by their duly authorized officers or representatives on the dates set forth below.

Approved as to form:

Gesli Myers
Assistant City Attorney

City of Broken Arrow, Oklahoma
A Municipal Corporation

By: _____
Michael L. Spurgeon
City Manager

Attest:

Date _____

City Clerk [Seal]

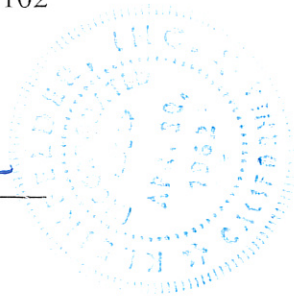
Kleinfelder, Inc.

By: _____
10835 E. Independence St., Suite 102
Tulsa, OK 74116

Attest:

Wendy Butler
Corporate Secretary (Seal)

Date: November 7, 2008



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

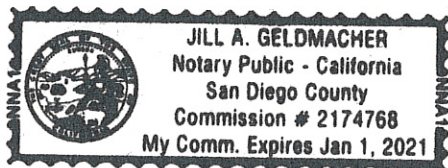
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of San Diego)
 On November 7, 2018 before me, Jill A. Geldmacher, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared John A. Murphy and Deborah Butera
 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: Amendment No 1 Document Date: _____
 Number of Pages: 2 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: Deborah Butera
☒ Corporate Officer — Title(s): Secretary
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: Kleinfelder, Inc

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CONSULTANT’S LETTER AGREEMENT**



September 6, 2018

Ms. Geneva Nicholls
Engineering & Construction Project Engineer
City of Broken Arrow
485 North Poplar Avenue
Broken Arrow, OK 74013

DELIVERED ELECTRONICALLY TO: GNICHOLLS@BROKENARROWOK.GOV

**RE: Proposal for Additional Wetland Delineation
Broken Arrow 37th Street Regional Detention Areas
Broken Arrow, Oklahoma**

Dear Ms. Nicholls:

Kleinfelder, Inc. (Kleinfelder) is pleased to present this proposal to provide environmental services concerning the proposed above-referenced project in Broken Arrow, Oklahoma. The majority of the project lies west of South 37th Street (South 209th East Avenue), between East Omaha Street South (East 51st Street South) and East Albany Street (East 61st Street South) (Project Site).

The following sections provide our understanding of the proposed project, scope of work, fee and schedule. It is our understanding that the City of Broken Arrow will provide a contract or contract amendment for the additional work contained in this proposal.

BACKGROUND and PROJECT UNDERSTANDING

Based on a meeting held on August 28, 2018, additional areas will require an evaluation of potentially jurisdictional Waters of the United States (WOTUS), including wetlands. This work is being conducted in an effort to avoid and minimize impacts to wetlands and streams during construction of the 37th Street Detention Area. The three additional areas to be surveyed comprise approximately 14 acres of land (see attached figure). Prior to the commencement of work, we request that the City of Broken Arrow representatives review the attached figure and confirm the boundaries of the additional areas that require delineation.

To conduct this delineation, Kleinfelder will use procedures presented in the 1987 Corps Wetland Delineation Manual and the 2010 Midwest Regional Supplement. The wetland delineation mapping and report would be in support of a potential Section 404 Permit application, if needed. Potentially jurisdictional waterbodies at the Project Site will be delineated using global positioning systems (GPS). To accomplish these goals, Kleinfelder proposes to perform the tasks listed below.

SCOPE OF WORK

Wetland Delineation

Kleinfelder proposes to review desktop resources and conduct fieldwork to assess the Project

Site for the presence of potentially jurisdictional Waters as defined in Section 404 of the Clean Water Act and Section 10 of the Rivers & Harbors Act. Our evaluation will be designed to identify the presence or absence of Waters of the U.S. and provide a routine delineation per the 1987 USACE Wetland Delineation Manual and the 2010 Midwest Regional Supplement. Our methods will include:

1. A review of the Natural Resources Conservation Service (NRCS) soil survey maps to evaluate the potential for hydric soils at or near these locations.
2. A review of the U.S. Geological Survey (USGS) 7.5-minute Topographic Maps and aerial photographs to evaluate the potential for waters of the U.S.
3. A review of the USFWS National Wetland Inventory (NWI) maps for this site.
4. Fieldwork will be conducted including the on-site collection of photographs, soils data, plant species, and hydrology observations. Wetland determination data forms will be used to log field collected data.
5. Wetland/water locations will be recorded using GPS technology. A figure of potentially jurisdictional wetlands on an aerial background will be prepared. Shapefiles will be provided upon request.

One option is to delineate wetlands and streams for all three additional parcels (Areas 5, 6, and 7). A second option is to delineate wetlands and streams for additional areas 6 and 7.

Preparation of Delineation Report

Kleinfelder will prepare a Wetland Delineation Report documenting our findings that will be suitable for submission to the USACE in support of a jurisdictional determination, and permit applications, if needed. The reports will include Project Site location, and summary of information to include vegetation, soils, hydrology, and general habitat types of the Project Site. Additionally, maps, figures, photographs, and data forms will be provided that include the Project Site location and potentially jurisdictional waterbody boundaries. A figure will be provided that shows potentially jurisdictional wetlands and streams on an aerial photograph.

One report will be prepared for the new areas to be delineated (all three additional areas or only areas 6 and 7 – see above).

Schedule

It is anticipated that fieldwork and report preparation will be completed within 30 days of receiving the executed contract/Notice to Proceed, assuming there are no delays related to weather, site access or information from the client.

COSTS

Kleinfelder proposes to perform the scope of work outlined in this proposal **on a Fixed Fee** basis for the cost shown below. Invoices would be submitted monthly on a percent complete basis. Kleinfelder will not exceed this amount without prior approval from the Client. For work not estimated in the previous tasks, or outside the above-described scope, Kleinfelder will provide an estimate of the additional fees required and will submit to the Client for approval. The estimated project budget is summarized in the following table.

PROJECT BUDGET SUMMARY	
Wetland and Stream Delineation & Preparation of Report (Areas 5, 6, and 7) (*)	\$6,900
Wetland and Stream Delineation & Preparation of Report (Areas 6 and 7 only) (*)	\$5,900

(*) See attached figure showing proposed additional wetland and stream delineation areas.

ASSUMPTIONS

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

1. Kleinfelder is not responsible for project delays due to consultation and coordination with agencies.
2. The Client will provide access to the Project Site and Project Site plans that accurately identify the project area and limits of disturbance.
3. The potentially jurisdictional wetland and stream areas will be mapped using GPS technology in the field. It is assumed that flagging of the wetland areas will not be required. GIS will be used by Kleinfelder staff to produce figures and graphics that display the potentially jurisdictional areas.
4. One final report will be issued upon completion of the work.
5. Meetings/conference calls not already described herein and revisions to the report not described herein, including responses to comments by regulatory agencies, are not included in our fee.

ACTIVITIES NOT COVERED BY THIS SCOPE OF WORK

The following services or activities are not included in the scope of work for the work included in the proposal. Please note that some of the items listed below may be included in a separate scope of work and contract with the City of Broken Arrow.

1. Preparation of a CWA Section 404 permit application (general, nationwide or individual).
2. Preparation of a preliminary or final compensatory mitigation and monitoring plan.
3. Biological monitoring services that may be required by the USACE or USFWS.
4. Evaluation of wetland functions and value assessment.
5. No species-specific protocol surveys will be conducted.
6. Informal/Formal Section 7 Consultation with the USFWS.
7. Protocol surveys for T&E species are not included in this scope but can be provided at the request of the Client.
8. Cultural Resources Survey (which may be required for permitting). A cultural survey can be conducted for an additional fee.
9. Meetings with Regulatory Agencies or other coordination not outlined in this scope.

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 standard 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 provides 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 of Broken Arrow will provide a contract or a contract amendment for the additional scope of work included in this proposal. The scope of work, schedule, and costs are valid only if authorized within **thirty (30)** business day from the listed proposal date.

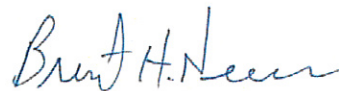
We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you should have any questions or comments regarding this proposal, please contact either of the undersigned.

Sincerely,

KLEINFELDER, INC.



Jack Finley, PWS
Project Professional



Brent H. Neece
Project Manager

Enc: Figure: Proposed Additional Delineation Areas