

AGREEMENT FOR PROFESSIONAL SERVICES – ENVIRONMENTAL/CULTURAL RESOURCES
Revisions to a National Register of Historic Places Nomination for the Town of Warren, Cochise County, Arizona

This Agreement is entered into on November 19, 2024 by and between WestLand Resources, Inc., an Arizona corporation, d/b/a WestLand Engineering & Environmental Services Consultant”) and City of Bisbee with office in Bisbee, Arizona (“Client”), and authorizes the Consultant to complete the work outlined in the Scope of Services attached as Exhibit A (the “Agreement”).

I. SCOPE OF SERVICES AND FEE

Consultant will provide the Scope of Services as described in Exhibit A. Services not set forth in Exhibit A of this Agreement are specifically excluded from the scope of the Consultant’s services. The Consultant assumes no responsibility to perform any services not specifically listed in Exhibit A.

The fee for services is described in Exhibit A, and summarized as follows:

1. Consultant will provide the scope of services described in Exhibit A on a time and materials not to exceed (NTE) basis, in accordance with the rates provided in Exhibit A, with an NTE amount of \$20,000.

Client shall pay the cost of all reimbursable expenses incurred or to be incurred by WestLand directly or indirectly in connection with the project for transportation and subsistence incidental thereto; obtaining bids or proposals from contractors; toll telephone calls; and all charges to be paid or incurred for fees, permits, bond premiums, title company charges, delivery charges, prints and reproduction of reports, drawings, and specifications, and all other charges and expenses not specifiable or itemized in this paragraph, but which are reasonably necessary to the proper completion of the services hereby covered. In the event such reimbursable expenses are paid directly by WestLand, then Client shall be obligated to reimburse WestLand and such charges and expenses shall be invoiced by WestLand to Client at direct cost, plus fifteen percent (15%) for handling.

If agreed to in writing by the Client and the Consultant, the Consultant shall provide Additional Services, which shall be appended hereto. Additional Services are not included as part of the Scope of Services and shall be paid for by the Client in addition to payment for the services listed in Exhibit A. Payment for Additional Services will be made by the Client, in accordance with the Consultant’s prevailing fee schedule, or as agreed to by the Client and the Consultant.

II. TERMS AND CONDITIONS

1. **Entire Agreement.** This Agreement is the entire Agreement between the Client and the Consultant. There are no understandings or agreements except as expressly stated herein. This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Both parties have participated fully in the preparation and revision of this Agreement, and each party and its counsel have reviewed the final document as appropriate. Any rule of contract construction regarding ambiguities being construed against the drafting party shall not apply in the interpreting of this Agreement, including any Section Headings or Captions.
2. **Contract Amendments.** No conditions or representation altering, detracting from or adding to the terms hereof shall be valid unless printed or written hereon or evidenced in writing by either party to this Agreement and accepted in writing by the other.
3. **Access Authorization.** The Client shall provide for the Consultant’s right to enter the property owned by the Client and/or others necessary for the Consultant to provide the services. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (for the purpose of this Section 3, collectively, “Consultant”) against any damages, liabilities or costs arising or allegedly arising from procedures associated with testing or investigative activities or connected in any way with the discovery of hazardous materials or suspected hazardous materials on the property.
4. **Information Provided by Others.** The Client shall furnish, at the Client’s expense, all information, requirements, reports, data, utility mapping and field markings, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, utility mapping and field markings, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Consultant shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client’s consultants and contractors or others.
5. **Ownership of Instruments of Service.** The Consultant shall retain ownership of all reports, drawings, plans, specifications, electronic files, field data, notes and other documents and instruments prepared by the Consultant as instruments of service. The Consultant shall retain all common law, statutory and other reserved rights, including, without limitation, all copyrights thereto.

6. **Delays.** The Client agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by the Consultant to perform its services in an orderly and efficient manner, the Consultant shall be entitled to a reasonable adjustment in schedule and compensation.
7. **Limitation of Liability.** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, agents, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officers, directors, partners, employees, agents, shareholders, owners and subconsultants shall not exceed \$50,000, or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
8. **Billing and Payment Terms.**

Payment Due. Invoices shall be submitted by the Consultant monthly and are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date.

Interest. If payment in full is not received by the Consultant within 30 calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

Collection Costs. If the Client fails to make payments when due and the Consultant incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to the Consultant. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable Consultant staff costs at standard billing rates for the Consultant's time spent in efforts to collect. This obligation of the Client to pay the Consultant's collection costs shall survive the term of this Agreement or any earlier termination by either party.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Consultant may suspend performance of services. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, the Consultant shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance.

Termination of Services. If the Client fails to make payment to the Consultant in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the Consultant.

9. **Disputed Invoices.** If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within (10) calendar days of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement.
10. **Severability.** If any term or provision of this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, such holding shall be applied only to the provision so held, and the remainder of this Agreement shall remain in full force and effect.
11. **Dispute Resolution.**

Mediation. In an effort to resolve any conflicts that arise under a task order/notice to proceed or following completion of the services, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the services shall be submitted to nonbinding mediation.

The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

Jury Waiver. The parties hereby voluntarily, knowingly, irrevocably and unconditionally waive any right to have a jury participate in resolving any dispute (whether based upon contract, tort or otherwise) between or among the parties arising out of or in any way related to this Agreement or any relationship between the parties. This provision is a material inducement to each party to enter into this Agreement.

Prevailing Party Attorney's Fees. Should litigation be necessary to enforce any term or provision of this Agreement, then all litigation and collection expenses, including, without limitation, witness fees, court costs, attorneys' fees and other expenses, whether taxable or not, shall be paid to the prevailing party.

12. **Assignment.** Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Consultant as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.
13. **Governing Law and Jurisdiction.** The Client and the Consultant agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Arizona without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions. It is further agreed that any legal action between the Client and the Consultant arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Pima County, Arizona.
14. **Termination.** In the event of termination of this Agreement by either party, the Client shall within fourteen (14) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement. The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than fourteen (14) calendar days written notice. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:
 - Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
 - Assignment of this Agreement or transfer of the project by either party to any other entity without the prior written consent of the other party;
 - Suspension of the project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
 - Material changes in the conditions under which this Agreement was entered into, the task order/notice to proceed, services or the nature of the project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of termination, the Client shall pay the Consultant, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

15. **Waiver of Rights.** Any waiver at any time by either party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with the Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.
16. **Notices.** All notices, requests, demands or other communications required or permitted to be given hereunder to Consultant shall be delivered to WestLand Resources, Inc., 4001 E. Paradise Falls Drive, Tucson, Arizona 85712. All notices, requests, demands or other communications required or permitted to be given hereunder to the Client shall be delivered to the address set forth below the Client's signature on this Agreement.
17. **Consequential Damages.** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the applicable project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the applicable project.
18. **Mutual Indemnification.** The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors, and employees (for the purpose of this Section 18, collectively, "Client") against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent

caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees, agents, and subconsultants (for the purpose of this Section 18, collectively, "Consultant") against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the applicable project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

19. **Code Compliance.** The Consultant shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of the execution of this Agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the Consultant to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.
20. **Standard of Care.** In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.
21. **Corporate Protection.** It is intended by the parties to this Agreement that the Consultant's services in connection with the applicable project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with the project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant, an Arizona corporation, and not against any of the Consultant's individual employees, officers or directors.
22. **Certifications, Guarantees, and Warranties.** The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing any such certification.
23. **Jobsite Safety.** Neither the professional activities of the Consultant, nor the presence of the Consultant or its employees and subconsultants at a construction/project site, shall impose any duty on the Consultant, nor relieve the contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies.

The Client agrees that the contractor shall be solely responsible for jobsite and worker safety and warrants that this intent shall be carried out in the Client's contract with the contractor. The Client also agrees that the contractor shall defend and indemnify the Client, the Consultant and the Consultant's subconsultants. The Client also agrees that the Client, the Consultant and the Consultant's subconsultants shall be named as additional insureds under the Contractor's policies of general liability insurance. Client further agrees to indemnify and hold harmless Consultant from any and all liability, real or alleged, in connection with the performance of work on the applicable project.

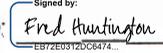
The Consultant and its personnel have no authority to exercise any control over any construction contractor or its employees, or the Client or its employees, in connection with their work or any health or safety programs or procedures.

24. **Shoring for Cultural Resources Testing.** The scope of work assumes trenching to a maximum of 5 feet deep with vertical side walls and will not require the use of shoring, sloping, or benching of trench side walls to allow for safe inspection of the exposed soil profile. The scope of work is based on Consultant's current understanding that the soils in the project area are suitable for this method of testing. If soil conditions are discovered by Consultant during excavation that at Consultant's sole discretion believes cannot be safely excavated, the additional cost of stabilizing the trenches in a manner that allows for the completion of testing will be used. Any additional cost incurred will be charged on a time and materials basis at Consultant's standard billing rates.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their officers designated below as of the date written on the first page of this Agreement.

City of Bisbee
 Signature: 
 Name: Ken Budge
 Title: Mayor
 Street Address: 76 Eric street
 City, State, Zip: Bisbee, AZ 85603
 Telephone: (520) 432-6012
 Email Address: ACoronado@bisbeeaz.gov
 Date: November 19, 2024

**WestLand Resources, Inc., an Arizona corporation,
d/b/a WestLand Engineering & Environmental
Services**

Signed by:
 Signature: 
 Name: Fred Huntington
 Title: Senior Technical Advisor
 Street Address: 4001 E. Paradise Falls Drive
 City, State, Zip: Tucson, Arizona 85712
 Telephone: (520) 206-9585
 Email Address: fhuntington@westlandresources.com
 Date: 12/2/2024



4001 E. Paradise Falls Drive
Tucson, AZ 85712
520-206-9585

November 8, 2024

EXHIBIT A

Ms. Melissa Hartman
City Planner/Housing
City of Bisbee
76 Erie Street,
Bisbee, AZ 85603

**RE: REVISIONS TO A NATIONAL REGISTER OF HISTORIC PLACES NOMINATION FOR THE TOWN OF WARREN, COCHISE COUNTY ARIZONA
WESTLAND PROPOSAL NO. P12047**

Dear Ms. Hartman:

WestLand Engineering & Environmental Services (WestLand) is pleased to provide this fee proposal to assist the City of Bisbee (City) with preparation of Phase II of a two-phase project to help complete revisions and inventory to the existing National Register of Historic Places (NRHP) nomination for the Warren Historic District. The intent of the work under this cost proposal is for WestLand to assist the City with updating and completing nomination revisions in support of a complete nomination package for listing the Warren Townsite in the NRHP.

SCOPE OF WORK

NRHP Nomination Revisions

Phase I tasks that will support Phase II have recently been completed and encompassed updates to 614 forms, new forms for 167 properties, data tables, and a draft district map. Phase II will entail addressing the comments received by the Keeper's Office in Washington, D.C. This will include addressing all comments, updating map figures, updating property counts and numbers of contributing and non-contributing resources, and updating data tables.

A copy of the revised document will be provided to the City for review and approval before it is submitted to the Arizona State Historic Preservation Office (SHPO). Upon any requested revisions by the City, WestLand will address comments within two weeks of receipt, after which time the document will be submitted to the Arizona SHPO to be agendaized at the next available HSRC review meeting. WestLand project manager Jennifer Levstik will attend the HSRC meeting to answer any questions the review committee may have and will complete any revisions to the document before it is formally submitted to the NRHP for approval and eventual listing.

SCHEDULE AND COST ESTIMATE

The project is expected to last up to 8 to 12 months from Notice-to-Proceed (NTP) to final approval by the Arizona SHPO. We will schedule the edits to the document to ensure that the revised nomination package can be reviewed by the HSRC no later than the winter of 2025 within the timeframe allowed by the 2024 grant cycle.

The cost of the project set-up and client communications, archival research, providing a revised nomination package, and attendance at one HSRC meeting can be completed for a not-to-exceed cost of **\$20,000** and will be billed per task as completed. Expenses include vehicle costs for WestLand staff attending the HSRC Meeting in Phoenix. This cost is based on the following assumptions:

- The fee assumes no public meetings or presentations beyond a one-hour kick-off with community members and city staff.
- Fee assumes no travel beyond attendance at the HSRC meeting is necessary.
- A word version of the NRHP nomination will be provided to WestLand.
- Any communications with the previous author to get original files will be conducted by City staff.
- All submittals will be digital, and no hard copies are necessary.
- Funds can be moved between tasks, but the total will not be exceeded without prior written approval.

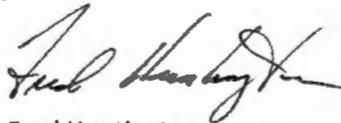
Should the project require additional public meetings, a modification to the scope may be necessary.

If you have any questions or require additional information, please do not hesitate to contact Jennifer Levstik at 520-307-1851.

Respectfully,
WestLand Engineering & Environmental Services



Jennifer Levstik
Principal Investigator Consultant



Fred Huntington
Senior Technical Advisor



**Arizona SHPO Certified Local Government
HISTORIC PRESERVATION FUND PASS-THROUGH APPLICATION
Federal Fiscal Year 2024
DUE DATE: May 31, 2024**



1. **PROJECT NAME:** National Registration of Historic Places nomination for the town of Warren, Cochise County Arizona

2. **TYPE OF PROJECT:**

- | | | |
|---|---|---|
| <input type="checkbox"/> Context Development | <input type="checkbox"/> Ordinance Development | <input type="checkbox"/> Ordinance Update |
| <input type="checkbox"/> Survey and Inventory | <input type="checkbox"/> Nomination Preparation | <input checked="" type="checkbox"/> Nomination Update |
| <input type="checkbox"/> Preservation Plan | <input type="checkbox"/> Historic District Plan | <input type="checkbox"/> Design Guidelines |
| <input type="checkbox"/> Design Guidelines Update | <input type="checkbox"/> Local Workshop | |

3. **PROJECT DESCRIPTION:** (Attach a detailed project description, product to be submitted, specific scope items, anticipated schedule for completion including major milestones and the proposed line-item budget).

4. **RELATIONSHIP OF THE PROJECT TO THE CLGs WORK PRIORITIES:** (Attach statement.)

5. **RELATIONSHIP OF THE PROJECT TO THE GOALS OUTLINED IN THE ARIZONA HISTORIC PRESERVATION PLAN UPDATE 2019** (Attach a statement regarding the applicable goals, which begin on page 31 of the plan.)

6. **FUNDING:**

ESTIMATED TOTAL PROJECT COST:	\$ <u>34,800</u>	_____	_____ %
GRANT FUNDS REQUESTED:	\$ <u>20,000</u>	_____	_____ %
MATCHING FUNDS:	\$ <u>14,800</u>	_____	_____ %

SOURCE OF MATCHING FUNDS*: _____

*(Please include a letter of intent for the matching funds by the above listed party.)

7. **PROJECT COORDINATOR/CONTACT:**

NAME: Melissa Hartman TITLE: City Planner

ADDRESS: 478 N Dart Road Bisbee, AZ. 85603

EMAIL ADDRESS: Mhartman@BisbeeAZ.gov TELEPHONE: 520-335-5693

8. **MONTHS TO COMPLETE THE PROJECT:** September 30, 2025 (Project Period Ends on September 30, 2025)

9. **PROJECT PARTNERS:** Westland Engineering, Jennifer Westlake Consultant

10. Sign the Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying (DI-2010) on page 3 and return it with this form and the required attachments.

**Return this form and attachments by May 31, 2024 to: Jessica LaPota, Grants Coordinator
jlapota@azstateparks.gov
Cell phone: 602-364-0059**