

CITY OF BISBEE

CONTRACT FOR ENGINEERING SERVICES

CDBG Contract #129-17

Tin Town Drainage and Street Improvements

THIS CONTRACT, entered into this 6th day of June, 2017, by and between the City of Bisbee, County of Cochise, State of Arizona (hereinafter called the "CITY") acting herein by the Mayor hereunto duly authorized, and Miller Engineers, Inc. D.B.A. Souder, Miller & Associates (hereinafter called the "ENGINEER") acting herein by Karl Tonander P.G., P.E., Senior Vice President, hereunto authorized.

WHEREAS, The CITY is in need of certain engineering services for the purpose of:

designing and construction oversight of drainage and street improvements within the Tin Town neighborhood, located off of Hwy 92 in Bisbee. The design is to include a detention basin and street drainage improvements and paving to capture the surface flow and redirect it to a future community garden;

and desires to implement such improvements under the general direction of the State of Arizona Department of Housing (ADOH), Community Development Block Grant Program, (CDBG) Contract #129-17, and with the assistance of the South Eastern Arizona Governments Organization (SEAGO) who have been retained by the City to provide grant administration services;

and WHEREAS the ENGINEER has offered to perform the proposed work in accordance with the terms of this contract;

NOW, THEREFORE the parties do mutually agree as follows:

1. Scope of Services

The ENGINEER promises and agrees to perform the work, as described in the Request for Qualification (RFQ) for drainage and street improvements in Tin Town, in a good and competent manner as specifically indicated in the ENGINEER's Submittal dated April 20, 2017 and to the satisfaction of the CITY or its designees. The terms of the above-referenced RFQ and the ENGINEER's Submittal are incorporated herein by reference and such items are made a part of this contract as if the same were set forth fully herein. In the event any incorporated term may be inconsistent with an express term of this contract, the latter shall prevail.

The ENGINEER agrees to provide all of the materials and services required by this contract, in a complete and acceptable form, as customarily provided according to professional standards for completion of the contract which shall include:

- Provide all professional and basic services necessary to produce all preliminary and final design plans and specifications in accordance with all City, county, state and federal codes and requirements.

- Provide engineering and/or surveying as required.
- With the assistance of SEAGO, assemble bid package including all ADOH requirements and bid specifications, submit the package for review by the CITY and ADOH and make any necessary revisions to the bid package prior to publication of the notice to bid. Assist in preparation of the notice to bid.
- Produce and provide copies of the bid package and plans for distribution during the bidding process as needed.
- Maintain and update as needed the bid register during bidding process.
- Respond to contractors' questions during the bid period.
- With the assistance of SEAGO, prepare construction contracts and documents for review and approval of the CITY prior to execution.
- Attend pre-bid and pre-construction conferences in Bisbee.
- Interpret plans and specifications for contractor.
- Review and make recommendation to the CITY concerning contractor progress payments.
- Review and process contractor change orders and submit to the CITY for approval.
- Provide all necessary interim and final inspections of contractor's work.
- Be available for advice and consultation to the CITY during the life of the contract and during construction.
- Attend final walk through with the CITY.
- Prepare record drawings of construction and submit two (2) full sets to the CITY.
- If required, attend meetings of the City Council.

The CITY, through SEAGO, shall be responsible for the items particularly described as follows:

- Prepare advertisement for contract bid, have advertisement published and promote project to contractors. Provide the ENGINEER with the required ADOH forms for inclusion in the bid package.
- Complete and submit to ADOH "Contractor Verification" form LS-2 and "Subcontractor Verification" form LS-3, if applicable.
- Complete and submit to ADOH "Pre-Construction Conference Report" form LS-6.
- Verify and submit to ADOH all fringe benefit plans and payroll deductions, including forms LS-15 and LS-17.

- Verify that all public and contractor employee notices are properly posted before and during construction. • Complete and submit to ADOH "Construction Status Report" form LS-8.
- Conduct contractor employee interviews, complete and submit to ADOH "Employee Interview" and "On-Site Inspection Report" forms LS-9 and LS-10
- Review, verify and submit to ADOH "Contractor Weekly Payroll and Statement of Compliance" forms LS-4 and LS-5 weekly during construction.
- Review, approve and process all necessary transactions for payment to the contractor.
- Provide necessary close-out information to ADOH.

2. Time of Performance

All of the services required and performed hereunder to include preliminary and final design plans and specification and preparation of the bid package shall be completed no later than 90 days from the Notice to Proceed with Engineering Services.

The schedule of work as submitted in the ENGINEER's submittal dated April 20, 2017 is fully incorporated herein and, unless otherwise specified, shall be determined to be the time schedule negotiated between the parties for design and preparation of final plans and specifications.

3. Compensation and Method of Payment

The maximum amount of compensation to be paid hereunder shall not exceed Thirty Seven Thousand and Sixteen Dollars and Sixty Cents (\$37,016.60) and have a construction budget of \$154,477.00 exclusive of design fees and the value of partial construction by City crews. Fixed limits of construction costs are hereby established as a condition of this Contract. Should the lowest bona fide bid or negotiated proposal exceed the fixed limit of construction costs, the CITY shall:

- a. give written approval of an increase in such fixed limit; or
- b. authorize rebidding or renegotiating of the project within a reasonable time; or
- c. cooperate in revising the scope and quality as required to reduce the construction costs.

Should the CITY proceed under this clause, the ENGINEER shall modify the plans and specification, as necessary, to comply with the fixed limit.

Payment to the ENGINEER shall be based on satisfactory completion of identified milestones as set forth in the ENGINEER's Submittal. Additional services as required and requested by the CITY which are not listed in the ENGINEER's Submittal shall be charged in excess of the fee listed above, based on the schedule of charges included in the ENGINEER's Submittal. Such additional services shall be requested in writing by the CITY as approved by the Mayor and/or the Council as applicable.

Payment shall be made by the CITY to the ENGINEER on the basis of monthly invoices which must include a detailed itemization of all work and materials included, copies of receipts or billings as requested and is subject to review and certification of the CITY's authorized representative prior to payment.

4. Acceptance of Work

The CITY or its designee shall have the right to reject all or any work products submitted under this contract which do not meet the required specification. In the event of any such rejection, the ENGINEER agrees to promptly remedy any and all deficiencies. No compensation shall be due for any rejected work until such deficiencies have been corrected.

5. Notices

All notices, invoices and payments shall be made in writing and may be given by personal delivery or by mail. The designated recipient for such notices, invoices and payments are as follows:

To ENGINEER: Carson Taylor, E.I., 500 W. Main St., Safford AZ 85546, 928-428-9141, 575-650-3160 (cell); carson.taylor@soudermiller.com

To CITY: Andy Haratyk, Public Works Director, City of Bisbee, 118 Arizona Street, Bisbee, AZ 85603; phone number: (520) 432-6002; aharatyk@cityofbisbee.com.

6. Insurance

The ENGINEER shall maintain various insurance policies in force during the term of the contract and shall provide certificate(s) of such insurance naming the CITY as additional insured upon execution of this contract, providing not less than the following coverage:

I. INSURANCE

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$1,000,000
- Products - Completed Operations Aggregate \$ 500,000
- Personal and Advertising Injury \$ 500,000
- Blanket Contractual Liability – Written & Oral \$ 500,000
- Each Occurrence \$ 500,000

- a. The policy shall be endorsed to include the following additional insured language : "The City of Bisbee, its departments , agencies, boards, officers, officials, agents and employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$500,000

- a. The policy shall be endorsed to include the following additional insured language: "The City of Bisbee, its departments, agencies, boards, officers, officials, agents and employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

| | |
|-------------------------|-----------|
| Workers' Compensation | Statutory |
| Employers' Liability | |
| Each Accident | \$500,000 |
| Disease - Each Employee | \$500,000 |
| Disease - Policy Limit | \$500,000 |

- a. This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S . 23-901, **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

- Each Claim \$ 500,000
- Annual Aggregate \$1,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this contract is completed.
- b. The policy shall cover professional misconduct of lack of ordinary skill for those positions defined in the Scope of Work of this contract.
- c. The policy shall be endorsed to include the following additional insured language: "The City of Bisbee, its departments, agencies, boards, officers, officials, agents and employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Bisbee is named as an additional insured, the City of Bisbee shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
Contractor shall provide the City with certificates naming it as an additional insured.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Bisbee. Such notice shall be sent directly to the Bisbee City Public Works Department, 118 Arizona Street, Bisbee, Arizona 85603.

D. ACCEPTABILITY OF INSURANCE: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "AM.

Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be

signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Bisbee City Public Works Department, Bisbee, Arizona 85603. **The City project/contract number and project description shall be noted on the certificate of insurance.** The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies or Contractor shall furnish to the City separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Contracting Agency in consultation with the Risk Management Department, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

7. Agreement, Amendment and Arbitration

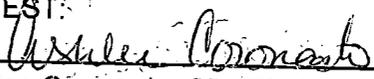
This contract shall be effective upon its approval by the parties, as indicated by the signatures of their representatives hereto. This contract, its attachments and those documents incorporated by reference represent the entire contract and understanding between the parties. No amendment shall be effective unless properly authorized and executed by the parties in the same manner as this contract was executed.

This contract shall be governed by the laws of the State of Arizona and suits pertaining to this contract may be brought only in courts in the State of Arizona.

The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim of controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The recipient shall have seven (7) days to prepare and deliver a response. Thereafter, if the parties fail to resolve the claim or controversy following a reasonable period for such resolution of not less than ten (10) days, the aggrieved party may request that the dispute be submitted to arbitration pursuant to A.R.S. §12-1518.

Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any

ATTEST:



Ashlee Coronado, City Clerk

Exhibit A

TERMS AND CONDITIONS

1. Termination of contract

a. If for any reason, the ENGINEER shall fail to fulfill in a timely and proper manner his/her obligations under this contract or if the ENGINEER shall violate any of the covenants, agreements or stipulations of this contract, the CITY shall thereupon have the right to terminate the contract by giving written notice to the ENGINEER of such termination and specifying the effective date thereof.

Notwithstanding the above, the ENGINEER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the ENGINEER and the CITY may withhold any payments to the ENGINEER for the purpose of set-off until such time as the exact amount of damages due the CITY from the ENGINEER is determined.

Upon receipt of a termination notice, the ENGINEER shall:

- promptly discontinue all services affected (unless the notice directs otherwise); and
- deliver or otherwise make available to the CITY, at CITY's cost, copies of data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performance of this contract.
- The CITY may terminate this contract at any time by giving at least ten (10) days written notice to the ENGINEER. If the contract is terminated by the CITY as provided herein, the ENGINEER will be paid as provided in this Addendum for the time expended and expenses incurred up to the termination date. If this contract is terminated due to the fault of the ENGINEER, Paragraph 1 hereof relative to termination shall apply.
- This contract may be terminated per A.R.S. §38-511, Conflict of Interest.

2. Changes

The CITY may request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of the ENGINEER's compensation, which are mutually agreed upon by and between the CITY and the ENGINEER, shall be incorporated in written amendments to this contract.

3. Personnel

a. The ENGINEER represents that he/she has, or will secure at his/her own expense, all personnel required for performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the CITY. b. All of the services required hereunder will be performed by the ENGINEER or under his/her supervision and all personnel engaged in the work shall be fully qualified, authorized and permitted for such work under state and local law to perform such services. c. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

4. Assignability

The ENGINEER shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CITY thereto; provided, however, that claims for money by the ENGINEER from the CITY under this contract may be assigned to a bank, trust company or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

5. Reports and Information

The ENGINEER, at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this contract.

6. Records Maintenance and Retention

The ENGINEER shall maintain accounts and records including personnel, property and financial records, adequate to identify and account for all costs pertaining to the contract and such other records as may be deemed necessary by the CITY to assure proper accounting for all project funds, both federal and non-federal shares. These records will be retained for at least three (3) years following the grant contract closeout between ADOH and U.S. Department of Housing and Urban Development (HUD) unless permission to destroy them is granted in writing by the CITY.

7. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the ENGINEER under this contract are confidential and the ENGINEER agrees that such shall be made available only to the CITY, ADOH and to HUD unless authorized by the CITY to release such information to other individuals or organizations.

8. Copyright

No report, plan, drawing or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the ENGINEER.

9. Compliance with Local Laws

The ENGINEER shall comply with all applicable laws, ordinances and codes of the state and local governments and the ENGINEER shall save the CITY harmless with respect to any damages arising from any tort done by the ENGINEER or his/her representatives in performing any of the work embraced by this contract.

10. ENGINEER will comply with the requirements of the Americans with Disabilities Act (ADA).

11. Interest of Members of a CITY Governing Body

No member of the Governing body of the CITY and no other officer, employee or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the ENGINEER shall take appropriate steps to assure compliance.

12. Interest of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in this contract; and the ENGINEER shall take appropriate steps to assure compliance.

13. Handicapped Access

In designing all construction, ENGINEER agrees to comply with requirements of the 2010 ADA Standards for Accessible Design. The ENGINEER represents that he/she understands said standard specifications and same are incorporated herein by this reference.

14. Clean Air Act, Clean Water Act

The ENGINEER shall comply with all provisions requiring compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and EPA regulations, 40 CFR Part 15 which prohibit the use of non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision requires reporting of violations to the USFPA Assistant Administrator for Enforcement.

15. Federal Labor Standards Provisions

This project to be designed by the ENGINEER is subject to the Federal Labor Standards Provisions, DavisBacon Act of 1931, Contract Work Hours and Safety Standards Act of 1962, Copeland Act of 1934 and the Fair Labor Standards Act of 1939. The ENGINEER shall incorporate information concerning federal Labor Standards in the bid documents.

such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract will forthwith be physically amended to make such insertion or correction.

8. Access to Information

It is agreed that all information, data reports, records and plans as are existing, available and necessary for carrying out the work outlined above have been furnished to the ENGINEER by the CITY and its agencies. ENGINEER hereby acknowledges receipt of same.

9. Indemnification

ENGINEER represents he has knowledge of all rules and regulations imposed by ADOH. ENGINEER shall comply with the requirements of all applicable laws, rules and regulations and shall exonerate, indemnify and hold harmless the CITY and its agency members from and for any violation caused by him and shall assume full responsibility for payment of federal, state and local taxes on contributions imposed or required under the Social Security, workmen's compensation and income tax laws for persons employed by the ENGINEER. The ENGINEER shall not be responsible for such contributions for the contractor or subcontractor.

10. Terms and Conditions

This contract is subject to the provisions entitled "Terms and Conditions" attached hereto and incorporated by reference herein as Exhibit A. This Addendum shall be interpreted as if Exhibit A were printed in full herein.

11. Certifications

This contract is subject to the provisions entitled "Certifications" which were submitted by the ENGINEER in the Submittal dated April 20, 2017 and are incorporated by reference herein.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals.

The City of Bisbee



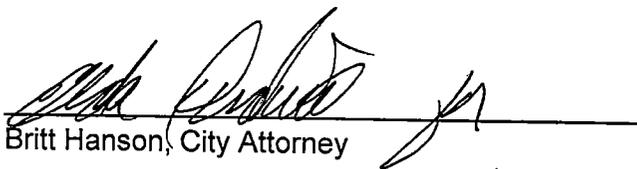
David Smith, Mayor of Bisbee

ENGINEER:



Karl Tonander, Senior Vice President, Souder, Miller & Associates

Approved as to Form:



Britt Hanson, City Attorney