

PROFESSIONAL SERVICES AGREEMENT
(Client - Consultant)

This Agreement is made and entered into this 1st day of April, 2021, between the **City of Bisbee** (hereinafter called CLIENT) and **MILLER ENGINEERS, INC. d/b/a SOUDER, MILLER & ASSOCIATES** (hereinafter called CONSULTANT) for the design of three new retaining walls to replace the existing retaining walls on Clauson Avenue, Temby Road and Opera Drive in Bisbee, Arizona, SMA Project Number 9729903.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

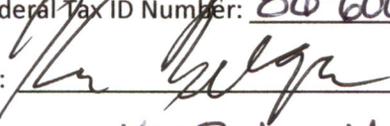
CLIENT hereby engages CONSULTANT to perform the services identified in Exhibit A, for the compensation set forth in same said Exhibit A. Any additional work and corresponding compensation not identified in Exhibit A will be detailed and included in Amendments to this Agreement.

CONSULTANT shall be authorized to commence the Services upon execution of this Agreement, unless otherwise specified herein. CONSULTANT and CLIENT agree that this signature page, together with the Standard Terms and Conditions, and all Exhibits, Attachments and Amendments referred to herein, constitute the entire Agreement relating to the Work.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CLIENT:

City of Bisbee
Mr. Jesus Haro, Public Works Director
76 Erie Street, P.O. Box 4601
Bisbee, Arizona 85603
Tel. No. (520) 432-6069
Federal Tax ID Number: 84-6000235

By: 
Name, Title: Ken Budge, Mayor

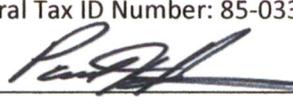
Date: 4/22/21

CLIENT ACCOUNT PAYABLE:

Name: City of Bisbee
Address: 76 Erie Street P.O. Box 4601
Bisbee, AZ 85603
Phone Number: 520-432-6000

CONSULTANT:

MILLER ENGINEERS, INC. d/b/a
SOUDER, MILLER & ASSOCIATES
3500 Sedona Hills Parkway
Las Cruces, New Mexico 88011
(575) 647-0799
Federal Tax ID Number: 85-0336964

By: 
Name, Title: Paul Pompeo, P.E.,
Civil Technical Sector Director

Date: April 1, 2021

CONSULTANT ACCOUNT INVOICING:

Eileen Aven, PFA
(575) 647-0799, Ext. 1308



STANDARD TERMS AND CONDITIONS

1 Scope of Agreement

- 1.1 This Agreement supersedes all prior contracts or agreements, either verbal or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement between the parties with reference to said services.
- 1.2 This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. It cannot be modified or changed by any verbal promise by whosoever made, nor shall any written modification of it be binding on the CLIENT until it has been approved in writing by both the CLIENT and the CONSULTANT and made a part of the Agreement by way of Amendment.

2 Right of Entry

- 2.1 The CLIENT will provide for right of entry of the CONSULTANT and all his equipment, in order to do the work.
- 2.2 While the CONSULTANT will take reasonable precautions to minimize damage to the property, it is understood by the CLIENT that in the normal course of work some damage to the surface may occur, the correction of which is not part of this Agreement.

3 Invoices

- 3.1 The CONSULTANT's compensation shall be as outlined in Exhibits or Amendments to this Agreement. Invoices may be submitted twice monthly and will include a final bill upon completion of services. Invoices will show total charges accrued during the billing period.
- 3.2 Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. CLIENT agrees to pay a finance charge of one and one-half percent (1.5%) per month, or the maximum rate allowed by law, on past due accounts.
- 3.3 Any required Gross Receipts and/or Professional Services Taxes, as may be required by a specific jurisdiction, will be added to CONSULTANT's invoices, in addition to the fees quoted or agreed to, and are payable by the CLIENT. CLIENT may provide a suitable Non-Taxable Transaction Certificate to CONSULTANT in lieu of payment of tax if permissible by the jurisdiction.
- 3.4 CLIENT will compensate CONSULTANT for any expenses incurred to recover any invoiced amount that remains unpaid after 60 days. These costs may include both costs incurred internally by CONSULTANT or external fees charged by third-party collections placement agencies, attorneys or other resources. Said fees may in some cases exceed the principal of the amount owed.
- 3.5 If any invoiced amount remains unpaid after 60 days CONSULTANT may elect to cease work immediately; CONSULTANT will not be responsible for any loss to CLIENT resulting from this stoppage. Further, if, at any time during the course of the project any invoiced amount remains unpaid after 60 days, CONSULTANT

may require CLIENT to provide an irrevocable letter of assignment of credit from a financial institution and in a form acceptable to the CONSULTANT in an amount to be determined by the CONSULTANT up to and including any remaining un-invoiced balance of the project and any outstanding invoice(s). Said credit line may be accessed at the discretion of the CONSULTANT for payment of any overdue invoices.

- 3.6 CLIENT will provide to CONSULTANT three references for creditworthiness. These references should be active accounts within the last year and of a similar or higher value of credit than the estimated fee for work anticipated to be completed under this Agreement.

4 Ownership of Documents

- 4.1 All reports, boring logs, field data, field notes, drawings and specifications, calculations, estimates, laboratory test data, and other documents prepared or furnished by the CONSULTANT, as instruments of service, shall remain the property of the CONSULTANT whether or not the Project is completed. CLIENT may make and retain copies for information reference in connection with the Project. However, such documents are not intended or represented to be suitable for reuse by the CLIENT or others on any other project.
- 4.2 Upon CLIENT's payment in full for all Work performed under the Contract Documents, CONSULTANT shall grant CLIENT a license to use the Work Product in connection with the Project, conditioned on CLIENT's express understanding that it's reuse of the Work Product without the CONSULTANT's involvement or consent is at CLIENT's sole risk; and CLIENT agrees to indemnify, defend and hold harmless CONSULTANT and anyone working by or through CONSULTANT for all claims, damages, losses and expenses arising out of any such reuse without CONSULTANT's consent.
- 4.3 The CLIENT agrees that all documents and other work furnished to the CLIENT or his agents, which is not paid for, will be returned upon demand and will not be used by the CLIENT for any purpose whatsoever.

5 Standard of Care

- 5.1 Services performed by the CONSULTANT under this Agreement will be conducted in a manner consistent with and limited to that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.
- 5.2 CONSULTANT shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence CONSULTANT cannot ascertain.



5.3 Services performed by the CONSULTANT follow the general intent of Section D "Model Standards for Construction Layout Surveys" of the National Society of Professional Surveyors (NSPS).

6 Allocation of Risk

6.1 The CLIENT agrees to limit the CONSULTANT's liability to the CLIENT, and anyone claiming by, through or under the CLIENT, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of CONSULTANT's services or this agreement regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery such that the total aggregate liability shall not exceed \$25,000 or the total of CONSULTANT's fees, whichever is greater. This limitation shall not apply to the extent the damage is paid under CONSULTANT's commercial general liability policy. In any case the time period for any damage claims will not exceed five (5) years after the date of the final invoice.

7 Sole Remedy

7.1 Notwithstanding anything to the contrary contained herein, CLIENT agrees that its sole and exclusive claim, demand, suit, judgment or remedy against the CONSULTANT shall be asserted against the CONSULTANT's corporate entity and not against its shareholders, directors, officers or employees.

8 Insurance

8.1 The CONSULTANT represents and warrants that it and its agents, staff and sub-consultants employed by it is and are protected by worker's compensation insurance and that the CONSULTANT has such coverage under professional liability, public liability and property damage insurance policies which the CONSULTANT deems to be adequate.

8.2 CONSULTANT carries professional liability insurance of at least \$1,000,000.

8.3 Certificates for all such policies of insurance shall be provided to CLIENT upon request in writing. Within the limits and conditions of such insurance, the CONSULTANT agrees to indemnify and save CLIENT harmless from and against any loss, damage, or liability arising from any negligent acts by the CONSULTANT, its agents, staff, and sub-consultants employed by it, to the proportionate extent caused by such negligence. The CONSULTANT shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance.

8.4 The CONSULTANT shall not be responsible for any loss, damage, or liability arising from any acts by CLIENT, its agents, staff, and other consultants employed by it.

9 Indemnification

9.1 It is expressly understood and agreed between CONSULTANT and CLIENT, that CONSULTANT shall indemnify the CLIENT for all losses, damages, claims, actions, or demands resulting from the CONSULTANT's negligent actions or inactions as a result of this Agreement to the proportionate extent that such

damages are caused by CONSULTANT's negligence or willful misconduct. Similarly, CLIENT shall indemnify the CONSULTANT for all losses, damages, claims, actions, or demands to the extent caused by CLIENT's willful misconduct or negligent acts, errors or omissions as a result of this Agreement.

10 Termination

10.1 This Agreement may be terminated by either party upon ten (10) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, CONSULTANT shall be paid for services performed up to the termination notice date.

10.2 Additionally, it is mutually agreed that both parties will refrain from soliciting and/or hiring each other's employees within 1-year from completion and/or termination of the Agreement.

11 Confidentiality of Information

11.1 Except as required by law or this Agreement, or requested by the CLIENT, the CONSULTANT will communicate with and submit work products only to the CLIENT and parties specifically designated by the CLIENT. The CLIENT is responsible for all regulatory agency submittals and public health officials' notifications.

11.2 Information required by law to be released to public health officials or regulatory agencies will be provided only with the CLIENT's knowledge.

12 Severability

12.1 CLIENT and CONSULTANT have entered into this Agreement of their own free will, to communicate to one another mutual understandings and responsibilities. Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

12.2 However, CLIENT and CONSULTANT will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

13 Changed Conditions

13.1 The scope of services set forth in this Agreement is based on facts known at the time of execution of this Agreement. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that the scope of services should be redefined.

13.2 CONSULTANT will promptly inform CLIENT in writing of such situations, and if the facts discovered constitute a material change in Project assumptions, the parties shall promptly and in good faith enter into renegotiation of this Agreement to help permit CONSULTANT to continue to meet CLIENT's needs. If renegotiated terms



cannot be agreed to, CLIENT agrees that CONSULTANT has an absolute right to terminate this Agreement. No payment for services beyond those described in the original scope will be authorized without a written amendment to this Agreement.

14 Consequential Damages

14.1 To the fullest extent permitted by laws and regulations, CLIENT and CONSULTANT waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

15 Defects in Service

15.1 CLIENT and CLIENT's personnel, contractors and sub-contractors shall promptly report to CONSULTANT any defects or suspected defects in CONSULTANT's work, in order that CONSULTANT may take prompt, effective measures which in CONSULTANT's opinion will minimize the consequences of a defect in service.

15.2 Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of the other party, and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, acts of God and other circumstances include, but are not necessarily limited to, unusual weather, floods, epidemics, war, riots, strikes, lockouts or other industrial disturbances, protest demonstrations, unanticipated site conditions, or inability despite reasonable diligence to supply personnel, equipment or material to the project. Should such acts occur, CLIENT and CONSULTANT shall utilize their best efforts to overcome the resulting difficulties and resume conduct of services called for herein as soon as reasonably possible.

15.3 Delays within the scope of this provision that cumulatively exceed forty-five (45) calendar days shall, at the option of either party, make this Agreement subject to renegotiation or termination.

16 Information Provided by Others

16.1 CONSULTANT shall indicate to CLIENT the information needed for rendering of services hereunder, and CLIENT shall provide to CONSULTANT such information as is available to CLIENT. CLIENT recognizes that it is impossible for CONSULTANT to assure the sufficiency of such information, either because it is impossible to do so, or because of errors or omissions which may have occurred in assembling the information.

16.2 Accordingly, CLIENT waives any claim against CONSULTANT and agrees to defend, indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to CONSULTANT by CLIENT.

16.3 CLIENT accepts that any utility locations incorporated into design documents reflect the relative accuracy of the provider and/or utility owner. Unless otherwise specified in the scope of work, CONSULTANT has not verified indicated locations (or lack of) from any utility providers and hence cannot be presumed to guarantee the absence, presence or authoritative location of any utility.

16.4 Accordingly, CLIENT waives any claim against CONSULTANT and agrees to defend, indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information resulting from uncertainty in utility location.

17 Public Responsibility

17.1 CLIENT and CONSULTANT each recognizes that they owe a duty of care to the public that requires them to conform to applicable codes, standards, regulations and ordinances, principally to protect public health and safety.

17.2 If CLIENT for any reason decides to disregard CONSULTANT's recommendations in these respects, CONSULTANT shall employ its best judgement in deciding whether or not to notify public officials. CLIENT agrees that such decisions are CONSULTANT's to make, in light of CONSULTANT's public responsibilities as CONSULTANT perceives them and, in any event, CONSULTANT should not be held liable in any respect, and CLIENT waives any claim against CONSULTANT, for failing to report conditions which were CLIENT's responsibility to report.

18 Jobsite Safety

18.1 Where construction work is being done on the site, CONSULTANT is responsible solely for his own and his employees' activities on the jobsite, but this shall not be construed to relieve CLIENT or any construction contractors from their responsibility for maintaining a safe jobsite.

18.2 Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT or his employees and subcontractors, shall be construed to imply CONSULTANT has any responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the jobsite.

18.3 CLIENT agrees that the Contractor(s) is solely responsible for jobsite safety and warrants that this intent shall be made evident in the CLIENT's Agreement with the General Contractor or other contractors and subcontractors. CLIENT also warrants that CONSULTANT shall be made an additional insured under the Contractor's general liability insurance policy.

19 CLIENT's Responsibility to Notify Consultant

19.1 CLIENT hereby warrants that, if he knows or has any reason to know or suspect that hazardous materials may exist at the project site, he has so informed CONSULTANT. CLIENT also warrants that he has informed CONSULTANT of such known or suspected hazardous materials type, quantity and location.



19.2 When hazardous materials are known, assumed or suspected to exist at the site, CONSULTANT is required to take appropriate precautions to protect the health and safety of his personnel, to comply with applicable laws and regulations, and to follow procedures that CONSULTANT deems prudent to minimize physical risks to employees and the public.

20 Buried and Aboveground Structures and Utilities

20.1 In the prosecution of his work, the CONSULTANT will take reasonable precautions to avoid damage or injury to subterranean and aboveground structures and utilities.

20.2 The CLIENT agrees to hold the CONSULTANT harmless for any damages to subterranean and aboveground structures and utilities which are not called to the CONSULTANT's attention or correctly shown on the plans furnished.

21 Discovery of Unanticipated Hazardous Materials

21.1 Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. CONSULTANT and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services.

21.2 CONSULTANT and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for CONSULTANT to take immediate measures to protect health and safety. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered.

21.3 CLIENT encourages CONSULTANT to take any and all measures that in CONSULTANT's professional opinion are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of working to protect employees' and the public's health and safety.

21.4 In addition, CLIENT waives any claim against CONSULTANT for injury or loss arising from CONSULTANT's discovery of unanticipated hazardous materials or suspected hazardous materials.

22 Discovery of Unanticipated Hazardous Materials on Site Not Belonging to CLIENT

22.1 In the event the project site is not owned by CLIENT, CLIENT warrants that he has obtained all necessary permissions for CONSULTANT to enter onto the site and conduct subsurface exploration activities. CLIENT recognizes that it is his responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

22.2 CLIENT also understands that any such discovery may result in recognition of a significant reduction of the property's value, and this may spur the property's owner to institute a claim for compensation for alleged damages even though discovery is not the cause of

damages. Accordingly, in such situations, CLIENT waives any claim against CONSULTANT for injury or loss of any type arising from CONSULTANT's discovery of unanticipated hazardous materials or suspected hazardous materials on a site not owned by CLIENT and CLIENT agrees to indemnify, defend, and hold harmless the CONSULTANT from and against any claim, liability, loss or cost, including reasonable attorney's fees and cost of defense, allegedly arising out of access to or activities conducted on any such property.

23 Aquifer Contamination

23.1 Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading hazardous materials off-site.

23.2 Because nothing can be done to eliminate the risk of such an occurrence, and because subsurface sampling is a necessary aspect of the work which CONSULTANT will perform on CLIENT's behalf, CLIENT waives any claim against CONSULTANT for injury or loss which may arise as a result of alleged cross-contamination caused by sampling.

24 Contaminated Equipment and Consumables

24.1 Any of CONSULTANT's field or laboratory equipment that becomes contaminated by hazardous materials encountered at the project site must be decontaminated, and contaminated consumables must be disposed of properly. CLIENT agrees to remunerate CONSULTANT for costs associated with decontamination of equipment and disposal and replacement of contaminated consumables.

24.2 In some instances, the fair market value of a piece of equipment, were it not contaminated, together with the cost of properly transporting and disposing of the equipment, may be less than the cost of decontamination. In such instances, CONSULTANT shall notify CLIENT and give CLIENT the option of paying for decontamination or purchasing the equipment at its fair market value immediately prior to contamination. If CLIENT elects to purchase equipment, CLIENT and CONSULTANT shall enter into a specific agreement for that purpose.

24.3 For purposes of this Agreement, any equipment that cannot be decontaminated shall be considered a consumable.

25 Disposal of Samples

25.1 Soil, rock, water and/or other samples obtained from the Project site are the property of CLIENT. CONSULTANT shall preserve such samples for no longer than thirty (30) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed upon in writing.

25.2 Should any of these samples be contaminated by hazardous substances or suspected hazardous



substances, it is CLIENT's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from CONSULTANT's custody and transporting them to a disposal site. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.

- 25.3 CLIENT is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures.

26 Contaminated Materials

- 26.1 CLIENT recognizes that, when it is known, assumed or suspected that hazardous materials exist beneath the surface of the project site, certain waste materials, such as drill cuttings and drilling fluids, should be handled as if contaminated. Accordingly, to protect human health and safety as well as the environment, CONSULTANT will appropriately contain and label such materials; will promptly inform CLIENT that such containerization and labeling has been performed, and will leave the containers on site for proper lawful removal, transport, and disposal by CLIENT. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.
- 26.2 The decision on how contaminated material will be disposed of or treated is not the responsibility of CONSULTANT. The CONSULTANT can provide information on treatment options and qualified transporters and advise on the probable range of cost. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.
- 26.3 Arrangement for transportation of contaminated material and off-site disposal shall be the sole responsibility of the CLIENT.
- 26.4 Waste analysis and preparation of permits does not constitute direction or decision by CONSULTANT regarding material disposal. By statute, responsibility for this decision resides with the generator and shall not be implied to be transferred to CONSULTANT because of the services provided. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.

27 Subsurface Risks

- 27.1 CLIENT recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with the appropriate equipment and experienced personnel under the direction of a trained professional who functions in accordance with a professional standard of care may fail to detect certain conditions, because they are hidden and therefore cannot be considered in development of a subsurface exploration program.
- 27.2 For similar reasons, actual environmental, geologic and environmental/geotechnical conditions that CONSULTANT properly infers to exist between sampling points may differ significantly from those that actually exist. The passage of time must also be considered, and CLIENT recognizes that, due to natural occurrences or

direct or indirect human intervention at the site or distant from it, actual conditions discovered may quickly change.

- 27.3 CLIENT realizes that nothing can be done to eliminate these risks altogether, but certain techniques can be applied by CONSULTANT to help reduce them to that level deemed tolerable by CLIENT. CONSULTANT is available to explain these risks and risk reduction methods to CLIENT, but in any event, the scope of services included with this Agreement is that which CLIENT agreed to or selected in light of his own risk preferences and other considerations.

28 Failure to Encounter Hazardous Materials

- 28.1 It is possible that exploration may fail to reveal the presence of hazardous materials at sites where hazardous materials are assumed or expected to exist. CLIENT understands that CONSULTANT's failure to discover hazardous materials through appropriate and mutually agreed-upon sampling techniques does not guarantee that hazardous materials do not exist at the site.
- 28.2 Similarly, a site which in fact is unaffected by hazardous materials at the time of CONSULTANT's subsurface exploration may be later due to natural phenomena or human intervention become contaminated.
- 28.3 CLIENT agrees that it would be unfair to hold CONSULTANT liable for failing to discover hazardous materials whose exact location is impossible to foretell from the surface, or for failing to discover hazardous materials which in fact did not exist at specific sampling locations at the time such samples were taken. Accordingly, CLIENT waives any claim against CONSULTANT, and agrees to save CONSULTANT harmless from any claims or liability for injury or loss arising from CONSULTANT's failure to detect the presence of hazardous materials through techniques commonly employed for the purpose.
- 28.4 CLIENT also agrees to compensate CONSULTANT for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project costs.

29 Joint and Several Liability

- 29.1 The concept of joint and several liability is basically this: When two or more parties are considered responsible for causing injury or damage, any one of the parties may be made to provide compensation for as much as 100% of the damages assessed.
- 29.2 As applied to hazardous materials projects, it is possible that the concept of joint and several liabilities could be construed to make CONSULTANT partly or wholly responsible for damages created directly or indirectly by the hazardous materials. CLIENT agrees that it would be unfair for CONSULTANT to be exposed to such an action, because CONSULTANT had nothing whatsoever to do with the creation of the hazardous condition.



29.3 Accordingly, CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify and save CONSULTANT harmless from any claim or liability for injury or loss arising from application of a joint and several liability concept that would in any manner hold or seek to hold CONSULTANT responsible for creating a hazardous condition or permitting one to exist.

29.4 CLIENT also agrees to compensate CONSULTANT for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project cost.

30 Construction Monitoring

30.1 CLIENT recognizes that unanticipated or changed conditions may be encountered during construction. When CLIENT agrees to retain CONSULTANT to monitor construction, CONSULTANT agrees to assign to the monitoring function persons qualified to observe and report on the quality of work performed by contractors, et al.

30.2 CLIENT recognizes that construction monitoring is a technique employed to minimize the risk of problems arising during construction. Provision of construction monitoring by CONSULTANT is not insurance, nor does it constitute a warranty or guarantee of any type. In all cases, contractors, et al, shall retain responsibility for the quality of their work and for adhering to plans and specifications. Should CLIENT for any reason not retain CONSULTANT to monitor construction, or should CLIENT unduly restrict CONSULTANT's assignment of personnel to monitor construction, or should CONSULTANT for any reason not perform construction monitoring during the full period of construction, CONSULTANT shall not have the ability to perform a complete service.

30.3 Should the CONSULTANT be prevented from performing a complete service, CLIENT waives any claim against CONSULTANT, and agrees to indemnify, defend and hold CONSULTANT harmless from any claim or liability for injury or loss arising from problems during construction that allegedly result from findings, conclusions, recommendations, plans or specifications developed by CONSULTANT.

31 Opinion of Probable Construction Cost

31.1 CLIENT recognizes that CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, competitive bidding or market conditions. Hence CONSULTANT'S opinions of probable costs are to be made on the basis of CONSULTANT's experience; but CONSULTANT cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of probable cost.

32 Reliance by Third Parties

32.1 Any information, including but not limited to data, reports, findings, summaries, or recommendations, prepared by CONSULTANT for CLIENT in the course of performing the Services hereunder may not be relied upon by any person or entity other than CLIENT without CONSULTANT's prior written consent. Unless otherwise agreed, any use of information prepared by the CONSULTANT by anyone other than the CLIENT is entirely at that third party's own risk.

33 Assignment

33.1 Neither party to this Agreement shall transfer, sublet or assign any rights 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.

34 Notices

34.1 Any notice required under this Agreement will be in writing and sent to the appropriate party at the address designated in this Agreement, and shall be deemed served if sent by registered or certified mail or hand-delivered to an officer or authorized representative of the party to whom the notice is directed. All notices shall be effective upon the date of receipt.

35 Dispute Resolution

35.1 If any controversy or claim arises out of or relates to this contract, or breach thereof, and if said dispute cannot be settled through negotiation or mediation, the parties shall submit to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



EXHIBIT A
SCOPE OF WORK, SCHEDULE, AND COMPENSATION

Section 1: Scope of Work

Presented below is a detailed description of the professional services to be provided by the CONSULTANT to complete the project.

SMA will provide preliminary design and final design for three new retaining walls to replace the existing retaining walls on Clauson Avenue, Temby Road and Opera Drive in Bisbee, Arizona. The new retaining wall shall be constructed adjacent to the existing wall on each street. This will include the preparation of a complete set of civil engineering construction drawings including geotechnical investigation, surveying, retaining wall design plans and analysis, bidding of the project and associated details in accordance with the most current version of the City of Bisbee Design Standards.

BASE CONTRACT

P1T21 Project Administration

SMA will provide the following Project Administration Services:

1. Project Start-Up
 - a. Client Interview/Programming: SMA will meet with identified City of Bisbee staff individually or as a group to go over the goals and objectives of the project.
 - b. Start-Up Meetings: SMA will prepare and meet with the Design Team to review the established goals and objectives of the project. Included in this meeting will be established expectations of each member of the Design Team. This will also include meeting with City of Bisbee staff to review the project scope and finalize specific items with the project design. This will include establishing the key representatives from all agencies involved in the project design and review process.
 - c. Project Management Plan: SMA will develop a Project Management Plan establishing the design team. This plan will also outline staff assignments and timelines for completion of specific tasks.
2. On-Going Project Management
 - a. Monthly Budget Tracking: SMA will track project expenditures to meet the established project budget. This will include meeting with City of Bisbee staff to review monthly pay applications and to answer any questions that may arise.
 - b. Monthly Progress Reports: SMA will provide a monthly progress report to the City of Bisbee. This report will outline the status of each project task relative to the established schedule.
 - c. General Project Management: SMA will provide project management duties including ongoing communication with the City of Bisbee staff regarding project design activities and being available to address any questions that may arise from City of Bisbee staff.
3. Project Site Visits
 - a. This task shall include one site visit to the site to review the existing retaining walls during the design phase.
 - b. Should additional site visits be required due to unforeseen requirements requested by the City of Bisbee, or other reviewing agencies, this time shall be subject to a Contract Amendment and be billed to the client on a Time and Material basis.

Deliverable of this item is expected to be ongoing throughout the duration of the project.



P2T29/P2T40 Geotechnical Investigation

SMA Working with Wood Environment and Infrastructure Solutions, Inc., will undertake a geotechnical investigation at the following three locations:

1. Along the south side of Clauson Avenue from the intersection of Clauson Avenue and Shearer Avenue and extending east for approximately 120 feet.
2. Along the south side of Temby Road approximately 500 feet east of the intersection of Temby Road and Hunt Avenue and extending east/northeast for approximately 140 feet.
3. Along the east side of Opera Drive at the intersection of Opera Drive and Temby Road extending south for approximately 120 feet.

The geotechnical investigation shall include the following (item descriptions below taken from Wood Environment's proposal):

1. Scope - Based on the limited site access for truck-mounted drilling equipment, anticipated shallow bedrock and discussions with SMA, we propose to perform the geotechnical investigation for the planned new retaining walls using geophysical methods. The geophysical test lines will be performed at the base of the existing walls in the area of the planned retaining wall foundations. If tieback and/or rock anchors will be considered, additional seismic test lines (beyond what is proposed herein) may be necessary above the existing retaining walls to assess the subsurface conditions in the anchor zone behind the existing walls.
2. Preparation for Field Investigation - Prior to mobilizing to the site with the geophysical test equipment, a project-specific site health and safety plan will be developed for the field investigation program. The plan will identify and discuss methods of mitigating hazards associated with working on existing slopes and near existing roadways. The geophysical test lines will be located outside of the existing roadways, and therefore traffic control has not been included. If permit(s) are required to perform the investigation, we understand they will be issued by the City of Bisbee at no cost. Additionally, we understand that permission to access private parcels at the base of the existing retaining walls will be provided by SMA and/or the City of Bisbee prior to Wood mobilizing for the field investigation.
3. Field Investigation – Seismic Survey - Three (3) surface seismic surveys will be performed (i.e., one at each wall location) to characterize the subsurface conditions at each of the planned new wall locations. The surveys will be performed along a test line oriented parallel and adjacent to the base of the existing retaining wall at each location. It is anticipated that the seismic survey lines will be approximately 120 feet in length, with an estimated exploration depth of 15 to 20 feet. At the Temby Avenue wall location, the seismic survey may consist of two (2) shorter test lines in-lieu of one (1) longer test line based on accessibility at the base of the existing wall. The seismic survey will utilize both compression wave refraction and shear wave refraction microtremor (ReMi) methods. A one-dimensional (vertical) shear wave velocity profile of the subsurface materials will be determined using ReMi methods and Wood's SmartSeis S-12 engineering seismograph, 12- and/or 24-geophone array and analytical software (SeisOpt ReMi Version 1.0 from Optim Software). A sledgehammer will serve as the energy source for the compression wave surveys. The energy source for triggering microtremor noise will be provided by having a person jump at the end of the survey line or by using ambient noise. The ReMi method is capable of interpreting shear wave velocity reversals, wherein a horizon of lower velocity material underlies a horizon of higher velocity material. The seismic refraction data collected in the field will be post-processed and interpreted to determine compression and shear wave velocity profiles. The results of the analyses will be included in the geotechnical investigation report, and will include the following:

- A discussion of interpreted subsurface compression and shear wave velocities;
- A velocity profile of the subsurface soil/rock strata;
- An estimate of the depth to rock along the test line; and,
- Typical excavation conditions at the test line location.



4. Field Investigation – Hand Excavated Test Pits - At each wall location, a shallow test pit will be hand excavated by Wood’s field crew and a bulk sample of the surface soils will be collected for laboratory sampling. We estimate the test pits will extend to a depth approximately 6 inches below the existing ground surface at the base of the wall, depending on difficulty of performing the hand excavations and the depth to rock.
5. Laboratory Testing - At the completion of the field exploration, soil samples will be delivered to Wood’s Phoenix laboratory for testing. As requested, the bulk sample collected from each wall location will be tested for the following:
 - Moisture content (ASTM D2216);
 - Sieve analysis (ASTM D421);
 - Atterberg limits (ASTM D4318);
 - Classification of Soils (ASTM D2487); and
 - Total soluble sulfates and chlorides.
6. Analysis and Reporting - The results of our field investigation and laboratory testing will be the basis for our engineering analysis. The analysis will be performed to develop geotechnical recommendations for the planned new retaining walls. A geotechnical investigation report will be prepared that will summarize the field and laboratory test data and provide geotechnical engineering recommendations. An electronic (pdf) copy will be provided for your use. The items to be presented in the report will include, but not necessarily be limited to the following:
 - A site plan showing the seismic test line and test pit locations;
 - A description of the procedures and equipment used in the field investigation program;
 - Laboratory test results and summaries of the test data;
 - A description of the geology and geotechnical profile encountered at the project site;
 - A discussion of the geotechnical profile as it relates to the proposed construction;
 - Allowable bearing pressures for shallow spread footings;
 - Estimated settlement of shallow spread footings;
 - Lateral earth pressures;
 - Seismic site classification;
 - Construction considerations; and,
 - Earthwork recommendations.

The scope of services outlined herein does not include an assessment of slope stability at each wall location. Additional investigation above the existing retaining walls will be required to assess slope stability and to provide recommendations for tieback and/or rock anchors.

7. Schedule - From notice to proceed, we anticipate approximately two to three weeks will be necessary to coordinate and perform the field investigation, depending upon when the work is authorized and permits are provided. Including mobilization to and from Bisbee, we anticipate the field work can be completed over two days. An additional two to three weeks will be required to complete the laboratory testing and prepare the geotechnical investigation report.

P3T01/P3T02 Boundary /Topographic / As-Built Survey

SMA will conduct a boundary property pin location survey of the identified retaining walls on Clauson Avenue, Opera Drive and Temby to identify the boundaries based only on the recorded information provided by the Client. The project civil construction drawings shall be based on this survey. A topographic/as-built survey will then be conducted utilizing GPS surveying methods to determine the existing topography of the project site, existing roads and areas immediately adjacent to the site. Adjacent improvements to include roadways, City of Bisbee supplied wet utilities, identified wire utilities and drainage infrastructures shall be determined and be the basis of the project construction drawings.



The above listed fee for preparation of the site topographic as built and boundary survey includes a maximum of 12 hours in the field for the survey crew to establish the appropriate project data. Note that this fee may be expanded by SMA's hour rates listed in Attachment 1, Exhibit A if the following occurs:

8. Additional surveying work requested by the Client.
9. If property pins are found to be missing, destroyed or mis-located in the project area.
10. If the current recorded property descriptions do not match actual field conditions.

P3T20 Preliminary Design

SMA will prepare a set of civil construction drawing documents for the preliminary design of three new retaining walls to replace the existing retaining walls on Clauson Avenue, Temby Road and Opera Drive. These documents will be utilized by the client to obtain a site development permit from any required permitting agencies. The plans will be prepared on SMA's standard format for site development, sealed by the SMA Project Engineer and meeting the requirements of the City of Bisbee. The plans will include the following sheets:

- Cover Sheet
- General notes and legend sheet.
- Site horizontal and vertical control plan.
- Grading and drainage plan.
- Final site utility design and/or relocations to include potable water, wastewater, fire protection, natural gas, electrical service and telecommunication service.
- Retaining wall plan and calculations.

SMA will develop a 60% construction plan set to be submitted to the City. Deliverable of this item is expected to be complete within 20 working days after completion of the Survey task and receipt of the Geotechnical Investigation report.

P4T30 - Final Design

SMA will provide final design services that will include revisions to the construction plans to approximately 90% complete; preparation of contract documents; preparation of the Engineer's Opinion of Probable Construction Costs (EOPCC); and submittal of these items to the City of Bisbee. The EOPCC will estimate the quantities for all proposed items and will prepare unit cost price estimates for each item using SMA's database of existing projects and other resources. Following receipt of comments, SMA will finalize the plans and specifications and prepare a single master package.

Deliverable of this item is expected to be complete within 10 working days after all review comments have been received. Note: SMA has not included funding for application or insurance fees that may be required by right of way management agencies.

Should additional reviews be required due to unforeseen requirements requested by the City of Bisbee, or other reviewing agencies, this time shall be subject to a Contract Amendment and be billed to the client on a Time & Material basis.

P5T01 - Bid Facilitation

Bid support includes activities associated with the bidding of the project or negotiations with an on-call contractor for the proposed project. These services will include attending a pre-bid teleconference and value engineering meeting to be held remotely for the City of Bisbee, answering contractor questions, preparation and distribution of design revisions as required and remote attendance at the pre-construction meeting.

WORK NOT INCLUDED

The above scope of services constitutes our entire proposal. Items specifically excluded are:

1. **Any work not specifically outlined and included in the above task summaries.**
2. Underground exploration of any kind (beyond any geotechnical services described above, if any),
3. Additional bores and testing in excess of number listed above,



4. Identification, location and/or verification of hazardous or toxic waste sites, archeological sites, or environmentally sensitive sites,
5. Redesign following approval of 75% review drawings,
6. Biological Survey, Cultural Resources Survey and /or an Environmental Assessment,
7. Resolution of any differences discovered between field and record data,
8. Payment of permit or recording fees, title research, exemption, express mailing and other fees,
9. Drainage report or any drainage calculations,
10. Landscape Design

Section 2: Schedule and Term

The schedule for completion of the task identified in Section 1 of this Exhibit A shall be as follows:

- Project Administration – Ongoing throughout project.
- Geotechnical Investigation – 30 working days
- Survey Services - 10 working days
- Preliminary Design (60% complete) – 40 working days
- Final Design (90% and 100% complete) – 20 working days.
- Bid Facilitation – As required.

Section 3: Compensation

Compensation for the professional services identified in Section 1 of this Exhibit A shall be made as follows.

Fixed Fee Schedule – Design Phase		
Task	Description	Lump Sum
P1T21	Project Administration	\$ 4,400.00
PT240	Geotechnical Investigation	\$ 13,300.00
P3T01	Boundary / Topographic / As-Built Survey	\$ 5,100.00
P3T20	Preliminary Design (60% Complete)	\$ 13,500.00
P4T30	Final Design (90% and 100%)	\$ 4,000.00
Sub Total Design Phase Cost		\$ 40,300.00
Fixed Fee Schedule – Bidding and Construction Phase		
P5T01	Bid Facilitation	\$ 6,500.00
Sub Total Bidding and Construction Phase Cost		\$ 46,800.00
Total Cost		\$ 46,800.00

Project required permitting, application fees and direct reimbursable items as listed within the “Reimbursable Expense Schedule”, Attachment Number 1, Exhibit A, Page 2 attached herein, are not included in the above fee schedule. These fees, as applicable, will be added to all invoices.

A copy of SMA’s 2021 rates, fees, and expenses are enclosed with this proposal. Additional services requested by the client beyond the scope of services identified in the Professional Service Agreement will be provided as a separate Work Order, including a specific scope of work and fee, and is not included as part of the base fee stated above.

Section 5: Sub-consultants

SMA proposes to complete the work identified in Section 1 of this Exhibit A using the following sub-consultants. The Client approves of the use of the following sub-consultants:

WOOD ENVIRONMENTAL AND INFRASTRUCTURE SOLUTIONS, INC.



PROFESSIONAL FEE SCHEDULE – Effective January 2021
ATTACHMENT NO. 1 – EXHIBIT A

PROFESSIONAL SERVICES

Professional Staff

Principal	\$ 250.00	per hour
Senior Manager III	\$ 235.00	per hour
Senior Manager II	\$ 220.00	per hour
Senior Manager I	\$ 210.00	per hour
Senior Engineer/Scientist/Surveyor III	\$ 200.00	per hour
Senior Engineer/Scientist/Surveyor II	\$ 180.00	per hour
Senior Engineer/Scientist/Surveyor I	\$ 165.00	per hour
Project Engineer/Scientist/Surveyor III	\$ 150.00	per hour
Project Engineer/Scientist/Surveyor II	\$ 140.00	per hour
Project Engineer/Scientist/Surveyor I	\$ 120.00	per hour
Staff EIT/Scientist/LSIT III	\$ 120.00	per hour
Staff EIT/Scientist/LSIT II	\$ 110.00	per hour
Staff EIT/Scientist/LSIT I	\$ 100.00	per hour

Technical Staff

Senior Engineering/Design/Survey Tech VIII	\$ 180.00	per hour
Senior Engineering/Design/Survey Tech VII	\$ 160.00	per hour
Senior Engineering/Design/Survey Tech VI	\$ 140.00	per hour
Senior Engineering/Design/Survey Tech V	\$ 120.00	per hour
Senior Engineering/Design/Survey Tech IV	\$ 105.00	per hour
Engineering/CAD/Design/Survey/Field Tech III	\$ 90.00	per hour
Engineering/CAD/Design/Survey/Field Tech II	\$ 75.00	per hour
Engineering/CAD/Design/Survey/Field Tech I	\$ 60.00	per hour
Technical Intern II	\$ 60.00	per hour
Technical Intern I	\$ 50.00	per hour
Construction Observer IV	\$ 120.00	per hour
Construction Observer III	\$ 100.00	per hour
Construction Observer II	\$ 80.00	per hour
Construction Observer I	\$ 60.00	per hour

Support Staff

Project Financial/Manager Assistant II	\$ 100.00	per hour
Project Financial/Manager Assistant I	\$ 75.00	per hour
Administrative Assistant IV	\$ 120.00	per hour
Administrative Assistant III	\$ 100.00	per hour
Administrative Assistant II	\$ 80.00	per hour
Administrative Assistant I	\$ 60.00	per hour

EXPENSES

All project-related expenses will be billed at rates determined with respect to current market pricing; *a complete list of expense rates is available upon request.*

OTHER SERVICES

- Telephone/facsimile/postage @ actual cost
- Mileage @ \$0.56 per mile (or current IRS rate)
- Per diem \$151.00 per day (or max per-diem rate per USGSA)
- Other travel (car rental, air, etc.) @ actual cost

SUBCONTRACTED SERVICES

Subconsultants, analytical laboratories, drilling services & general subcontractors @ cost+10%

Applicable tax applies to all billable hours, expenses, and other changes for which such tax has not previously been paid. Overtime will be charged at a rate of 1.5x on time & materials contracts with prior written acknowledgement of the client for services in excess of 8 hours in a day, on weekends or holidays. A 1.5% interest charge per month will be applied to all invoices not paid within 30





April 1, 2021

#9729903

Mr. Jesus Haro, Public Works Director
City of Bisbee
76 Erie Street, P.O. Box 4601
Bisbee, Arizona 85603
jhara@bisbeeaz.gov

RE: Proposal for Professional Civil Engineering Services – Clauson Avenue, Temby Road and Opera Drive Retaining Wall Design in Bisbee, AZ.

Dear Mr. Haro:

This letter and accompanying Professional Service Agreement is Miller Engineers, Inc. d/b/a Souder, Miller & Associates' (SMA) proposal based upon conversations with Alonzo Martinez, P.E., for professional civil engineering services for the above referenced site.

Project Overview:

SMA will provide preliminary design and final design for three new retaining walls to replace the existing retaining walls on Clauson Avenue, Temby Road and Opera Drive in Bisbee, Arizona. The new retaining wall shall be constructed adjacent to the existing wall on each street. This will include the preparation of a complete set of civil engineering construction drawings including geotechnical investigation, surveying, retaining wall design plans and analysis, bidding of the project and associated details in accordance with the most current version of the City of Bisbee Design Standards.

Client Provided Information:

SMA will require any available property information, previous boundary surveys, and/or other record information the client may have in their possession pertaining to the subject property.

Budget and Schedule:

Based on the attached detailed statement of work and the items listed above, SMA estimates a total budget of \$46,800.00. Please see attached Professional Services Agreement and Exhibit "A" for detailed of scope of work, deliverables, fees and schedule.

Additional services requested beyond the scope of services identified herein will be provided as a separate work order, including a specific scope of work and fee, and is not included as part of the base fee stated above.

City of Bisbee

April 1, 2021

Page 2

This proposal offer may be withdrawn, at the option of SMA, if it has not been accepted within 30-days of its issuance. Souder, Miller & Associates appreciates the opportunity to provide professional consulting services for you. If you have any questions or comments concerning this proposal, please feel free call or email at your convenience.

Sincerely,

**MILLER ENGINEERS, INC. d/b/a
SOUDER, MILLER & ASSOCIATES**

A handwritten signature in black ink, appearing to read 'Paul Pompeo', with a long horizontal flourish extending to the right.

Paul Pompeo, P.E.
Civil Technical Sector Director
paul.pompeo@soudermiller.com

Enc (2) – Professional Service Agreement
SMA 2021 Rate and Expense Schedule



Google Earth

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300 ft