



# TOWN OF FAIRFAX

## STAFF REPORT

### September 7, 2022

**TO:** Mayor and Town Council

**FROM:** Loren Umbertis, Public Works Director

**SUBJECT:** Professional/Technical Services Agreement for Geotechnical Investigation near 560 Bolinas Road

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#### **RECOMMENDATION**

Authorize the Town Manager to execute agreement with Miller Pacific Engineering Group to conduct geotechnical investigation of retaining wall failure near 560 Bolinas Road and

#### **DISCUSSION**

An existing retaining wall supports the downslope edge of Bolinas Road just east of residence #560. The wall is approximately 100-feet long and up to about 10-feet high. It is constructed of steel soldier piles and 4x12 timber lagging. The western portion of the wall appears to have rotated away from the roadway, resulting in backfill settlement and gaps between the beams and backfill soils. Lagging boards between the beams are not blocked or braced and have settled and/or come out of alignment. Settlement of wall backfill has resulted in significant roadway pavement distress and cracking that extends into the uphill lane.

Given the nature of the wall distress, the vital importance of Bolinas Road as an evacuation route and the Town's intent to resurface the roadway next year, it is recommended that a geotechnical investigation be undertaken to assess the subsurface conditions and develop remedial recommendations. Miller Pacific Engineering Group (Town Engineer) have provided a scope and cost to conduct this work which is incorporated into the attached agreement.

#### **FISCAL IMPACT**

The cost of this agreement is \$38,000. Funding for this agreement is available in the current year Capital Improvement Program fund 53-887.

#### **ATTACHMENT**

Agreement

**TOWN OF FAIRFAX  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of \_\_\_\_\_, 2022 by and between the Town of Fairfax, a public agency organized and operating under the laws of the State of California with its principal place of business at 142 Bolinas Rd., Fairfax, CA 94930 ("Town"), and Miller Pacific Engineering Group, a California Corporation with its principal place of business at 504 Redwood Blvd. Suite 220, Novato, CA 94947 (hereinafter referred to as "Consultant"). Town and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**RECITALS**

A. Town is a public agency of the State of California and is in need of professional services for the following project:

560 Bolinas Road, Fairfax, CA  
(hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for Town to retain Consultant to provide the services described herein.

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

Consultant shall provide the Town with the services described in the Scope of Services attached hereto as Exhibit "A." This Agreement only includes Phases 1 and 2. If the Town elects to authorize subsequent phase(s), an amendment to this Agreement shall be prepared.

2. Compensation.

a. Subject to paragraph 2(b) below, the Town shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of thirty-eight thousand dollars (\$38,000). This amount is to cover all printing and related costs, and the Town will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the Town, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following

manner: a letter outlining the changes shall be forwarded to the Town by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the Town and executed by both Parties before performance of such services, or the Town will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by Town.

5. Term.

The term of this Agreement shall be from \_\_\_\_\_, **2022 to June 30, 2023**, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the Town to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither Town nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the Town, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Town, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor.

Consultant is retained as an independent contractor and is not an employee of Town. No employee or agent of Consultant shall become an employee of Town. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from Town as herein provided.

11. Insurance.

Consultant shall not commence work for the Town until it has provided evidence satisfactory to the Town it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted

- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the Town, and provided that such deductibles shall not apply to the Town as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status.

(iv) Subject to written approval by the Town, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the Town as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the Town and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the Town evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the Town at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant

shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Town at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the Town or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the Town, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Town, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the Town and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the Town, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Town, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Town has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Town will be promptly reimbursed by Consultant or Town will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Town may cancel this Agreement.

(iii) The Town may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the Town nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Town that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Town as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Town may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

## 12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of Town's choosing), indemnify and hold the Town, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Town, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

## 13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects

("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the Town. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Reserved.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Marin, State of California.

17 Termination or Abandonment.

a. Town has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, Town shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Town shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by Town and Consultant of the portion of such task completed but not paid prior to said termination. Town shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to Town only in the event of substantial failure by Town to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the Town.

19. Organization.

Consultant shall assign **Michael Jewett** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the Town.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

TOWN:

Town of Fairfax  
142 Bolinas Rd.  
Fairfax, CA 94930

Attn: Loren Umbertis, Public Works Director

CONSULTANT:

Miller Pacific Engineering Group  
504 Redwood Blvd. Suite 220  
Novato, CA 94947

Attn: Michael Jewett

and shall be effective upon receipt thereof.

22. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Town and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement.

This Agreement, with its exhibits, represents the entire understanding of Town and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of Town. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence.

Time is of the essence for each and every provision of this Agreement.

29. Town's Right to Employ Other Consultants.

Town reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests.

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Federal Requirements.

When funding for the services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN TOWN OF FAIRFAX  
AND MILLER PACIFIC ENGINEERING GROUP**

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

TOWN OF FAIRFAX

MILLER PACIFIC ENGINEERING GROUP

By: \_\_\_\_\_  
Heather Abrams  
TOWN Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
TOWN Clerk

By: \_\_\_\_\_  
TOWN Attorney

## EXHIBIT A

### Scope of Services

CONSULTANT shall provide civil and geotechnical engineering services for roadway stabilization at 560 Bolinas Road (approximate location) in Fairfax, CA as described in CONSULTANT's Proposal, which is attached hereto as Exhibit A and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and incorporated documents, the terms of this Agreement shall control.



July 25, 2022  
File: 2022-12341pro.doc

Town of Fairfax  
142 Bolinas Avenue  
Fairfax, California 94930

Attn: Mr. Mark Lockaby

Re: Proposal for Geotechnical Engineering Services  
Retaining Wall Stabilization  
560 Bolinas Road  
Fairfax, California

### Introduction

As requested, we are pleased to propose our geotechnical engineering services for stabilization of an existing soldier pile and timber lagging retaining wall supporting the downslope edge of the roadway near 560 Bolinas Road in Fairfax, California. The purpose of our services is to evaluate site geologic conditions and develop construction plans and technical specifications for new stabilization improvements.

### Project Description

The existing soldier pile and timber lagging retaining wall supporting the downslope edge of Bolinas Road just east of residence #560 is about 100-feet long and up to about 10-feet high. The wall is constructed of steel soldier piles (H-beams), 4x12 timber lagging and is located approximately 2-feet off the edge of the pavement. The western portion of the existing wall appears to have rotated away from the roadway, resulting in backfill settlement and gaps between the beams and backfill soils. Lagging boards between the beams are not blocked or braced and have settled and/or come out of alignment.

Backfill settlement has resulted in significant pavement distress and cracking that extends into the uphill lane. Below the wall, a level bench extends about 2-feet to the crest of very steep descending slopes inclined at about 1:1 (horizontal:vertical). Brief review of regional geologic mapping indicates that this site is located within the upper part of a large landslide which extends from Cascade Creek at the base of the slope (several hundred feet below the site) to the crest of the ridge just above Bolinas Road.

### Scope of Services

We customarily provide our services in phases to correspond with project development. Based on our current understanding of the project, we propose the following scope of services:

#### Phase 1 – Geotechnical Investigation

Our Phase 1 services will include a detailed site reconnaissance to observe and document existing conditions, select a location for subsurface exploration, and pre-mark the site for utility location by USA North. We will obtain a soils boring permit through Marin County Environmental Health and an encroachment permit from the Town of Fairfax, although we anticipate encroachment fees will be waived. We will perform one day of subsurface exploration with 2 soil borings, drilled using truck- or track-mounted equipment to anticipated maximum depths on the

order of 30- to 40-feet unless practical auger refusal is encountered at shallower depths. Professional traffic control will be provided during drilling operations. We will collect samples at select intervals for laboratory testing in order to develop criteria for project design.

During performance of our Phase 1 work, we will also subcontract with a licensed Professional Land Surveyor to acquire topographic and boundary information suitable for use in project design, plan preparation, and permitting. Based on the results of our exploration, laboratory testing, and surveying, we will develop a couple conceptual options for site stabilization, along with “rough” cost estimates for use in selection of the “preferred” option. We will also develop recommendations for near-term site winterization and temporary stabilization as needed.

Phase 2 – Geo-Civil Design Services

Following issuance of our Phase 1 services, we will prepare an engineered design for the “preferred” stabilization alternative. This will include performing the necessary engineering analysis for design and preparing a calculation package that summarizes our design approach. We will prepare drawings and technical specifications for incorporation into the Contract Documents. We have assumed we will submit a “90 percent” set of drawings and specifications for review by the project team, and we will finalize these documents once all review comments have been incorporated.

Phase 3 – Construction Observation & Testing

During construction, we should be present intermittently to observe the Contractor’s operations and test portions of the work. While the scope of our Phase 3 services will depend upon the stabilization alternative that is selected, we generally anticipate it will include observing foundation excavations, site grading, concrete and steel placement, pavement construction and other pertinent items. Once construction is complete, we will prepare a brief letter report documenting our observations and testing. We will also present our opinion regarding Contractor compliance with the design plans and specifications.

Schedule and Fee

Based on current driller and surveyor availability, we anticipate delivery of our Phase 1 report within about 8 to 12 weeks of authorization.

We anticipate providing our services on a time-and-expense basis in accordance with a standard Town Agreement and the attached Schedule of Charges and Cost Estimate Worksheet. Based on our understanding of the project, we propose the following fee arrangements:

Phase 1 – Geotechnical Investigation.....	Time & Expense, Estimate \$28,000
Phase 2 – Geo-Civil Design.....	Time & Expense, Estimate \$10,000
Phase 3 – Geotechnical Construction Observation/Testing .....	
.....	Time & Expense, Estimate \$10,000 to \$15,000

We will provide a more detailed scope/budget proposal for Phase 2 and 3 services once our Geotechnical Investigation is complete, and the “preferred” stabilization approach has been selected.

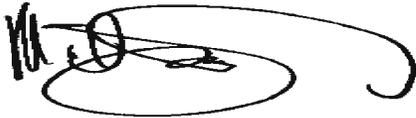
Town of Fairfax  
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July 25, 2022

For planning purposes, we anticipate that stabilization options will likely include new walers/tiebacks and new soil-nail/shotcrete approaches. Based on bids for similar recent projects, we generally anticipate construction costs for the project could be on the order of \$200,000 to \$500,000 depending on the "preferred" stabilization option and ultimate extents/scope of work.

We are pleased to have the opportunity to work with you on this project. If you have any questions concerning this proposal, please call us. When you wish us to proceed, please provide us a Town agreement for execution. We are prepared to commence with our Phase 1 services immediately upon authorization.

Very truly yours,  
MILLER PACIFIC ENGINEERING GROUP

A handwritten signature in black ink, appearing to read 'Mike Jewett', with a large, sweeping flourish extending to the right.

Mike Jewett  
Engineering Geologist No. 2610  
(Expires 1/31/23)

Attachments: Schedule of Charges, Cost Estimate Worksheet



**MILLER PACIFIC ENGINEERING GROUP**  
a California corporation

**SCHEDULE OF CHARGES**  
**PROFESSIONAL ENGINEERING AND TESTING SERVICES**

<u>Professional and Technical Personnel</u>	<u>Hourly Rate</u>
Project Assistant/Word Processor .....	\$85
Engineering Technician .....	\$120
Senior Technician .....	\$130
Prevailing Wage .....	\$150
Staff Engineer/Geologist.....	\$150
Project Engineer/Geologist.....	\$170
Senior Engineer/Geologist.....	\$200
Associate Engineer/Geologist .....	\$230
Principal Engineer/Geologist .....	\$260

In-house Laboratory Testing

(Will be charged at the hourly rate above unless otherwise noted in the Agreement and Proposal)

Modified 4 in. Compaction Curve/Checkpoint	ASTM D 1557.....	\$300/\$125
California Impact	Cal. 216 .....	\$350
Sieve Analysis	ASTM D 422.....	\$150
Sieve Analysis (w-200 wash)	ASTM D 1140 .....	\$150
Atterberg Limits	ASTM D 4318.....	\$250
Moisture Content/Density	ASTM D 2937.....	\$40
Unconfined Compression	ASTM D 2166.....	\$80
Hydrometer	ASTM D4829.....	\$250
Rush Testing	Add 50% to the Total of all Laboratory Testing	

Other Inside Charges

Mileage .....	\$0.80 per mile
Vehicle (Field).....	\$9 per hour
Nuclear Density Gauge .....	\$8 per test
Inclinometer .....	\$160 per day / \$90 per half day
Laser Level/Floor Level.....	\$25 per day
Sampling Equipment.....	\$50 per day / \$30 half day

Outside Services ..... Cost + 20%

Includes exploration equipment, instrumentation, in-situ monitoring, outside/specialized laboratory testing, per diem, shipping, courier/delivery services, outside reproduction, and other services and supplies not normally provided.

\*NOTES:

- Field site visits and travel time are normal hourly rates, portal to portal.
- Overtime – Weekday                      add \$35  
Overtime – Weekend/Holiday/Night    add \$45\*  
  \*(4- and 8-hour minimums)
- Rates are for normal Geotechnical Engineering and Geological services. Rates for depositions and testimony are \$520 per hour for Principal; \$460 per hour for Associate; and \$410 per hour for Senior. All other personnel are \$305 per hour. These fees are due and payable at the time of service.
- Schedule of charges is effective as of March 2022. It is subject to revision annually and at other times without notice.

**MILLER PACIFIC ENGINEERING GROUP**  
 Budget Estimate Worksheet  
 Town of Fairfax - 560 Bolinas Road Wall Stabilization  
 Fairfax, California

									Date: 7/25/22
									Project Number: 22-12341
									By: NGK
PERSONNEL COST	SAS, MPM, DSC, EAD	BSP, MFJ	RCA, NGK	MMT, ZMS	EIC, MNT, RGM, YHS, CMS, JMB	JTO, AJM, ZTM	NAR, TWMM, BPC, JMO, BDH, RJA	KRB, MLT	
Task Description	Principal Eng/Geol \$260	Associate Eng/Geol \$230	Senior Eng/Geol \$200	Project Eng/Geol \$170	Staff Eng/Geol \$150	Senior Technician \$130	Eng Technician \$120	Word Processor \$85	
1.0 Background Review		2	2						
2.0 USA		2							
3.0 Permitting				2					
4.0 Drilling		1			10				
5.0 Lab					8				
6.0 CAD					4				
7.0 Report	2	4	6					1	
Subtotal Hours	2	9	8	2	22	0	0	1	
Subtotal Dollars	\$ 520	\$ 2,070	\$ 1,600	\$ 340	\$ 3,300	\$ -	\$ -	\$ 85	
OVERTIME - PREMIUM						Hrs	Unit \$	Amt \$	
Weekday and Saturday						Add 2	\$35	\$ 70	
Sunday/ Holiday / Night						Add 0	\$45	\$ -	
<b>Total Personnel Hours:</b>						<b>44</b>	<b>Total Personnel Dollars:</b>	<b>\$ 7,985</b>	

OTHER CHARGES				
Item	Quantity	Units	Unit \$	Amount \$
Vehicle - Time - Field	8	Hours	\$ 9.00	\$ 72
Vehicle - Mileage	100	Miles	\$ 0.80	\$ 80
Nuclear Density Gage		Test	\$ 8.00	\$ -
Sampling or Video Equipment	1	Days	\$ 50.00	\$ 50
Inclinometer		Days	\$ 150.00	\$ -
Inclinometer pipe & Grout @ \$10.00 a foot		Feet	\$ 10.00	\$ -
Specialty Software		Flat Rate	\$ 100.00	\$ -
<b>Total Other Charges:</b>				<b>\$ 202</b>

OUTSIDE AND SUBCONTRACT COSTS				
Task Description	Quantity	Unit	Unit \$	Amount \$
1.0 Exploration (borings) Travel	2	Hours	\$ 240	\$ 480
2.0 Exploration (borings) Prevailing Wage	8	Hours	\$ 375	\$ 3,000
3.0 Exploration (borings) Mob	1	Each	\$ 375	\$ 375
4.0 Traffic Control	1	Day	\$ 1,690	\$ 1,690
5.0 Survey Allowance	1	Each	\$ 7,500	\$ 7,500
6.0 Cuttings Disposal	2	Drums	\$ 300	\$ 600
7.0 Lab - corrosivity		Test	\$ 200	\$ -
8.0 Lab - R-Value		Test	\$ 390	\$ -
9.0 Lab - TXCU		Test	\$ 482	\$ -
10.0 Permit	1	Each	\$ 700	\$ 700
<b>Overhead:</b>				<b>20%</b>
<b>Total Outside Cost:</b>				<b>\$ 17,214</b>

<b>Subtotal:</b>		<b>\$ 25,401</b>
<b>Contingency:</b>	<b>10%</b>	<b>\$ 2,540</b>
<b>Total Project Costs:</b>		<b>\$ 27,941</b>

**Use for Budget:** **\$ 28,000**

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice Town on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform Town regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

The services will be accomplished in two phases with each having separate compensation. This agreement only includes Phases 1 and 2. The phases and associated compensation are outlined below.

Phase 1 – Geotechnical Investigation .....	\$28,000
Phase 2 – Geo-civil Design .....	\$10,000
<hr/>	
<b>Total Compensation .....</b>	<b>\$38,000</b>

EXHIBIT C

*Not Applicable*

## EXHIBIT D

### Federal Requirements

#### 6.14 Compliance with Federal Laws, Regulations, and Executive Orders

- a) For purposes of this Agreement, "contractor" and CONSULTANT have the same definition and "contract" and Agreement have the same definition.
- b) The contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags, or likenesses of DHS agency officials without specific FEMA pre-approval.
- c) This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.
- d) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from this contract.
- e) The contractor acknowledges that 31 U.S.C. Chap. 38 (administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.
- f) If applicable, the contractor shall provide the following access to records:
  - 1. The contractor agrees to provide the Town of Fairfax, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  - 2. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts or transcriptions as reasonably needed.
  - 3. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or work sites pertaining to the work being completed under the contract.
- g) During the performance of this contract, if applicable, the contractor agrees as follows:
  - 1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national

origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of

paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.