



CIVIL DESIGN PROFESSIONALS

INNOVATIVE ENGINEERING SOLUTIONS

ENGINEERING SERVICES AGREEMENT

Date: August 26, 2021

Client: Midwest Ready Mix
1405 East Highway 50
Vermillion, SD 57069

Project: 1401 North Cleveland Ave
Sioux Falls, South Dakota
Project No.: 21-0674

Site Solution Professionals, Inc. d/b/a Civil Design Professionals (CDP) will provide to the client shop drawings for the referenced project in accordance with Client furnished information pursuant to the terms and conditions of this Agreement.

A. FEE

- Final Design = \$2,300.00
(two thousand three hundred dollars and zero cents)

Prices do not include any convenience fees for credit cards. For credit card transactions add 4%.

B. SCHEDULE

- Final Plans will be provided after receipt of signed agreement.

C. SCOPE OF WORK

- CDP will provide design shop drawings for the retaining wall design based upon the site information furnished by the Client for the above noted project, for the purpose of construction. Electronic copies are provided unless special arrangements are made.
- If requested, CDP will provide design calculations for the retaining wall design based upon the site information furnished by the Client using standard design procedures. CDP makes no warranties or guarantees related to the calculations provided and such calculations are for Client's information only.

D. CLIENT RESPONSIBILITY

- Client shall provide CDP with full information regarding the project's design and construction. Such information includes, but is not limited to: geotechnical investigation/soil borings, site civil plans, project specifications, soil testing, photos, sieve analysis, compaction testing, bearing capacity testing and any special circumstances affecting the retaining walls before, during or after construction. CDP is entitled to rely on any such Client provided information and has no duty to confirm the accuracy of any such information. Client agrees to indemnify, defend, and hold CDP harmless from any claim made against CDP by any party relating in any way to CDP's use of Client furnished information.
- Client agrees that it is obligated to ensure compliance with all notes and quality assurance provisions as listed on CDP's design documents. Client agrees to indemnify, defend, and hold CDP harmless from any claim made against CDP by any party relating in any way to Client's failure to ensure compliance with all notes and quality assurance provisions as listed on CDP's design documents.
- Unless otherwise directed in writing, Client shall be solely responsible for distributing CDP's design documents for the purpose of soliciting comments or coordinating CDP's design documents with any other project participants or governmental agency.

E. EXCLUSIONS

- CDP shall have no responsibility whatsoever for any site or soil investigation that may be necessary to determine the suitability of the adjacent or underlying material to support the retaining wall structure. Client agrees that it will indemnify, defend and hold harmless CDP from any claims made against CDP by any party relating in any way to the suitability of site soils, including the adjacent or underlying material to support the retaining wall structure.
- Any retaining wall certification reports or letters, or other such documents provided by CDP, whether during or after construction, shall not be considered in any way as a warranty or guarantee as to the quality or appropriateness of the construction of the subject retaining wall and shall not eliminate the Client's responsibility or that of any other contractor to follow the plans and specifications relating to the construction of the subject retaining wall.

F. CHANGES

- Client assumes full responsibility and shall hold CDP harmless against any claims arising from any changes made to the plans or specifications by the Client or person other than CDP, unless Client has given CDP prior notice of the changes and has received written consent for such changes from CDP.
- Changes requested after drawing and design preparation has been substantially completed may require additional compensation at the sole determination of CDP. Client will be advised, and approval secured, before additional work is performed by CDP. Client agrees to pay for any costs associated with the changes on CDP's next invoice.

G. TERMS (PAYMENT)

- CDP shall invoice the Client for engineering services upon completion and submittal of the documents. Payment of each invoice is due and payable by Client within ten (10) days of receipt of invoice. Amounts unpaid thirty (30) days after invoice date shall bear interest charges of one and one half (1½) percent per month.
- In the event CDP incurs costs to collect any unpaid balance, or incurs litigation costs to collect any unpaid balance under this Agreement, then CDP shall be entitled to recover all such costs from Client, including but not limited to, its attorney's fees and court costs.

H. TERMS (CONTRACT)

- CDP shall not be responsible for any damages or be held in default due to acts of God, war, riots, fire, flood, or other events or delays that are either unavoidable or beyond CDP's reasonable control, delays caused by failure of Client or Owner's agents to furnish information or to approve or disapprove CDP's work promptly, or due to late, slow or faulty performance by Client, other contractors or engineers, or government agencies, the performance of those work is precedent to or concurrent with completion of CDP's work.

H. TERMS (CONTRACT) (CONTINUED)

- CLIENT AGREES THAT CDP'S LIABILITY TO CLIENT OR TO ANY THIRD PARTY FOR ANY DAMAGES ON ACCOUNT OF A BREACH OF THE TERMS OF THIS AGREEMENT, OR ERROR, OMISSION, OR OTHER PROFESSIONAL NEGLIGENCE BY CDP SHALL BE LIMITED TO A SUM NOT TO EXCEED \$25,000 OR THE FEE LISTED IN THIS AGREEMENT, WHICHEVER IS GREATER AND CLIENT SHALL INDEMNIFY CDP FOR ANY DAMAGES ARISING FROM CDP'S SERVICES UNDER THIS AGREEMENT THAT EXCEED THE AGREED UPON LIMITATION OF LIABILITY. CLIENT AGREES THAT THIS LIMITATION OF LIABILITY IS REASONABLE GIVEN THE FEE CHARGED BY CDP RELATIVE TO THE POTENTIAL RISKS TO CDP FOR ITS SERVICES. THIS LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF CDP'S AVAILABLE INSURANCE COVERAGE OR THEORY OF LIABILITY. CLIENT MAY NEGOTIATE A HIGHER LIABILITY LIMIT FOR ADDITIONAL CONSIDERATION.
- Pre-Lien Notice: CDP is required by law to provide you the following notice:
 - (a) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.
 - (b) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT, UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.
- Client agrees that the venue for any litigation arising from the Agreement shall be Hennepin County, Minnesota.

IN WITNESS WHEREOF, CDP and Client(s) have executed this Agreement the day and year first written above.

The parties below have accepted, made and executed this agreement upon the terms, conditions, and provisions stated above.

ACCEPTANCE

Midwest Ready Mix

CIVIL DESIGN PROFESSIONALS

By: _____

By: Laura R. Blonigen

Title: _____

Title: _____

Signature: _____

Signature: *Laura Blonigen*

Date: _____

Date: 8/26/2021