

RESOLUTION NO. 03-2022

A RESOLUTION OF THE CITY COUNCIL OF CLINTON, MISSOURI APPROVING AN AGREEMENT BETWEEN THE CITY OF CLINTON AND ALLSTATE CONSULTANTS, LLC.

WHEREAS, the City of Clinton desires to utilize the services of Allstate Consultants, LLC for engineering services related to a structural evaluation of 118-120 S. Main and adjacent structures; and

WHEREAS, Allstate Consultants, LLC has the expertise required to perform these services;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF CLINTON, MISSOURI AS FOLLOWS:

Section 1. The Agreement with Allstate Consultants, LLC (Exhibit A) is hereby approved.

Section 2. The Mayor is hereby authorized to execute said Agreement on behalf of the City of Clinton.

Read and passed this 15th day of February, 2022.



Greg Lowe, Mayor

ATTEST



Wendee Seaton, City Clerk



AGREEMENT FOR PROFESSIONAL SERVICES

**CLIENT: CITY OF CLINTON
105 E. OHIO STREET
CLINTON, MO 64735**

BILLING: SAME AS CLIENT

DATE: FEBRUARY 11, 2022

PROJECT #: 22041.01

PROJECT INFORMATION:

**120 S. MAIN STREET
CLINTON, MO 64735**

SCOPE OF SERVICES / FEE FOR SERVICES:

Allstate Consultants LLC, 3312 LeMone Industrial Blvd., Columbia, MO 65201 agrees to provide professional engineering services related to a **STRUCTURAL EVALUATION** for the above listed project. These services will be completed on an **Hourly fee** basis. See the attached Addendum A for our hourly rates and standard terms and conditions.

CONTRACT:

Acceptance of this agreement will serve as Allstate Consultants' notice to proceed and together with the standard terms and conditions attached hereto represent the formal contractual agreement. All fees associated with this project will be paid for by the client.

Proposed By:



Allstate Consultants LLC

Accepted By:

 

Signature Date

Greg Lowe, Mayor

Print Name / Title



ADDENDUM A – STANDARD TERMS AND CONDITIONS

Scope of Service: The Client (you) and the Consultant (Allstate Consultants LLC) have agreed to a list of services the Consultant will provide to the Client as set forth in this agreement. If agreed to in writing by the Client and the Consultant, the Consultant shall provide Additional Services. Additional Services are not included as part of the Scope of Services and shall be paid for by the Client in addition to payment for the services included. Payment for Additional Services will be made by the Client, in accordance with the Consultant's prevailing fee schedule, as provided below. Any services not set forth in this agreement are specifically excluded and Consultant assumes no responsibility for those services. Directing the Consultant to proceed with services is an acceptance of this proposal.

Fee: A *Fixed fee*, if stated, shall constitute the total compensation due.

A *Percentage fee*, if stated, shall be calculated on the basis of the total cost of the work designed and specified by the Consultant.

An *Estimated fee*, if stated, will be calculated on an hourly basis, and the estimate shall not be exceeded by more than twenty percent without written approval of the Client.

A *Not-To-Exceed fee*, if stated, will be calculated on an hourly basis, and will not be exceeded without prior written approval of the Client.

An *Hourly fee*, if stated, will be based on the actual hours expended on the project and will be calculated on an hourly basis.

Hourly Rate: Where the fee is to be calculated on an hourly basis, the rates shall be as follows:

PRINCIPAL.....	\$190.00
ENGINEER III.....	\$160.00
ENGINEER II.....	\$150.00
ENGINEER I.....	\$130.00
WATER QUALITY SCIENTIST III.....	\$150.00
WATER QUALITY SCIENTIST II.....	\$120.00
WATER QUALITY SCIENTIST I.....	\$80.00
PROJECT SCIENTIST III.....	\$145.00
INVESTIGATIVE ENGINEER III.....	\$235.00
INVESTIGATIVE ENGINEER II.....	\$210.00
INVESTIGATIVE ENGINEER I.....	\$180.00
TECHNICIAN VI/SURVEYOR III.....	\$140.00
TECHNICIAN V/SURVEYOR II.....	\$130.00
TECHNICIAN IV/SURVEYOR I/SENIOR PROJECT MANAGER.....	\$115.00
TECHNICIAN III/PROJECT MANAGER I.....	\$95.00
TECHNICIAN II.....	\$80.00
TECHNICIAN I.....	\$60.00
TECHNICIAN.....	\$40.00
CREW (1 MAN).....	\$140.00
CREW (2 MEN).....	\$170.00
CREW (3 MEN).....	\$195.00
INVESTIGATOR IV.....	\$140.00
INVESTIGATOR III.....	\$125.00
INVESTIGATOR II.....	\$100.00
INVESTIGATOR I.....	\$80.00
EXPERT TESTIMONY II.....	\$380.00
EXPERT TESTIMONY I.....	\$250.00
DRILL RIG CREW (2 MEN).....	\$173.00
DRILL RIG CREW WITH GROUTER (2MEN).....	\$194.00
GPS RECEIVERS (PER UNIT).....	\$175.00/day
TRAFFIC COUNTERS (PER UNIT).....	\$195.00/day
ATV (PER UNIT).....	\$140.00/day
MILEAGE.....	IRS Rate
EXPENSES (Lodging, Meals, Printing, Research, & etc.).....	Actual Cost

Annual Rate Increase: Rates may be adjusted annually or periodically. Adjusted rates will be incorporated and billed into applicable agreements and contracts.

Reimbursable Expenses: The Client shall reimburse the Consultant for direct expenses incurred during performance of the service, including printing charges, taxes, mileage, public transportation cost, tolls, permit fees, equipment rentals, meals, lodging, and other miscellaneous expenses.

Billing/Payments: Statements for the Consultant's services shall typically be submitted on a monthly basis and at the completion of the project. Statements shall be due upon receipt and payable within 30 days after their date. Payments shall not be contingent upon any other payments to the Client by others. If not paid within 30 days, the Consultant may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of all services. Payments to the Consultant shall not be withheld, postponed or made contingent on the construction, completion or success of the project. No withholdings, deductions or offsets shall be made from the Consultant's compensation for any reason.

Retainer: A retainer or advance deposit may be required for the amount stated in this Agreement. If required, the Client shall pay the Consultants prior to our commencement of services. The Client has agreed to pay our monthly invoices on a current basis and the retainer shall be applied to the outstanding balance upon the conclusion of our services or, at our option, to satisfy delinquent monthly statements. We reserve the right to request further reasonable deposits if the initial payment is used to satisfy prior invoices. Any unused portion of the deposit will be refunded at the conclusion of the services.

Termination of Services: The Agreement may be terminated by the Client or the Consultant after seven days written notice should the other fail to perform its obligation hereunder. In the event of termination, the Client shall pay the Consultant for all services rendered to the date of termination, all reimbursable expenses, and termination expenses.

Access to Site: Unless otherwise stated, the Consultant will have access to the site for activities necessary for the performance of the services. The Consultant will take precautions to minimize damage due to these activities but have not included in the fee the cost of restoration of any resulting damage.

Code Compliance: The Consultant shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of this agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the Consultant to a reasonable adjustment in the schedule and additional compensation in accordance with the Scope of Service provisions of this Agreement.

Assignment: Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Consultant as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

Certification/Guarantee & Warranty: The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing any such certification.

Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement.

Construction Observation: The Consultant may visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and the Consultant, in order to observe the progress and quality of the Work completed by the Contractor. The Consultant shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work.

Dispute Resolution: In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation. If the dispute or any issues remain unresolved after good faith mediation by both parties, the parties agree to attempt resolution by submitting the matter to a court of competent jurisdiction.

Applicable Laws: Unless otherwise specified, this agreement shall be governed by the laws of the State of Missouri.

Presence of Hazardous Materials: The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees and subconsultants (collectively, Consultant) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.

Indemnification: The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Information Provided by Others: The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys, existing plans/specifications, existing geotechnical reports, and instructions required by this Agreement. The Consultant may use such information in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Consultant shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

Limitation of Liability: In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$100,000.00, or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Standard of Care: In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The Consultant makes no warranty, either express or implied, as to the professional services rendered under this Agreement.

Ownership of Instruments of Service: The Client acknowledges the Consultant's construction documents, including electronic files, as the work papers of the Consultant and the Consultant's instruments of professional service. Nevertheless, upon completion of the services and payment in full of all monies due to the Consultant, the Client shall receive ownership of the final construction documents prepared under this Agreement. The Client shall not reuse or make any modification to the construction documents without the prior written authorization of the Consultant. The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way related to or connected with the unauthorized reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client without the written authorization of the Consultant.

Timeliness of Performance: The Client and Consultant are aware that many factors outside the Consultant's control may affect the time to complete the services to be provided under this Agreement. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices.

Unauthorized Changes to Plans: In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to any reports, plans, specifications or other construction documents, including electronic files, prepared by the Consultant without obtaining the Consultant's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore the Client agrees to waive any claim against the Consultant and to release the Consultant from any liability arising directly or indirectly from such changes.