



Highway Department


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MEMORANDUM

TO: Cass County Commission

FROM: Thomas Soucy, County Engineer 

DATE: February 18, 2025

SUBJECT: Consent Agenda Item for March 5, 2025 Commission Meeting: Structural Engineering Services Agreement for Shop Floor Repair

Attached is the structural engineering services agreement from Sandman Structural Engineers for the repair plan of our existing shop floor/pit. The estimated cost of this work is \$7,000.00

SUGGESTED MOTION: AUTHORIZE CHAIRPERSON TO SIGN STRUCTURAL ENGINEERING SERVICES AGREEMENT WITH SANDMAN STRUCTURAL ENGINEERS FOR THE REPAIR PLAN FOR OUR EXISITING SHOP FLOOR/PIT.

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Structural Engineering Services Agreement

CLIENT

PROJECT

Name: Cass County Highway Department
Address: _____
Phone: _____

Name: Maintenance Pit Rehab
Location: West Fargo, ND
ID #: _____

AGREEMENT

- 1. This agreement will be between the client named above and Sandman Structural Engineers (SSE).
- 2. This agreement is based upon our understanding of the project to date. SSE reserves the right to revise the fee if the scope of work changes from the work noted herein.

a. Project Description:

The current maintenance pit is experiencing various amounts of movement at the shop slab level. The floor opening is smaller than the pit wall spacing and the overhang has moved overtime. Cracking of the concrete floor near the opening and deterioration the embed steel elements has reduced the usability of the fall protection screens when a truck is not over the pit.

b. Scope of Services to be Provided:

SSE will develop drawings to replace the overhang slab and the embedded elements. Additionally the pit will be extended to the West to allow a new staircase so that the pit can be accessed from the shop floor if a truck is park above the pit. Time will be billed hourly up to the maximum amount shown below.

c. Schedule of Services:

SSE can complete the design and drawings within two weeks from receipt of a signed agreement.

- 3. Opinion of cost is \$ 7,000 . Additional expense necessary due to change(s) in scope will be on a time and expense basis per: Attached Rate Sheet or \$ _____ per hour (Engineering), and \$ _____ per hour (Technician)
- 4. Fees will be paid by client in accordance with Section 5 of the General Provisions of Service.
- 5. See General Provisions of Service on Page 2 of this document.

AUTHORIZATION

I, _____, agree to the terms of this contract and authorize SSE to proceed with the work as outlined above. Signer states that they are in a position of responsible charge to legally sign contracts. If the signer is not found to be in responsible charge to legally sign this agreement on behalf of the entity represented; SSE holds the right to enforce all terms of this agreement with the signer personally, the entity, or both. The signer also states that they have the authority to direct SSE to perform the services identified within this agreement.

Client Signature: _____

Date: _____

SSE Signature:  _____

Date: 2/4/2025

GENERAL PROVISIONS OF SERVICE

Section 1: Our Agreement

1.1 Our Agreement with you consists of these General Provisions of Service and the accompanying written proposal or authorization. It is our entire Agreement and it supersedes all prior agreements. Our Agreement may be modified only in writing making specific reference to the provision modified. Directing us to start work prior to execution of this Agreement constitutes your acceptance of these General Provisions of Service.

1.2 If mutually acceptable terms cannot be established, we have the right to withdraw our proposal without liability to you or others, and you will compensate us for services already rendered. In the event you use a purchase order, work order, or other form to authorize our services, any conflicting or additional terms it provides are not part of our Agreement unless we accept them making specific reference to the change or addition and we do so in writing.

Section 2: Our Responsibilities

2.1 We will provide the professional services specifically described in our written Agreement with you. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from all claims, damages, and expenses arising out of your direction.

2.3 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

2.4 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.

2.5 Our estimates of construction or remediation costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

Section 3: Your Responsibilities

3.1 You will provide us with all relevant reports, specifications, plans, and information about the site to which you have access. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed our work. SSE shall not be held liable for anything related to information that was not provided to us to perform our work.

3.2 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials or other contamination at the work site. If we observe or suspect the presence of contaminants not anticipated in our Agreement, we may terminate our work without liability to you or to others, and we will be paid for the services we have provided.

3.3 Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. You agree to defend and hold us harmless from any related claim or loss.

3.4 If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for renegotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating renegotiation, and the Consultant and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with the Termination provision herein.

3.5 Inasmuch as the remodeling and/or rehabilitation of the existing structure requires that certain assumptions be made by the Consultant regarding existing conditions, and because some of these assumptions may not be verifiable without the Client's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the Client agrees to bear all costs, losses and expenses, including the cost of the Consultant's Additional Services, arising from the discovery of concealed or unknown conditions in the existing structure or site.

3.6 The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys, and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys, and instructions 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.

Section 4: Instruments of Service

4.1 Unless you request otherwise, we will provide our instruments of service in an electronic format.

4.2 Our drawings, reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. These Instruments of Service are not assignable. You may not transfer these instruments of service to others or use them for a purpose for which they were not prepared without our written approval. If said Instruments of Service are assigned without prior approval, you agree to pay SSE an additional fee of the value of the use as established by SSE. SSE will invoice you for this additional fee and you agree to pay within 10 days of the invoice. You also agree to reimburse SSE for its attorney's fees and litigation costs related to your breach or violation of this section and Agreement. You also agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of a non-approved transfer or use.

4.3 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. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant from any damages, liabilities, or costs, including reasonable attorneys' fees and costs of defense, arising from such changes. In addition, the Client agrees to include in any contracts for construction appropriate language that prohibits the Contractor or any subcontractors of any tier from making any changes or modifications to the Consultant's construction documents, including electronic files, without the prior written approval of the Consultant and that further requires the Contractor to indemnify both the Consultant and the Client from any liability or cost arising from such changes made without such proper authorization.

4.4 If you do not pay for our services in full as agreed, we may retain all work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control. You agree not to use or rely upon our work for any purpose whatsoever until it is paid for in full.

4.5 Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Section 5: Our Compensation

5.1 You agree to pay for our services as agreed upon or according to our then current Schedule of Charges if there is no other written agreement as to price. An estimated cost is not a firm figure. You will pay all sales taxes and other taxes that are based upon your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. All undisputed portions of invoices are due on receipt and you agree to pay interest on unpaid balances beginning 60 days after invoice dates at the rate of .833% per month, but not to exceed the maximum rate allowed by law. If payment is not received within 60 days, we will assign finance charges back to day 1, stop work, and seek to file a lien on the project.

5.3 If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of all terms of our Agreement and we agree to extend credit to that person and to release you.

5.4 Your obligation to pay for our services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of lawsuit in which we are not involved, your successful completion of a project, receipt of payment from another, or any other event. No retainage will be withheld.

5.5 If you fail to pay us within 120 days of invoice date, you agree to reimburse our expenses, including but not limited to attorney fees, staff time, and other costs of collection.

5.6 You agree to compensate us for our reasonable fees and expenses, including reasonable counsel fees, if we are required to respond to a subpoena or other legal process arising out of a project and as to which we are not a party.

5.7 If we are delayed by factors beyond our control, or if project conditions or the scope or the amount of work changes, or if changed labor union conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice and we will receive an equitable adjustment of our compensation. If we do not reach agreement on such compensation within 30 days of our written application, we may terminate our duties without liability to you or to others.

5.8 If you fail to pay us within 120 days following invoice date, we may consider the default a total breach of our Agreement and, at our option, terminate all of our duties without liability to you or to others. At that time we have the option to revoke the Engineer of Record status for the project.

5.9 In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to fees due us.

5.10 SSE will provide additional services outside the scope of services as requested by the client. Service requests by the client outside the scope is understood to be additional services. If time does not allow for normal scheduling, additional services may be subject to overtime rates. These may include but are not limited to: Major plan changes, modifications, system changes, etc, requiring significant re-work or re-design after providing documents, direction, or notice to proceed. SSE will make every reasonable effort to notify the client when re-work activities are required for directed changes. If the scope of work changes significantly to where additional services billed as hourly becomes impractical, an amended contract may be issued for acceptance.

Section 6: Disputes, Damage, and Risk Allocation

6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting attended by each party's representative empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 Neither of us will be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital.

6.3 We will not be liable for damages unless suit is commenced within two years of the date of injury or loss or within two years of the date of the substantial completion of our services, whichever is earlier. We will not be liable unless you have notified us of the discovery of the claimed breach of contract, negligent act, or omission within 30 days of the date of discovery and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us a written report signed by an appropriately licensed professional specifying each act or omission that you contend constitutes a violation of the standard of care governing our professional services.

6.4 For you to obtain the benefit of a fee that includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed \$50,000. If you are unwilling to accept this allocation of risk, we will increase our aggregate professional liability to \$100,000 provided that, within 10 days of the date of this Agreement, you provide payment in an amount that will increase our fees by 20%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.

6.5 You agree to indemnify us from expense and liability to others in excess of the risk allocation stated above and to insure this obligation.

6.6 The prevailing party in any action relating to this Agreement shall be entitled to recover its costs and expenses, including reasonable attorney fees, staff time, and expert witness fees.

6.7 The law of the state in which our servicing office is located will govern all disputes. Each of us waives trial by jury. No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make any claim against our employees as individuals.

Section 7: General Indemnification

7.1 We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

7.2 To the extent it may be necessary to indemnify either of us under Section 6, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

7.3 You agree to indemnify us against all loss and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

7.4 You agree to hold us harmless against any construction related deficiencies if Construction Administration services are declined or if SSE is omitted in the due process of Construction Administration of its instruments of service.

Section 8: Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request.

8.2 Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other under this Agreement. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.3 Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Consultant.

8.4 This Agreement may be terminated early only in writing. We will receive an equitable adjustment of our compensation in the event of early termination.

8.5 If a provision of this Agreement is invalid or illegal, all other provisions shall remain in force and effect.

End of these provisions.