

AMENDMENT No. 2
TO
ENGINEERING SERVICES AGREEMENT
BETWEEN
CITY OF RAPID CITY
AND
CETEC ENGINEERING SERVICES, INC.
FOR
MALLRIDGE LIFT STATION IMPROVEMENTS
CITY PROJECT No. SS03-1255

OWNER: City of Rapid City
Engineering Division
300 6th Street
Rapid City, SD 57701-2724
Attention: Dave LaFrance, P.E., Project Manager

ENGINEER: CETEC Engineering Services, Inc.
1830 West Fulton Street
P.O. Box 9014
Rapid City, SD 57709-9014

PURPOSE: This Amendment modifies terms and conditions of "*Authorization and Agreement for Services for Mallridge Lift Station Improvements, City Project No. SS03-1255*" dated May 5, 2004. The terms and conditions of the referenced agreement shall remain unchanged unless specifically modified by this amendment.

ATTACHMENTS TO THIS AMENDMENT:

1. Fee Proposal for geotechnical investigation, American Engineering Testing, Inc., March 16, 2005.

CHANGES TO AGREEMENT:

Engineering shall provide geotechnical investigation services and reporting as described in the American Engineering Testing proposal attached herefor and Exhibit A.

FEE ADJUSTMENT:

The fee for this Amendment No. 2, shall be as follows:

American Engineering Testing Proposal				\$2,100.00
CETEC Mark-up (10%)				\$210.00
CETEC Labor				
Survey Crew	3 hrs. @ \$90	=		\$270.00
Project Engineer	1 hrs. @ \$90	=		\$90.00
CAD I	1 hrs. @ \$45	=		\$45.00
Total Amendment 2 Fee				\$2,715.00

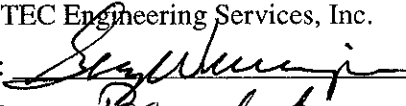
The adjusted maximum limiting fee, including this Amendment No. 2, shall be as follows:

Original Contract Amount			\$37,336.00
Amendment No. 1 - Final Design	February 24, 2005		\$70,000.00
Amendment No. 2 - Geotechnical	April 14, 2005		\$2,715.00
Total Maximum Limiting Fee			\$110,051.00

EXECUTION

In Witness whereof, the parties hereto have executed this Amendment No. 2 effective as of the latest date signed below.

OWNER
CITY OF RAPID CITY
By: _____
Title: _____
Date: _____
Attests: _____
Title: _____

ENGINEER
CETEC Engineering Services, Inc.
By:  _____
Title: President
Date: 4-18-04



AMERICAN
ENGINEERING
TESTING, INC.

PW042605-09

- CONSULTANTS
- GEOTECHNICAL
 - MATERIALS
 - ENVIRONMENTAL

March 16, 2005

Mr. Greg Wierenga P.E.
CETEC
1830 West Fulton Street
PO Box 9014
Rapid City, South Dakota 57709

Subject: Geotechnical Exploration Program
Proposed Country Road Lift Station
Rapid City, South Dakota
Rapid City Project SS03-1255

Dear Greg:

INTRODUCTION

American Engineering Testing Inc. (AET) is pleased to provide this proposal for conducting a Geotechnical Exploration Program for the proposed Country Road Lift Station project to be constructed in Rapid City, South Dakota. This proposal is based on the information provided and defines the general scope, completion schedule, and estimated costs for our work.

PROJECT INFORMATION

Based on the information you have provided we understand the lift station will be built along the south side of Country Road just east of W Nike Road in northeast Rapid City. The lift station structures are anticipated to be precast concrete manholes, 5' to 8' in diameter extending up to 20 feet below existing grades. The operations building is anticipated to be a single-story, concrete masonry structure on spread footings with concrete floor slab. An asphalt or concrete paved access road will be constructed to the site from Country Road.

We anticipate cuts and fills across the site of 3 feet or less will be required to obtain the required finish grades. AET has also assumed access to the site is possible with a truck-mounted drill rig and support vehicle.

SCOPE OF WORK

The purpose of the geotechnical study will be to provide subsurface soil information at the project location and to provide information and engineering recommendations for planning and design of the project. In order to accomplish the above stated purpose, AET proposes the following scope of work:

1. Drill two Standard Penetration Test (SPT) borings within the footprint of the proposed lift station and building to depths of 25' below existing grades.
2. The subsurface conditions will be logged at each location and groundwater levels taken at each boring location following drilling. The borings will be advanced using either 4.25" I.D. Hollow Stem Auger or 4-inch flight auger. Soil samples will be collected in accordance with the procedures outlined in ASTM D1587-74.
3. Perform laboratory testing in accordance with the appropriate ASTM procedures to classify the soils in order to estimate the characteristic engineering and index properties, as well as strength properties of the soils. At this time we anticipate the lab work will include natural moisture content, dry density and unconfined compression tests. One proctor and CBR test will be included for use in pavement design.
4. Provide three (3) copies of a report summarizing the results of the field work, laboratory data, and engineering recommendations for use in design and construction of the project. The report will provide recommendations for excavation and backfilling, subgrade preparation, grading and fill requirements, applicable foundation types/depths, floor slab construction and both asphalt and concrete pavement sections.

This proposal is exclusively for the scope of work stated above. Should the project conditions change, AET should be notified as soon as possible to review this proposal to determine if the scope of work should be modified.

FEES

Based on the scope of work defined in this proposal, the total cost of the site work, laboratory testing and report for the geotechnical study will be a lump sum of \$2100.00, plus tax, if applicable.

SCHEDULE

Weather permitting, AET can perform the field work within five (5) days from receipt of a written authorization to proceed. We anticipate the drilling can be completed in one day. Laboratory testing will require approximately one week. Preliminary recommendations can be given within days following completion of drilling. The final report will be submitted within one week after the completion of the laboratory testing.

Country Road Lift Station
Rapid City, South Dakota
Page 3


ACCEPTANCE

Please indicate your acceptance of this proposal by endorsing the enclosed copy and returning it to our office. The original proposal is intended for your records. We cannot begin work on this project without written authorization to proceed.

CLOSING

Thank you for considering American Engineering Testing (AET) for this project. If you have any questions please call our office at (605) 388-0029.

Sincerely,



Robert Temme PE
South Dakota Manager

ACCEPTANCE

SIGNATURE: 

PRINTED NAME Greg Wierenga.

COMPANY: CETEC Engineering Services, Inc.

DATE: 4-14-05

SECTION 1 - RESPONSIBILITIES

1.1 - The party to whom the proposal/contract is addressed is considered the Client of American Engineering Testing, Inc. (AET). The terms and conditions stated are binding, upon acceptance, on the Client, its successors, assignees, joint ventures and third-party beneficiaries. Oral proposal acceptance or authorizing purchase orders from the Client are considered formal acceptance of AET's terms and conditions.

1.2 - Prior to AET performing work, Client will provide AET with all information that may affect the cost, progress, safety and performance of the work. This includes, but is not limited to, information on proposed and existing construction, all pertinent sections of contracts between Client and property owner, site safety plans or other documents which may control or affect AET's work. If new information becomes available during AET's work, Client will provide such information to AET in a timely manner. Failure of client to timely notify AET of changes to the project including, but not limited to, location, elevation, loading, or configuration of the structure or improvement will constitute a release of any liability of AET. Client will provide a representative for timely answers to project-related questions by AET.

1.3 - Work by AET will not relieve other persons of their responsibility to perform work according to the contract documents or specifications, and AET will not be held responsible for work or omissions by Client and other persons. AET does not perform construction management, general contracting or surveying services and our presence on site does not constitute any assumption of those responsibilities. AET will not be responsible for directing or supervising the work of others, unless specifically authorized and agreed to in writing.

1.4 - Work by AET often includes sampling at specific locations. Inherent with such sampling is variation of conditions between sampling locations. Client recognizes this uncertainty and the associated risk, and acknowledges that opinions developed by AET, based on the samples, are qualified to that extent.

1.5 - AET is not responsible for interpretations or modifications of AET's recommendations by other persons.

1.6 - Should changed conditions be alleged, Client agrees to notify AET before evidence of alleged change is no longer accessible for evaluation.

SECTION 2 - SITE ACCESS AND RESTORATION

2.1 - Client will furnish AET safe and legal site access.

2.2 - It is understood by Client that in the normal course of the work, some damage to the site or materials may occur. AET will take reasonable precautions to minimize such damage. Restoration of the site is the responsibility of the Client.

SECTION 3 - SAFETY

3.1 - Client shall inform AET of any known or suspected hazardous materials or unsafe conditions at the work site. If, during the course of AET's work, such materials or conditions are discovered, AET reserves the right to take measures to protect AET personnel and equipment or to immediately terminate services. Client shall be responsible for payment of such additional protection costs.

3.2 - AET shall only be responsible for safety of AET employees at the work site. The Client or other persons shall be responsible for the safety of all other persons at the site.

SECTION 4 - SAMPLES

4.1 - Client is responsible for informing AET of any known or suspected hazardous materials prior to submittal to AET. All samples obtained by, or submitted to, AET remain the property of the Client during and after the work. Any known or suspected hazardous material samples will be returned to the Client at AET's discretion.

4.2 - Non-hazardous samples will be held for 30 days and then discarded unless, within 30 days' of the report date, the Client provides a written request that AET store or ship the samples, at the Client's expense.

SECTION 5 - PROJECT RECORDS

The original project records prepared by AET will remain the property of AET. AET shall retain these original records for a period of three years following submission of the report, during which period the project records can be made available to Client at AET's office at reasonable times.

SECTION 6 - STANDARD OF CARE

AET will perform services consistent with the level of care and skill normally performed by other firms in the profession at the time of this service and in this geographic area, under similar budgetary constraints. No other warranty is implied or intended.

SECTION 7 - INSURANCE

AET carries Worker's Compensation, Comprehensive General Liability, Automobile Liability and Professional Liability insurance. AET will furnish certificates of insurance to Client upon request.

SECTION 8 - DELAYS

If AET work delays are caused by Client, work of others, strikes, natural causes, weather, or other items beyond AET's control, a reasonable time extension for performance of work shall be granted, and AET shall receive an equitable fee adjustment.

SECTION 9 - PAYMENT, INTEREST AND BREACH

9.1 - Invoices are due on receipt. Client will inform AET of invoice questions or disagreements within 15 days of invoice date; unless so informed, invoices are deemed correct.

9.2 - Client agrees to pay interest on unpaid invoice balances at a rate of 1.5% per month, or the maximum allowed by law, whichever is less, beginning 30 days after invoice date.

9.3 - If any invoice remains unpaid for 60 days, such non-payment shall be a material breach of this agreement. As a result of such material breach, AET may, at its sole option, terminate all duties to the Client or other persons, without liability.

9.4 - Client will pay all AET collection expenses and attorney fees relating to past due fees which the Client owes under this agreement.

SECTION 10 - MEDIATION

10.1 - Client and AET agree that any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

10.2 - Unless Client and AET mutually agree otherwise, mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. Request for mediation shall be in writing and the parties shall share the mediator's fee and any filing fees equitably. The mediator shall be acceptable to both parties and shall have experience in commercial construction matters.

SECTION 11 - LITIGATION REIMBURSEMENT

Payment of AET costs for Client lawsuits against AET which are dismissed or are judged substantially in AET's favor will be the Client's responsibility. Applicable costs include, but are not limited to, attorney and expert witness fees, court costs, and AET costs.

SECTION 12 - MUTUAL INDEMNIFICATION

12.1 - AET agrees to hold harmless and indemnify Client from and against liability arising out of AET's negligent performance of the work, subject to Section 13 and any other limitations, other indemnifications or other provisions Client and AET have agreed to in writing.

12.2 - Client agrees to hold harmless and indemnify AET from and against liability arising out of Client's negligent conduct, subject to any limitations, other indemnifications or other provisions Client and AET have agreed to in writing.

12.3 - If Client has indemnity agreement with other persons, the Client shall include AET as a beneficiary.

SECTION 13 - LIMITATION OF LIABILITY

Client agrees to limit AET's liability to Client arising from negligent acts, errors or omissions, such that the total liability of AET shall not exceed \$10,000 or shall not exceed the project fees, whichever is greater.

SECTION 14 - TERMINATION

After 7 days written notice, either party may elect to terminate work for justifiable reasons. In this event, the Client shall pay for all work performed, including demobilization and reporting costs to complete the file.

SECTION 15 - SEVERABILITY

Any provisions of this agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, Client and AET will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

SECTION 16 - GOVERNING LAW

This Agreement shall be construed, and the rights of the parties shall be determined, in accordance with the Laws of the State of Minnesota.

SECTION 17 - ENTIRE AGREEMENT

This agreement, including attached appendices, is the entire agreement between AET and Client. This agreement nullifies any previous written or oral agreements, including purchase/work orders. Any modifications to this agreement must be in writing.

**SUBSURFACE BORING SUPPLEMENT
TO TERMS AND CONDITIONS**

SECTION 1 - UNDERGROUND UTILITY AND STRUCTURE CLEARANCE

1.1 - It is necessary that borings, excavations and other penetrations be located such that they maintain a minimum safe distance from underground utilities or other man-made objects. Client shall advise AET of all utilities that service or are located on the site, as well as any underground improvements located on the site. AET will contact state notification centers, where available, or individual utility owners where a state notification center is not available prior to drilling.

1.2 - Public utility owners may not provide the locating service on private property. In such situations, the Client is responsible for location of such utilities prior to drilling.

1.3 - The property owner may have private *underground improvements* which cannot be cleared through the state notification center or public utility owners. The Client is responsible for location of these improvements.

1.4 - AET will not be responsible for any damages to "non-located" or incorrectly located underground utilities or other man-made improvements.

SECTION 2 - SITE RESTORATION

2.1 - Client accepts that in the normal course of field exploration work, certain types of damage to the site may occur which are inherent with this type of work, such as tire indentations to lawns and landscape areas. It is the responsibility of AET to take reasonable precautions to minimize such damage. It is also AET's responsibility to patch boreholes placed through pavement or slab areas after performance of borings. Otherwise, restoration of the site is the responsibility of the client.

SECTION 3 - CONTAMINATION

3.1 - Client acknowledges and accepts that unavoidable contamination risks may be associated with AET's subsurface drilling, sampling and installation of monitoring devices. Risks include, but are not limited to, cross contamination created by linking contaminated zones to uncontaminated zones during the drilling process; containment and proper disposal of known or suspected hazardous materials, drill cuttings and drill fluids; and decontamination of equipment and disposal and replacement of contaminated consumables. Client and AET agree that the discovery of unanticipated actual or suspected hazardous materials may make it necessary for AET to take immediate measures, including regulatory notification, to protect human health and safety, and/or the environment. Client and AET also agree that the discovery of such materials constitutes a changed condition which may result in added costs to the Client, and may require a renegotiation of work scope or termination of services.

3.2 - Pursuant to risks set forth in Section 3.1, which are inherent with AET's work performed on the Client's behalf, Client agrees to hold harmless and indemnify AET from and against liability associated with contamination resulting therefrom.

SECTION 4 - LOST EQUIPMENT

Equipment lost in bore holes may be required to be retrieved or properly abandoned by government agencies. Client agrees to pay AET all costs related to retrieving and/or abandoning such equipment at AET fee schedule rates, unless agreed otherwise.

SECTION 5 - LIMITATIONS OF SUBSURFACE EXPLORATION

Client recognizes that unavoidable risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Variations in soil conditions usually occur between and beyond sampled/tested locations. Even a comprehensive sampling and testing program performed in accordance with a professional standard of care may fail to detect certain conditions, because the variability of conditions cannot be seen. For similar reasons, actual environmental, geologic and geotechnical conditions that AET characterizes to exist between sampling points may differ significantly from those that actually exist. The passage of time also must be considered, and Client recognizes that, due to natural occurrences or direct or indirect human activities at the site or distant from it, actual conditions discovered may change. Client recognizes that nothing can be done to eliminate the risks associated with these limitations.