

REQUEST AUTHORIZATION FOR MAYOR AND FINANCE OFFICER TO SIGN PROFESSIONAL SERVICES AGREEMENT OR AMENDMENT

Date: March 2, 2010

Project Name & Number: 2010 Citywide Geotechnical, Construction Materials and QA/QC Investigations - PW10-1862

CIP #: 50637

Project Description: Conduct geotechnical, construction materials and QA/QC investigations for various individual utilities and street construction projects located through Rapid City during 2010.

Consultant: American Engineering Testing, Inc.

Original Contract Amount: \$24,000.00

Original Contract Date: March 2, 2010

Original Completion Date: December 31, 2010

Addendum No:

Amendment Description:

Current Contract Amount: _____
Change Requested: _____
New Contract Amount: _____ \$0.00

Current Completion Date: _____
New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$24,000.00	8910	4223	505	
Total				

Agreement Review & Approvals

Gale S. Shyko _____ 2-12-2010
 Project Manager Date

[Signature] _____ 2-12-10
 Compliance Specialist Date

[Signature] _____ 2-12-10
 City Attorney Date

[Signature] _____ 2-12-10
 Division Manager Date

[Signature] _____ 2-12-10
 Department Director Date

ROUTING INSTRUCTIONS

Route two originals of the Agreement for review and signatures.
 Finance Office - Retain one original
 Project Manager - Retain second original for delivery to Consultant
 cc: Public Works
 Engineering
 Project Manager

FINANCE OFFICE USE ONLY

(Note to Finance: Please write date of Agreement in appropriate space in the Agreement document)

Date	2/16/10	Initials	[Signature]	Approved	Y	N
Appropriation					Y	N
Cash Flow					Y	N

**AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND AMERICAN
ENGINEERING TESTING, INC. FOR 2010 CITYWIDE GEOTECHNICAL,
CONSTRUCTION MATERIALS AND QA/QC INVESTIGATIONS
PROJECT NO. PW10-1862 / CIP NO. 50637**

This Agreement is made and entered into this _____ day of _____, 2010, by and between the City of Rapid City, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City," and American Engineering Testing, Inc., located at 1745 Samco Road, Rapid City, South Dakota 57702, herein after referred to as the "Consultant."

WHEREAS, the City is in need of a firm for sampling, analysis, and reporting related to 2010 Citywide Geotechnical, Construction Materials and QA/QC Investigations; and

WHEREAS, the Consultant has the necessary technical expertise to perform such services on behalf of the City; and

WHEREAS, the City wishes to retain the Consultant to perform the professional services so desired; and

WHEREAS, the purpose of this Agreement is to establish the terms and conditions of the Consultant's scope of services and the compensation it is to be paid for those services.

NOW THEREFORE, the parties hereby agree as follows:

1. The Consultant agrees to perform the work identified in the Scope of Work, which has been attached hereto and incorporated herein as Exhibit A.
2. The City agrees to compensate the consultant in an amount not to exceed \$24,000.00 for the work performed under this Agreement. The City shall not compensate the Consultant for any work in excess of this amount unless the Consultant first obtains prior written permission from the City.
3. The Service Agreement-Terms and Conditions attached to the Scope of Work are modified from their original form to reflect removal of the portions which have been crossed out. Section 4.2 is further modified to reflect that non-hazardous samples will be held for 45 days. Section 9.1 is further modified to reflect that payment will not be due until 45 days from submittal of an invoice from Consultant.

4. The parties' rights and obligations under the Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be litigated, and venued, in Pennington County, South Dakota, in the Circuit Court of the Seventh Judicial Circuit for the State of South Dakota.

CITY OF RAPID CITY, SOUTH DAKOTA

ATTEST:

Mayor Alan Hanks

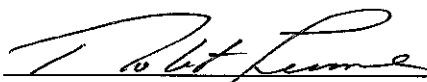
Finance Officer

Date

Date

(SEAL)

AMERICAN ENGINEERING TESTING, INC.



Robert Temme, Operations Manager

2-11-10

Date

**2010 CITY WIDE GEOTECHNICAL, CONSTRUCTION MATERIALS
AND QA/QC INVESTIGATIONS
PROJECT NO. PW10-1862 / CIP 50637**

SCOPE OF SERVICES

Geotechnical Investigations for identified projects shall include all necessary field work, sampling, testing, data collection and analysis the City and the Geotechnical consultant determines necessary to enable City staff to prepare design plans and specifications. The work would normally include: the advancement of a representative number of soils borings, to an appropriate depth; conducting standard penetration tests, penetrometer tests and other in-situ evaluation of materials; preparation of detailed logs and drawings of the borings, showing locations of borings, depths achieved, classification of soils encountered, presence of water or other liquids and other pertinent data; and collection of soils samples for later visual identification and laboratory testing; and results of any laboratory testing. The work may include collection of any additional data the staff deems necessary to characterize and describe the soils conditions. The work will also require providing engineering recommendations for addressing any concerns or problems that can be expected for the project.

Construction Materials Testing of various construction materials at specific, but currently undetermined, locations, or project sites within the City is required as part of this project. Such testing may include: sample acquisition, on-site materials testing, and laboratory testing of soils and new construction materials. It is anticipated that the materials that will require testing, include but are not limited to granular materials, soils, asphalt and Portland cement concrete. Such work shall be performed only at the specific written or verbal direction of the City of Rapid City Project Manager. The consultant must be available to provide field sampling or testing within two hours of receipt of notice by the Project Manager. Test results for each request shall be delivered

verbally to the Project Manager as soon as practical, and again in writing, in the form of a letter report, within 24 hours of the presentation of verbal results notification/delivery.

QA/QC Investigations will evaluate existing or newly completed projects to assess conditions or materials installed. The consultant shall perform investigations or examinations at specific, but currently unidentified, locations within the City. All such work shall be as directed by the Project Manager in writing. The scope of the QA/QC Investigation will include the sampling and testing of base course and sub-grade materials and obtaining intact core samples of asphalt or Portland cement concrete. The purpose of the QA/QC Investigation is to establish whether the requirements of Standard Specifications have been met. Core and other samples shall be numbered and tagged with identification of the project and sample location. The samples shall be stored by the consultant until at least 45 days after the final report is delivered to the Project Manager. Following that time the Project Manager shall either take acceptance of the samples or allows them to be discarded.

Upon completion of field work, all core holes shall be sealed with Portland cement concrete, level with the road pavement surface if located in a paved area.

The following additional information regarding scope of services must be provided for each project as identified by the City.

1. GEOTECHNICAL INVESTIGATION

- 1.1 Review information provided for the individual project requested.
- 1.2 Perform the following planning tasks for the preparation of a proposed scope of work:
 - Locate each boring/test hole physically in the field based upon observations of field geology, project constraints, and field constraints.
 - Propose the number of borings and the proposed depth of each.
 - Propose the number and type of field tests necessary.
 - Propose the number and type of laboratory tests necessary. Note: All utility related projects will require testing for soils resistivity.
- 1.3 Recommend any special data acquisition methods or requirements.

- 1.4 Present any potential problems based upon the Consultant's field observations and the Consultant's knowledge and experience.
- 1.5 Perform field work as necessary to meet the investigation requirements.
- 1.6 Submittals required include:
 - Scope and Cost of services for each individual project
 - Individual Project Reports
 - Three Copies of Reports with Cover Sheet.

2.0 CONSTRUCTION MATERIALS TESTING PROPOSAL PREPARATION

- 2.1 Review information provided for the testing projects
- 2.2 Perform the following planning tasks for the preparation of a proposed scope of work:
 - Review each applicable section of the Standard Specifications.
 - Establish the number and type of field tests necessary to determine specification compliance.
 - Determine the number and type of laboratory tests necessary to determine specification compliance.
- 2.3 Recommend special data acquisition methods or requirements.
- 2.4 Present any potential issues based upon the Consultant's review of the Standard Specifications, detailed specifications and plans and the Consultant's knowledge and experience.
- 2.5 Perform materials testing as necessary to meet the investigation requirements.
- 2.6 The Consultant will be required to submit three copies of a report for each individual materials investigation request immediately following completion of the work.

3.0 QA/QC INVESTIGATIONS

- 3.1 Review information provided for the individual project requested.
- 3.2 Perform the following planning tasks for the preparation of a proposed scope of work:

- Locate each boring/core hole physically in the field based upon observations of field geology, project constraints, and field constraints.
 - Determine the number of borings/cores and the proposed depth of each.
 - Determine the number and type of field tests necessary.
 - Determine the number and type of laboratory tests necessary.
 - Recommend special data acquisition methods or requirements.
 - Present any potential problems based upon the Consultant's field observations and the Consultant's knowledge and experience.
- 3.3 Perform the field and laboratory tests necessary to meet the investigation requirements.
- 3.4 The Consultant will be required to submit three copies of a report for each individual construction project immediately following completion of project.

4.0 FINAL REPORTING OF RESULTS

4.1 Upon completion of each individual project, the consultant will deliver, as soon as practical, three copies of a written report for that project. One copy shall be submitted to the Project Manager. Two further copies shall be submitted to Engineering Services Department in two binders at the completion of the overall geotechnical investigation project (electronic report alternate acceptable). The binders shall be titled "2010 City Wide Geotechnical Investigations" on the front cover and also on the spine of the binder. Individual investigation project reports shall be indexed within the binders. Delivery of final submittals shall occur at the completion of the 2010 City Wide Geotechnical Investigations project.

The final report shall tabulate results of all geotechnical investigations at each location, materials tests at each location and QA/QC reports at each location. As in the past, the City wishes to accumulate data to determine potential and existing problem areas.

AMERICAN ENGINEERING TESTING, INC.
RAPID CITY/PIERRE SOUTH DAKOTA
Short Form Fee Schedule
 Effective January 1, 2010

GEOTECHNICAL ENGINEERING & TESTING SERVICES

<u>PERSONNEL</u>	<u>UNIT</u>	<u>RATE</u>
Senior Geotechnical Engineer	HR	\$115.00
Geotechnical Engineer	HR	\$90.00
Materials Engineer	HR	\$85.00
Senior Engineering Technician	HR	\$65.00
Engineering Technician	HR	\$50.00
2-Man Drill Crew & CME 75 Rig	HR	\$175.00
Draft Person	HR	\$65.00
Clerical	HR	\$42.00
Rig Mileage	Mile	\$3.50
Pickup Mileage	Mile	\$0.70
Per Diem	Man/Day	\$31.00
Lodging	Day	cost

SOILS TESTING

Proctor (Standard or Modified)	EACH	\$130.00
One Point Proctor Check	EACH	\$90.00
Moisture Content / Dry Density	EACH	\$18.00
Atterburg Limits (LL & PL)	EACH	\$65.00
Gradation (Including #200)	EACH	\$65.00
#200 only	EACH	\$55.00
Consolidation/Swell	EACH	\$100.00
CBR (1 point)	EACH	\$125.00
Soundness (5 cycles)	EACH	\$215.00
Fractured Faces	EACH	\$58.00
Lightweight Particles (sp gr >1.95)	EACH	\$175.00
LA Abrasion	EACH	\$225.00
Relative Density of Cohesionless Soils	EACH	\$250.00
Direct Shear (3 points)	EACH	\$275.00
Permeability	EACH	\$175.00
Electrical Resistivity	Each	\$80.00

CONCRETE TESTING

Curing/Testing of 6" X 12" Cylinders	EACH	\$21.00
Trimming of Cylinder End (if required)	EACH	\$35.00
Curing/Testing of Mortar/Grout Cubes	EACH	\$48.00
Compression Tests of Cores	EACH	\$40.00
Compression Tests of Masonry Prisms	EACH	\$110.00
Flexural Beam Strength	EACH	\$42.00

BITUMINOUS TESTING

Marshall Density (set of 3)	EACH	\$135.00
Extraction / Gradation	EACH	\$160.00
Coring Machine	PER DAY	\$75.00
Bit Wear	PER INCH	\$1.00
Density of Cores	EACH	\$35.00
Flow and Stability (set of 3)	EACH	\$135.00
Rice Density	EACH	\$165.00

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. **Verbal proposal acceptance or authorizing purchase orders from the Client are considered formal acceptance of AET's terms and conditions. By signing the proposal or verbally authorizing the services, the authorizing party attests that they have the authority to legally bind the Client to agreement.**

1.2 - Prior to AET performing services, Client will provide AET with all information that may affect the cost, progress, safety and performance of the services. 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 services. If new information becomes available during AET's services, 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 - Services performed by AET will not relieve other persons of their responsibilities according to the contract documents or specifications, and AET will not be held responsible for work or omissions by Client or 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 - Services performed by AET often include 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 samples so taken, 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.

1.7 - AET reserves the right to charge for time to negotiate new terms and conditions from those portrayed in our proposal or should the Client require the use of their contract format. If mutually acceptable terms cannot be established, AET shall have the right to withdraw their proposal without any liability to the Client, Owner or other parties and assigns associated with the project. If Client requests use of their contract format after the services have already been authorized, AET will be compensated for services rendered prior to approval of the Client's contract by both parties according to the AET Terms and Conditions.

1.8 - The AET proposal accompanying these terms and conditions is valid for sixty (60) days after the proposal issuance date to the Client. If Client authorizes the services after the expiration date, AET reserves the right to review and revise the proposal as necessary.

SECTION 2 - SITE ACCESS, RESTORATION AND UTILITIES

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

2.2 - It is understood by Client that in the normal course of its services AET may unavoidably alter existing site conditions or affect the environment in the area being studied. AET will take reasonable precautions to minimize alterations to the site or existing materials. ~~Restoration of the site is the responsibility of the Client.~~

2.3 - If AET is required to locate public or private underground utilities or subsurface structures ("hidden features") in its efforts to conform with reasonable standards of care, AET is entitled to rely on the location information provided by locating vendors. Client shall provide AET with any information available or reasonably obtainable to help prevent our services from encountering such hidden features. ~~AET will not accept liability for encounters with hidden features.~~

SECTION 3 - SAFETY

3.1 - Client shall inform AET of any known or suspected hazardous materials or unsafe conditions at the site. If, during the course of AET's services, 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 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 services. 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~~ 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 strives to 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 maintains Worker's Compensation, Comprehensive General Liability, Automobile Liability and Professional Liability insurance. AET will furnish certificates of insurance to Client upon request.

7.1 - Commercial General Liability insurance will include coverage for Products/Completed Operations (extending two (2) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require), Broad Form Property Damage including Completed Operations, Personal Injury, and Blanket Contractual Liability insurance applicable to AET's defense and indemnity obligations under this Agreement.

7.2 - Automobile Liability insurance shall include coverage for all owned, hired and non-owned automobiles.

7.3 - Professional Liability Insurance is written on a claims-made basis and coverage will be maintained for two years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

7.4 - AET can endorse its Commercial General Liability (including Products/Completed Operations coverage) and Automobile Liability to add Client and Owner as an "additional insured" with respect to liability arising out of the Services performed for Client or Owner by or for AET. Such insurance afforded to Client and Owner as an additional insured under AET's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by Client or Owner.

7.5 - AET will maintain in effect all insurance coverage required by this Agreement at its sole expense, if such insurance is reasonably available, and with insurance carriers licensed to do business in the state in which the Project is located and having a current A.M. Best rating of no less than A minus (A-).

7.6 Upon request, prior to commencing the Services hereunder, AET will furnish Client with Certificates of Insurance evidencing that all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents.

7.7 - AET reserves the right to charge Client for additional coverage, coverage limits or policy modification including waiver of subrogation and other project specific requirements not known at the time of our proposal, subject to approval by AET's insurance providers.

SECTION 8 - DELAYS

If delays to AET's services are caused by Client or Owner, 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. In any case, Client shall pay for services of AET within 30 days of invoice.

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 as well as withhold any and all data from Client until such invoice payments are restored to a current status.

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

SERVICE AGREEMENT - TERMS AND CONDITIONS**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 indemnify Client from and against liability arising out of AET's negligent performance of the services, 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 indemnify AET from and against liability arising from the negligent conduct of the Client, Owner, Client's Contractors/Subcontractors or other third parties, 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 AET's negligent acts, errors or omissions, such that **the total liability of AET shall not exceed AET's insurance coverage** .

SECTION 14 - UNIONIZATION

AET reserves the right to renegotiate an appropriate fee increase or to terminate its contract on three (3) days written notice to Client and will not accept any liability for any penalties or costs from Client, Owner and their successors, assignees, joint-venturers, Contractors and Subcontractors, or any other parties involved with the project for claims, liabilities, damages or consequential damages directly or indirectly related to AET being required to provide unionized personnel on the project. Reservation of this right on the part of AET represents neither approval nor disapproval of unions in general or the use of collective bargaining agreements.

SECTION 15 - TERMINATION

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

SECTION 16 - 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 17 - 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 South Dakota.

SECTION 18 - ENTIRE AGREEMENT

This agreement, including attached appendices, is the entire agreement between AET and Client. Regardless of method of acceptance of AET's proposal and general conditions by the Client, this agreement nullifies any previous written or oral agreements, including purchase/work orders. Any modifications to this agreement must be mutually acceptable to both parties and accepted in writing. No considerations will be given to revisions to AET's general conditions or alternate contract format submitted by the Client as a condition for payment of AET's accrued services.