

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

Date:

Project Name & Number: Horace Mann Pool and Park Project PR11-1942

CIP #: 50864

Project Description: Material testing and inspection of soils and concrete.

Consultant: American Technical Services, Inc.

Original Contract Amount: \$39,660.00

Original Contract Date: July 8, 2014

Original Completion Date: October 1, 2015

Amendment Number:

Amendment Description:

Current Contract Amount: _____

Current Completion Date: _____

Change Requested: _____

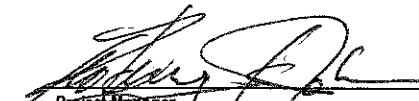
New Contract Amount: _____ \$0.00

New Completion Date: _____

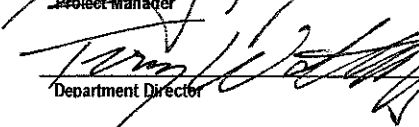
Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$39,660.00	132	4223	107	Material testing and inspection
\$39,660.00	Total			

Agreement Review & Approvals



Project Manager



Department Director

6-20-14
Date



Division Manager

6-23-14
Date

6-24-14
Date


City Attorney

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	Initials	Approved
Appropriation	6/23/14		<input checked="" type="radio"/> Y <input type="radio"/> N
Cash Flow			<input type="radio"/> Y <input checked="" type="radio"/> N

**Agreement Between City of Rapid City and American Technical Services Inc. for
Professional Services for Horace Mann Park Pool Replacement,
Project No. 11-1942 / CIP 50864**

AGREEMENT made _____, 20____, between the City of Rapid City, SD (City) and American Technical Services Inc., (Engineer), located at PO Box 558, Rapid City, SD 57709. City intends to obtain services for Horace Mann Park Pool Replacement, Project No. 11-1942 / CIP No. 50864. The scope of services is as described within this document and as further described in Exhibit A (attached).

The City and the Engineer agree as follows:

The Engineer shall provide professional engineering services for the City in all phases of the Project and as further defined in Exhibit A (attached), serve as the City's professional engineering representative for the Project, and give professional engineering consultation and advice to the City while performing its services.

Section 1—Basic Services of Engineer

1.1 General

- 1.1.1 The Engineer shall perform professional services described in this agreement, which include customary engineering services. Engineer intends to serve as the City's professional representative for those services as defined in this agreement and to provide advice and consultation to the City as a professional. Any opinions of probable project cost, approvals, and other decisions provided by Engineer for the City are rendered on the basis of experience and qualifications and represent Engineer's professional judgment.
- 1.1.2 All work shall be performed by or under the direct supervision of a professional Engineer licensed to practice in South Dakota.
- 1.1.3 All documents including Drawings and Specifications provided or furnished by Engineer pursuant to this Agreement are instruments of service in respect of the Project and Engineer shall retain an ownership therein. Reuse of any documents pertaining to this project by the City on extensions of this project or on any other project shall be at the City's risk. The City agrees to defend, indemnify, and hold harmless Engineer from all claims, damages, and expenses including attorney's fees arising out of such reuse of the documents by the City or by others acting through the City.
- 1.1.4 The contract will be based on an hourly rate and reimbursable fee schedule with a maximum not-to-exceed amount.



1.2 Scope of Work

The Engineer shall:

- 1.2.1 Consult with the City, other agencies, groups, consultants, and/or individuals to clarify and define requirements for the Project and review available data.
- 1.2.2 Perform the tasks described in the Scope of Services. (See Exhibit A.)
- 1.2.3 Conduct a location survey of the Project to the extent deemed necessary to provide adequate site information.
- 1.2.4 Prepare a report presenting the results of the study as outlined in the scope of services.

Section 2—Information Provided by City

The City will provide any information in its possession for the project at no cost to the Engineer.

Section 3—Notice to Proceed

The City will issue a written notification to the Engineer to proceed with the work. The Engineer shall not start work prior to receipt of the written notice. The Engineer shall not be paid for any work performed prior to receiving the Notice to Proceed.

Section 4—Mutual Covenants

4.1 General

- 4.1.1 The Engineer shall not sublet or assign any part of the work under this Agreement without written authority from the City.
- 4.1.2 The City and the Engineer each binds itself and partners, successors, executors, administrators, assigns, and legal representatives to the other party to this agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, regarding all covenants, agreements, and obligations of this agreement.
- 4.1.3 Nothing in this agreement shall give any rights or benefits to anyone other than the City and the Engineer.
- 4.1.4 This agreement constitutes the entire agreement between the City and the Engineer and supersedes all prior written or oral understandings.



This agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

- 4.1.5 The Engineer shall make such revisions in plans which may already have been completed, approved, and accepted by the City, as are necessary to correct Engineer's errors or omissions in the plans, when requested to do so by the City, without extra compensation therefore.
- 4.1.6 If the City requests that previously satisfactorily completed and accepted plans or parts thereof be revised, the Engineer shall make the revisions requested by the City. This work shall be paid for as extra work.
- 4.1.7 If the City changes the location from the one furnished to the Engineer, or changes the basic design requiring a new survey for the portions so changed, the redesign will be paid for as extra work.
- 4.1.8 The City may at any time by written order make changes within the general scope of this Agreement in the work and services to be performed by the Engineer. Any changes which materially increase or reduce the cost of or the time required for the performance of the Agreement shall be deemed a change in the scope of work for which an adjustment shall be made in the Agreement price or of the time for performance, or both, and the Agreement shall be modified in writing accordingly. Additional work necessary due to the extension of project limits shall be paid for as extra work.
- 4.1.9 Extra work, as authorized by the City, will be paid for separately and be in addition to the consideration of this Section.
- 4.1.10 For those projects involving conceptual or process development services, activities often cannot be fully defined during the initial planning. As the project does progress, facts and conditions uncovered may reveal a change in direction that may alter the scope of services. Engineer will promptly inform the City in writing of such situations so that changes in this agreement can be renegotiated.
- 4.1.11 This Agreement may be terminated (a) by the City with or without cause upon seven days' written notice to the Engineer and (b) by the Engineer for cause upon seven days' written notice to the City. If the City terminates the agreement without cause, the Engineer will be paid for all services rendered and all reimbursable expenses incurred prior to the date of termination.

If termination is due to the failure of the Engineer to fulfill its agreement obligations, the City may take over the work and complete it. In such



case, the Engineer shall be liable to the City for any additional cost to the extent directly resulting from Engineer's action.

- 4.1.12 The City or its duly authorized representatives may examine any books, documents, papers, and records of the Engineer involving transactions related to this agreement for three years after final payment. All examinations will be performed at reasonable times, with proper notice. Engineer's documentation will be in a format consistent with general accounting procedures.
- 4.1.13 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Engineer in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.
- 4.1.14 Costs and schedule commitments shall be subject to renegotiation for delays caused by the City's failure to provide specified facilities or information or for delays caused by other parties, excluding sub-contractors and sub-consultants, unpredictable occurrences including without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdowns, acts of God, or the public enemy, or acts of regulations of any governmental agency or any other conditions or circumstances beyond the control of the City or Engineer. Temporary delays of services caused by any of the above which results in additional costs beyond those outlined may require renegotiation of this agreement.
- 4.1.15 The City will give prompt written notice to the Engineer if the City becomes aware of any fault or defect in the Project or nonconformance with the Project Documents.
- 4.1.16 Unless otherwise provided in this Agreement, the Engineer and the Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.
- 4.1.17 In the event asbestos or toxic materials are encountered at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of Engineer's services, Engineer may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the City retains appropriate



specialist CONSULTANT(S) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials.

4.1.18 This agreement, unless explicitly indicated in writing, shall not be construed as giving Engineer the responsibility or authority to direct or supervise construction means, methods, techniques, sequences, or procedures of construction selected by any contractors or subcontractors or the safety precautions and programs incident to the work of any contractors or subcontractors.

4.1.19 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or in any way involving the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants.

4.1.20 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or any way involving the specification or recommendation of asbestos, in any form, or any claims based upon use of a product containing asbestos.

4.1.21 Engineer hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota.

4.2 **City of Rapid City NonDiscrimination Policy Statement**

In compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination act of 1975, the Americans with Disabilities Act of 1990, and other nondiscrimination authorities it is the policy of the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-5035, to provide benefits, services, and employment to all persons without regard to race, color, national origin, sex, disabilities/handicaps, age, or income status. No distinction is made among any persons in eligibility for the reception of benefits and services provided by or through the auspices of the City of Rapid City.

Engineer will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.



Section 5—Payments to the Engineer

5.1 Schedule of Pay Rates

The City will pay the Engineer for services rendered or authorized extra work according to the Engineer's hourly and reimbursable rate schedule described in Exhibit A.

5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$39,660.00 unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Engineer shall complete the design as agreed upon here without any additional compensation. Sub task dollar amounts may be reallocated to other tasks as long as the total fee is not exceeded. Prime consultant may not mark up sub-consultant or sub-contractor services.

5.3 Progress Payments

Monthly progress payments shall be processed by the City upon receipt of the claim as computed by the Engineer based on work completed during the month per the hourly rates and allowable reimbursable as established in Section 5.1 and approved by the City.

Net payment to the Engineer shall be due within forty-five (45) days of receipt by the City.

Section 6—Completion of Services

The Engineer shall complete services on or before based on an award date of July 7, 2014.

Section 7—Insurance Requirements

7.1 Insurance Required

The Engineer shall secure the insurance specified below. The insurance shall be issued by insurance company(s) acceptable to the City and may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance including any policy endorsements shall be provided to the City prior to or upon the execution of this Agreement.



7.2 Cancellation

The Engineer will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Contractor agrees to hold the City harmless from any liability, including additional premium due because of the Contractor's failure to maintain the coverage limits required.

7.3 City Acceptance of Proof

The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the coverages and limits described in this agreement are adequate to protect the Engineer, its consultants or subcontractors interests, and assumes no liability therefore. The Engineer will hold the City harmless from any liability, including additional premium due, because of the Engineer's failure to maintain the coverage limits required.

7.4 Specific Requirements

- 7.4.1 Workers' compensation insurance with statutory limits required by South Dakota law. Coverage B-Employer's Liability coverage of not less than \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.
- 7.4.2 Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. If the occurrence form is not available, claims-made coverage shall be maintained for three years after completion of the terms of this agreement. The policy shall name the City and its representatives as an additional insured.
- 7.4.3 Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
- 7.4.4 Professional liability insurance providing claims-made coverage for claims arising from the negligent acts, errors or omissions of the Engineer or its consultants, of not less than \$1,000,000 each occurrence and not less than \$1,000,000 annual aggregate. Coverage



shall be maintained for at least three years after final completion of the services.

Section 8—Hold Harmless

The Engineer hereby agrees to hold the City harmless from any and all claims or liability including attorneys' fees arising out of the professional services furnished under this Agreement, and for bodily injury or property damage arising out of services furnished under this Agreement, providing that such claims or liability are the result of a negligent act, error or omission of the Engineer and/or its employees/agents arising out of the professional services described in the Agreement.

Section 9—Independent Business

The parties agree that the Engineer operates an independent business and is contracting to do work according to his own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship between the City and the Engineer shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to the Engineer is inclusive of any use, excise, income or any other tax arising out of this agreement.

Section 10-Indemnification

If this project involves construction and Engineer does not provide consulting services during construction including, but not limited to, onsite monitoring, site visits, site observation, shop drawing review and/or design clarifications, City agrees to indemnify and hold harmless Engineer from any liability arising from the construction activities undertaken for this project, except to the extent such liability is caused by Engineer's negligence.

Section 11-Controlling Law and Venue

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of South Dakota, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the State of South Dakota, 7th Judicial Circuit, Pennington County.

Section 12-Severability

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and effect.



Section 13—Funds Appropriation

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the City for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Engineer, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of Rapid City:

Engineer:

MAYOR

AMERICAN TECHNICAL SERVICES INC.

DATE: _____

DATE: _____

ATTEST:

FINANCE OFFICER

Reviewed By:

ROD JOHNSON, PROJECT MANAGER

DATE: _____

CITY'S DESIGNATED PROJECT
REPRESENTATIVE

ENGINEERING FIRM'S DESIGNATED
PROJECT REPRESENTATIVE

NAME Rod Johnson
PHONE 605-394-4154
EMAIL rod.johnson@rcgov.org

NAME Justin Foster
PHONE 605-787-9303
EMAIL justin.foster@atsinc.com



8105 Black Hawk Rd • PO Box 558 • Black Hawk, SD 57718-0558 • Phone (605) 787-9303 • FAX (605) 787-9515
140 Pine Needle Drive • Spearfish, SD 57783 • Phone (605) 642-2742 • Mobile 390-3768

CITY OF RAPID CITY
Department of Public Works
300 6th Street
Rapid City, South Dakota 57701

May 22, 2014

Attn: Mr. Rod Johnson
Operations Management Engineer

ATS No. 13-13401

Subj: Proposal for Materials Testing & Inspection
Horace Mann Pool and Park
Rapid City, South Dakota

Thank you for the opportunity to provide you with this revised proposal for materials testing and inspection services to be performed for the above referenced project. This proposal consists of the narrative, scope of work, unit rates and estimated fees, and general conditions. This proposal is valid for 90 calendar days from the date of issuance. Execution of a work agreement after that date would require review and possible revision of the proposal.

SCOPE OF WORK

American Technical Services will provide the necessary tools, equipment and personnel to perform soils testing, drilled pier inspection and evaluation, concrete testing, asphalt testing, masonry inspection and testing, and steel weld and bolt inspection for the construction of the Horace Mann Pool and Park in Rapid City, South Dakota.

Field sampling and testing, as well as laboratory testing, will be conducted by experienced and qualified Engineering Technicians under the direct supervision of a Professional Engineer. The proposed services will include on-site and laboratory testing as requested and specified to determine conformance of the following construction parameters with the project specifications:

- Quality Control testing for all soil types;
- Drilled pier inspection and evaluation for buildings and pools;
- Concrete and masonry lab and field testing;
- Asphalt lab and field testing; and
- Steel weld and bolt inspection.

RECEIVED

MAY 27 2014

**ENGINEERING
SERVICES**

Services provided by the Professional Engineers of American Technical Services will consist of professional opinions and recommendations made in accordance with generally accepted engineering practices. The on-site presence of field representatives of American Technical Services will be for the purpose of providing our Client with a continuing source of information relative to materials and operations and will not include any superintending, supervision, direction or responsibility for safety of the actual work of the Contractor or the Contractor's workmen.

UNIT RATES AND ESTIMATED FEES:

A. EARTHWORK: Field and Laboratory Testing

Proctors	4 ea	\$125.00/ea	\$	500.00
Gradation/PI	2 ea	\$125.00/ea	\$	250.00
Nuclear Density Tests	200 ea	\$10.00/ea	\$	2000.00
Engineering Technician	100 hr	\$ 44.00/hr	\$	4400.00
Geotechnical Engineer	25 hr	\$ 95.00/hr	\$	2375.00
			Subtotal A = \$	9,525.00

B. DRILLED PIERS: Based on drilling 8 piers per day, 140 piers total, 17 days est.

Engineering Technician	170 hr	\$ 44.00/hr	\$	7480.00
Geotechnical Engineer	25 hr	\$ 95.00/hr	\$	2375.00
			Subtotal B = \$	9,855.00

C. CONCRETE AND MASONRY: Field and Laboratory Testing

Concrete Test Sets	100 sets	\$ 45.00/set	\$	4500.00
Mortar/Grout Specimens	10 sets	\$ 45.00/set	\$	450.00
Engineering Technician	275 hr	\$ 44.00/hr	\$	12,100.00
			Subtotal C = \$	17,050.00

D. ASPHALT :

Engineering Technician	20 hr	\$ 44.00/hr	\$	880.00
Nuclear Density Tests	40 ea	\$ 15.00/hr	\$	600.00
			Subtotal D = \$	1480.00

E. STEEL:

Certified Weld Inspector	10 hr	\$ 75.00/hr	\$	750.00
			Subtotal E = \$	750.00

F. MOBILIZATION:

Trip Charge	200 ea	\$5.00/ea	\$	1000.00
			Subtotal F = \$	1000.00

Total Estimated Fees:

Subtotal A = \$ 9,525.00
Subtotal B = \$ 9,855.00
Subtotal C = \$ 17,050.00
Subtotal D = \$ 1,480.00
Subtotal E = \$ 750.00
Subtotal F = \$ 1,000.00

Total Estimated Fees: \$ 39,660.00

Please note that ATS performed the geotechnical engineering and evaluation for the design and development of this project. Thus, we are familiar with the site, soil profiles and project requirements.

These are our estimates of testing services based on the project specifications and our knowledge of construction sequencing of similar size projects. We will increase or decrease frequencies of testing upon request or will work with you to provide maximum services for your budget.

Please note that any or all of the above quoted services can be contracted. Retests will be conducted as necessary and billed per the contract documents. The actual fee will reflect the services requested and performed.

We look forward to working with you. If you have any questions or comments, we will be happy to discuss them with you.

If this proposal meets with your approval, please sign below and return a signed copy for our records.

Sincerely,
AMERICAN TECHNICAL SERVICES, INC.



Dave G. Bressler, P.E.
Director of Engineering

Justin Foster
Project Manager

cc: File

The foregoing proposal narrative and all attachments have been read and are hereby accepted.

(COMPANY/ORGANIZATION)

(AUTHORIZED REPRESENTATIVE)

(TITLE)

(DATE)

GENERAL CONDITIONS

SECTION 1: PROJECT INFORMATION

- 1.1 Client will make available to ATS all known information regarding existing and proposed requirements which affects the work, including but not limited to: specifications, contracts, recommendations, plans and change orders.
- 1.2 Client will immediately transmit to ATS any new information that becomes available to it or its subcontractors, so that recommended actions can be reviewed. Client will provide a representative to answer questions about the project when required by ATS upon 24-hour notice.
- 1.3 ATS will not be liable for any incorrect advice, judgment, or decision based on any inaccurate information furnished by Client, and Client will indemnify ATS against liability arising out of or contributed to by such information.

SECTION 2: SAMPLES

- 2.1 ATS will retain representative samples for 30 days after submission of ATS report. Upon request by Client, samples can be shipped, charges collect, to destination selected by Client; or ATS can store them for an agreed upon storage charge.

SECTION 3: FEE PAYMENT

- 3.1 ATS will submit invoices to client monthly, and a final invoice upon completion of services. Invoices will show charges based on current ATS Fee Schedule or other agreed upon basis. A detailed separation of charges and backup data will be at Client's request.
- 3.2 The Client will pay the balance stated on the invoices unless Client notifies ATS in writing of the particular item that is alleged to be incorrect within fifteen (15) days from the invoice date.
- 3.3 Payment is due upon receipt of invoice and is past due thirty (30) days from invoice date. On past due accounts, Client will pay a late charge of 1.5(%) per month, or the maximum allowed by law. In the event of litigation, resulting from Client's refusal to make payment, without just cause, then all warranties and representations, expressed or implied, by ATS shall be void.
- 3.4 In the event Client fails to pay ATS within sixty (60) days following invoice date, ATS may consider the default a total breach of this agreement and all duties of ATS under this agreement will be terminated.
- 3.5 In consideration for ATS agreeing to provide services to Client, the individual(s) authorizing work on Client's behalf, jointly severally and unconditionally guarantee prompt payment of all amounts currently due or due in the future due from Client to ATS. This Guarantee is absolute and shall be a continuing one.

SECTION 4: OWNERSHIP OF DOCUMENTS

- 4.1 All documents prepared by ATS as instruments of service will remain the property of ATS.
- 4.2 Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose.
- 4.3 ATS will retain all pertinent records concerning services performed for a period of two (2) years after the report is sent; during that time the records will be made available to the Client during ATS's normal business hours.

SECTION 5: DISPUTES

- 5.1 If ATS institutes suit against the Client to enforce any part of this agreement, then all litigation expenses or collection expenses, including attorney's fees, will be paid to the prevailing party.

- 5.2 If the Client institutes a suit against ATS, which is dismissed, or a verdict rendered for ATS, client agrees to pay ATS for all cost of defense, including attorney's fees, expert witness fees and court costs.
- 5.3 Client and ATS herein mutually agree to not pursue litigation against each other for consequential damages.

SECTION 6: STANDARD OF CARE

- 6.1 ATS will perform consistent with the level of care and skill ordinarily exercised by members of the geotechnical and materials testing profession currently practicing under similar conditions. No other warranty, expressed or implied, is made.
- 6.2 ATS will be responsible for its data, interpretation and recommendations, but will not be responsible for interpretation by others.

SECTION 7: LIMITATION OF LIABILITY

- 7.1 ATS's liability to the Client and all contractors and subcontractors on the project, for damages due to professional negligence, negligence or breach of any other obligation to Client or others, will be limited to an amount not to exceed \$20,000 or the ATS fee, whichever is less.
- 7.2 Client will notify any contractor or subcontractor who performs work in connection with any work done by ATS of the limitation of liability for design defects, errors, omissions, or professional negligence, and to require as a condition precedent to their performing their work, a like indemnity and limitations of liability on their part as against ATS. In the event the Client fails to obtain a like limitation and indemnity, Client agrees to indemnify ATS for any liability to any third party, including reasonable attorney's fees.
- 7.3 Limitation of liability: American Technical Services' liability for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes shall not exceed the total amount of services/fees. Such causes include, but are not limited to, design professional negligence, errors, omissions, strict liability, breach of contract, and breach of warranty.

SECTION 8: INSURANCE

- 8.1 ATS will carry worker's compensation insurance and public liability, property damage, and errors and omissions insurance policies, which ATS considers adequate. ATS will not be responsible for liability beyond the limits and conditions of the insurance. ATS will not be responsible for any loss or liability arising from negligence by Client or by other consultants employed by Client.

SECTION 9: TERMINATION

- 9.1 This agreement may be terminated by either party upon seven (7) days written notice if there is substantial failure by the other part to perform. Termination will not be effective if substantial failure is remedied before expiration of the seven days. Upon termination, ATS will be paid for services rendered plus reasonable termination expenses.
- 9.2 If the contract is terminated prior to completion of all reports contemplated by the agreement, or suspended for more than three (3) months, ATS may complete analysis and records as are necessary to complete it's files and may complete a report on the services performed. Termination or suspension expenses will include direct costs of completing analysis, records and report.

SECTION 10: ASSIGNS

- 10.1 Neither party may assign duties or interest in the agreement without the written consent of the other party.