



AMERICAN
ENGINEERING
TESTING, INC.

CONSULTANTS
• GEOTECHNICAL
• MATERIALS
• ENVIRONMENTAL

April 5, 2005

Mr. Joe Jagodzinski
City of Rapid City
Public Works Department-Engineering Division
300 Sixth Street
Rapid City, South Dakota 57701

Subject: Confirming Agreement
 Geotechnical Exploration Program
 2005 City Wide Geotechnical Investigations
 Rapid City, South Dakota
 AET # 18-01793

Dear Joe:

INTRODUCTION

American Engineering Testing Inc. (AET) is pleased to provide this confirming agreement for conducting the 2005 City Wide Geotechnical Investigations for the City of Rapid City. This agreement is based on your phone call yesterday indicating AET had been selected to provide the City wide geotechnical services for the 2005 calendar year. This agreement defines the general scope and completion schedule for the upcoming projects. A copy of AET's 2005 Fee Schedule is also included for your review.

PROJECT INFORMATION

We understand the 2005 City Wide Geotechnical project list is currently being prepared. As the projects become available AET will be provided with a description of the project details. AET will then provide the City with a detailed Scope of Work and the associated fees. Based on past work, we anticipate a typical project will include the drilling of test borings, the associated lab/field work and a report with recommendations for excavation, backfilling, reuse of site soils, subgrade prep and/or stabilization and both asphalt and concrete pavement sections. Individual reports will be submitted after each project with a year end submittal of all projects in a three ring binder.

PROJECT FEES

The fees for each project will be in accordance with the hourly and unit rates as presented on the 2005 AET Fee Schedule included at the end of this agreement. Invoicing will be submitted monthly for those projects completed within that time frame.

SCHEDULE

Project field work will be scheduled following review of the project details and requirements. Weather permitting, AET will schedule the field work to begin within one week after receiving the project information. Once authorized to proceed, AET will set up the required utility locates at least 48 hours in advance of the field work. Required laboratory testing can typically be completed within one week with a preliminary report issued within one week upon completing the lab testing.


ACCEPTANCE

Please indicate your acceptance of this agreement by signing on the space provided and returning one copy for our files. A copy of AET's Service Agreement - Terms and Conditions, modified as mutually agreed upon with the City on past work, is included for your review.


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, P.E.
South Dakota Manger

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE


Attorney

4-25-05
Date

APPROVED:
CITY OF RAPID CITY

BY _____

DATE: _____



AMERICAN
ENGINEERING
TESTING, INC.

AMERICAN ENGINEERING TESTING, INC.

RAPID CITY, SOUTH DAKOTA

Short Form Fee Schedule

Effective January 1, 2005

CONSULTANTS
• GEOTECHNICAL
• MATERIALS
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GEOTECHNICAL ENGINEERING & TESTING SERVICES

<u>PERSONNEL</u>	<u>UNIT</u>	<u>RATE</u>
Senior Geotechnical Engineer	HR	\$100.00
Geotechnical Engineer	HR	\$76.50
Senior Engineering Technician	HR	\$55.00
Engineering Technician	HR	\$44.00
2-Man Drill Crew & CME 75 Rig	HR	\$145.00
Draft Person	HR	\$47.50
Clerical	HR	\$36.00
Rig Mileage	Mile	\$3.00
Pickup Mileage	Mile	\$0.50

SOILS TESTING

Proctor (Standard or Modified)	EACH	\$125.00
Sample Preparation	EACH	\$50.00
One Point Proctor Check	EACH	\$85.00
Moisture Content / Dry Density	EACH	\$15.00
Atterburg Limits (LL & PL)	EACH	\$60.00
Gradation (Including #200)	EACH	\$60.00
#200 only	EACH	\$50.00
CBR (1 point)	EACH	\$125.00
Soundness (5 cycles)	EACH	\$200.00
Fractured Faces	EACH	\$55.00
Lightweight Particles (sp gr >1.95)	EACH	\$150.00
LA Abrasion	EACH	\$200.00
Relative Density of Cohesionless Soils	EACH	\$235.00
Direct Shear (3 points)	EACH	\$250.00
Permeability	EACH	\$350.00
Electrical Resistivity	Each	\$75.00

CONCRETE TESTING

Curing/Testing of 6" X 12" Cylinders	EACH	\$18.00
Trimming of Cylinder End (if required)	EACH	\$30.00
Cylinder Molds	CASE	\$45.00
Compression Tests of Cores	EACH	\$35.00
Compression Tests of Masonry Prisms	EACH	\$100.00

BITUMINOUS TESTING

Marshall Density (set of 3)	EACH	\$125.00
Extraction / Gradation	EACH	\$155.00
Coring Machine	PER DAY	\$50.00
Bit Wear	PER INCH	\$1.00
Generator (if required)	PER JOB	\$75.00
Density of Cores	EACH	\$30.00
Flow and Stability (set of 3)	EACH	\$110.00
Rice Density	EACH	\$155.00

"AN AFFIRMATIVE ACTION EMPLOYER"

1745 Samco Road • Rapid City, SD 57702 • 605-388-0029 • Fax: 605-388-0064
St. Paul • Duluth • Mankato • Marshall • Pierre • Rapid City • Rochester • Sioux Falls • Wausau

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. RT
4-6-05

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. RT
4-6-05

AET's required limits of insurance.

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. RT 4-6-05

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. RT 4-6-05

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.