

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

**Project Name & Number:** Roosevelt Park 50-Meter Pool  
Project No. 12-2090

**CIP #:** 50948

**Project Description:** Materials Testing and Inspection Services

**Consultant:** American Technical Services Inc.

**Original Contract Amount:** \$25,764.00

**Original Contract Date:** August 19, 2013

**Original Completion Date:**

**Addendum No:**

**Amendment Description:**


**Current Contract Amount:** \_\_\_\_\_  
**Change Requested:** \_\_\_\_\_  
**New Contract Amount:** \_\_\_\_\_ \$0.00

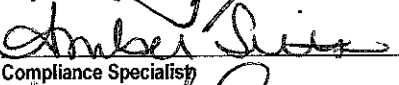
**Current Completion Date:** \_\_\_\_\_  
**New Completion Date:** \_\_\_\_\_

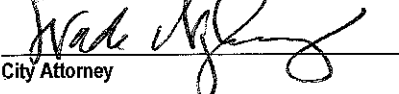
**Funding Source This Request:**

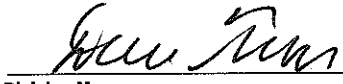
Amount	Dept.	Line Item	Fund	Comments
\$25,764.00	132	4225	107	
<b>Total</b>				

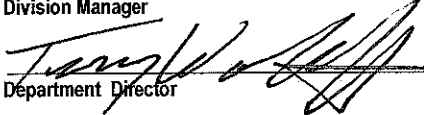
### Agreement Review & Approvals

 \_\_\_\_\_ **7-30-13**  
Project Manager Date

 \_\_\_\_\_ **7/30/13**  
Compliance Specialist Date

 \_\_\_\_\_  
City Attorney Date

 \_\_\_\_\_ **7-31-13**  
Division Manager Date

 \_\_\_\_\_ **7-31-13**  
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	Initials	Approved
8/1/13		(Y) N
		Y N

AGREEMENT BETWEEN THE CITY OF RAPID CITY  
AND AMERICAN TECHNICAL SERVICES INC.  
FOR MATERIALS TESTING AND INSPECTION

1) This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701, a municipal corporation organized under the laws of the state of South Dakota, hereinafter referred to as the "City," and American Technical Services, Inc., PO Box 558, Black Hawk, SD 57718, hereinafter referred to as the "Consultant."

2) Specifications to be followed under this contract are the City of Rapid City Standard Specifications for Public Works Construction (Current Edition) and any Special Provisions, Special Conditions, and/or Detailed Specifications pertaining to this contract.

3) The Consultant agrees to perform the work described in attached Scope of Work, in an amount not to exceed \$25,764.00. The Consultant will only be paid for work actually performed. This Agreement along with attached Informal Quotations and Detailed Specifications constitutes the entire agreement between the City and Consultant and supersedes all prior written or oral communications. In the event any terms of this agreement conflict with the attached quote, this agreement shall control.

4) The Consultant agrees to indemnify, defend and hold the City harmless against all liability, loss, damage, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Consultant and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Consultant or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Consultant.

5) Payment for the work will be made to the Consultant by check after the completion of the contracted work, receipt of a signed voucher, and approval by the Council. Payment shall be made within 45 days after receipt of a signed voucher.

6) The Consultant is an independent entity and not an employee, agent, or partner of the City.

7) The Consultant shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A. Workers' Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
B. Comprehensive General Liability  (Including Contractual Liability and Completed Operations) Bodily Injury and Property Damage General Aggregate	  \$1,000,000 each occurrence \$2,000,000
C. Commercial Automobile Liability	\$1,000,000 combined single limit

Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work and/or services. Such Certificates shall afford the City thirty (30) days written notice of cancellation or of a material change in coverage. The City's failure to obtain from the Consultant a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.

8) The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

9) The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

AMERICAN TECHNICAL SERVICES INC.

\_\_\_\_\_

By: \_\_\_\_\_

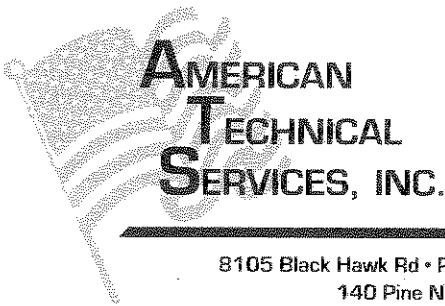
Its: \_\_\_\_\_

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer



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 6<sup>th</sup> Street  
Rapid City, South Dakota 57701

**July 23, 2013**

**Attn: Mr. Rod Johnson**  
**Operations Management Engineer**

ATS No. 13-13129

**Subj: Proposal for Materials Testing & Inspection**  
**Roosevelt Park 50 meter Pool**  
**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, driven pile inspection and evaluation, concrete testing, asphalt testing, masonry inspection and testing, and steel weld and bolt inspection for the construction of the Roosevelt Park 50 meter Pool 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;
- Driven Pile inspection and evaluation for pool shell;
- Concrete and masonry lab and field testing;
- Asphalt lab and field testing; and
- Steel weld and bolt inspection.

**RECEIVED**

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JUL 24 2013

**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	2 ea	\$125.00/ea	\$	250.00
Gradation/PI	2 ea	\$125.00/ea	\$	250.00
Nuclear Density Tests	100 ea	\$10.00/ea	\$	1000.00
Engineering Technician	60 hr	\$ 42.00/hr	\$	2520.00
Geotechnical Engineer	15 hr	\$ 85.00/hr	\$	1275.00
Subtotal A = \$				5,295.00

**B. DRILLED PIERS: Based on driving 10 piles per day, 168 piers total, 17 days est.**

Engineering Technician	170 hr	\$ 42.00/hr	\$	7140.00
Geotechnical Engineer	30 hr	\$ 85.00/hr	\$	2550.00
Subtotal B = \$				9,690.00

**C. CONCRETE AND MASONRY: Field and Laboratory Testing**

Concrete Test Sets	50 sets	\$ 45.00/set	\$	2250.00
Mortar/Grout Specimens	4 sets	\$ 45.00/set	\$	180.00
Engineering Technician	162 hr	\$ 42.00/hr	\$	6804.00
Subtotal C = \$				9,234.00

**D. ASPHALT :**

Engineering Technician	10 hr	\$ 42.00/hr	\$	420.00
Nuclear Density Tests	20 ea	\$ 15.00/hr	\$	300.00
Subtotal D = \$				720.00

**E. STEEL:**

Certified Weld Inspector	6 hr	\$ 75.00/hr	\$	450.00
Subtotal E = \$				450.00

**F. MOBILIZATION:**

Trip Charge	75 ea	\$5.00/ea	\$	375.00
Subtotal F = \$				375.00

**Total Estimated Fees:**

Subtotal A = \$ 5,295.00  
Subtotal B = \$ 9,690.00  
Subtotal C = \$ 9,234.00  
Subtotal D = \$ 720.00  
Subtotal E = \$ 450.00  
Subtotal F = \$ 375.00

**Total Estimated Fees: \$ 25,764.00**

***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.***

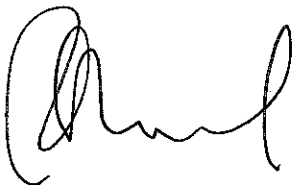
These are our estimates of testing services based on the project specifications and our knowledge of construction sequencing of similar size projects. We will increase or decrease frequencies of testing upon request or will work with you to provide maximum services for your budget.

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

**CITY OF RAPID CITY  
Proposal for Materials Testing & Inspection  
Roosevelt Park 50 Meter Pool**

**July 23, 2013  
ATS 13-13129  
Rapid City, SD**

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.