

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

Project Name & Number: East Signal Drive and Crescent Drive Street & Utility Reconstruction
Project. Project # 12-2052

CIP #: 50949

Project Description: Reconstruction of E. Signal Drive and Crescent Drive.

Consultant: Sperlich Consulting, Inc.

Original Contract Amount: \$134,785.00

Original Contract Date: 5/18/15

Original Completion Date:

Addendum No:

Amendment Description:


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

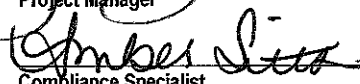
Current Completion Date: _____
New Completion Date: _____

Funding Source This Request:

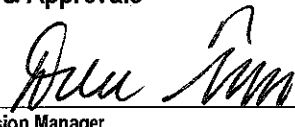
| Amount | Dept. | Line Item | Fund | Comments |
|--------------|--------------|-----------|------|----------|
| \$40,435.00 | 8910 | 4223 | 505 | Street |
| \$20,217.00 | 8911 | 4223 | 505 | Drainage |
| \$37,067.00 | 833 | 4223 | 604 | Sewer |
| \$37,066.00 | 933 | 4223 | 602 | Water |
| \$134,785.00 | Total | | | |

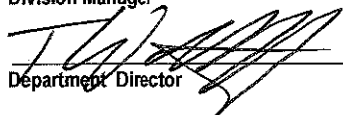
Agreement Review & Approvals

 _____ 5/6/15
Project Manager Date

 _____ 5/6/15
Compliance Specialist Date

City Attorney Date

 _____ 5-7-15
Division Manager Date

 _____ 5-7-15
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 |
|------|----------|----------|
| | | Y N |
| | | Y N |

Agreement Between City of Rapid City and Sperlich Consulting for Construction Professional Services for East Signal Drive and Crescent Drive Street & Utility Reconstruction, Project No. 12-2052 / CIP No. 50949

AGREEMENT made _____, 20____, between the City of Rapid City, SD (City) and Sperlich Consulting, (Engineer), located at 821 Columbus Street, Suite 1, Rapid City SD 57701. City intends to obtain construction administration services for East Signal Drive and Crescent Drive Street & Utility Reconstruction, Project No. 12-2052 CIP No. 50949. The scope of services is as described within this document and as further described in Exhibits A, B, C and D (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 Exhibits A, B, C and D (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 be paid for any authorized, necessary 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 C.

5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$134,785.00 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 90 days after construction is complete based on an award date of May 18, 2015.

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

[Handwritten Signature]

SPERLICH CONSULTING

DATE: _____

DATE: 5-6-15

ATTEST:

FINANCE OFFICER

Reviewed By:

[Handwritten Signature]

KLARE SCHROEDER, PROJECT MANAGER

DATE: 5/6/15

CITY'S DESIGNATED PROJECT REPRESENTATIVE

ENGINEERING FIRM'S DESIGNATED PROJECT REPRESENTATIVE

NAME Klare Schroeder
PHONE 605-394-4154
EMAIL klare.schroeder@rcgov.org

NAME Kale McNaboe
PHONE 605-721-4040
EMAIL kale.mcnaboe@sperlichconsulting.com



EXHIBIT A

EAST SIGNAL DRIVE AND CRESCENT DRIVE STREET AND UTILITY RECONSTRUCTION PROJECT NO. 12-2052 / CIP NO. 50949

BACKGROUND:

The City of Rapid City Public Works Department, Engineering Services Division, has determined a need to secure professional design services including Preliminary Design Services, Final Design Services, Bidding Services, Basic Construction Services, and Expanded Construction Services for the East Signal Drive and Crescent Drive Street and Utility Reconstruction Project.

The selected consultant will provide services related to reconstructing water and sewer mains and service lines, storm sewer improvements, and reconstructing the streets. Temporary construction easement acquisition will likely be required for construction of this project. The consultant will be required to prepare easement exhibits, provide copies of deeds for the City to prepare the easement documents, and obtain the easements. The consultant will be responsible for meeting individually with property owners regarding easements and general project coordination.

City staff from the Engineering Services Division and the Utility Maintenance Group will be available to assist in providing information for this project.

It is anticipated that the improvements will include the following:

1. Reconstruct eight inch (8") sanitary sewer mains in E. Signal Drive and Crescent Drive. Reconstruct the sanitary sewer service lines to the property lines.
2. Reconstruct the water main in E. Signal Drive and Crescent Drive. Reconstruct the water service lines to the property lines and install new curb stops and boxes. The design of cathodic protection facilities to be completed by Consultant.
3. Reconstruct the streets in E. Signal Drive and Crescent Drive. Design the asphalt pavement sections and determine if edge drains should be installed. Provide recommended typical sections for E. Signal Drive and Crescent Drive. Sidewalk will not be installed, but the boulevard should be graded to allow sidewalk to be installed in the future. Handicap ramps at intersections should be constructed with the Project. If there are trees that may interfere with the Project, the consultant will be responsible for contacting the homeowners and informing them about the project and the City's tree replacement policy. Any driveways that are reconstructed to the property line should be built with the sidewalk through it at this time.
4. The Consultant should evaluate the drainage and determine if storm sewer is required.

Sperlich Consulting, Inc. was selected through the City's "Consultant Selection" process to provide engineering services for Task 4 through Task 5 for the above referenced project.

TASK 4 – BASIC CONSTRUCTION SERVICES:

This task consists of all services necessary for the administration of the Basic Construction Services of the project construction stage, and may include the following itemized services.

- 4.1 Review construction contract documents and other submittals from the contractor and submit to the City of Rapid City project manager for distribution to City Attorney's for approval and signatures of the Mayor and Finance Officer.
- 4.2 ~~Prepare Notice to Proceed for City of Rapid City project manager signature and distribution to contractor for execution.~~
- 4.3 Arrange and conduct a Pre-Construction Conference including agenda. Record minutes and distribute to all attendees. An example of an agenda is enclosed as Attachment Six for your information.
- 4.4 Provide written clarification regarding drawing and specification questions.
- 4.5 Provide recommendations to address changed or unknown conditions that may appear during construction.
- 4.6 Review and take action on shop drawings, product submittals, test results, and other submittals.
- 4.7 Prepare "As-Built" plans and specifications. "As-Built" plans and specifications shall be submitted as a hard copy and on CD compatible with AutoCAD Release 2008 or newer format. Submit to Engineering Services within 30 days of project completion. In the event that the City did not issue a "Notice to Proceed" for Task 5 services, then the City shall forward construction record documents for preparing the "As-Built" plans and specifications.

TASK 5 – EXPANDED CONSTRUCTION SERVICES:

This task consists of all services necessary for the administration of the Expanded Construction Services of the project construction stage, and may include the following itemized services.

- 5.1 ~~Mark removal limits of appropriate items.~~
- 5.2 ~~Prepare Public Service Announcements (P.S.A.'s) for Engineering Services. Engineering Services will be responsible for distribution to all local media. Copies of P.S.A.'s shall be distributed one week prior to start of work or change in operations that may significantly affect the public.~~
- 5.3 Appropriately notify affected Property Owners.
- 5.4 Arrange and conduct appropriate progress meetings. Record minutes and distribute to all attendees.
- 5.5 Provide daily on-site observation to assure that the methods and materials used by the contractor meet the intent of the plans and specifications. For buried installations such as for sewer and water mains the Consultant shall be on site all of the time the Contractor is installing these buried installations.
- 5.6 Prepare daily reports. A daily record of activity will be maintained by the inspector including weather conditions, construction progress, deviations from the plans and specifications, work performed, quantities installed and any other pertinent information. Such information shall be neatly and concisely entered into the City of Rapid City Project Inspector's Diary and Inspection quantity book. Submit detachable copies to Engineering Services on a weekly basis.
- 5.7 Perform stormwater inspections, prepare reports, and keep the erosion and sediment control plans current as required by the ordinance regulating construction site runoff control, Chapter 8.46, and the Stormwater Quality Manual.

- 5.8 Provide soil compaction testing according to the Standard Specifications. All test results shall be submitted to the City of Rapid City within 30 days of project completion.
- 5.9 Provide assurance testing (or witness Contractor testing) according to the Standard Specifications. All test results shall be submitted to the City of Rapid City within 30 days of project completion.
- 5.10 Prepare and submit monthly pay request information.
- 5.11 Prepare change orders, and extra work orders for contractor on City of Rapid City forms and make recommendations for their approval or denial.
- 5.12 Prepare and submit project completion punch list items to the Contractor and Engineering Services and oversee its completion.
- 5.13 Prepare and submit City of Rapid City project "Construction Project Close-out Checklist" indicating compliance with Standard Specifications and acceptance of the various infrastructure components. The Consultant is responsible for coordinating completion of the checklist items with the Contractor. The checklist is enclosed as Attachment Four for your information.
- 5.14 Prepare letter of certification of project completion verifying compliance with plans and specifications and start of warranty period.
- 5.15 Prepare a letter to SDDENR notifying them of project completion.
- 5.16 Ensure Contractor's two-year warranty surety is provided to the City of Rapid City either within the performance bond or as a separate bond.
- ~~5.17 Assist the City in addressing and communicating warranty items with the Contractor that may arise during the City's two-year warranty period.~~

EXHIBIT B.1

E. Signal Drive Reconstruction

PROJECT NO. 12-2052 / CIP NO. 50949

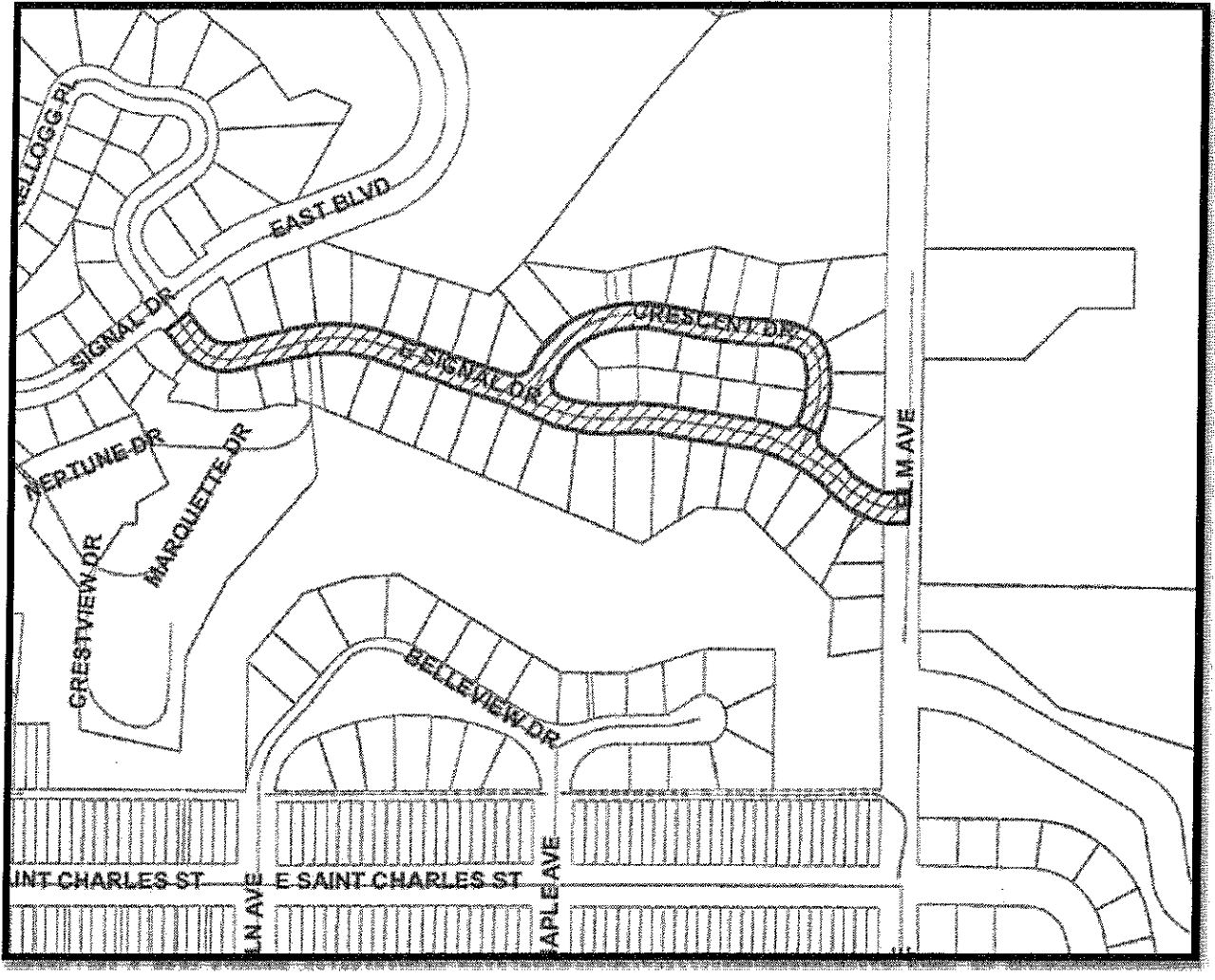
| Number | Task Item | Total Costs |
|--|---|---------------------|
| TASK 4 - BASIC CONSTRUCTION SERVICES | | |
| 4.1 | REVIEW CONSTRUCTION CONTRACT DOCUMENTS AND OTHER SUBMITTALS | \$600.00 |
| 4.2 | PREPARE NOTICE TO PROCEED | \$0.00 |
| 4.3 | ARRANGE AND CONDUCT THE PRE-CONSTRUCTION CONFERENCE | \$360.00 |
| 4.4 | PROVIDE WRITTEN CLARIFICATION REGARDING DRAWINGS AND SPECIFICATIONS | \$465.00 |
| 4.5 | PROVIDE RECOMMENDATIONS TO ADDRESS CHANGED OR UNKNOWN CONDITIONS | \$930.00 |
| 4.6 | REVIEW AND TAKE ACTION ON SHOP DRAWINGS, PRODUCT SUBMITTALS | \$915.00 |
| 4.7 | PREPARE "AS-BUILT" PLANS AND SPECIFICATIONS | \$0.00 |
| TASK #1 TOTAL COST = | | \$3,270.00 |
| TASK 5 - EXPANDED CONSTRUCTION SERVICES | | |
| 5-1 | MARK REMOVAL LIMITS OF APPROPRIATE ITEMS | \$0.00 |
| 5-2 | PREPARE PUBLIC SERVICE ANNOUNCEMENTS | \$0.00 |
| 5-3 | NOTIFY AFFECTED PROPERTY OWNERS | \$435.00 |
| 5-4 | ARRANGE AND CONDUCT PROGRESS MEETINGS | \$15,040.00 |
| 5-5 | PROVIDE DAILY ON-SITE OBSERVATIONS | \$94,770.00 |
| 5-6 | PREPARE DAILY REPORTS | \$1,110.00 |
| 5-7 | PERFORM STORMWATER INSPECTIONS | \$750.00 |
| 5-8 | PROVIDE SOIL COMPACTION TESTING | \$13,560.00 |
| 5-9 | WITNESS CONTRACTOR ASSURANCE TESTING | \$435.00 |
| 5-1 | PREPARE AND SUBMIT MONTHLY PAY REQUEST INFORMATION | \$1,860.00 |
| 5-11 | PREPARE CHANGE ORDERS AND EXTRA WORK ORDERS | \$1,365.00 |
| 5-12 | PREPARE AND SUBMIT PUNCH LIST ITEMS | \$1,050.00 |
| 5-13 | PREPARE AND SUBMIT "CONSTRUCTION PROJECT CLOSE-OUT CHECKLIST" | \$900.00 |
| 5-14 | PREPARE LETTER OF CERTIFICATION OF PROJECT COMPLETION | \$120.00 |
| 5-15 | PREPARE PROJECT COMPLETION LETTER TO SDDENR | \$120.00 |
| 5-16 | ENSURE CONTRACTORS TWO-YEAR WARRANTY SURITY IS PROVIDED | \$0.00 |
| 5-17 | ADDRESS WARRANTY ITEMS WITH CONTRACTOR DURING WARRANTY PERIOD | \$0.00 |
| TASK #2 TOTAL COST = | | \$131,515.00 |
| E. SIGNAL DRIVE RECONSTRUCTION PROJ NO. 12-2052 / CIP NO. 50949, CONTRACT VALUE FOR TASKS 4-5 = | | \$134,785.00 |

EXHIBIT C
EFFECTIVE LABOR RATES

SPERLICH CONSULTING, INC.
HOURLY RATES AND REIMBURSABLE COSTS
2015

| | |
|--|----------------|
| Kale McNaboe – Project Manager | \$105.00 / hr. |
| Douglas Sperlich - Design Engineer | \$105.00 / hr. |
| Paul Kraft – Staff Engineer | \$75.00 / hr. |
| Austin Hoellein – Staff Engineer | \$75.00 / hr. |
| Jeffrey Janis – Registered Land Surveyor | \$75.00 / hr. |
| Field Survey Crew | \$50.00 / hr. |
| Engineer's On-Site Representative | \$65.00 / hr. |
| Donna Miller – CAD Technician | \$67.50 / hr. |
| Bridget White – CAD Technician | \$65.00 / hr. |
| Mileage | \$0.55 / mi. |
| Photo copies | \$0.50 / ea. |
| Authorized commercial travel | 1.1 x Cost |
| Other Reimbursable Expenses | 1.1 x Cost |

EXHIBIT D



E. Signal Drive Reconstruction

Project No. 12-2052 / CIP No. 50949



CONSULTANTS
· ENVIRONMENTAL
· GEOTECHNICAL
· MATERIALS
· FORENSICS

May 1, 2015

Sperlich Consulting Inc.
821 Columbus; Suite 1
Rapid City, South Dakota 57701

Attn: Mr. Kale McNaboe, P.E.

Subject: Cost Proposal –Testing and Observation Services
East Signal Drive and Crescent Drive;
Street and Utility Reconstruction
Rapid City, South Dakota

Dear Kale:

INTRODUCTION

As requested, American Engineering Testing Inc. (AET) is pleased to provide this proposal for the testing services for the above referenced project. It is our understanding that the contractor (RCS Construction) will be responsible for all concrete testing and procurement and performance of proctor samples for the project.

SCOPE OF WORK

Testing and observation services will consist of field testing of soils for street subgrade (including any required undercut and proof rolling), utility trench backfill, manhole and inlet backfill, and aggregate base course .

AET will provide a field technician on a part-time basis to provide the necessary field and lab testing services. In addition, a Geotechnical Engineer will be available for consultation and observations and will administer the testing for the project.

FEES

The following provides an estimate of the services and fees as we understand the project at this time and is based on the current construction schedule and the City of Rapid City Specifications on testing frequency (minimum of one test per 200 lineal feet per 3 feet of trench depth). It appears that roughly 250 to 300 soils compaction tests will be required. We have tried to be as realistic as possible in estimating testing quantities and time required. Quantities may change considerably due to

1745 Samco Road | Rapid City, SD 57702

Phone (605) 388-0029 | Toll Free (800) 972-6364 | Fax (605) 388-0064 | www.amengtest.com | AA/EEO

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Cost Proposal – Testing and Observation Services
Proposed E. Signal and Crescent Drive Reconstruction
Rapid City, SD
May 1, 2015

AMERICAN
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TESTING, INC.

circumstances beyond our control such as weather, slower utility placement than anticipated, unforeseen soil conditions, or additional testing required or requested by the Engineer, or City. **Actual quantities may differ from the below estimates.** You will be invoiced only for the work actually performed. If you (the client) or your representative requests AET to spend additional time beyond the total estimated amount, the total estimated amount is changed accordingly and you will be invoiced for all additional services in accordance with the below unit charges for this particular project.

1. Testing of Soils as outlined above (estimated 250 to 300 density tests)

| | | |
|------------------|-----------------------|--------------------|
| Soils Technician | 170 hr @ \$60.00/hr | \$ 10,200.00 |
| Engineer | 16 hr @ \$95.00/hr | \$ 1,520.00 |
| Clerical | 16 hr @ \$45.00/hr | \$ 720.00 |
| Mileage | 1600 mi @ \$0.70/mi | <u>\$ 1,120.00</u> |
| | Total Estimate | \$13,560.00 |

Terms and Conditions

All AET Services are provided subject to the Terms and Conditions set forth in the enclosed Service Agreement—Terms and Conditions, which, upon acceptance of this proposal, are binding upon you as the Client requesting Services, and your successors, assignees, joint venturers and third-party beneficiaries. Please be advised that additional insured status is granted upon acceptance of the proposal.

Acceptance

AET requests written acceptance of this proposal in the Proposal Acceptance box below, but the following actions shall constitute your acceptance of this proposal together with the Terms and Conditions and Amendments: 1) issuing an authorizing purchase order for any of the Services described above, 2) authorizing AET's presence on site or 3) written or electronic notification for AET to proceed with any of the Services described in this proposal. Please indicate your acceptance of this proposal by signing below and returning a copy to us. When you accept this proposal, you represent that you are authorized to accept on behalf of the Client.


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CLOSING

Thank you for the opportunity for American Engineering Testing, Inc. to provide this proposal for the testing services for this project. If you have any questions please call our office at (605) 388-0029.

Sincerely,



Ray Atkins, PE
Construction Materials Engineer

ACCEPTANCE: _____

SIGNATURE: _____

COMPANY: _____

DATE: _____

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 or changes are made during AET's services, Client will provide such information to AET in a timely manner. Earthwork and construction activities are done to support a particular structure (type, size, and shape) or facility at a specific location and elevation. If the type of structure or facility (structural type, size, shape, location, elevation, etc.) changes, the earthwork or construction activities completed may no longer provide suitable structural support or be capable of supporting the intended construction. Additional earthwork or redesign of all or a part of the structure or facility may be needed. 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 - AET observes and tests earthwork and other construction operations and materials, and may provide opinions, conclusions and recommendations regarding the same. However, AET's work does not relieve the contractors of their contractual responsibility to perform their work in accordance with approved plans, specifications and building code requirements.

1.4 - AET personnel do not have authority to accept, reject, direct or otherwise approve the work of the contractor. AET cannot stop work or waive or alter the requirements of the project documents. Any authority given to AET by Client must be in writing prior to the start of work.

1.5 - AET does not perform construction management, general contracting or surveying services and our involvement with the project does not constitute any assumption of those responsibilities.

1.6 - 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.

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

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

1.9 - Test borings and/or cone penetration test soundings to a proper depth below foundation grade and the base of suitable bearing soils are recommended for projects where supporting soils will be subjected to increased loads to explore the deeper unseen soil and ground water conditions. Judgments made by AET personnel regarding the suitability of materials and ground water conditions below the bottom of an excavation are limited if sufficiently deep test borings/soundings are not provided by the Client prior to our observations and judgments. AET's opinions, conclusions and recommendations are qualified to that extent.

1.10 - 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.

1.11 - 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 - WILL CALL SERVICES

2.1 - Unless specifically directed, AET's services will be performed on a will-call basis at the direction of the Client or their authorized representatives. The client and its authorized representatives accept that there are inherent risks associated with performing engineering judgments and testing services on a will-call basis. Work performed on a will-call basis does not permit complete evaluation of the work being performed. AET can not, with certainty, document or provide complete judgments regarding work which we did not observe or test. Our opinions, conclusions, and recommendations are qualified to that extent.

2.2 - Density tests of fill and soil represent conditions only at the locations and elevations tested and do not necessarily represent conditions elsewhere. Judgments made regarding the engineering capability of the entire fill sequence should not be based on random, non-representative tests.

2.3 - AET requires a minimum of 24 hours notice of the need for services. AET will not be liable for claims, damages, or delays related to failure of Client to provide adequate advance notice to AET.

SECTION 3 - SITE ACCESS, UNDERGROUND FACILITIES AND CONSTRUCTION STAKING

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

3.2 - AET is not responsible for locating underground facilities on construction sites. We proceed on the assumption that underground facilities have been located and cleared, and we will not accept liability for damaging same. An underground facility is an underground line, fixture, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electrical power, heat, gas, oil, petroleum products, water including storm water, steam, sewage, and other similar substances.

3.3 - Normally, the location and elevation of a proposed structure or facility is staked (with offsets) by others or provided by use of their GPS equipment. Our measurements are made in relation to those stakes or the GPS information provided by others. The reliability of any opinions, conclusions, and recommendations based on those measurements is strictly dependent on the accuracy of the staking or GPS information provided by others.

3.4 - During construction, observations and testing services are based on the positioning of the formwork by the contractor or their subcontractor. AET will not be held responsible for any errors that result due to improper location or positioning of the formwork.

SECTION 4 - SAFETY

4.1 - 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.

4.2 - AET shall only be responsible for the 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 5 - SAMPLES

5.1 - 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.

5.2 - 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 6 - 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 7 - STANDARD OF CARE

AET performs its 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.

SECTION 8 - INSURANCE

AET maintains Worker's Compensation, Comprehensive General Liability, Automobile Liability and Professional Liability insurance, as described below. Upon request, prior to commencing the Services, AET can furnish Client with Certificates of Insurance evidencing that the insurance is in effect and in full force.

8.1 - 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 indemnity obligations under this Agreement.

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

8.3 - 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.

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

8.5 - AET will maintain in effect all insurance coverage required by this Agreement at its sole expense, provided 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-).

8.6 - 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 9 - 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 10 - PAYMENT, INTEREST AND BREACH

10.1 - 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.

10.2 - 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.

10.3 - 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.

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

SECTION 11 - MEDIATION

11.1 - Except for enforcement of AET's rights to payment for services rendered or to assert and/or enforce its lien rights, including without limitation assertion and enforcement of mechanic's lien rights and foreclosure of the same, 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; provided however that if either party should fail to respond to a request for mediation within 60 days after the request, this requirement for mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings shall be of no force and effect.

11.2 - 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 equally. The mediator shall be acceptable to both parties and shall have experience in commercial construction matters.

SECTION 12 - 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 13 - MUTUAL INDEMNIFICATION

13.1 - AET agrees to indemnify Client from and against liability arising out of AET's negligent performance of the services, subject to Section 14 and any other limitations, other indemnifications or other provisions Client and AET have agreed to in writing.

13.2 - 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.

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

13.4 - AET's indemnification to the Client is limited solely to losses or damages caused by its failure to meet the standard of care and only to the extent of its negligence

13.5 - AET will not accept any obligation to indemnify Client other than to meet the standard of care. If a court of competent jurisdiction rules that indemnity is implied or if required by law, AET's obligation for the costs of indemnity is only to the extent due to AET's negligent acts, errors or omissions.

SECTION 14 - 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 \$20,000.

SECTION 15 - 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 16 - POSTING OF NOTICES ON EMPLOYEE RIGHTS

Effective June 21, 2010, prime contracts with a value of \$100,000 or more and signed by federal contractors on projects with any agency of the United States government must comply with 29 CFR Part 471, which requires physical posting of a notice to employees of their rights under Federal labor laws. The required notice may be found at 29 Code of Federal Regulations Part 471, Appendix A to Subpart A. The regulation also has a "flow-down" requirement for subcontractors under the prime agreement for subcontracts with a value of \$10,000 or more. AET requires strict compliance of its subcontractors working on federal contracts subject to this regulation. The regulation has specific requirements for location of posting and language(s) for the poster.

SECTION 17 - 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 18 - 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 19 - 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 20 - 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.