



May 4, 2026

City of Deadwood – Public Works  
102 Sherman Street  
Deadwood, South Dakota 57732

Attn: Lornie Stalder  
[lornie@cityofdeadwood.com](mailto:lornie@cityofdeadwood.com)

Subject: Cost Proposal - Geotechnical Exploration & Review  
Proposed Retaining Wall Reconstruction  
Freemont Street  
Deadwood, South Dakota

Dear Lornie,

As requested, American Engineering Testing (AET) is pleased to submit a proposal for the subsurface exploration for use in the planning, design and reconstruction of the existing retaining wall along Freemont Street in Deadwood, South Dakota. In this proposal, we present our understanding of the project, an outline of the scope of services we are to provide, and the lump sum fee for our services.

### **PROJECT INFORMATION**

Based on the information provided, we understand the existing approximate 90' long by 15' high Redi-Rock block retaining wall is experiencing both vertical settlement as well as outward horizontal rotational movement. On-going measurements last performed by Towey Design Group (TDG) in January 2026 indicate vertical displacements on the order of up to 0.55' (6.60") and horizontal displacements of up to 0.31' (3.72"). At this time, it is anticipated the existing wall will be removed, the site soils remediated as necessary to provide a suitable bearing surface, and the wall reconstructed.

The purpose of the geotechnical study will be to determine the subsurface conditions at the site and to evaluate the suitability of the site soils for their use in reconstructing the retaining wall system. We assume access to the boring locations will be accessible with a truck mounted drill rig and four-wheel drive support truck.

**1745 Samco Road | Rapid City, SD 57702**

**Phone (605) 388-0029 | [teamAET.com](http://teamAET.com) | AA/EEO**

This document shall not be reproduced, except in full, without written approval from American Engineering Testing, Inc.

## SCOPE OF SERVICES

### *Field Exploration*

Based on the information provided, the following scope of services will be provided:

- Perform a site visit to stake the proposed boring locations and arrange clearance of underground public utilities through SD One Call.
- Drill a total of two (2) standard penetration test (SPT) borings within the proposed retaining wall alignment on Freemont Street to depths of approximately 30 feet below existing grade, or practical auger refusal, whichever is less.

The borings will be advanced with either solid flite auger (FA) or hollow stem auger (HSA) using a truck mounted drill rig. The borings will be backfilled with auger cuttings and the surface restored. Any additional cuttings will be thin-spread on site near the boring location unless directed otherwise.

Before we drill, we will contact South Dakota One Call to locate public underground utilities. South Dakota One Call does not currently charge for this service, but they will not locate private underground utilities or structures. Examples of private utilities include, but are not limited to, propane lines, sewer laterals, sprinkler systems, site lighting, and electric and data lines between buildings. **The client/property owner is responsible for locating all private underground utilities and structures.** Please provide us with any maps, plans and records showing the location of all private utilities and structures.

AET shall be entitled to rely upon the accuracy of all location information supplied by any source. We will not be responsible for any damages to underground utilities or structures not located or incorrectly identified by the client/property owner, any maps, plans or records, or public or private utility locator providers.

We will drill the borings using solid flite or hollow stem augers, and sampling by either the split-barrel method (ASTM D1586) or the ring lined-barrel method (ASTM D3550). Our crew will keep field logs noting the methods of drilling and sampling, the Standard Penetration Values (N-values, "blows per foot"), preliminary soil classification, and observed groundwater levels. We will collect samples at 2½-foot intervals to a depth of 15-feet, then every 5-feet to the proposed terminal boring depths. Representative portions of recovered samples will be collected in sealed glass jars or capped brass tubes to prevent moisture loss and submitted to our laboratory for review, testing and final classification.

We will backfill the boreholes with auger cuttings and restore the surface. Even after backfilling, some sloughing/settlement of the backfill may occur, resulting in a potential tripping hazard. Our field crew will take all precautions necessary to minimize settlement of the boreholes; however, area disturbance may be seen after we leave the site.

### ***Laboratory Testing***

We will initiate routine laboratory testing by reviewing each recovered soil sample to assess the major and minor soil components, while also noting the color, degree of saturation, and lenses or seams in the samples. We anticipate laboratory testing to include natural moisture content, dry density, Atterberg Limits, gradation (sieve) analysis, direct shear, and unconfined compression or consolidation-swell potential.

On completion of testing, we will visually/manually classify each sample on the basis of texture and plasticity in accordance with the Unified Soil Classification System and prepare the boring logs.

### ***Report***

We will prepare a geotechnical engineering report in which we will present logs of the test borings, laboratory test results, a review of engineering properties of the site soils, and our geotechnical engineering opinions and recommendations regarding the following:

- Site preparation and grading procedures needed in order to attain the required allowable bearing pressure necessary to support the reconstructed wall system.
- Suitability of the on-site soils for reuse as backfill material, as well as imported fill and geo-foam requirements.
- Foundation types and depths, including estimates of foundation movement.
- Backfilling procedures, including material types and compaction requirements.
- Soil parameters for use in designing the wall system to include lateral earth pressures, friction angles, friction coefficients, and soil/aggregate unit weights.
- Comments on other items which may affect final performance or constructability.

### **SCHEDULE**

Weather and site access permitting, the drilling can be scheduled within about 10 to 15 working days from receiving a written notice-to-proceed. The drilling can be completed in 1 day. Laboratory testing will require approximately 7 to 10 working days to complete. The report can be submitted within about 10 working days following the completion of the laboratory testing.

### **FEES**

Our fees for the scope of services described above will be charged on a lump sum basis of \$5,575.00, plus applicable state and local taxes.

Please note, our fees will be in effect for ninety (90) days after issuance of this proposal, after which they will be subject to review and adjustment where necessary.

## **ENVIRONMENTAL CONCERNS**

This proposal is presented for engineering services to evaluate the structural properties of the soil at the specified site. This proposal does not cover an environmental assessment of the site or environmental testing of the soil or groundwater. If you wish to have us provide these additional services, please contact us.

## **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 ventures and third-party beneficiaries. Please be advised that additional insured status is granted upon acceptance of the proposal.

## **ACCEPTANCE**

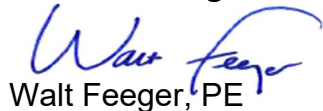
AET requests written acceptance of this proposal in the Proposal Acceptance box below, but the following actions shall constitute your acceptance of this proposal together with the Terms and Conditions and Amendments: 1) issuing an authorizing purchase order for any of the Services described above, 2) 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.

## **CLOSING**

AET appreciates the opportunity to provide this service for you and we look forward to working with you on this project. If you have questions or need additional information, please contact our office at 605-388-0029.

Sincerely,

**American Engineering Testing, Inc.**



Walt Feeger, PE

Manager/Principal Engineer – West Division

**Cost Proposal - Geotechnical Exploration**  
Proposed Freemont Street Retaining Wall  
Deadwood, South Dakota  
May 4, 2026



**ACCEPTANCE AND AUTHORIZATION**

SIGNATURE: \_\_\_\_\_  
PRINTED NAME: \_\_\_\_\_  
COMPANY: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE NUMBER AND EMAIL: \_\_\_\_\_  
DATE: \_\_\_\_\_

**INVOICING INFORMATION (Provide Company AP Department Information, if applicable)**

ACCOUNTS PAYABLE CONTACT NAME: \_\_\_\_\_  
BILLING/MAILING ADDRESS: \_\_\_\_\_  
AP PHONE NUMBER AND INVOICE EMAIL: \_\_\_\_\_  
P.O. NO./ PROJECT NO.: \_\_\_\_\_

## **SERVICE AGREEMENT - TERMS AND CONDITIONS**

### **SECTION 1 - RESPONSIBILITIES**

**1.1** – This Service Agreement – Terms and Conditions (“terms and conditions”) is applicable to all services (“Services”) provided by American Engineering Testing, Inc. (AET). As used herein “Services” refer to the scope of Services described in the proposal submitted by AET to Client. The proposal, these terms and conditions and any appendices attached hereto shall comprise the agreement (“Agreement”) between AET and Client for Services described in the proposal and are binding upon the Client, its successors, assignees, joint ventures and third-party beneficiaries. **AET requests written acceptance of the Agreement, but the following actions shall also constitute Client’s acceptance of the Agreement: 1) issuing an authorizing purchase order, task order, service order, or any other documentation for any of the Services, 2) authorizing AET’s presence on site, or 3) written or electronic notification for AET to proceed with any of the Services.** Issuance of a purchase order, task order or service order by Client which contains separate terms and conditions will not take precedence or modify the terms and conditions contained in this Service Agreement AND THE TERMS AND CONDITIONS OF THIS SERVICE AGREEMENT AND ANY CORRESPONDING PROPOSAL ISSUED BY AET SHALL GOVERN UNLESS AUTHORIZED IN WRITING IN ADVANCE BY AET.

**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 their client and/or Owner which contain flow-down provisions to AET, if they are included, 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. 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 Services do 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 Services.

**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. Client acknowledges the limitations inherent in sampling. Variations in conditions occur between and beyond sampled/tested locations. The passage of time, natural occurrences and direct or indirect human activities at the site or distant from it may alter the actual conditions. Client assumes all risks associated with such variations.

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

**1.8** - Should change in 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 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** – Pricing in the proposal assumes use of these terms and conditions. AET reserves the right to amend pricing if Client requests modifications to the Agreement or use of Client’s alternate contract format. Any contract amendments made after Client has authorized the Services shall be applicable only to Services performed after the effective date of such amendment. The proposal and these terms and conditions, including terms of payment, shall apply to all Services performed prior to the effective date of such amendment.

**1.11** – The AET proposal accompanying these terms and conditions is valid for thirty (30) days after the proposal issuance date to the Client. Any attempt to authorize Services after the expiration date is subject to AET’s right to revise the proposal as necessary.

### **SECTION 2 – ON CALL SERVICES**

**2.1** - If AET’s Services are performed on an on-call basis at the direction of the Client or its authorized representatives, Client acknowledges the inherent limitations associated with performing engineering judgments and testing Services on an on-call basis, including without limitation, the inability to completely evaluate, document or judge work and conditions not directly observed or tested by AET. AET’s opinions, conclusions, and recommendations are qualified to the extent of those limitations.

**2.2** - Density tests of fill soils represent conditions only at the locations and elevations tested and do not necessarily represent conditions laterally, above or below. AET can only provide judgments regarding the engineered fill system to adequately support the design construction loadings by monitoring the filling process on a continuous basis for consistency of soil type, moisture content, lift thickness, and compaction effort.

**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 - SAFETY**

**3.1** - Client shall inform AET of any known or suspected hazardous materials or unsafe conditions at the site. Client or its authorized representative(s) is responsible for the safety of the jobsite. If, during the course of AET’s Services, such materials or conditions are discovered, AET reserves the right to take measures to protect AET personnel and equipment or to immediately terminate Services. Client shall be responsible for payment of such additional protection costs.

**3.2** - AET shall only be responsible for safety of AET employees at the site; the safety of all others shall be Client's or other persons' responsibility.

### **SECTION 4 - SAMPLES**

**4.1** - Client shall inform AET of any known or suspected hazardous materials prior to submittal to AET. All samples obtained by or submitted to AET remain the property of the Client during and after the Services. Any known or suspected hazardous material samples will be returned to the Client at AET’s discretion.

**4.2** - Non-hazardous samples will be held for thirty (30) days and then discarded unless, within thirty (30) days of the report date, the Client requests in writing that AET store or ship the samples. Storage and shipping costs shall be borne solely by Client.

#### **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 minimum 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 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 7 - INSURANCE**

AET maintains insurance with coverage and minimum limits shown below. AET will furnish certificates of insurance to Client upon request.

##### **7.1** –

Workers' Compensation Employer's Liability	Statutory Limits \$100,000 each accident \$500,000 disease policy limit \$100,000 disease each employee
Commercial General Liability	\$1,000,000 each occurrence \$1,000,000 aggregate
Automobile Liability	\$1,000,000 each accident
Professional/Pollution Liability Insurance	\$1,000,000 per claim \$1,000,000 aggregate

**7.2** - Commercial General Liability insurance will include coverage for Products/Completed Operations extending one (1) year after completion of AET's Services as outlined in our proposal, Property Damage, Personal Injury, and Contractual Liability coverage applicable to AET's indemnity obligations under this Agreement.

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

**7.4** - Professional/Pollution Liability Insurance is written on a claims-made basis and coverage will be maintained for one (1) year after completion of AET's Services as outlined in our proposal. Renewal policies during this period shall maintain the same retroactive date.

**7.5** - **To the extent permitted by applicable state law, and upon Client's signing of the proposal, which includes these Terms and Conditions, and return of the same to AET, or Client provided forms of acceptance as defined in Section 1.1; Client and Owner shall be named an "additional insured" on AET's Commercial General Liability Policy (Form CG D4 14, which includes blanket coverage for the Additional Insured on a Primary and Non-Contributory basis). Client and Owner shall also be named an "additional insured" on a Primary and Non-contributory basis on AET's Automobile Liability Policy (Form CA T4 74). Any other endorsement, coverage or policy requirement may result in additional charges.**

**7.6** - AET will maintain insurance coverage required by this Agreement at its sole expense, provided such insurance is reasonably available, 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-). Such insurance shall provide for thirty (30) days prior written notice to Client for notice of cancellation or material limitations for the policy or ten (10) days' notice for non-payment of premium.

**7.7** - AET reserves the right to charge Client for AET's costs for additional coverage requirements unknown on the date of the proposal, e.g., coverage limits or policy modification including waiver of subrogation, additional insured endorsements and other project specific requirements.

#### **SECTION 8 - DELAYS**

If delays to AET's Services are caused by Client or Owner, other parties, strikes, natural causes, pandemic, weather, or other items beyond AET's control, a reasonable time extension for performance of the Services shall be granted, and AET shall receive an equitable fee adjustment.

#### **SECTION 9- PAYMENT, INTEREST AND BREACH**

**9.1** - Invoices are due net thirty (30) days from the date of receipt of an undisputed invoice. Invoices will be paid without reductions for bond or retention. Client will inform AET of invoice questions or disagreements within fifteen (15) days of invoice date; unless so informed, invoices are deemed correct.

**9.2** – Invoices remaining unpaid for sixty (60) days shall constitute a material breach of this Agreement, permitting AET, in its sole discretion and without limiting any other legal or equitable remedies for such breach, to terminate performance of this Agreement and be relieved of any associated duties to the Client or other persons. Further, AET may withhold from Client data and reports in AET's possession. If Client fails to cure such breach, all reports associated with the unpaid invoices shall immediately upon demand be returned to AET and Client may neither use nor rely upon such reports or the Services.

**9.3** – AET reserves the right to pursue any unpaid invoice utilizing available remedies at law. AET explicitly reserves its Mechanic Lien or Bond Claim rights for nonpayment of an undisputed invoice. Client is responsible for paying AET expenses and attorney fees related to collection of past due invoices.

**9.4** – AET reserves the right to charge a 2.5% fee on any payment made using a credit card or debit card.

## **SECTION 10 - CHANGE ORDERS**

AET's proposal associated with this project may provide an estimated cost for the work. If the proposal amount is a time and material estimate, or if changes occur affecting the project scope, estimated quantities, project schedule or other unforeseen conditions, AET will communicate with Client and request a change order. However, nothing in this agreement shall be construed in any way as a waiver of payment by Client to AET for Services authorized under this agreement. Approval of a change order may be in writing, by electronic communication, or any directive for additional Services.

## **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 fails to respond to a request for mediation within sixty (60) days, the party requesting mediation may without further notice, proceed to arbitration or the institution of legal or equitable proceedings.

**11.2** - 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 and each party shall pay their own legal fees. The mediator shall be acceptable to both parties and shall have experience in commercial construction matters.

## **SECTION 12 - LITIGATION REIMBURSEMENT**

Except for matters relating to non-payment of fees, which is governed by Section 10 hereof, payment of attorney's fees and costs associated with lawsuits or arbitration of disputes between AET and Client, which are dismissed or are judged substantially in either party's favor, shall be paid by the non-prevailing party. Applicable costs include, but are not limited to, attorney and expert witness fees, court costs, and other direct costs.

## **SECTION 13 - MUTUAL INDEMNIFICATION**

**13.1** - Subject to the limitations contained in Sections 14 and 17, AET agrees to indemnify Client from and against damages and costs to the extent caused by AET's negligent performance of the Services.

**13.2** - Client agrees to indemnify AET from and against damages and costs to the extent caused by the intentional acts or negligence of the Client, Owner, Client's contractors and subcontractors or other third parties.

**13.3** - If Client has an indemnity agreement with other persons or entities relating to the project for which AET's Services are performed, the Client shall include AET as an Additional Insured.

**13.4** - AET's indemnification to the Client, including any indemnity required or implied by law, 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.

## **SECTION 14 - NON-SOLICITATION**

Each party to this Agreement (a "Party") agrees that it will not encourage, induce, or actively solicit any employee of the other party to leave their employment for any reason, provided that neither Party is precluded from (a) hiring any such employee who has been terminated by a Party or its subsidiaries prior to commencement of employment discussions between a Party and such employee, or (b) soliciting any such employee by means of a general advertisement or through an employment agency that does not specifically pursue the employee, or (c) hiring employees or former employees of the other Party who contact the Party on its own accord. This Non-Solicitation provision shall be effective and enforceable for six (6) months following termination of this Agreement.

## **SECTION 15- MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**

Except as specifically set forth herein and to the extent permitted by applicable law, Client and AET waive against each other, and each other's officers, directors, members, subcontractor, agents, assigns, successors, partners, and employees any and all claims for or entitlement to special, incidental, indirect, punitive, or consequential damages arising out of, resulting from, or in any way related to the Services provided by AET under this Agreement. This mutual waiver of consequential damages includes, but is not limited to, the following: loss of profits; loss of revenue; rental costs/expenses incurred; loss of income; loss of use of property, equipment, materials or services; loss of opportunity; loss of rent; loss of good will; loss of financing; loss of credit; diminution of value; loss of business and reputation; loss of management or employee productivity or the services of such persons; increased financing costs; cost of substitute facilities; cost of substitute goods/property/equipment; cost of substitute services; and/or cost of capital. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement in accordance with the provisions of the Agreement and related documents and shall survive any such termination.

## **SECTION 16 - LIMITATION OF LIABILITY**

To the fullest extent permitted by applicable law, the total aggregate liability of AET and its officers, directors, partners, employees, subcontractors, agents, and sub-consultants, to Client and/or Client's employees, officers, directors, members, agents, assigns, successors, or partners, or anyone claiming through Client, for any and all injuries, damages, claims, losses, or expenses (including attorney's fees and costs) arising out of, resulting from or in any way related to Services provided by AET from any cause or causes, including, but not limited to, its negligence, professional errors and omissions, strict liability, breach of contract, or breach of warranty shall not exceed the total compensation in excess of costs received by AET for Services or \$50,000, whichever is less. The limitation of liability set forth herein does not apply to claims arising solely out of or related to the willful or intentional acts of AET.

## **SECTION 17 - 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 18 - 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 Services performed, including demobilization and reporting costs to complete the Services.

## **SECTION 19 - 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 20 - GOVERNING LAW**

This Agreement shall be construed in accordance with the Laws of the State of South Dakota without regard to its conflicts of law provisions.

## **SECTION 21 - ENTIRE AGREEMENT**

This Agreement, including these terms and conditions and attached proposal and appendices, is the entire agreement between AET and Client. Regardless of method of acceptance of this Agreement by the Client, this Agreement supersedes any written or oral agreements, including purchase/work orders or other Client agreements submitted to AET after the start of our Services. 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 terms and conditions or alternate contract format submitted by the Client as a condition for payment of AET's accrued Services.

## **SECTION 22 - SITE ACCESS, UNDERGROUND FACILITIES AND CONSTRUCTION STAKING (CONSTRUCTION)**

**22.1** - Client will furnish AET safe and legal site access.

**22.2** - With the exception of public utilities which AET will contact state "call before you dig" notification centers (e.g. South Dakota One Call), Client will mark or cause to be marked the location of all other underground utilities and structures (Facilities) that service or are located on the site. AET shall be entitled to rely upon the accuracy of all location information supplied by any source.

**22.3** - Client shall hold harmless, indemnify and defend AET from all claims, damages, losses, fines, penalties and expenses (including attorney's fees) arising out of or related to the following: a) Facilities that are not shown or vary from the locations shown on any plans or drawings, b) Facilities that are not located by or vary from the locations marked by Client, governmental or quasi-governmental locator programs, or private utility locating services, or c) any other Facilities that are not disclosed or vary from locations provided by the Client. The obligation to defend AET shall be independent of the obligation to indemnify and hold harmless AET and shall be with independent counsel acceptable to AET.

**22.4** - The location and elevation of a proposed structure or facility shall be staked (with offsets) and controlled by surveying or GPS equipment by others. AET's measurements are made in relation to that information. 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.

**22.5** - During construction, observations and testing Services are based on the positioning of the formwork by the contractor or its subcontractor. AET will not be responsible for any errors or damages resulting from improper location or positioning of the formwork.

**22.6** - Client acknowledges that in the normal course of its Services, AET may unavoidably alter existing site conditions or affect the environment in the area being studied. AET will take reasonable precautions to minimize alterations to the site or existing materials. Restoration of the site is the responsibility of the Client.

## **SECTION 23 UNDERGROUND UTILITIES AND STRUCTURES AND FACILITIES (GEOTECH)**

**23.1** - Public Utilities: AET's sole responsibility under this section will be to contact the state "call before you dig" notification center (e.g. SD One Call), if such an entity exists, for location information of public utilities only. AET shall have no obligation to proceed with the work until Client has fully complied with all the requirements of this Section 23.

**23.2** - Private Utilities and all other Equipment or Facilities: Client will mark or cause to be marked the location of all other Facilities, Equipment and/or Utilities that service or are located on the site including but not limited to private utilities. AET shall be entitled to rely upon the accuracy of all location information supplied by any source including the Client.

**23.3** - Client acknowledges that location data may be incorrect or that some Facilities, Equipment or Utilities may not be capable of location and Client fully acknowledges and accepts this risk and waives any claims against AET for damages or claims arising out of or in any way related to incorrect locations of Utilities, Equipment or Facilities incapable of location.

**23.4** - Client shall waive as against AET and further hold harmless, indemnify and defend AET from all claims, damages, losses, fines, penalties and expenses (including attorney's fees) by any third parties arising out of or related to the following: a) Facilities and utilities that are not shown or vary from the locations shown on any plans or drawings, b) Facilities and utilities that are not located by or vary from the locations marked by Client, governmental or quasi-governmental locator programs, or private utility locating services, or c) any other Facilities or utilities that are not disclosed or vary from locations provided by the Client. The obligation to defend AET shall be independent of the obligation to indemnify and hold harmless AET and shall be with independent counsel acceptable to AET.