

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE
CITY OF MARSHALL, MINNESOTA and AMERICAN ENGINEERING TESTING, INC.**

THIS SERVICE AGREEMENT is made and entered into this _____ day of _____ 2021, by and between the City of Marshall, Minnesota (“CLIENT”) and American Engineering Testing, Inc., St. Paul, Minnesota (“AET”).

TERM

Unless this agreement terminates earlier, per the terms herein, this Agreement will terminate on 12/31/2023. This agreement can be terminated with a 30-day notice by either party.

RECITALS

- A. CLIENT has need from time to time for various services offered by AET, including environmental services, geotechnical engineering, subsurface exploration, materials engineering, testing, forensic services and laboratory services (“Services”).

This Service Agreement – Terms and Conditions (“terms and conditions”) is applicable to all 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 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 or service order 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.

NOW THEREFORE in consideration of the foregoing, and the covenants contained herein, CLIENT and AET hereby mutually agree as follows:

SECTION I - SERVICES TO BE PERFORMED BY AET

A. **Basic Services**

1. When CLIENT requests Services for a specific project (“Project”), AET shall issue a letter proposal (“Letter Proposal”) setting forth additional terms and conditions pursuant to which AET will perform the Services, e.g., the scope of Services for such Project and additional or alternate payment provisions. The Proposal is valid for ninety (90) day after such issuance to the Client. The Letter Proposal, the terms and conditions set forth in this Service Agreement and any appendices attached hereto shall comprise the Agreement between AET and CLIENT for Services for a Project and are binding upon the CLIENT, its successors, assignees, joint venturers and third-party beneficiaries.
2. Billing rates and invoicing for the Services will be in accordance with Section III of this Agreement—Payment to AET.
3. AET requests written acceptance of the Letter Proposal(s), but the following actions shall also constitute CLIENT’s acceptance of the Agreement for a Project: 1) issuing an authorizing purchase order, task order or service order 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.
4. The scope of Services may include, but shall not be limited to environmental services, geotechnical engineering, subsurface exploration, materials engineering, testing, forensics, and laboratory services.
5. AET shall perform its Services as an independent contractor. Except where otherwise provided in this Service Agreement, AET shall be responsible for the means and methods used in performing Services under this Service Agreement, and is not in a joint-venture with CLIENT. CLIENT or its designated representative shall coordinate AET’s Services and shall facilitate the exchange of information among AET and the independent professional associates and consultants engaged by CLIENT.
6. AET will perform Services consistent with the level of care and skill normally performed by other firms in its profession at the time of the Services and in the same geographic area, under similar budgetary constraints.
7. AET shall request and obtain from CLIENT the data and information considered important for the performance of AET’s Services. Documents prepared by AET and the Services will conform to applicable Federal, State, and local laws, rules, regulations, ordinances, codes, orders, and other legal requirements. AET’s communications to or with CLIENT’s other independent professional associates and consultants will be through or with the knowledge of CLIENT.
8. AET will contact the state “call before you dig” notification center (e.g. Gopher State One Call in Minnesota), 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 Paragraphs 8 – 11.

9. 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.
10. CLIENT acknowledges that location data may be incorrect or that some Facilities may not be capable of location and CLIENT fully accepts this risk and waives any claims against AET for incorrect locations or Facilities incapable of location.
11. 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.
12. CLIENT acknowledges that, in the normal course of fieldwork, some damage to the site may occur. AET shall take reasonable precautions to minimize such damage and shall patch bore holes placed through pavement or slab areas after performance of borings. Except for the foregoing, restoration of the site shall be the responsibility of CLIENT.
13. To the extent required by law, AET shall report to CLIENT any contamination detected or of which AET becomes aware during the course of providing Services on a Project. Discovery of actual or suspected hazardous materials shall entitle AET to take immediate measures it deems necessary in its sole discretion, including regulatory notification, to protect human health and safety, and/or the environment. Further, discovery of such materials constitutes a changed condition for which CLIENT agrees to pay associated additional costs and/or which entitle AET to terminate Services on the Project.
14. Known or suspected hazardous material samples obtained by AET shall remain the property of CLIENT. AET reserves the right to return such samples to CLIENT.
15. AET shall only be responsible for safety of AET employees at the site.

B. Additional Services

Any additional Services requested by CLIENT for a Project shall be subject to the terms and conditions of this Service Agreement. A supplemental Letter Proposal may set forth the nature of the additional Services to be performed, the schedule, if appropriate, in which the Services must be completed, any variance in the amount or terms for payment for the Services from such amounts or terms set forth in an initial Letter Proposal and such other terms and conditions and appendices upon which the parties may mutually agree.

C. Change Orders

AET's proposal associated with this project provides 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 if AET's fees are approaching the proposal amount and request a change order. However, nothing in this agreement shall be construed in any way as a waiver of Client's payment to AET for services ordered under this agreement. Approval of a change order may be in writing or by electronic communication.

SECTION II - CLIENT'S RESPONSIBILITIES

A. CLIENT shall:

1. Make available to AET drawings, specifications, schedules, and other information, interpretation, and data which were prepared for or by CLIENT, or its consultants, and which CLIENT and AET consider pertinent to AET's responsibilities hereunder, all of which AET may rely upon in performing Services hereunder except as may be specifically provided in writing.
2. Provide AET information known by CLIENT concerning possible site contamination.
3. Make arrangements for safe and legal access to and make necessary provisions for AET to enter upon public and private property as required for AET to perform Services under this Service Agreement.
4. Give prompt written notice to AET whenever CLIENT observes or otherwise becomes aware of any development that in CLIENT's determination may affect the scope or timing of AET Services or any defect or non-conformance in the work of AET that may in CLIENT's determination affect the Project.
5. Advise AET of the identity of other independent professional associates or consultants participating in the design or construction administration of this part of the Project and the scope of such third-party services.
6. Be responsible for the safety of CLIENT's employees at the work site.

SECTION III - PAYMENT TO AET

A. General (Annual Schedule Rate)

Except as described in Paragraph B of this Section III, CLIENT shall compensate AET for all Services at rates set forth on AET's standard fee schedule in effect in the year in which Services are provided. CLIENT acknowledges receipt of AET's current standard fee schedule or the fees included in the Letter Proposal. AET's then-current standard fee schedule is available upon CLIENT's request. Rates will be evaluated on a calendar basis.

B. Specific Projects

Any variance from AET's standard fee schedule or terms of payment shall be as set forth in the Letter Proposal attached hereto or any additional or supplemental Letter Proposal issued by AET and accepted by CLIENT.

C. General

1. If CLIENT disputes any matter or information contained in an AET invoice for the Services, CLIENT shall so notify AET within fifteen (15) days of receipt of the AET invoice. If CLIENT fails to notify AET of any dispute to an invoice within fifteen (15) days, invoices will be deemed accepted by CLIENT, and no longer subject to dispute.
2. Invoices for Services will be processed and payments made by CLIENT to AET within thirty (30) days of the date of receipt of invoice.
3. Service charges for unpaid invoices shall be imposed at the rate of 1.5% per month or the highest rate permissible by law, whichever is less.
4. CLIENT shall indemnify and hold AET harmless for all costs of collection of unpaid invoices, including reasonable attorneys' fees.

SECTION IV - GENERAL CONSIDERATIONS**A. Personnel and Timing**

1. AET has, or will secure, qualified personnel, equipment, and facilities to complete the Services it agrees to provide pursuant to this Service Agreement.
2. No Services will commence until written notice to proceed is given to AET by CLIENT.
3. The Services shall be commenced and carried out in accordance with a schedule which AET and CLIENT shall agree upon. The time and compensation within which AET shall perform its services shall be extended and/or adjusted for delays caused by acts of God or other circumstances beyond the control of AET.

B. Project and Agreement Changes

The terms of this Service Agreement or a Letter Proposal may be changed only by the written mutual consent of CLIENT and AET.

C. Termination

Either CLIENT or AET may terminate this Service Agreement without cause by giving thirty (30) days' prior written notice to the other party of such termination and specifying the effective date of termination. In such event, copies of documents, data, reports, work papers, studies, drawings, maps, models, and photographs prepared by AET shall become the property of CLIENT. AET retains the right to maintain a complete file in its archiving system. This Service Agreement may be terminated by either party for material breach, including without limitation, failure by CLIENT to pay invoices, upon seven (7) days written notice to the other party. Regardless of the reasons for termination or the party electing termination, CLIENT shall pay AET for all work performed pursuant to this Service Agreement prior to the effective date of termination and for costs incurred as a result of any early termination, including demobilization and reporting costs to complete the file. CLIENT's use of AET's work for any purpose other than that set forth in a Letter Proposal shall be unauthorized by AET, at CLIENT's sole risk and shall constitute CLIENT's waiver of any obligation by AET to indemnify CLIENT pursuant to Section IV, paragraph H, following.

D. Records

1. Fiscal records of AET pertinent to AET's compensation and payments under this Agreement will be kept in accordance with standard accounting practices.
2. AET shall maintain all original records (fiscal and other) and design calculations on file in legible form for a period of not less than two (2) years.
3. AET's records and design calculations will be available at AET's office at reasonable business hours upon reasonable notification for examination and audit if required.

E. Insurance

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

2. AET maintains the following insurance coverage and limits of liability:

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

3. Commercial General Liability insurance will include coverage for Products/Completed Operations extending one (1) year after completion of AET's services, Property Damage including Completed Operations, Personal Injury, and Contractual Liability insurance applicable to AET's indemnity obligations under this Agreement.
4. Automobile Liability insurance shall include coverage for all owned, hired and non-owned automobiles.
5. Professional Liability Insurance is written on a claims-made basis and coverage will be maintained for one (1) year after completion of AET's services. Renewal policies during this period shall maintain the same retroactive date.
6. **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 Products/Completed Operations and 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 shall result in additional charges.**
7. AET will maintain in effect all insurance coverage required by this Service 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.
8. AET reserves the right to charge CLIENT for AET's costs for additional coverage requirements unknown on the date of the Letter Proposal.

F. Mediation

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, (including costs of collection and reasonable attorneys' fees) 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.
2. Unless CLIENT and AET mutually agreed otherwise, mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. The mediator shall be acceptable to both parties and shall have experience in construction matters.
3. The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

G. 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 Service 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 Service Agreement in accordance with the provisions of the Service Agreement and related Documents and shall survive any such termination.

H. Limitation of Liability

In order to offer AET's Services at a reasonable price, AET limits its liability to CLIENT and anyone claiming through CLIENT for any claims resulting from Services provided pursuant to this Agreement. CLIENT agrees that in no event shall AET or its agents or employees be liable to CLIENT, any holder of any real property interest in the real property on which the project is located, or anyone claiming through CLIENT, for (1) incidental, indirect, special or consequential damages, or (2) any damages whatsoever resulting from personal injury, death, damage to or loss of use of property, or loss of profits, resulting from the performance of or non-performance of the Services, negligent acts, errors or omissions, even if the possibility of such damage was foreseeable. CLIENT agrees that the liability of AET and its agents and employees hereunder is limited solely to CLIENT's direct damages and in no event shall it exceed the amount of the stated insurance limits (stated in Section E – Insurance).

I. Indemnification

1. AET agrees to indemnify CLIENT from and against liability resulting from AET's negligent performance of the Services, subject to any limitations, other indemnifications or other provisions CLIENT and AET have agreed to in writing.
2. CLIENT agrees to indemnify AET from and against liability resulting from CLIENT's, CLIENT's Contractors/Subcontractors or other third parties' negligent conduct, including without limitation the owner of any interest in the real property on which the Project is located, subject to any limitations, other indemnifications or other provisions CLIENT and AET have agreed to in writing.
3. AET's indemnification is limited to costs for loss or damage caused by its failure to meet the standard of care and only to the extent of its negligence.
4. AET will not accept any obligation to defend CLIENT other than to meet the standard of care. If a court of competent jurisdiction rules that defense is implied or if required by law, AET's obligation for the cost of defense is only to the extent due to AET's negligent acts, errors or omissions.

J. 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.

K. Unionization

AET represents that its employees and personnel providing Services under this Agreement are non-union personnel and that the fees to be charged for the Services are calculated accordingly. In the event that AET is required to provide unionized personnel for performance of the Services, AET reserves the right to charge an appropriate fee increase or to terminate this Service Agreement on three (3) days written notice to CLIENT and CLIENT agrees that AET shall not be liable for any penalties or costs charged or incurred by CLIENT, and CLIENT's 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's fee increase, termination of the Service Agreement or failure to perform the Services. This reservation of right on the part of AET represents only a reflection of additional costs anticipated to be incurred by AET in connection with assigning unionized personnel to the Project and shall not be considered either approval nor disapproval of unions in general or the use of collective bargaining agreements.

L. 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.

M. Severability

Any provisions of this Service Agreement later held to violate a law or regulation shall be deemed of no force and effect, and all remaining provisions shall continue in force; provided, 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.

N. Governing Law

This Service Agreement, the Letter Proposal(s) and any appendices or amendments to either shall be construed, and the rights of the parties shall be determined, in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, this Agreement is herewith executed effective the date and year first above written by the undersigned, who are authorized representatives of Client and AET.

CLIENT:

American Engineering Testing, Inc.

By: _____

By: _____

Type or Printed Name: _____

Type or Printed Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Address and Phone:

American Engineering Testing, Inc.
550 Cleveland Avenue North
St. Paul, MN 55114
Telephone: 651.659.9001