

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
AMERICAN ENGINEERING TESTING, INC.
AND
CITY OF DULUTH**

THIS MASTER SERVICES AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is made by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City," and AMERICAN ENGINEERING TESTING, INC., located at 4431 West Michigan Street, Duluth, MN 55807, hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, the City desires to utilize Consultant's geotechnical and material testing services on a non-exclusive, project by project basis to support the construction, operation, and maintenance of city systems; and

WHEREAS, Consultant has represented that it is qualified and willing to perform these services;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Consultant will provide, upon written request of the city engineer in the form of a Statement of Work or similar documentation (each a "SOW"), geotechnical and/or material testing services including, but not limited to, laboratory tests of soils, grain size analysis, strength and compressibility testing, and construction testing and observations.

II. Fees

It is agreed between the parties that Consultant's maximum annual fee for the term of this Agreement shall not exceed the sum of Fifty Thousand and no/100 Dollars (\$50,000.00), payable from various appropriate funds, departments, agencies, and objects, Project 1722. Fees for each service will be determined by the Consultant's current testing fee schedule, attached hereto as "Exhibit A." All invoices for services rendered shall be submitted monthly to the project manager, or his/her designee, and shall be accompanied by such documentation as the City shall reasonably expect. Upon receipt of said request and appropriate documentation, the City shall reimburse Consultant up to the amount set forth above.

III. General Terms and Conditions

1. Amendments.

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment.

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or

obligations under this Agreement without prior written consent of the City.

3. Data and Confidentiality.

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a “work made for hire” and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work (“City Property”). Consultant further agrees that to the extent the work is not a “work made for hire” Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.
- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Standard of Performance.

Consultant represents and warrants that:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance

with the then current generally accepted standards of the profession for the provisions of services of this type.

- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period.

The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2022, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure

rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. (Public Employee Retirement Association). Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

To the extent allowed by law, Consultant shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Consultant's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance.

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. City of Duluth shall be named as Additional Insured by endorsement under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Upon execution of this Agreement, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

- c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

9. Notices.

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City: City of Duluth
411 W First Street
City Hall Room # 211
Duluth MN 55802
Attn: City Engineer

Consultant: American Engineering
Testing, Inc.
4431 West Michigan Street
Duluth, MN 55807
Attn: Eric Edlund

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control,

including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

CITY OF DULUTH

AMERICAN ENGINEERING TESTING, INC.

By:

By:

Mayor

Company Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

Assistant City Attorney



I.	<u>Engineering/Technical Personnel Rates</u>				
A.	Administrative Assistant	65.00/hr			
B.	Engineering Technician I	70.00/hr			
C.	Draftsperson	78.00/hr			
D.	Engineering Technician II	85.00/hr			
E.	Drill Crew/Engineering Technician III	98.00/hr			
F.	Engineering Assistant	115.00/hr			
G.	Engineer I/Geologist I/Scientist I	125.00/hr			
H.	Engineer II/Geologist II/Scientist II	145.00/hr			
I.	Senior Engineer	155.00/hr			
J.	Principal Engineer	175.00/hr			
II.	<u>Vehicle Mileage</u>				
A.	Personal Automobile/Truck	0.75/mile			
B.	¾-ton Truck/Van	1.00/mile			
C.	1-ton to 2-ton Auxiliary Truck	1.15/mile			
D.	1-ton Truck with Drill Rig	1.20/mile			
E.	1½-ton to 2½-ton Truck with Drill Rig	1.35/mile			
F.	Tractor/Lowboy Trailer	1.80/mile			
III.	<u>Site Exploration Equipment Rental</u>				
A.	Drill Rig				
1.	Rotary Drill on 4WD 1½ to 2½-ton Truck	86.00/hr			
2.	Rotary Drill on All-Terrain Vehicle	115.00/hr			
B.	Rig Auxiliary Vehicle Rental				
1.	¾-ton Truck	18.00/hr			
2.	1-ton or 2-ton Truck	23.00/hr			
C.	Cone (CPT) Rig/Equipment Rental				
1.	20-ton CPT Truck Rig	149.00/hr			
2.	Electronic Cone or Piezocone	44.00/hr			
3.	Soil Sampler	4.00/hr			
4.	Water Sampler	21.00/hr			
D.	Geotechnical Equipment Rental				
1.	Field Vane Shear	375.00/day			
2.	Inclinometer Reading Equipment	340.00/day			
3.	Pneumatic Transducer Reading	180.00/day			
4.	Bore Hole Permeability				
a.	Open End Casing Method	139.00/day			
b.	HQ Wireline Packer	340.00/day			
5.	Borehole Pressuremeter	72.00/hr			
6.	Iowa Borehole Shear Tester	335.00/day			
7.	Double Ring Infiltrometer	275.00/day			
8.	GPS Mapping System Equipment	16.00/hr			
9.	Pile Driving Analyzer (PDA)	750.00/day			
10.	Auxiliary PDA Equipment				
a.	Generator	50.00/day			
b.	Calibrated SPT Rod	180.00/day			
11.	GPR Antenna				
a.	400 or 1000 megahertz	375.00/day			
E.	Geotechnical Software Rental				
1.	Finite Element (seepage or soil deformation)	70.00/hr			
2.	CAPWAP	40.00/hr			
3.	Wave Equation, L-Pile, Slope Stability (ReSSA), or Stabilized Earth Slopes & Walls	25.00/hr			
F.	Bit Wear				
1.	Diamond Bit – Sedimentary Rock				
a.	B, NQ	11.00/ft			
b.	HQ	13.00/ft			
2.	Diamond Bit – Metamorphic & Igneous				
a.	B, NQ	18.00/ft			
			b.	HQ	21.00/ft
IV.	<u>Laboratory Tests of Soils</u>				
	<i>*Quoted Per Job</i>				
A.	Water Content	13.00/test			
B.	Dry Density (includes water content)	58.00/test			
C.	Atterberg Limits (ASTM:D4318)				
1.	Plasticity Index	113.00/test			
2.	Liquid Limit or Plastic Limit	98.00/test			
D.	Shrinkage Limit (ASTM:D427)	120.00/test			
E.	Sieve Analysis (includes -#200)	100.00/test			
F.	Hydrometer Analysis (sieve included)	210.00/test			
G.	Specific Gravity (ASTM:D854)				
1.	Mineral Soil	140.00/test			
2.	Organic Soil	160.00/test			
H.	Hand Penetrometer/Torvane	12.00/test			
I.	Unconfined Compression	91.00/test			
J.	Consolidation – Primary consolidation Curve up to 32 tsf (ASTM:D2435)	*			
K.	Direct Shear Test	*			
L.	Triaxial Compression Test	*			
M.	Permeability Tests	*			
N.	Tests of Expansive Soils	*			
O.	Electrical Resistivity	100.00/test			
P.	Organic Content of Soil	70.00/test			
Q.	Topsoil Borrow Test (MnDOT 3877)				
1.	Method A	300.00/test			
2.	Method B (nutrient content)	325.00/test			
R.	R-value (Hveem Stabilometer)	400.00/test			
S.	California Bearing Ratio				
1.	Granular	675.00/test			
2.	Cohesive	750.00/test			
T.	Miscellaneous				
1.	Thin-wall Samples (extrusion only)	35.00/test			
V.	<u>Expenses</u>				
A.	Direct Project Expenses: includes out-of-town per diem; plowing & towing; special materials & supplies; special travel, transportation & freight; subcontract services; and miscellaneous costs	Cost + 15%			
B.	Equipment Replacement (when abandonment is more feasible than recovery)	Cost			
C.	Equipment Recovery (when required by regulatory agencies or project specifications)	Cost +15%			
	The rates presented are portal-to-portal with vehicle mileage, expenses and equipment rentals being additional. Overtime for personnel charged at above cost plus 25% for over 8 hours per day or Saturday; and at above cost plus 50% for Sundays or Holidays. Hazardous work charged at an additional 25%. Night time shift work will include a premium charge of \$30.00 per person per shift.				

I. Engineering/Technical Personnel Rates

A.	Administrative Assistant	65.00/hr
B.	Engineering Technician	70.00/hr
C.	Engineering Technician II	85.00/hr
D.	NDT Level II	97.00/hr
E.	ICC/CWI Tech/Engr Tech III	98.00/hr
F.	Engineering Assistant	115.00/hr
G.	Engineer I	125.00/hr
H.	Engineer II	145.00/hr
I.	Senior Engineer/Specialist	155.00/hr
J.	Principal Engineer	175.00/hr

II. Vehicle Mileage

A.	Vehicle Mileage	.75/mile
----	-----------------	----------

III. Soils/Earthwork

A.	Excavation Observations	See I & II
B.	Nuclear Density Tests	15.00/test
C.	Nuclear gauge use fee during full time observation	50.00/day
D.	CP/DCP Non-MnDOT	25.00/test
E.	MnDOT DCP	60.00/test
F.	Proctor	150.00/test
G.	Wet preparation for Proctor	70.00/sample
H.	Sieve Analysis	95.00/test
I.	Sieve Analysis thru .02mm	160.00/test
J.	Atterberg Limits	108.00/test
K.	Hydrometer	197.00/test
L.	Specific Gravity	137.00/test
M.	Topsoil analysis	
	1. Method A	290.00/test
	2. Method B (nutrient content)	325.00/test
N.	Organic Content	70.00/test
O.	CBR (excludes proctor)	
	1. Granular Soil	650.00/test
	2. Cohesive Soil	730.00/test
P.	Permeability Tests	
	1. Rigid Wall	275.00/test
	2. Flexible Wall	395.00/test

IV. Plastic/Hardened Concrete

A.	Cylinder Compressions	27.00/test
B.	WisDOT Cylinder Break Reporting	25.00/cyl
C.	Curing/Handling Spares	27.00/test
D.	Cylinder Molds	3.00/mold
E.	Saw Trimming Ends	10.00/end
F.	Beam Flexure	53.00/test
G.	Beam Mold Prep	47.00/mold
H.	Equipment Rental (beyond personnel)	
	1. Schmidt Hammer	65.00/day
	2. Rebar Locator	125.00/day
	3. Generator	50.00/day
I.	Coring	
	1. Coring Crew	146.00/hr
	2. Bit Wear	7.00/inch
	3. Patch	10.00/core
J.	Density & Compressions of Cores	
	1. Density & Absorption	60.00/test
	2. Compression	70.00/test
	3. Saw Trimming Ends	16.00/core

K.	Shotcrete	
	1. Panel Coring (6 cores)	245.00/panel
	2. Compression Test	60.00/test
L.	Floor Flatness (ASTM:E1155)	Per Quote
	1. Profilograph Rental	165.00/day
M.	Air Content ASTM:C457	525.00/test
N.	Petrographic ASTM:C856	1500.00/test

V. Masonry

A.	Sampling/ICC Inspection	See I & II
B.	Compression Mortar/Grout	
	1. Cylinders or Cubes	72.00/set
	2. Grout Prisms	60.00/test
	3. Molds	
	1. Cylinders & Cubes	3.00/mold
	2. Prisms	5.00/mold

VI. Bituminous

A.	Field Sampling	See I & II
B.	Laboratory Tests	
	1. Marshall Air Voids	167.00/test
	2. Superpave Gyrotory Air Voids	210.00/test
	3. Stability & Flow	57.00/test
	4. Density & Thickness	45.00/core
	5. Chemical Extraction	220.00/test
	6. Extraction & Gradation	260.00/test
	7. Fabricate TSR Specimen	
	1. Marshall	63.00/test
	2. Gyrotory	83.00/test
	8. TSR Test	19.00/test
	9. Saw Trimming Lifts	20.00/core
	10. Gyrotory Mix Properties	520.00/test
	11. CAA	125.00/test
	12. FAA	120.00/test

VII. Equipment

A.	Seismograph	75.00/day
	1. Engineering Services	See I & II
B.	Ground Penetrating Radar (GPR)	450.00/day
	1. Engineering Services	See I & II

VIII. Expenses

A.	Direct Project Expenses: includes out-of-town per diem; special materials & supplies; subcontracted services, and miscellaneous costs	Cost + 15%
----	---	------------

The rates presented are portal-to-portal with vehicle mileage, expenses and equipment rentals being additional.

Overtime for personnel charged at above cost plus 25% for over 8 hours per day or Saturday; and at above cost plus 50% for Sundays or Holidays. Hazardous work charged at an additional 25%. Night time shift work will include a premium charge of \$25.00 per person per shift.

A minimum charge of \$100.00 per job may be assessed to cover administrative costs.