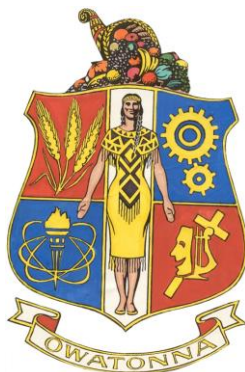


# THE CITY OF

Office of Public Works Director  
City Engineer



# OWATONNA

540 West Hills Circle  
Owatonna, MN 55060-4701  
Ph. (507) 774-7307  
FAX: (507) 444-4351

TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: KYLE SKOV, PUBLIC WORKS DIRECTOR AND CITY ENGINEER  
DATE: July 1, 2021  
SUBJECT: Motion Approving AET's Proposal for Construction Testing Services for the West Bridge Street Reconstruction Project

**PURPOSE:**

Request City Council approval of the proposal received from American Engineering Testing, Inc. (AET) for their Construction Testing Services for the West Bridge Street Reconstruction Project.

**BACKGROUND:**

Staff is proposing AET to perform Testing Services for the reconstruction of Bridge Street from I-35 to 24<sup>th</sup> Avenue. Anticipated services are to include: Soil and Aggregate Sampling and Testing, Concrete Field Testing, Bituminous Pavement Sampling and Testing, and Concrete Plant Inspections.

**BUDGET IMPACT:**

The proposed fee for testing services is approximately \$32,636.00.

Variations in the overall cost of services may occur due to reasons beyond control. Variations may affect actual invoice totals either increasing or decreasing total costs depending on the situation. If more time or tests are required, additional fees may apply. If fewer time or tests are needed, a cost savings will be realized.

**STAFF RECOMMENDATION:**

Staff recommends approval.



April 1, 2021

Reese Sudtelgte  
ISG Inc.  
6465 Wayzata Blvd, Suite 970  
Minneapolis, MN 55426  
[Reese.Sudtelgte@ISGInc.com](mailto:Reese.Sudtelgte@ISGInc.com)

RE: Proposal for Construction Testing Services  
2021 West Bridge Street Reconstruct  
Owatonna, Minnesota  
SAP: 153-109-014  
AET #08-20998

Mr. Sudtelgte:

Thank you for the opportunity to respond to your request for a proposal to perform engineering observations and testing services on the referenced project. American Engineering Testing, Inc., (AET) is pleased to provide this letter which presents our anticipated scope of services, our unit rates, and an estimated total cost to perform these services.

**Project Information**

We understand the City of Owatonna will be performing roadway and utility improvements on West Bridge St, from the I-35 southbound ramps to 24<sup>th</sup> Ave. ISG will be performing the field engineering, construction staking and civil services for the project. We have reviewed the plans and specifications for the project. The specifications reference testing frequencies based on the 2018 MnDOT Standard Specification, and the 2019 MnDOT SALT Schedule of Materials Control (SMC). We understand the project will include the following:

- Installation of utilities
- Grading and placement of granular material
- Grading and placement of aggregate base
- Construction of new concrete roadways and roundabout
- Construction of new concrete curb & gutter, driveways, and sidewalks

1730 First Avenue | Mankato, MN 56001

Phone (507) 387-2222 | (800) 972-6364 | Fax (507) 387-6999 | [www.amengtest.com](http://www.amengtest.com) | AA/EEO

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### **Scope of Services**

Based on our review of the available plans and our experience on similar projects, our anticipated scope of services is outlined below. These services will be provided on a part-time, will-call basis coordinated through authorized ISG field personnel.

#### **Soil and Aggregate Sampling and Testing**

Our estimate of the sampling and testing to be performed on the grading and base items is based on the requirements of Mn/DOT's "Specified Density Method" and in accordance with the SMC. AET will perform Mn/DOT laboratory sieve analysis testing as well as in-place density and moisture testing on the following materials:

- Utility Trench Backfill
- Subgrade Prep
- Embankment Fill
- Aggregate Base
- Topsoil Analysis

Select granular material will be compacted by specified density method, unless material is test rolled; in which case special provisions allow for "ordinary compaction." Aggregate base will be compacted by "ordinary compaction" in accordance with the project special provisions. Moisture testing will be performed in accordance with the SMC.

#### **Concrete Field Testing**

During the placement of concrete paving, curb and gutter, driveways, and sidewalk, AET will perform field testing consisting of slump, air content and temperature of the plastic concrete, followed by casting of cylinders for compression testing. For paving concrete, field personnel will cast flexural strength beams at the end of each day. The SMC requires field testing be performed once per 100 cubic yards, or fraction thereof placed for each mix for each day. The SMC requires three compressive strength cylinders be cast at the rate of once per 300 cubic yards for concrete placed each day. Cylinders will be retrieved the following day for testing in our laboratory, with all three being tested at 28 days. We recommend casting a set of four compressive strength cylinders to be tested at the following ages, one at 7 days, and three at 28 days.

#### **Bituminous Pavement Sampling and Testing**

We understand that this project has only a small quantity of bituminous, and therefore requires no testing. If testing should be required, AET will test according to the SMC. As bituminous paving is being completed, a certified Engineering Technician will obtain companion samples, provided by the contractor, during each day of paving. Samples will be tested in our laboratory for the following:

- Gyrotory density, Rice specific gravity, Asphalt Film Thickness (AFT), Coarse Aggregate Angularity (CAA) and Fine Aggregate Angularity (FAA)

West Bridge St. Reconstruct  
Page 3 of 4  
April 1, 2021  
AET #08-20998

- Asphalt extraction and aggregate gradation
- Companion core thickness and density

### **Concrete and Bituminous Plant Inspections**

AET will review the concrete and bituminous plant certifications prior to the beginning of work, including consulting with Mn/DOT Concrete and Bituminous Office to complete associated contact reports and certification documents.

During the concrete plant inspections, a representative from AET will observe and document quality control personnel performing the required quality control tests, verify and document batch weight proportions, and obtain and review material certifications. In addition, AET personnel will also conduct verification gradation testing, as well as aggregate quality testing per the 2019 MnDOT SALT SMC.

Small quantity bituminous does not require plant monitoring, but should it be required, AET personnel will perform duties as follows. During the bituminous plant inspections, a representative from AET will observe and document quality control personnel performing the required quality control tests, verify and document batch weight proportions, and obtain and review material certifications.

### **Estimated Fees**

Our services will be provided on a unit cost basis according to the unit rates provided in the attached Fee Schedule. Our invoices will be determined by multiplying the number of personnel hours or tests by their respective unit rates.

We have estimated a “minimum required estimate” of \$25,777.00 which estimates the tests needed to satisfy the requirements as defined in the SMC. The “likely needed estimate” is the cost that we anticipate will be required to complete the previously described testing services, based on our experience and assumed scheduling of the project. Therefore, we propose a budget cost estimate using the “likely needed” estimate of **\$32,636.00**.

We refer you to the attached Materials Testing Estimate as reference to how we arrived at this estimated cost for the roadway. We caution that this is only an estimated cost.

Often, variations in the overall cost of the services occur due to reasons beyond our control, such as weather delays, changes in the contractor’s schedule, unforeseen conditions or retesting. These variations will affect the actual invoice totals, either increasing or decreasing our total costs for the project from those estimated in this proposal. If more time or tests are required, additional fees may be needed to complete the project testing services. If less time or tests are needed, a cost savings will be realized.

### **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

West Bridge St. Reconstruct  
Page 4 of 4  
April 1, 2021  
AET #08-20998

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.

**General Remarks**

If you have any questions regarding this proposal, or if we can be of further assistance, please call me at (507) 387-2222.

Sincerely,



Sam Sveine  
Engineering Assistant, GIT



Lee McLaughlin  
Project Manager

Attachments:

- Fee Schedule Tabulation
- Construction Materials Service Agreement – Terms and Conditions

<b>PROPOSAL ACCEPTANCE AND AUTHORIZATION</b>	
Signature: _____	Date: _____
Typed/Printed Name: _____	
Title: _____	
Company: _____	
Email: _____	



**AMERICAN  
ENGINEERING  
TESTING, INC.**

**2021 West Bridge St. Reconstruction-Owatonna, MN**

Material	Units	Qty.	Likely	Likely	Agency Testing Freq.	# of Tests		Cost per test (\$)	Cost (\$)	
			Trips	Hrs		Minimum	Likely		Minimum	Likely
Utility trenches-277 If Water main	LF	1,081	3	9	Moisture Density 1 per soil type (Proctor)	1	2	145.00	145.00	290.00
Utility trenches-804 If Storm					Relative Density 1/500'2'lift (Nuclear) Hourly rate	3	9		0.00	0.00
					Relative Moisture	3	9		0.00	0.00
Subgrade Prep-25 Stations	LF	2,443	1	3	Subgrade Density 1/25 Sta. (Nuclear) Hourly rate	2	4		0.00	0.00
Grading Material-Select Granular	CU YD	7,127	2	6	Gradation 1/40,000 cuyd	1	1	105.00	105.00	105.00
					Relative Density 1/4,000 cuyd (Nuclear) Hourly rate	0	4		0.00	0.00
					Moisture Density 1 per soil type (Proctor)	0	1	145.00	0.00	145.00
Aggregate Base - Class V	CU YD	2,890	2	6	Gradation 1 Lot/2,000 cuyd, 2 tests/Lot	4	4	105.00	420.00	420.00
					Moisture 1/1000yd3 (included in hourly rate)	3	4		0.00	0.00
					DCP 1/3000 cuyd (included in hourly rate)	0	0		0.00	0.00
					Aggregate Quality or AC extraction	1	1	225.00	225.00	225.00
Bituminous Testing - SP WE/NW 90 Tons Wear 90 Tons Non-wear	TON	180	0	0	Mn/Dot Gytratory Mix Properties ( 1 test/day/mix type)	0	0	500.00	0.00	0.00
					Mn/Dot Marshall Mix Properties (1/1000 ton or 1/day)	0	0	365.00	0.00	0.00
					Companion Core Density (estimate 1/600 ton)	0	0	42.00	0.00	0.00
Concrete Paving	CU YD	3,897	20	120	Cylinder Molds (4/set, 1set/300 CU YD)	28	32	3.00	84.00	96.00
Other Concrete: Sidewalks-127yd, c&g-856yd, Driveways-116yd	CU YD	1099	8	24	Testing of hardened Concrete Beams	20	20	60.00	1200.00	1200.00
					Testing of hardened Concrete Cylinders	28	32	25.00	700.00	800.00

Topsoil Borrow Testing	CU YD	811	1	3	Topsoil Borrow Test, 1 per source	1	1	208.00	208.00	208.00	
									<b>Subtotal =</b>	<b>3,087.00</b>	<b>3,489.00</b>

Bituminous Batch Plant Inspection	Plant Inspections Provided on a Will - Call basis	1 test/mix type/day (assumes 4 hours at plant)	0	0	344.00	0.00	0.00		
Concrete Batch Plant Inspection		1 test/mix type/day (assumes 3 hours at plant)	20	24	258.00	5160.00	6192.00		
		Gradations (Coarse Aggregate)	6	12	105.00	630.00	1260.00		
		Gradations (Fine Aggregate)	6	12	105.00	630.00	1260.00		
		Aggregate Quality	2	4	175.00	350.00	700.00		
							<b>Subtotal =</b>	<b>6,770.00</b>	<b>9,412.00</b>

Time and Mileage*	Unit	Rate (\$)	Minimum Quantity	Likely Quantity	Minimum Cost	Likely Cost
Mileage	Mile	0.75	3000	3,700	2250.00	2775.00
Certified Engineering Technician Time	Hr	86.00	145	171	12470.00	14706.00
Project Management	Hr	120.00	10	16	1200.00	1920.00
Senior Engineer	Hr	167.00	0	2	0.00	334.00
<b>Subtotal =</b>					<b>15920.00</b>	<b>19735.00</b>

	<b>Minimum</b>	<b>Likely</b>
<b>Total Cost Estimate =</b>	<b>25,777.00</b>	<b>32,636.00</b>

Estimate prepared by : Sam Sveine

Mankato to Owatonna Mileage trip charge is (100 miles =\$75.00/trip) Trips will be split with other jobs whenever possible.

**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 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.

**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. 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 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 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** – 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 ninety (90) 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 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 - SITE ACCESS, UNDERGROUND FACILITIES AND CONSTRUCTION STAKING**

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

**3.2** – With the exception of public utilities which AET will contact state “call before you dig” notification centers (e.g. Gopher State One call in Minnesota), 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.

**3.3** – 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.

**3.4** - 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.

**3.5** - 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.

**SECTION 4 - SAFETY**

**4.1** - 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.

**4.2** - 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 5 - SAMPLES**

**5.1** - 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.

**5.2** - 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 6 - 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 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 insurance with coverage and limits shown below. AET will furnish certificates of insurance to Client upon request.

**8.1** -

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

**8.2** - 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.

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

**8.4** - 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.

**8.5** - **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.**

**8.6** - 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.

**8.7** - 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 9 - 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 10 - PAYMENT, INTEREST AND BREACH**

**10.1** - Invoices are due net thirty (30) days from the date of receipt of an undisputed invoice, but not greater than 45 days from the date of the invoice. Client will inform AET of invoice questions or disagreements within fifteen (15) days of invoice date; unless so informed, invoices are deemed correct.

**10.2** - 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.

**10.3** - 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.

**SECTION 11 - 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 payment by Client to AET for Services authorized under this agreement. Approval of a change order may be in writing or by electronic communication.

**SECTION 12 - MEDIATION**

**12.1** - 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.

**12.2** - 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 13 - 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 AET costs.

**SECTION 14 - MUTUAL INDEMNIFICATION**

**14.1** - 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 intentional acts or negligent performance of the Services.

**14.2** - 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.

**14.3** - 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.

**14.4** - 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 15 - 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 16- 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 17 - 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 greater. 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 18 – UNIONIZATION**

AET reserves the right to negotiate an appropriate fee increase or to terminate this Agreement on three (3) days written notice to Client without incurring 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 19 - 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 20 - 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 file.

**SECTION 21 - 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 22 - GOVERNING LAW**

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

**SECTION 23 - 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 previous 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.



AMERCON-12

KREYNOLDS1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/17/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with PRODUCER, CONTACT, INSURER(S) AFFORDING COVERAGE, and INSURED information.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED.

Main table listing insurance coverages (A-E) with columns for INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, and LIMITS.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) RENEWALS: contracts@amengtest.com

Table with CERTIFICATE HOLDER (Illustration Only) and CANCELLATION (Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.)