



## **MAYOR & COUNCIL COMMUNICATION**

**DATE: 9/1/15**  
**CONSENT**  
**ITEM 8**

**AGENDA ITEM:** Eagle Point Boulevard Testing Contract

**SUBMITTED BY:** Clark Schroeder

**THROUGH:** Jack Griffin

**REVIEWED BY:** Staff

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### **SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff ..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion ..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

**POLICY RECOMMENDER:** Jack Griffin

**FISCAL IMPACT:** \$16,186. All within the budgeted scope of the project

**SUMMARY AND ACTION REQUESTED:** Amercian Engineering Testing Inc. (AET) is a company which Focus Engineering wishes to engage to do compliance testing for the road work being done on Eagle Point Boulevard. This contact will authorize AET to perform sampling and material testing services in accordance to the project specifications.

**RECOMMENDATION:** Based on the aforementioned, staff recommends that the city council direct the Administrator to sign this contract.



CONSULTANTS  
• ENVIRONMENTAL  
• GEOTECHNICAL  
• MATERIALS  
• FORENSICS

August 19, 2015

City of Lake Elmo  
C/O Focus Engineering, Inc.  
PO Box 22166  
Eagan, MN 55122

Attn: Mr. Ryan Stempski, PE

RE: Proposal for Construction and Materials Testing  
Eagle Point Boulevard  
Street & Utility Improvements  
Lake Elmo, Minnesota  
AET Proposal No. 20-13494

Dear Mr. Stempski:

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

### **Project Information**

We understand that the City of Lake Elmo will be performing roadway improvements to Eagle Point Boulevard. The project will include a complete reconstruction of the pavement and subgrade along with improvements to the sanitary sewer, watermain and storm sewer. The City of Lake Elmo will be performing the field engineering, construction staking and civil services for the project. We have reviewed the plans and specifications for the project.

### **Project Approach**

During the construction improvements, AET will provide experienced, Mn/DOT certified Engineering Technicians to perform sampling and material testing services in accordance to the project specifications.

### **Scope of Services**

Based on our review of the available plans and our experience with the City of Lake Elmo 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 City field personnel.



### **Soils Sampling and Testing**

Our estimate of the sampling and testing to be performed on the grading and base items is based on the project specifications AET will perform MnDOT laboratory sieve analysis testing as well as in-place density and moisture testing on the following materials:

- Utility trench backfill.
- Subgrade Preparation
- Aggregate Base

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

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:

- Gyratory density, Rice specific gravity and VMA.
- Asphalt extraction and aggregate gradation.

After the completion of the paving, we will obtain companion core samples, provided by the contractor, for laboratory testing. This testing will include the following:

- The thickness of each layer of the core sample.
- The density of each layer of the core sample.
- Determination of the percent of Gmm (percent of maximum specific gravity) for density of each layer of the core sample.

If required, we can also run the Mn/DOT program to determine random core locations of bituminous based on tonnage (lot sizes) and pavement placement patterns. This information will be given to BMI to pass along to the paving contractor.

### **Concrete Testing**

During the placement of concrete 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. Project specifications require a testing frequency of one set of plastic property testing per 500 lineal feet of curb & gutter as well as one set of three cylinders be cast for each plastic property test. The cylinders will be tested at an age of 7 days, 28 days, with the third cylinder be held in reserve for future testing if the 28 day strength requirement is not met in the 28 day period.

### **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” which estimates the tests needed to satisfy the requirements as defined in the MnDOT Schedule of Material Control. 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 **\$16,186.00** for the scope of services outlined in this proposal. 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 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**

We are submitting this proposal for acceptance. When it is accepted, we ask that a copy be signed by an authorized representative of the party responsible for payment for these services, and that this copy be returned to us as authorization to proceed.

We have enclosed with this proposal a copy of the “Service Agreement.” The terms contained in the “Service Agreement” are incorporated herein and are an integral part of this contract for professional engineering services.

Acceptance of this proposal by the authorized signature, verbal authorization to proceed, or issuance of a purchase order, indicates that you understand and accept the terms and conditions contained in this proposal, including the “Services Agreement”.

August 19, 2015  
Eagle Point Boulevard  
AET Proposal No. 20-13494  
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**General Remarks**

If you have any questions regarding this proposal, or if we can be of further assistance, please call me at (612) 685-6571 or Doug Trangsrud at (612) 790-7940

Sincerely,

**American Engineering Testing, Inc.**



Brian F. Arman  
Senior Project Manager  
[barman@amengtest.com](mailto:barman@amengtest.com)  
(612) 685-6571

Attachments:  
Fee Schedule Tabulation

**PROPOSAL ACCEPTED BY:**

**Signature:**\_\_\_\_\_

**Printed Name:**\_\_\_\_\_

**Company:**\_\_\_\_\_

**Date:**\_\_\_\_\_



**Materials Testing Estimate for Eagle Point Boulevard Street & Utility Improvements  
Lake Elmo, MN**

Material	Units	Qty.	Trips	Hrs	Agency Testing Freq.	# of Tests		Cost per test (\$)	Cost (\$)	
						Minimum	Likely		Minimum	Likely
Common Embankment Structure Trenches Subgrade Prep			2	4	Moisture Density 1 per soil type (Proctor)	1	3	125.00	125.00	375.00
	Lin Ft	1,061	8	16	Relative Density 1/250 linial feet of structure (Nuke)	12	15	25.00	300.00	375.00
	Sta	35			Relative Moisture 1/per project catagory**			15.00	0.00	0.00
			4	8	Subgrade Prep - 1/25 Sta	2	4	25.00	50.00	100.00
					Sand Cone (Upon Request)			47.00		
Grading Material - Select Granular Borrow	CU YD	12,000	1	2	Gradation 1/20,000 CU YD	1	1	90.00	90.00	90.00
			4	8	DCP 1/2,000 CU YD (included in hourly rate)	6	8	Hrly		
					Nuclear Density Gauge Testing (Upon Request)			25.00		
Aggregate Base - Class V	CU YD	9,580	8	16	Gradation (4 per 1,100 to 5,500 CU YD)	8	8	90.00	720.00	720.00
					Percent Crushing (2 per source)	2	2	165.00	330.00	330.00
					Aggregate Quality Test (2 per source)	2	2	445.00	890.00	890.00
					Relative Moisture 1/per project catagory**			15.00	0.00	0.00
			6	15	DCP 1/500 CU YD (included in hourly rate)	19	21			
Bituminous Testing - SP WE/NW	Total Tons	3,650	2	4	Mn/Dot Gyrtory Mix Properties (1 test/day/mix type)	2	2	515.00	1030.00	1030.00
					Mn/Dot Marshall Mix Properties (1/1000 ton or 1/day)			365.00	0.00	0.00
					Companion Core Density (estimate 1/600 ton)	6	8	45.00	270.00	360.00
Concrete *Estimated	CU YD	400*	5	15	Cylinder Molds (3 Cyl. per 100 CU YD)	12	18	3.00	36.00	54.00
					Testing of Plastic Concrete (1 set of 3 cys/ 100 CU YD) -					
					Testing of hardened Concrete Cylinders	12	18	22.00	264.00	396.00
					Cylinder Pick-up from Job Site	4	6	60.00	240.00	360.00
40                      88								Subtotal =	4,345.00	5,080.00

\*\*Relative Moisture Test included in Relative Desnity if Nuclear Gauge option is selected

Time and Mileage	Unit	Rate (\$)	Minimum Quantity	Likely Quantity	Minimum Cost	Likely Cost
Mileage	Mile	0.75	1,100	1,500	825.00	1,125.00
Mn/DOT Certified Technician Time	Hr	83.00	80	95	6,640.00	7,885.00
Project Management	Hr	131.00	8	16	1,048.00	2,096.00
Subtotal =					8,513.00	11,106.00

Estimate prepared by : Brian Arman

	Minimum	Likely
<b>Total Cost Estimate =</b>	<b>12,858.00</b>	<b>16,186.00</b>



**SECTION 1 - RESPONSIBILITIES**

**1.1** – 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 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.

**1.2** - Prior to AET performing Services, Client will provide AET with all information that may affect the cost, progress, safety and performance of the Services. This includes, but is not limited to, information on proposed and existing construction, all pertinent sections of contracts between Client and property owner, site safety plans or other documents which may control or affect AET’s Services. If new information becomes available or changes are made during AET’s Services, Client will provide such information to AET in a timely manner. Earthwork and construction activities are done to support a particular structure (type, size, and shape) or facility at a specific location and elevation. If the type of structure or facility (structural type, size, shape, location, elevation, etc.) changes, the earthwork or construction activities completed may no longer provide suitable structural support or be capable of supporting the intended construction. Additional earthwork or redesign of all or a part of the structure or facility may be needed. Failure of Client to timely notify AET of changes to the project including, but not limited to, location, elevation, loading, or configuration of the structure or improvement will constitute a release of any liability of AET. Client will provide a representative for timely answers to project-related questions by AET.

**1.3** - AET observes and tests earthwork and other construction operations and materials, and may provide opinions, conclusions and recommendations regarding the same. However, AET’s 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 sixty (60) 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 - WILL CALL SERVICES**

**2.1** - If AET’s Services are performed on a will-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 a will-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** - AET is not responsible for locating underground facilities on construction sites. Client shall ensure that underground facilities have been previously located and cleared. AET will not be responsible for any damages to underground facilities not located or incorrectly identified. An underground facility is an underground line, fixture, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, power, heat, gas, oil, petroleum products, water including storm water, steam, sewage, and similar substances.

**3.3** - The location and elevation of a proposed structure or facility is 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.

**3.4** - 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** – 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 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 final acceptance of the Project by Owner, Property Damage including Completed Operations, Personal Injury, and Contractual Liability insurance 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 Liability Insurance is written on a claims-made basis and coverage will be maintained for one (1) year after final acceptance of the Project by Owner. Renewal policies during this period shall maintain the same retroactive date.

**8.5** - To the extent permitted by applicable state law, and only upon Client's signing of the proposal and return of the same to AET, Client and Owner shall be named an "additional insured" on AET's Commercial General Liability Policy (Form CG D4 14 04 08, which includes blanket coverage for Products/Completed Operations and on a Primary and Non-Contributory basis) and Automobile Liability Policy. Client and Owner shall be extended "waiver of subrogation" status for applicable coverages. Any other endorsement, coverage or policy requirement shall result in additional charges.

**8.6** - AET will maintain in effect all 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, work of others, strikes, natural causes, weather, or other items beyond AET's control, a reasonable time extension for performance of 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. 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** – Client agrees to pay interest on unpaid invoice balances at a rate of one and a half percent (1.5%) per month, or the maximum allowed by law, whichever is less, beginning thirty (30) days after invoice date.

**10.3** – 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.

**10.4** - Client will pay all AET expenses and attorney fees relating to collection of past due invoices.

## **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. 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 10.4 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 13 - MUTUAL INDEMNIFICATION**

**13.1** - Subject to the limitations contained in Sections 14 and 15, 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.

**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 a beneficiary.

**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 or intentional acts.

#### **SECTION 14- WAIVER OF CONSEQUENTIAL DAMAGES**

**NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES INCURRED EVEN IF THE POSSIBILITY OF SUCH DAMAGES WAS FORESEEABLE. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO LOSS OF USE AND LOSS OF INCOME OR PROFIT.**

#### **SECTION 15 - LIMITATION OF LIABILITY**

Client agrees to limit AET's liability to Client resulting from AET's negligent acts, errors or omissions, such that **the total liability of AET shall not exceed \$50,000.**

#### **SECTION 16 – UNIONIZATION**

AET reserves the right to negotiate an appropriate fee increase or to terminate its contract 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 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 file.

#### **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 Minnesota 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 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.