

Professional Services Agreement



PARTIES

This Agreement made this 16 day of March, 2011, between:

City of Jonesboro
PO Box 1845
Jonesboro, AR 72403
Attn.: Mayor Harold Perrin

and **AMEC Earth & Environmental, Inc.**
1129 SW Wanamaker Ave.
Topeka, KS 66604
Attn: Larry Sample

hereinafter called "Client"

hereinafter called "AMEC"

PROJECT

Client engages AMEC to provide services in connection with:

LiDAR collection, data processing, and delivery of a digital terrain model in Arc GIS format

SCOPE OF SERVICES

AMEC agrees to perform services as follows:

Oversee collection and processing of 115.5 square miles of LiDAR data. Deliver bare earth LAS files and DTM

Client agrees that all services not expressly included are excluded from AMEC's Scope of Services.

COMPENSATION (check one)

Firm-fixed price: Client agrees to compensate AMEC on a firm-fixed price basis in the amount of: \$42,850.00.

Time and materials: Client agrees to compensate AMEC for all hours worked and other costs incurred at the rates and terms set forth herein. Should the total cost of AMEC's performance be greater than the estimated amount shown below, AMEC will notify Client and provide a revised estimate for Client's approval. In such event, continued performance is subject to additional funding as mutually agreed.

Labor Categories and Hourly Labor Rates:

Other Direct Costs (Reimbursed at cost plus ____ % mark-up):

Total estimated time and materials cost:

In addition to the Agreement amount, Client assumes full responsibility for the payment of any applicable sales, use, or value-added taxes under this Agreement, except as otherwise specified.

ATTACHMENTS

The listed attachments form part of this Agreement:

1. Specifications and Deliverables as designated in shown in Arkansas NRCS LiDAR contract (see attached).
- 2.
- 3.

TERMS AND CONDITIONS

1. **AUTHORIZATION TO PROCEED.** The signing of this Agreement by the Client and AMEC will serve as written authorization for AMEC to proceed with the services called for in this Agreement.
2. **ENTIRE AGREEMENT.** This Agreement, including attachments incorporated herein by reference, represents the entire agreement between AMEC and Client and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be altered only by written instrument signed by authorized representatives of both Client and AMEC.
3. **CHANGES AND DELAYS.** Work beyond the scope of services or re-doing any part of the project through no fault of AMEC, shall constitute extra work and shall be paid for on a time-and-materials basis in addition to any other payment provided for in this Agreement. In the event AMEC's work is interrupted due to delays other than delays caused by AMEC, AMEC shall be compensated equitably (based on AMEC's current Fee Schedule) for the additional labor or other charges associated with maintaining its work force for Client's benefit during the delay, or at the option of the Client, for charges incurred by AMEC for demobilization and subsequent remobilization. If, during the course of performance of this Agreement, conditions or circumstances are discovered which were not contemplated by AMEC at the commencement of this Agreement, AMEC shall notify Client in writing of the newly discovered conditions or circumstances and the impact on the Agreement. Client and AMEC agree to negotiate in good faith any changes to the price, terms and conditions or schedule of this Agreement. Client acknowledges and agrees that its use of any purchase order or other form to procure services is solely for administrative purposes and in no event shall AMEC be bound to any terms and conditions on such form regardless of reference to or signature. Client shall endeavor to reference this Agreement on any purchase order (or any other form), but Client's failure to do so shall not operate to modify this Agreement.
4. **PAYMENT AND SUSPENSION.** Unless otherwise stated in the Proposal, invoices will be submitted by AMEC either at the completion of the work or on a monthly basis and will be due and payable on the invoice date. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late fee of one and one-half percent (1.5%) per month computed at 31 days from the date of invoice. In addition, any collection fees, legal fees, court costs, and other related expenses incurred by AMEC in the collection of delinquent invoice amounts shall be paid by CLIENT. **IN THE EVENT CLIENT DISPUTES ALL OR PART OF AN INVOICE, CLIENT MUST ADVISE AMEC IN WRITING WITHIN FIFTEEN (15) DAYS FROM INVOICE DATE. UNDISPUTED PORTIONS ARE SUBJECT TO PAYMENT WITHIN THIRTY (30) DAYS. AMEC may suspend performance of services under this Agreement if: 1) CLIENT fails to make payment in accordance with the terms hereof, 2) CLIENT becomes insolvent, enters bankruptcy, receivership, or other like proceeding (voluntary or involuntary) or makes an assignment for the benefit of creditors, or 3) AMEC reasonably believes that CLIENT will be unable to pay AMEC in accordance with the terms hereof and notifies CLIENT in writing prior to such suspension of services. If any such suspension causes an increase in the time required for AMEC's performance, the performance schedule and/or period for performance shall be extended for a period of time equal to the suspension period.**
5. **PERMITS, UTILITIES AND ACCESS.** Unless otherwise agreed in writing, the Client shall: 1) apply for and obtain all required permits and licenses; 2) make all necessary arrangements for right of entry to provide AMEC access to the site for all equipment and personnel at no charge to AMEC; 3) make available to AMEC all relevant information and documents under its control regarding past, present and proposed conditions of the site, including but not limited to plot plans, topographic studies, hydrologic data and previous soil and geologic data including borings, field or laboratory tests and written reports and shall immediately transmit to AMEC any new information that becomes available or any changes in plans; and 4) provide AMEC with the location of all underground utilities and structures in the exploration area. While AMEC will take all reasonable precautions to minimize any damage to the property, the Client agrees to hold AMEC harmless for any damages to any subterranean structures or any damage required for right of entry.
6. **PROBABLE COSTS.** AMEC does not guarantee the accuracy of probable costs for providing services hereunder. Such probable costs represent only AMEC's judgment as a professional and are supplied only for the general guidance of the Client.
7. **DISPUTES.** Any dispute arising hereunder shall first be resolved by taking the following steps, where a successive step is taken if the issue is not resolved at the preceding step: 1) by the technical and contractual personnel for each party performing this Agreement, 2) by executive management of each party, 3) by mediation, or 4) through the court system of the jurisdiction of the AMEC office that is entering into this Agreement. Client hereby waives the right to trial by jury for any disputes arising out of this Agreement. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.
8. **STANDARD OF CARE.** In the performance of professional services, AMEC will use that level of care and skill ordinarily exercised by reputable members of AMEC's profession currently practicing in the same locality under similar conditions. **NO OTHER REPRESENTATION, GUARANTEE, OR WARRANTY, EXPRESS OR IMPLIED, IS**

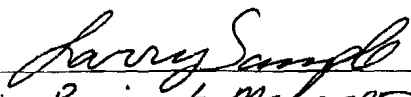
INCLUDED OR INTENDED IN THIS AGREEMENT, OR IN ANY COMMUNICATION (ORAL OR WRITTEN), REPORT, OPINION, DOCUMENT, OR INSTRUMENT OF SERVICE.

9. **INDEMNITY.** Client agrees to defend, indemnify, protect and hold harmless AMEC and its officers, employees and agents from any and all claims, liabilities, damages or expenses, including but not limited to delay of the project, reduction of property value, fear of or actual exposure to or release of toxic or hazardous substances, and any consequential damages of whatever nature, which may arise directly or indirectly, to any party, as a result of the services provided by AMEC under this Agreement, unless such injury or loss is caused by the sole negligence of AMEC.
10. **LIMITATION OF LIABILITY.** *Notwithstanding any other provision of this Agreement, the total liability of AMEC, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to AMEC for the services or \$50,000, whichever is less. All claims by Client shall be deemed relinquished unless filed within one (1) year after substantial completion of the services. In addition, AMEC shall not be liable for consequential, incidental or indirect damages as a result of the performance of this Agreement.*
11. **INSURANCE.** AMEC will maintain insurance for this Agreement in the following types: 1) worker's compensation insurance at statutorily required levels, 2) comprehensive general liability insurance and 3) automobile liability insurance for bodily injury and property damage.
12. **RESPONSIBILITY.** AMEC is not responsible for the completion or quality of work that is dependent upon or performed by the Client or third parties not under the direct control of AMEC, nor is AMEC responsible for their acts or omissions or for any damages resulting therefrom.
13. **EXCLUSIVE USE.** Services provided under this Agreement, including all reports, information or recommendations prepared or issued by AMEC, are for the exclusive use of the Client for the project specified. No other use is authorized under this Agreement. Client will not distribute or convey AMEC's reports or recommendations to any person or organization other than those identified in the project description without AMEC's written authorization. Client releases AMEC from liability and agrees to defend, indemnify, protect and hold harmless AMEC from any and all claims, liabilities, damages or expenses arising, in whole or in part, from such unauthorized distribution.
14. **FIELD REPRESENTATION.** Unless otherwise expressly agreed in writing, AMEC shall not be responsible for the safety or direction of the means and methods at the Client's site of contractors or their employees or agents that are not hired by AMEC, and the presence of AMEC at the Client's site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, Client will advise any contractors that AMEC's services are so limited. AMEC will not assume the role of "prime contractor", "principal contractor", "constructor", "controlling employer", or their equivalents unless the scope of such services are expressly agreed in writing.
15. **ENVIRONMENTAL LIABILITY.** Client has and shall retain all responsibility and liability for the environmental conditions on the site. All non-consumed samples shall remain the property of the Client, and Client shall be responsible for and promptly pay for the removal and lawful disposal of samples, cuttings and hazardous materials, unless otherwise agreed in writing. If appropriate, AMEC shall preserve samples obtained for the project for not longer than 30 days after the issuance of any document that includes the data obtained from those samples.
16. **TERMINATION.** This Agreement may be terminated by either party upon ten (10) days written notice to the other. In the event of a termination, Client shall pay for all reasonable charges for work performed and demobilization by AMEC to date of notice of termination. The limitation of liability and indemnity obligations of this Agreement shall be binding notwithstanding any termination of this Agreement.
17. **ASSIGNMENT.** Neither party shall assign its interest in this Agreement without the written consent of the other.
18. **GOVERNING LAW.** This Agreement is governed by the laws of the state of the AMEC office that is entering into this Agreement.

Client and AMEC acknowledge that each has read and agrees to these Terms and Conditions, which are incorporated herein and made a part of this Agreement.

CLIENT _____

AMEC EARTH & ENVIRONMENTAL, INC.

By: 
Title: Project Manager
Date: 3/1/2011