

17



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
-------------	-------	--------

R-2004-0348

Resolution

In Committee

Resolution relative to accepting the proposal of Owen Ayres & Associates Inc. for methane and groundwater sampling at the Lincoln Ave. landfill site for an estimated sum of \$8,700.00.

Introduced: 12/21/2004

Controlling Body: Public Works Committee

## COMMITTEE RECOMMENDATION adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>12-21-04</u>			Barczak				
			Czaplewski				
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic				
			Narlock	✓			
			Reinke				
		✓	Sengstock	✓			
	✓	✓	Vitale	✓			
			Weigel				
			TOTAL	<u>5</u>	<u>-</u>		

## SIGNATURE OF COMMITTEE MEMBER

*Rub Sengstock* \_\_\_\_\_  
 Chair Vice-Chair Member

## COMMON COUNCIL ACTION **ADOPT**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>DEC 21 2004</u>			Barczak	✓			
			Czaplewski	✓			
			Dobrowski	✓			
			Kopplin	✓			
	✓		Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Sengstock	✓			
		✓	Vitale	✓			
			Weigel	✓			
			TOTAL	<u>10</u>	<u>-</u>		

Finance  
Purchasing  
P. Works

STANDING COMMITTEES OF THE  
CITY OF WEST ALLIS COMMON COUNCIL  
2004

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplowski  
Vice-Chair: Martin J. Weigel  
Gary T. Barczak  
Thomas G. Lajsic  
Rosalie L. Reinke

PUBLIC WORKS

Chair: Richard F. Narlock  
Vice-Chair: Linda A. Dobrowski  
Kurt E. Kopplin  
Vincent Vitale  
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic  
Vice-Chair: Vincent Vitale  
Gary T. Barczak  
Martin J. Weigel  
Rosalie L. Reinke

LICENSE & HEALTH

Chair: Kurt E. Kopplin  
Vice-Chair: James W. Sengstock  
Linda A. Dobrowski  
Richard F. Narlock  
Michael J. Czaplowski

ADVISORY

Chair: Rosalie L. Reinke  
Vice-Chair: Gary T. Barczak  
Linda A. Dobrowski  
Vincent Vitale  
Martin J. Weigel



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

**File Number: R-2004-0348**

**Final Action:**  
**DEC 21 2004**

Resolution relative to accepting the proposal of Owen Ayres & Associates Inc. for methane and groundwater sampling at the Lincoln Ave. landfill site for an estimated sum of \$8,700.00.

WHEREAS, in 1994, the Wisconsin DNR approved a closure plan for the former landfill site at 113 th Street and Lincoln Avenue; and,

WHEREAS, following the closure of the landfill, the City of West Allis is required to conduct ongoing methane and groundwater sampling, as prescribed by the Wisconsin Department of Natural Resources (WDNR); and,

WHEREAS, Owen Ayres & Associates, Inc. has provided these services in a cost efficient and effective manner for the previous three years and has proposed to provide the services necessary to monitor this site in 2005, as outlined in their proposal, for an estimated project fee of \$8,700.00; and,

WHEREAS, The Director of Public Works has provided documentation to the Purchasing/Central Services Division that this contract is inappropriate for competitive selection as a result of the familiarity of the staff of Owen Ayres & Associates, Inc. with this project.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of West Allis that the proposal dated December 9, 2004 submitted by Owen Ayres & Associates, Inc. for methane gas and groundwater sampling at the Lincoln Ave. landfill for the total net sum of \$8,700.00 be and is hereby accepted.

BE IT FURTHER RESOLVED, that the Purchasing/Central Services Division be and is hereby authorized to issue a purchase order for the aforesaid service.

owen ayres.2

ADOPTED

*December 21, 2004*

*Paul M. Ziehler*

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED

*December 23, 2004*

*Jeannette Bell*

Jeannette Bell, Mayor



December 9, 2004

Mr. Michael Pertmer  
Director of Public Works  
City of West Allis  
6300 West McGeoch Avenue  
West Allis, WI 53219

Re: City of West Allis Landfill  
11241 West Lincoln Avenue  
Methane Gas and Groundwater Monitoring Proposal

Dear Mr. Pertmer:

Ayres Associates is pleased to submit this proposal for continued sampling of the methane gas and groundwater, and evaluation of data obtained from the above-referenced site for the 2005 calendar year.

Based on the Wisconsin Department of Natural Resources (WDNR) Conditional Closure Plan Modification dated March 26, 2003, Ayres Associates proposes to sample the eight perimeter methane gas monitoring wells once during the year. The wells will be sampled for methane gas (% by volume), oxygen (% by volume), carbon dioxide (% by volume), barometric pressure and ambient air temperature. The date and time of sampling, barometric pressure (and trend), ambient air temperature, and surface conditions in the vicinity of the wells will also be recorded.

The data collected during sampling of the methane gas wells will be submitted to the Wisconsin Department of Natural Resources (Southeast District) Solid Waste Engineer.

Ayres Associates will conduct semi-annual sampling of the ten groundwater monitoring wells as stipulated in the WDNR's "Conditional Closure Plan Modification Approval" letter dated June 16, 2004. We will follow the sampling protocols stipulated in Conditions # 1 through 3. The field data collected and laboratory reports will be submitted to WDNR (Southeast District) electronically after each groundwater sampling event.

The estimated costs to conduct the sampling of the methane gas and groundwater monitoring wells, laboratory costs and reporting for the 2005 calendar year are \$8,700.00.

Mr. Pertmer  
December 9, 2004  
Page 2 of 2

If you agree with the terms defined above, I have enclosed two standard forms of agreement for your execution. Please send one of the completed agreement forms to me and retain the other for your files. If you chose to issue a purchase order, please include the statement "Ayres Associates will conduct the work described above with the understanding that the "Terms and Conditions" on the reverse side of this Purchase Order do not apply to our services."

Should you have any questions regarding this proposal, please feel free to contact me at (262) 523-4489, ext. 224.

Sincerely,

Owen Ayres & Associates, Inc.



Stephen G. Bartoszewski, P.E., P.H.  
Environmental Engineer

SGB:sms

Enclosure

# AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of December 9, 2004 between the City of West Allis, 6300 West McGeoch Avenue, West Allis, Wisconsin (OWNER) and Owen Ayres & Associates, Inc., a.k.a. Ayres Associates, N19 W24075 Riverwood Drive, Waukesha, Wisconsin (CONSULTANT).

OWNER intends to retain the CONSULTANT for professional services for Methane Gas Sampling, Groundwater Sampling, and Laboratory Analysis as described in Attachment A (hereinafter called the Project).

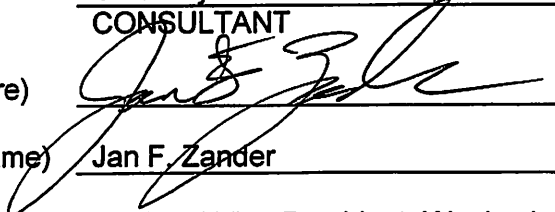
OWNER and CONSULTANT agree to performance of professional services by CONSULTANT and payment for those services by OWNER as set forth below.

The following Attachments are attached to and made a part of this Agreement.

- Attachment A - Scope of Services, consisting of 1 page.
- Attachment B - Periods of Service, consisting of 1 page.
- Attachment C - Compensation and Payments, consisting of 1 page.
- Attachment D - Terms and Conditions, consisting of 3 pages.
- Attachment E - Terms and Conditions for Services Involving Hazardous Substances, consisting of 3 pages.

This Agreement (consisting of 1 page), together with the Attachments identified above, constitute the entire agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Attachments may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

<u>City of West Allis</u> OWNER		<u>Owen Ayres &amp; Associates, Inc.</u> CONSULTANT
_____	(Signature)	
<u>Michael F. Pertmer</u>	(Typed Name)	<u>Jan F. Zander</u>
_____	(Title)	<u>Regional Vice-President, Waukesha</u>
<u>Director of Public Works</u>	(Date)	<u>12/3/4</u>
_____		_____

## ATTACHMENT A - SCOPE OF SERVICES

Agreement dated December 9, 2004

Initials:

OWNER \_\_\_\_\_  
CONSULTANT             


### BASIC SERVICES

CONSULTANT shall provide professional environmental services at 11241 West Lincoln Avenue, West Allis, Wisconsin for OWNER as follows:

1. Sample eight methane gas monitoring wells once per year. The wells will be sampled for methane gas (% by volume), oxygen (% by volume), and carbon dioxide (% by volume). The date and time of sampling, barometric pressure (and trend), ambient air temperature, and surface conditions in the vicinity of the wells will also be recorded.
2. The data collected during sampling of the methane gas wells will be submitted to the Wisconsin Department of Natural Resources (Southeast District) Solid Waste Engineer following completion of second event.
3. Sample ten groundwater monitoring wells (semi-annually) and analyze for the parameters specified in the Wisconsin Department of Natural Resources "Conditional Closure Plan Modification Approval" letter dated June 16, 2004. We will follow the sampling protocols stipulated in Conditions # 1, 2, and 3.
4. The field data collected during the sampling of the groundwater monitoring wells and laboratory reports will be submitted to the Wisconsin Department of Natural Resources (Southeast District) electronically after each event.
5. The City will receive copies of all information submitted to the Wisconsin Department of Natural Resources.

### ADDITIONAL SERVICES

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services. Services not included as part of Basic Services and will be paid for by OWNER as indicated in Attachment C and Article 5 of Attachment D.

### OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT.

Designate a person in writing to act as OWNER's representative.

Provide all criteria and full information as to OWNER's requirements.

Furnish to CONSULTANT all available pertinent information including, but not limited to, property, boundary, easement, right-of-way, and utility surveys, the location of buried tanks, piping, and related utilities, and previous reports.

Provide access to the site of the Project and provide any required easements for monitoring wells to be installed on or off the site.

## ATTACHMENT B - PERIODS OF SERVICE

Agreement dated December 9, 2004

Initials:

OWNER \_\_\_\_\_  
CONSULTANT           

Provisions of Attachment B hereinafter amend and supplement Attachment A and Attachment D as follows:

<u>Task</u>	<u>Calendar Days After</u> <u>Authorization to Proceed</u>
Methane Gas and Groundwater Sampling	Calendar Year 2005 – 365 days



## ATTACHMENT C - COMPENSATION AND PAYMENTS

Agreement dated December 9, 2004

Initials:  
OWNER  
CONSULTANT 

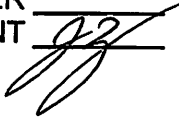
CONSULTANT will perform services on an hourly basis, plus reimbursable expenses. The estimated cost of services is \$8,700.00. CONSULTANT will not exceed this amount without OWNER's prior written approval.

**CONSULTANT's Reimbursable Expenses.** For reimbursable expenses, an amount equal to the normal and customary costs incurred in rendering services on the Project for: transportation and subsistence incidental thereto; telephone calls, electronic mail, facsimile transmissions, and telegrams; expenses incurred for computer time, word processing equipment, survey and testing instruments, and other highly specialized equipment; and reproduction of reports, documents, and similar Project-related items.

**Professional Associates and Subconsultants.** For services and reimbursable expenses of independent professional associates and subconsultants employed by CONSULTANT to render services on the Project, the amount billed to CONSULTANT therefor times a factor of 1.15.

## ATTACHMENT D - TERMS AND CONDITIONS

Agreement dated December 9, 2004

Initials:  
OWNER \_\_\_\_\_  
CONSULTANT             


### ARTICLE 1 - BASIC SERVICES

CONSULTANT shall provide professional services for OWNER on the Project to which this Agreement applies, including customary services incidental thereto, and as indicated in Attachment A.

### ARTICLE 2 - ADDITIONAL SERVICES

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services not included as part of Basic Services. These services will be paid for by OWNER as indicated in Attachment C and Article 5 of Attachment D.

### ARTICLE 3 - OWNER'S RESPONSIBILITIES

OWNER shall furnish to CONSULTANT in a timely manner so as not to delay the services of CONSULTANT items as provided in Attachment A.

### ARTICLE 4 - PERIODS OF SERVICE

The provisions of this Article and the compensation for CONSULTANT's services have been agreed to in anticipation of the orderly and continuous progress of the Project. In Attachment B specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided; if such dates are exceeded through no fault of CONSULTANT, compensation provided herein shall be subject to equitable adjustment.

### ARTICLE 5 - PAYMENTS

#### 5.1 Methods of Payments for Services and Expenses

OWNER shall pay CONSULTANT for Basic Services, Additional Services, and Reimbursable Expenses rendered (as amended and supplemented by Attachment A) in accordance with Attachment C.

#### 5.2 Times of Payments

CONSULTANT shall submit monthly invoices for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to CONSULTANT's invoices.

#### 5.3 Other Provisions Concerning Payments

5.3.1 If OWNER fails to make any payment due CONSULTANT for services and expenses within thirty days after receipt of CONSULTANT's invoice, the amounts due CONSULTANT will be increased at the rate of 1-1/2% per month (18% A.P.R.) from said thirtieth day, and in addition, CONSULTANT may, after giving seven days' written notice to OWNER, suspend

services under this Agreement until CONSULTANT has been paid in full all amounts due for services and expenses.

5.3.2 In the event of termination by OWNER under paragraph 7.1, CONSULTANT will be reimbursed for all charges and services rendered.

5.3.3 Records pertinent to CONSULTANT's compensation will be kept in accordance with generally accepted accounting practices.

5.3.4 Factors determining compensation payable to CONSULTANT will be adjusted periodically and equitably to reflect changes in various elements that comprise such factors.

5.3.5 The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed shall be added to the compensation as determined above.

## **ARTICLE 6 - OPINIONS OF COST**

CONSULTANT's opinions of probable Project Costs are made on the basis of CONSULTANT's experience; but CONSULTANT cannot and does not guarantee that actual Project Costs will not vary from opinions of probable cost.

## **ARTICLE 7 - GENERAL CONSIDERATIONS**

### **7.1 Termination**

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

### **7.2 Reuse of Documents**

All documents prepared by CONSULTANT (and independent associates) pursuant to this Agreement are instruments of service and CONSULTANT shall retain an ownership and property interest therein. OWNER may make and retain copies for information and reference in connection with use by OWNER.

### **7.3 Insurance**

CONSULTANT shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. Requirements for insurance are amended and supplemented as indicated in Attachment E.

### **7.4 Controlling Law**

This Agreement is to be governed by the law of the place of business of CONSULTANT at the address stated above.

## **7.5 Dispute Resolution**

**7.5.1 Negotiation.** OWNER and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the dispute resolution provision below or other provisions of this Agreement, or under law.

**7.5.2 Mediation.** If direct negotiations fail, OWNER and CONSULTANT agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective on the date of this Agreement prior to exercising other rights under law.

# ATTACHMENT E - TERMS AND CONDITIONS FOR SERVICES INVOLVING HAZARDOUS SUBSTANCES

Agreement dated December 9, 2004

Initials:  
OWNER \_\_\_\_\_  
CONSULTANT           JZ          

The following provisions are incorporated into the Agreement between OWNER and CONSULTANT.

## STANDARD OF CARE

In accepting this Agreement for consulting services, OWNER acknowledges the inherent risk associated with hazardous, oil, radioactive, toxic, irritant, pollutant, or otherwise dangerous substances or conditions as well as with construction activities. In performing the professional services, CONSULTANT will use that degree of care and skill ordinarily exercised, under similar circumstances, by members of the profession practicing in the same or similar locality. The standard of care shall be judged exclusively at the time the services are rendered and not according to later standards.

## PROJECT SITE

OWNER shall furnish to CONSULTANT all documents and information known to OWNER that relate to the identity, location, quantity, nature, or characteristics of any hazardous substances at, on, or under the site. In addition, OWNER shall furnish all data, prior studies, manufacturing or waste disposal histories, and construction documents actually or potentially informative as to the actual conditions at the site for performance of CONSULTANT's services. CONSULTANT shall be entitled to rely upon OWNER-provided documents and information in performing the services required under this Agreement, however, CONSULTANT assumes no responsibility or liability for their accuracy or completeness.

CONSULTANT will not direct, supervise, or control the work of contractors or their subcontractors. CONSULTANT's services will not include a review or evaluation of the contractor's or subcontractor's safety measures.

CONSULTANT shall be responsible only for its activities and that of its employees and subconsultants on the site. Neither the professional activities nor the presence of CONSULTANT or its employees or its subconsultants on the site shall imply that CONSULTANT controls the operations of others, nor shall this be construed to be an acceptance by CONSULTANT of any responsibility for jobsite safety.

## DISPOSAL OF CONTAMINATED MATERIAL

It is understood and agreed that CONSULTANT is not, and has no responsibility as a handler, generator, operator, treater, storer, transporter, or disposer of hazardous or toxic substances found or identified at the site, and that OWNER shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the site.

## **INDEMNIFICATION**

It is understood and agreed that OWNER is requesting CONSULTANT to undertake, for OWNER's benefit, obligations involving the presence or potential presence of hazardous substances. Therefore, it is expressly understood that OWNER shall in no manner hold CONSULTANT responsible for any existing site condition and the presence or potential presence of hazardous substances.

OWNER shall indemnify and hold CONSULTANT harmless from and against any and all claims, liabilities, losses, damages, consequential damages, costs, and expenses (excluding attorney's fees) which CONSULTANT may hereafter suffer in connection with any claim, action, or right of action (at law or in equity) because of any injury (including death) or damage to person or property which arises out of any act of negligence or willful misconduct by OWNER or its directors, officers, employees, agents, or subcontractors, or from any liability arising from the application of strict, joint and several, or retroactive liability.

CONSULTANT shall indemnify and hold OWNER, its directors, officers, and employees harmless from and against any and all claims, liabilities, losses, damages, consequential damages, costs, and expenses (excluding attorney's fees) which OWNER, its directors, officers, and employees may hereafter suffer in connection with any claim, action, or right of action (at law or in equity) because of any injury (including death) or damage to person or property which arises out of any act of negligence or willful misconduct by CONSULTANT or its directors, officers, employees, agents, independent contractors, or material suppliers.

In the event there is joint negligence on the part of OWNER and CONSULTANT, the responsibility and indemnification obligations for such negligence shall be prorated to reflect the relative degree of negligence or fault attributable to OWNER and CONSULTANT. CONSULTANT will not be liable for any indirect damages.

## **LIMITATION OF LIABILITY**

OWNER shall not be liable to CONSULTANT and CONSULTANT shall not be liable to OWNER for any consequential damages incurred by either due to fault of other, regardless of nature of this fault, or whether it was committed by OWNER or CONSULTANT, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

## **INSURANCE**

CONSULTANT represents that it carries statutorily required Workers' Compensation Insurance, Commercial General Liability Insurance in the amount of \$1,000,000, and Professional Liability Insurance, with Pollution Liability Insurance, in the amount of \$1,000,000. Certificates of these insurances will be provided to OWNER upon request. If OWNER requires additional insurance coverage, CONSULTANT will endeavor to obtain additional coverage at OWNER's expense, payable in advance.

## **RIGHT-OF-ENTRY**

OWNER shall furnish right-of-entry for CONSULTANT to such property as may be necessary for CONSULTANT to perform the services under this Agreement. CONSULTANT will take reasonable precautions to minimize damage to the property caused by CONSULTANT's

equipment, but has not included in CONSULTANT's fee the cost of restoration of damage which may result from CONSULTANT's operations. If OWNER requires CONSULTANT to restore property to its former conditions, the costs associated with restoration will be added to CONSULTANT's fee.

## **PRECEDENCE**

These Terms and Conditions for Services Involving Hazardous Substances shall take precedence over any conflicting provisions elsewhere in the Agreement.

## **SEVERABILITY**

If any of these Terms and Conditions are determined to be invalid or unenforceable in whole or part, the remaining provisions of this Agreement shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

## **Public Responsibility**

Both OWNER and CONSULTANT owe a duty of care to the public that requires them to conform to applicable codes, standards, laws, and regulations, principally to protect the public health and safety. OWNER shall make no request of CONSULTANT that, in CONSULTANT's reasonable opinion, would be contrary to CONSULTANT's professional responsibilities to protect the public. OWNER shall take all actions and render all notices required of OWNER in a timely manner. Should OWNER fail to take any required actions or render any required notices to appropriate public authorities in a timely manner, or if CONSULTANT has a legal, ethical, or professional obligation to report its findings, OWNER agrees CONSULTANT has the right to exercise its professional judgement in reporting to appropriate officials or taking other necessary action. OWNER agrees to take no action against, or attempt to hold CONSULTANT liable in any way for carrying out what CONSULTANT reasonably believes to be its public responsibility.

OWNER agrees CONSULTANT shall not be held liable in any respect for reporting said conditions or for failing to report conditions that were OWNER's responsibility to report.

## **SURVIVAL**

These Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.

# AGREEMENT FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of December 9, 2004 between the City of West Allis, 6300 West McGeoch Avenue, West Allis, Wisconsin (OWNER) and Owen Ayres & Associates, Inc., a.k.a. Ayres Associates, N19 W24075 Riverwood Drive, Waukesha, Wisconsin (CONSULTANT).

OWNER intends to retain the CONSULTANT for professional services for Methane Gas Sampling, Groundwater Sampling, and Laboratory Analysis as described in Attachment A (hereinafter called the Project).

OWNER and CONSULTANT agree to performance of professional services by CONSULTANT and payment for those services by OWNER as set forth below.

The following Attachments are attached to and made a part of this Agreement.

- Attachment A - Scope of Services, consisting of 1 page.
- Attachment B - Periods of Service, consisting of 1 page.
- Attachment C - Compensation and Payments, consisting of 1 page.
- Attachment D - Terms and Conditions, consisting of 3 pages.
- Attachment E - Terms and Conditions for Services Involving Hazardous Substances, consisting of 3 pages.

This Agreement (consisting of 1 page), together with the Attachments identified above, constitute the entire agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Attachments may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

City of West Allis  
OWNER

Michael F. Pertmer

Michael F. Pertmer

Director of Public Works

Dec. 23, 2004

(Signature)

(Typed Name)

(Title)

(Date)

Owen Ayres & Associates, Inc.  
CONSULTANT



Jan F. Zander

Regional Vice-President, Waukesha

12/3/4



## ATTACHMENT A - SCOPE OF SERVICES

Agreement dated December 9, 2004

Initials:  
OWNER TRP  
CONSULTANT JZ

### BASIC SERVICES

CONSULTANT shall provide professional environmental services at 11241 West Lincoln Avenue, West Allis, Wisconsin for OWNER as follows:

1. Sample eight methane gas monitoring wells once per year. The wells will be sampled for methane gas (% by volume), oxygen (% by volume), and carbon dioxide (% by volume). The date and time of sampling, barometric pressure (and trend), ambient air temperature, and surface conditions in the vicinity of the wells will also be recorded.
2. The data collected during sampling of the methane gas wells will be submitted to the Wisconsin Department of Natural Resources (Southeast District) Solid Waste Engineer following completion of second event.
3. Sample ten groundwater monitoring wells (semi-annually) and analyze for the parameters specified in the Wisconsin Department of Natural Resources "Conditional Closure Plan Modification Approval" letter dated June 16, 2004. We will follow the sampling protocols stipulated in Conditions # 1, 2, and 3.
4. The field data collected during the sampling of the groundwater monitoring wells and laboratory reports will be submitted to the Wisconsin Department of Natural Resources (Southeast District) electronically after each event.
5. The City will receive copies of all information submitted to the Wisconsin Department of Natural Resources.

### ADDITIONAL SERVICES

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services. Services not included as part of Basic Services and will be paid for by OWNER as indicated in Attachment C and Article 5 of Attachment D.

### OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT.

Designate a person in writing to act as OWNER's representative.

Provide all criteria and full information as to OWNER's requirements.

Furnish to CONSULTANT all available pertinent information including, but not limited to, property, boundary, easement, right-of-way, and utility surveys, the location of buried tanks, piping, and related utilities, and previous reports.

Provide access to the site of the Project and provide any required easements for monitoring wells to be installed on or off the site.

## ATTACHMENT B - PERIODS OF SERVICE

Agreement dated December 9, 2004

Initials:  
OWNER TAP  
CONSULTANT [Signature]

Provisions of Attachment B hereinafter amend and supplement Attachment A and Attachment D as follows:

<u>Task</u>	<u>Calendar Days After</u> <u>Authorization to Proceed</u>
Methane Gas and Groundwater Sampling	Calendar Year 2005 – 365 days

## ATTACHMENT C - COMPENSATION AND PAYMENTS

Agreement dated December 9, 2004

Initials:  
OWNER TWO  
CONSULTANT [Signature]

CONSULTANT will perform services on an hourly basis, plus reimbursable expenses. The estimated cost of services is \$8,700.00. CONSULTANT will not exceed this amount without OWNER's prior written approval.

**CONSULTANT's Reimbursable Expenses.** For reimbursable expenses, an amount equal to the normal and customary costs incurred in rendering services on the Project for: transportation and subsistence incidental thereto; telephone calls, electronic mail, facsimile transmissions, and telegrams; expenses incurred for computer time, word processing equipment, survey and testing instruments, and other highly specialized equipment; and reproduction of reports, documents, and similar Project-related items.

**Professional Associates and Subconsultants.** For services and reimbursable expenses of independent professional associates and subconsultants employed by CONSULTANT to render services on the Project, the amount billed to CONSULTANT therefor times a factor of 1.15.

# ATTACHMENT D - TERMS AND CONDITIONS

Agreement dated December 9, 2004

Initials:  
OWNER TM  
CONSULTANT JS

## ARTICLE 1 - BASIC SERVICES

CONSULTANT shall provide professional services for OWNER on the Project to which this Agreement applies, including customary services incidental thereto, and as indicated in Attachment A.

## ARTICLE 2 - ADDITIONAL SERVICES

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services not included as part of Basic Services. These services will be paid for by OWNER as indicated in Attachment C and Article 5 of Attachment D.

## ARTICLE 3 - OWNER'S RESPONSIBILITIES

OWNER shall furnish to CONSULTANT in a timely manner so as not to delay the services of CONSULTANT items as provided in Attachment A.

## ARTICLE 4 - PERIODS OF SERVICE

The provisions of this Article and the compensation for CONSULTANT's services have been agreed to in anticipation of the orderly and continuous progress of the Project. In Attachment B specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided; if such dates are exceeded through no fault of CONSULTANT, compensation provided herein shall be subject to equitable adjustment.

## ARTICLE 5 - PAYMENTS

### 5.1 Methods of Payments for Services and Expenses

OWNER shall pay CONSULTANT for Basic Services, Additional Services, and Reimbursable Expenses rendered (as amended and supplemented by Attachment A) in accordance with Attachment C.

### 5.2 Times of Payments

CONSULTANT shall submit monthly invoices for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to CONSULTANT's invoices.

### 5.3 Other Provisions Concerning Payments

5.3.1 If OWNER fails to make any payment due CONSULTANT for services and expenses within thirty days after receipt of CONSULTANT's invoice, the amounts due CONSULTANT will be increased at the rate of 1-1/2% per month (18% A.P.R.) from said thirtieth day, and in addition, CONSULTANT may, after giving seven days' written notice to OWNER, suspend

services under this Agreement until CONSULTANT has been paid in full all amounts due for services and expenses.

5.3.2 In the event of termination by OWNER under paragraph 7.1, CONSULTANT will be reimbursed for all charges and services rendered.

5.3.3 Records pertinent to CONSULTANT's compensation will be kept in accordance with generally accepted accounting practices.

5.3.4 Factors determining compensation payable to CONSULTANT will be adjusted periodically and equitably to reflect changes in various elements that comprise such factors.

5.3.5 The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed shall be added to the compensation as determined above.

## **ARTICLE 6 - OPINIONS OF COST**

CONSULTANT's opinions of probable Project Costs are made on the basis of CONSULTANT's experience; but CONSULTANT cannot and does not guarantee that actual Project Costs will not vary from opinions of probable cost.

## **ARTICLE 7 - GENERAL CONSIDERATIONS**

### **7.1 Termination**

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

### **7.2 Reuse of Documents**

All documents prepared by CONSULTANT (and independent associates) pursuant to this Agreement are instruments of service and CONSULTANT shall retain an ownership and property interest therein. OWNER may make and retain copies for information and reference in connection with use by OWNER.

### **7.3 Insurance**

CONSULTANT shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. Requirements for insurance are amended and supplemented as indicated in Attachment E.

### **7.4 Controlling Law**

This Agreement is to be governed by the law of the place of business of CONSULTANT at the address stated above.

## **7.5 Dispute Resolution**

**7.5.1 Negotiation.** OWNER and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the dispute resolution provision below or other provisions of this Agreement, or under law.

**7.5.2 Mediation.** If direct negotiations fail, OWNER and CONSULTANT agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective on the date of this Agreement prior to exercising other rights under law.

## ATTACHMENT E - TERMS AND CONDITIONS FOR SERVICES INVOLVING HAZARDOUS SUBSTANCES

Agreement dated December 9, 2004

Initials:  
OWNER MO  
CONSULTANT ES

The following provisions are incorporated into the Agreement between OWNER and CONSULTANT.

### STANDARD OF CARE

In accepting this Agreement for consulting services, OWNER acknowledges the inherent risk associated with hazardous, oil, radioactive, toxic, irritant, pollutant, or otherwise dangerous substances or conditions as well as with construction activities. In performing the professional services, CONSULTANT will use that degree of care and skill ordinarily exercised, under similar circumstances, by members of the profession practicing in the same or similar locality. The standard of care shall be judged exclusively at the time the services are rendered and not according to later standards.

### PROJECT SITE

OWNER shall furnish to CONSULTANT all documents and information known to OWNER that relate to the identity, location, quantity, nature, or characteristics of any hazardous substances at, on, or under the site. In addition, OWNER shall furnish all data, prior studies, manufacturing or waste disposal histories, and construction documents actually or potentially informative as to the actual conditions at the site for performance of CONSULTANT's services. CONSULTANT shall be entitled to rely upon OWNER-provided documents and information in performing the services required under this Agreement, however, CONSULTANT assumes no responsibility or liability for their accuracy or completeness.

CONSULTANT will not direct, supervise, or control the work of contractors or their subcontractors. CONSULTANT's services will not include a review or evaluation of the contractor's or subcontractor's safety measures.

CONSULTANT shall be responsible only for its activities and that of its employees and subconsultants on the site. Neither the professional activities nor the presence of CONSULTANT or its employees or its subconsultants on the site shall imply that CONSULTANT controls the operations of others, nor shall this be construed to be an acceptance by CONSULTANT of any responsibility for jobsite safety.

### DISPOSAL OF CONTAMINATED MATERIAL

It is understood and agreed that CONSULTANT is not, and has no responsibility as a handler, generator, operator, treater, storer, transporter, or disposer of hazardous or toxic substances found or identified at the site, and that OWNER shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the site.

## **INDEMNIFICATION**

It is understood and agreed that OWNER is requesting CONSULTANT to undertake, for OWNER's benefit, obligations involving the presence or potential presence of hazardous substances. Therefore, it is expressly understood that OWNER shall in no manner hold CONSULTANT responsible for any existing site condition and the presence or potential presence of hazardous substances.

OWNER shall indemnify and hold CONSULTANT harmless from and against any and all claims, liabilities, losses, damages, consequential damages, costs, and expenses (excluding attorney's fees) which CONSULTANT may hereafter suffer in connection with any claim, action, or right of action (at law or in equity) because of any injury (including death) or damage to person or property which arises out of any act of negligence or willful misconduct by OWNER or its directors, officers, employees, agents, or subcontractors, or from any liability arising from the application of strict, joint and several, or retroactive liability.

CONSULTANT shall indemnify and hold OWNER, its directors, officers, and employees harmless from and against any and all claims, liabilities, losses, damages, consequential damages, costs, and expenses (excluding attorney's fees) which OWNER, its directors, officers, and employees may hereafter suffer in connection with any claim, action, or right of action (at law or in equity) because of any injury (including death) or damage to person or property which arises out of any act of negligence or willful misconduct by CONSULTANT or its directors, officers, employees, agents, independent contractors, or material suppliers.

In the event there is joint negligence on the part of OWNER and CONSULTANT, the responsibility and indemnification obligations for such negligence shall be prorated to reflect the relative degree of negligence or fault attributable to OWNER and CONSULTANT. CONSULTANT will not be liable for any indirect damages.

## **LIMITATION OF LIABILITY**

OWNER shall not be liable to CONSULTANT and CONSULTANT shall not be liable to OWNER for any consequential damages incurred by either due to fault of other, regardless of nature of this fault, or whether it was committed by OWNER or CONSULTANT, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

## **INSURANCE**

CONSULTANT represents that it carries statutorily required Workers' Compensation Insurance, Commercial General Liability Insurance in the amount of \$1,000,000, and Professional Liability Insurance, with Pollution Liability Insurance, in the amount of \$1,000,000. Certificates of these insurances will be provided to OWNER upon request. If OWNER requires additional insurance coverage, CONSULTANT will endeavor to obtain additional coverage at OWNER's expense, payable in advance.

## **RIGHT-OF-ENTRY**

OWNER shall furnish right-of-entry for CONSULTANT to such property as may be necessary for CONSULTANT to perform the services under this Agreement. CONSULTANT will take reasonable precautions to minimize damage to the property caused by CONSULTANT's



equipment, but has not included in CONSULTANT's fee the cost of restoration of damage which may result from CONSULTANT's operations. If OWNER requires CONSULTANT to restore property to its former conditions, the costs associated with restoration will be added to CONSULTANT's fee.

## **PRECEDENCE**

These Terms and Conditions for Services Involving Hazardous Substances shall take precedence over any conflicting provisions elsewhere in the Agreement.

## **SEVERABILITY**

If any of these Terms and Conditions are determined to be invalid or unenforceable in whole or part, the remaining provisions of this Agreement shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

## **Public Responsibility**

Both OWNER and CONSULTANT owe a duty of care to the public that requires them to conform to applicable codes, standards, laws, and regulations, principally to protect the public health and safety. OWNER shall make no request of CONSULTANT that, in CONSULTANT's reasonable opinion, would be contrary to CONSULTANT's professional responsibilities to protect the public. OWNER shall take all actions and render all notices required of OWNER in a timely manner. Should OWNER fail to take any required actions or render any required notices to appropriate public authorities in a timely manner, or if CONSULTANT has a legal, ethical, or professional obligation to report its findings, OWNER agrees CONSULTANT has the right to exercise its professional judgement in reporting to appropriate officials or taking other necessary action. OWNER agrees to take no action against, or attempt to hold CONSULTANT liable in any way for carrying out what CONSULTANT reasonably believes to be its public responsibility.

OWNER agrees CONSULTANT shall not be held liable in any respect for reporting said conditions or for failing to report conditions that were OWNER's responsibility to report.

## **SURVIVAL**

These Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.