



City of West Allis

Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2004-0254	Resolution	In Committee
Resolution relative to accepting the proposal of Earth Tech to provide consulting services relative to the NR216 Permit compliance requirements for a sum not to exceed \$17,561.		
Introduced: 9/7/2004		Controlling Body: Public Works Committee

COMMITTEE RECOMMENDATION

Approve

ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
9-7-04	✓		Barczak				
			Czaplewski				
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic				
			Narlock	✓			
			Reinke				
		✓	Sengstock	✓			
			Vitale	✓			
			Weigel				
TOTAL				5	0		

SIGNATURE OF COMMITTEE MEMBER

Chair

Vice-Chair

Member

Andy Q. Dobrowski

COMMON COUNCIL ACTION

adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
9-7-04	✓		Barczak	✓			
			Czaplewski	✓			
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic	✓			
		✓	Narlock	✓			
			Reinke	✓			
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
TOTAL				10	—		

C: Eng. Dept.
Purchasing Dept.

STANDING COMMITTEES OF THE
CITY OF WEST ALLIS COMMON COUNCIL
2004

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski
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. Czaplewski

ADVISORY

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



City of West Allis

Resolution

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number: R-2004-0254

Final Action:

SEP 07 2004

Resolution relative to accepting the proposal of Earth Tech to provide consulting services relative to the NR216 Permit compliance requirements for a sum not to exceed \$17,561.

WHEREAS, in 1996 the City of West Allis, in anticipation of the future need to comply with and fund various Federal Clean Water initiatives initiated an RFP for consulting services to assist the City in determining the best approach; and,

WHEREAS, from the RFP's received, West Allis selected Earth Tech Inc. (formerly Rust Environmental) to perform the required services; and,

WHEREAS, the outgrowth of Earth Tech's work was the development of the West Allis Stormwater Utility; and,

WHEREAS, during the development of the Utility Earth Tech also provided consulting services in the preparation of the "Preapplication Stormwater Discharge Permit", required by NR216.05; and,

WHEREAS, following the Department of Natural Resources approval of the preapplication, Earth Tech assisted the City in the development of the NR216 Stormwater Discharge Permit application; and,

WHEREAS, in 2004, the Wisconsin Department of Natural Resources issued a WPDES Stormwater Permit to the City of West Allis; and,

WHEREAS, in part, the permit sets forth a compliance schedule for implementing various programs and activities; and,

WHEREAS, Earth Tech, in the agreement attached hereto, has proposed to prepare and/or develop a number of the programs required of the WPDES Permit for 2005; and,

WHEREAS, given Earth Tech's comprehensive knowledge of and involvement with the City of West Allis storm sewer system, the Director of Public Works has provided documentation to the Purchasing/Central Services Division that the work involved in this contract is inappropriate for competitive bidding.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of West Allis that the proposal dated June 17, 2004 submitted by Earth Tech, Inc. for consulting services relative to compliance with the WDNR WPDES Stormwater permit for West Allis for a total net sum not to exceed \$17,561, the funding of which shall be paid by the City's Stormwater Utility.

BE IT FURTHER RESOLVED that the Director of Public Works is hereby authorized to execute the attached Agreement and the Purchasing/Central Services Division be and is hereby authorized to issue a purchase order for the aforementioned services.

ADOPTED

September 7, 2004

Paul M. Ziehler

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

APPROVED

September 10, 2004

Jeannette Bell

Jeannette Bell, Mayor

CONSULTING AGREEMENT AND AUTHORIZATION TO PROCEED

This Agreement between EARTH TECH, Inc, a California corporation, ("ETI") with offices at 1020 N. Broadway, Suite 400, Milwaukee, Wisconsin 53202, and City of West Allis ("CLIENT"), with offices at West Allis City Hall 7525 W. Greenfield Ave. West Allis WI 53214

1. ETI agrees to perform the services described in its PROPOSAL dated: June 17, 2004 (Appendix A) including attachments and amendments ("SERVICES").
2. CLIENT authorizes ETI to perform these SERVICES for the following project and location:

2005 NR 216 Stormwater Permit Compliance Tasks

3. ETI is willing to perform the SERVICES in exchange for the following fee (check and complete):

_____ CLIENT will pay on a **time and material** basis. ETI will invoice according to the Fee Schedule* attached to the PROPOSAL.

_____ CLIENT will pay a **lump sum** of \$ _____ ETI will invoice monthly on a percentage completed basis.

 X CLIENT will pay on a **time and material basis not to exceed** the sum of \$ 17,561. I will invoice according to the per diem rates in effect at the time the services are executed.

_____ CLIENT will pay a retainer in the amount of \$ _____, to be applied against the fee.

* ETI reserves the right to adjust its Fee Schedule annually.

4. **Billing:** ETI will submit invoices to CLIENT monthly. CLIENT recognizes that timely payment is a material part of this Agreement. Each invoice is due and payable within thirty (30) calendar days of the date of the invoice. CLIENT will pay an additional charge of one and one-half percent (1.5%) per month not to exceed the maximum rate allowed by law for any payment received by ETI more than thirty (30) calendar days from the date of the invoice. CLIENT will pay when due that portion of invoice, if any, not in dispute. If CLIENT fails to pay any undisputed invoiced amounts within thirty (30) calendar days of the date of the invoice, ETI may suspend its performance or terminate this Agreement without incurring any liability to CLIENT and without waiving any other claim against CLIENT.

5. Special Provisions : X NONE _____ ATTACHMENT

6. **CLIENT RECOGNIZES THAT THE PRESENCE OF HAZARDOUS MATERIALS OR POLLUTION ON OR BENEATH THE SURFACE OF A SITE MAY CREATE RISKS AND LIABILITIES. CONSULTANT HAS NEITHER CREATED NOR CONTRIBUTED TO THIS POLLUTION. CONSEQUENTLY, CLIENT RECOGNIZES THIS AGREEMENT WILL ACCORDINGLY LIMIT CONSULTANT'S LIABILITY.**

CLIENT confirms reading this document in full (including the terms 7 through 18 on the following page). This Agreement when executed by Earth Tech is an offer to perform the services, open for acceptance within 30 days. This Agreement becomes effective on the date CLIENT signs below.

CLIENT

ETI - EARTH TECH, INC.

By: Michael F. Pentner

By: Scott C. Solverson

Name: MICHAEL F. PENTNER

Name: Scott C. Solverson, P.E.

Title: DIRECTOR OF PUBLIC WORKS

Title: Milwaukee Division Manager

Date: Sept. 10, 2004

Date: July 28, 2004



7. Standard of Care: ETI will perform the Services in accordance with the standards of care and diligence normally practiced by consulting firms performing services of a similar nature in the same locale.

8. Indemnity / limitation of Liability: Subject to any limitations stated in this Agreement, ETI will indemnify and hold harmless CLIENT, its officers, directors, employees, and subcontractors, from and against all claims and actions, including reasonable attorneys fees, arising out of damages or injuries to persons or tangible property to the extent they are caused by a professionally negligent act, error, or omission of ETI or any of its agents, subcontractors, or employees in the performance of Services under this Agreement. ETI will not be responsible for any loss, damage, or liability arising from any contributing negligent acts by CLIENT, its subcontractors, agents, staff, or consultants. Neither party will be responsible to the other for consequential damages including, but not limited to, loss of profit, loss of investment or business interruption. The CLIENT also agrees to seek recourse only against ETI and not against its officers, employees, directors, or shareholders. *The CLIENT agrees to limit ETI's liability due to breach of contract, warranty or negligent acts, errors or omissions of ETI to \$50,000 or the fee paid to ETI under this Agreement, whichever is greater.*

9. Insurance: During the period that Services are performed under this Agreement, ETI will maintain the following insurance: (1) Workers' Compensation coverage in accordance with the laws of the states having jurisdiction over its employees engaged in the Services and Employer's Liability Insurance (limit of \$500,000 each occurrence.); (2) Commercial General Liability Policy with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate; (3) Commercial Automobile Liability with a limit of \$500,000 per occurrence and a \$1,000,000 aggregate; and (4) Professional Liability coverage with a \$500,000 limit on each claim and a \$1,000,000 aggregate. *Client agrees ETI will not be liable for any loss, damage, or liability arising out of this Agreement beyond the coverage and conditions of such insurance with limits as stated above.*

10. Hazardous Substances/Hazardous Waste: CLIENT represents that if CLIENT knows or has reason to suspect that hazardous substances or pollution may exist at the project site, CLIENT has fully informed ETI. In the event ETI encounters hazardous substances or contamination significantly beyond that originally represented by CLIENT, ETI may suspend its Services and enter into good faith renegotiation of this Agreement. CLIENT acknowledges that ETI has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site and CLIENT agrees to defend, indemnify, and hold harmless ETI, from any claim or liability, arising out of ETI's performance of work under this Agreement and made or brought against ETI for any actual or threatened environmental pollution or contamination except to the extent that ETI has negligently caused or contributed to any such pollution or contamination. This indemnification includes reasonable attorney fees and expenses incurred by ETI in defense of such claim.

11. Sample Ownership: All samples and cuttings of materials containing hazardous contaminants are the property and responsibility of CLIENT. Removal of cuttings from the project site will remain the obligation of CLIENT. Absent direction from CLIENT, ETI may return all contaminated samples and laboratory byproducts to the CLIENT for proper disposal or treatment.

12. Buried Utilities: In those situations where ETI performs subsurface exploration, CLIENT, to the extent of its knowledge, will furnish to ETI information identifying the type and location of utilities and other man-made objects beneath the surface of the project site. ETI will take reasonable precautions to avoid damaging these utilities or objects. Prior to penetrating the site's surface, ETI will furnish CLIENT a plan indicating the locations intended for penetration. CLIENT will approve the location of these penetrations and authorize ETI to proceed.

13. Documents and Records: CLIENT acknowledges that ETI's reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other similar documents ("Records") are instruments of professional service, not products. All data ETI prepares for CLIENT under this Agreement will remain the property of ETI. CLIENT will not use any ETI data or report for any purpose other than its original purpose as defined in the PROPOSAL. CLIENT has no rights to incomplete or partial data. ETI will retain these Records for a period of three (3) years following completion of this project. During this time, ETI will reasonably make available the records to the CLIENT. ETI may charge a reasonable fee in addition to its professional fees for retrieving or copying such records.

14. Change Orders: ETI will treat as a change order any written or oral order (including directions, instructions, interpretations or determinations) from CLIENT which request changes in the Services. ETI will give CLIENT notice within ten (10) days of the change order of any resulting increase in fee. Unless Client objects in writing within five (5) days, the change order becomes a part of this Agreement.

15. Third-Party Rights: Except as specifically stated in this Agreement, this Agreement does not create any rights or benefits to parties other than CLIENT and ETI.

16. Assignment/ Status: The CLIENT will not delegate, assign, sublet, or transfer any interest in this Agreement without the written consent of ETI. ETI is an independent consultant and not the agent or employee of CLIENT.

17. Termination: Either party may terminate the Services with or without cause upon ten (10) days advance written notice. If Client terminates without cause, CLIENT will pay ETI costs incurred, noncancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors.

18 Complete Agreement: The Parties acknowledge this Agreement, including the Proposal and any Attachments constitute the entire Agreement between them. Unless stated otherwise in this Agreement, this Agreement may not be modified except in a writing signed by both parties. The parties agree that Wisconsin law governs this Agreement and any dispute involving the Agreement.



APPENDIX A

*Scope of Services
City of West Allis
2005 NR 216 Permit Compliance Tasks
June 17, 2004*

Task 1: Update Existing Stormwater Ordinance

The stormwater management ordinance for the City may require updating to conform to new Wisconsin Department of Natural Resources (WDNR) NR 151 requirements (section B.1) and the new Milwaukee Metropolitan Sewerage District (MMSD) Chapter 13 requirements. Language addressing illicit discharges should also be included in the City's legal authority. Earth Tech will prepare a recommended storm water ordinance incorporating requirements of the WDNR's NR 152, MMSD's Chapter 13 and illicit discharge language for inclusion into the City's regulations. Earth Tech will meet with the City up to two times and revise language to craft an ordinance that will comply with these new requirements.

Task 2: Retrofit Feasibility Evaluations

Earth Tech will evaluate the three existing structural flood control devices to examine the possibility of retrofitting existing dry ponds into wet ponds in an attempt to increase the water quality benefits as required in section E.5.d of the City's permit. Earth Tech will conduct on site visit of the three (3) existing dry ponds and, with the assistance of the City, gather existing plans, topographic maps, soils data, and aerial photographs to make an assessment of the retrofit possibilities. Land usage, ownership, drainage and pond areas, and groundwater data for the identified dry ponds will be reviewed to determine the water quality benefits to be gained. Upon completion of the dry pond evaluation, all data will be compiled, reviewed and summarized for inclusion in the City's annual report.

Task 3: Riparian Management Development Schedule

Earth Tech will assist the City in identifying river or stream segments to be evaluated in this program. Parcel information, topographic maps, GIS data and aerial photographs will be gathered and used to identify and map existing riparian areas. A list of possible affected landowners would be generated to target for informational mailing. A letter report with landowner list will be submitted to the City. If necessary, one meeting with the City and the WDNR will be scheduled to discuss the report. The final letter report would be prepared for inclusion in the annual report to the WDNR.

Task 4: Illicit Discharge Program Proposal

An Illicit Connection/Dry Weather Field Screening Program will be developed that will meet the requirements of the City's NR 216 permit (section E.6.a). With the City's input, monitoring locations will be identified. Required parameters to be analyzed, sampling equipment, sampling procedures and protocols, and associated costs will be included in the proposal to be submitted in the annual report.

Task 5: Industrial/High Risk Program Proposal

Develop an Industrial/High Risk Monitoring Program based on the storm sewer map, provided to the WDNR as part of the City's NR 216 application (section E.7.a), input from the City staff and other data sources available. The program will focus on procedures to monitor areas that are potential pollutant sources to the City's storm sewer system. A list of the City's industrial sites to be monitored and a checklist for conducting field inspections will be included in this proposal, which will be submitted in the annual report.

2005 NR 216 Permit Compliance Costs

Task Description		Total Costs
1.	Update Stormwater Ordinance (up to two meetings with City)	\$4,741
2.	Riparian Management Development Schedule (one meeting with City)	\$2,138
3.	Retrofit Feasibility Evaluations (one meeting with City)	\$3,911
4.	Illicit Discharge Program Proposal (one meeting with City)	\$3,854
5.	Industrial/High Risk Program Proposal (one meeting with City)	\$2,918
Total		\$17,561