

03.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2007-0013 Resolution In Committee

Resolution relative to accepting the proposal of Ayres Associates Inc. for methane and groundwater sampling at the Lincoln Avenue landfill site for an estimated sum of \$9,600.00.

Introduced: 1/16/2007

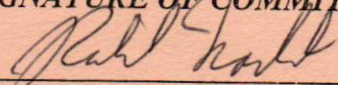
Controlling Body: Public Works Committee

Sponsor(s): Public Works Committee

COMMITTEE RECOMMENDATION **ADOPT**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
			Barczak				
			Czaplewski				
		✓	Dobrowski	✓			
<u>1-16-07</u>			Kopplin	✓			
			Lajsic				
			Narlock	✓			
			Reinke				
			Sengstock	✓			
	✓		Vitale	✓			
			Weigel				
			TOTAL	5			

SIGNATURE OF COMMITTEE MEMBER



 Chair Vice-Chair Member

COMMON COUNCIL ACTION **ADOPT**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
			Barczak	✓			
			Czaplewski	✓			
		✓	Dobrowski	✓			
<u>JAN 16 2007</u>			Kopplin	✓			
			Lajsic	✓			
	✓		Narlock	✓			
			Reinke	✓			
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
			TOTAL	10			



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2007-0013

Final Action:

Sponsor(s): Public Works Committee

JAN 16 2007

Resolution relative to accepting the proposal of Ayres Associates Inc. for methane and groundwater sampling at the Lincoln Avenue landfill site for an estimated sum of \$9,600.00.

WHEREAS, in 1994, the Wisconsin DNR approved a closure plan for the former landfill site at 113th 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, Ayres Associates Inc. has provided these services in a cost efficient and effective manner for the previous five years and has proposed to provide the services necessary to monitor this site in 2007, as outlined in their proposal, for an estimated project fee of \$9,600.00; and,

WHEREAS, the Director of Public Works has previously 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 Ayres Associates Inc. with this project.

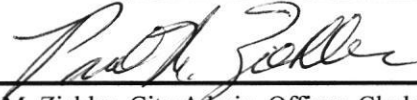
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of West Allis that the proposal dated December 28, 2006 submitted by Ayres Associates Inc. for methane gas and groundwater sampling at the Lincoln Avenue landfill for the total net sum of \$9,600.00 be and is hereby accepted.

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

ayres-lincoln landfill

ADOPTED

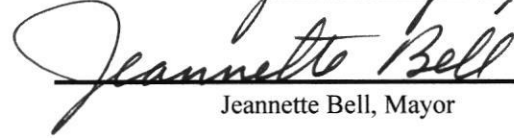
JAN 16 2007



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

APPROVED

January 18, 2007



Jeannette Bell, Mayor



December 28, 2006

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 Mike:

Thank you for the opportunity to submit this proposal for professional services associated with the sampling of the groundwater and methane gas, and the evaluation of data obtained from the City of West Allis Landfill, for the 2007 calendar year. This letter presents our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

The City of West Allis is required by the Wisconsin Department of Natural Resources (WDNR) to monitor the groundwater and methane gas at the above-referenced closed landfill site.

Scope of Services

We will conduct semi-annual sampling of the ten groundwater monitoring wells in accordance with conditions stated in the WDNR's "Conditional Closure Plan Modification Approval" letter dated June 16, 2004, following the sampling protocols stated in Conditions # 1 through 3 of the letter.

The field data collected and laboratory reports will be submitted to WDNR (Southeast District) project hydrogeologist electronically after each groundwater sampling event.

We will sample the eight perimeter methane gas monitoring wells once per year in accordance with the WDNR Conditional Closure Plan Modification dated March 26, 2003. Data collected from the wells will include: 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 is also to be recorded.

The data collected during sampling of the methane gas is to be submitted to the WDNR (Southeast District) Solid Waste Engineer.

Responsibilities of Owner and Others

The Owner is responsible for providing access to the site.

Time Schedule

Both the groundwater and methane gas wells will be sampled in March. The groundwater wells will again be sampled in September.

Fee

We will perform the above services for an amount based on a standard hourly rate for each class of employee, plus reimbursable expenses and subconsultant charges. The estimated cost of services is \$9,600. We will not exceed this amount without your prior approval. The Reimbursable Expenses Schedule and Standard Hourly Rates Schedule are attached as Appendices 1 and 2, respectively.

Contract Terms and Conditions

Attached are "Contract Terms and Conditions" which will apply to the services and which are incorporated into this proposal by reference.

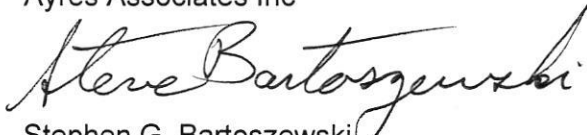
Acceptance

If this proposal and terms and conditions are acceptable to you, a signature on the enclosed copy of this letter will serve as our authorization to proceed.

Proposed by Consultant:

Accepted by Owner:

Ayres Associates Inc



Stephen G. Bartoszewski
Project Manager

Owner's Name

Signature



Fred J. Klingbeil
Vice President – Engineering Services

Name

Title

Date

Attachments: Contract Terms and Conditions
Attachment E

**AYRES ASSOCIATES
CONTRACT TERMS AND CONDITIONS**

1. Performance of Services: Consultant shall perform the services outlined in its proposal to Owner in consideration of the stated fee and payment terms.

2. Billing and Payment: Invoices for Consultant's services shall be submitted to Owner on a monthly basis. Invoices shall be due and payable within 30 days from date of invoice. If any invoice is not paid within 30 days, Consultant may, without waiving any claim or right against Owner, and without liability whatsoever to Owner, suspend or terminate the performance of services. Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the unpaid balance. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to Consultant's compensation. No deductions or offsets shall be made from Consultant's compensation or expenses on account of any setoffs or back charges.

3. Access to Site: Owner shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

4. Location of Utilities: Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information or instructions which have been furnished to Consultant by others.

5. Hazardous Materials: In the event that unanticipated potentially hazardous materials are encountered during the course of the project, Owner agrees to negotiate a revision to the scope of services, time schedule, fee, and contract terms and conditions. If a mutually satisfactory agreement cannot be reached between both parties, the contract shall be terminated and Owner agrees to pay Consultant for all services rendered, including reasonable termination expenses.

6. Insurance: Consultant shall maintain Workers' Compensation, General Liability, and Automobile Liability Insurance during its services for Owner. Consultant shall furnish a Certificate of Insurance to Owner upon written request. Owner agrees that Consultant shall not be liable or responsible to Owner for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

7. Limitation of Professional Liability: Owner agrees to limit Consultant's professional liability to an amount of \$50,000 or Consultant's fee, whichever is greater. In the event that Owner does not wish to limit Consultant's professional liability to this sum, Consultant agrees to raise the limitation of liability to a sum not to exceed \$1,000,000 for increased consideration of ten percent (10%) of the total fee or \$500, whichever is greater, upon receiving Owner's written request prior to the start of Consultant's services.

8. Opinions of Probable Costs: Consultant's opinions of probable project costs are made on the basis of Consultant's experience, qualifications and judgment; but Consultant cannot and does not guarantee that actual project costs will not vary from opinions of probable cost.

9. Construction Review: Consultant does not accept responsibility for the design of a construction project unless the Consultant's contract includes review of the contractor's shop drawings, product data, and other documents, and includes site visits during construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents.

10. Construction Observation: On request, Consultant shall provide personnel to observe construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents. This construction observation shall not make Consultant a guarantor of the contractor's work. The contractor shall continue to be responsible for the accuracy and adequacy of all construction performed. In accordance with generally accepted practice, the contractor will be solely responsible for the methods of construction, direction of personnel, control of machinery, and falsework, scaffolding, and other temporary construction aids. In addition, all matters related to safety in, on, or about the construction site shall be under the direction and control of the contractor and Consultant shall have no responsibility in that regard. Consultant shall not be required to verify any part of the work performed unless measurements, readings, and observations of that part of the construction are made by Consultant's personnel.

11. Standard of Performance: The standard of care for all professional services performed or furnished by Consultant under this contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant does not make any warranty or guarantee, expressed or implied, nor is this contract subject to the provisions of any uniform commercial code. Similarly, Consultant will not accept those terms and conditions offered by Owner in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

12. Ownership of Documents: All documents produced by Consultant under this contract are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Owner for any other purpose without the prior written consent of Consultant.

13. Electronic Files: Owner and Consultant agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this contract is executed. Electronic files furnished by either party shall be subject to an acceptance period of 60 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the hard-copy documents prepared by Consultant and electronic files, the hard-copy documents shall govern.

14. Termination of Services: This contract may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, Owner shall pay Consultant for all services rendered to the date of termination, all reimbursable expenses incurred prior to termination, and reasonable termination expenses incurred as the result of termination.

15. Controlling Law: This contract is to be governed by the law of the place of business of Consultant at the address in its proposal to Owner.

16. Assignment of Rights: Neither Owner nor Consultant shall assign, sublet or transfer any rights under or interest in this contract (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this contract. Nothing contained in this paragraph shall prevent Consultant from employing such independent subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

17. Third Party Benefits: This contract does not create any benefits for any third party.

18. Dispute Resolution: 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 following dispute resolution provision. 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 contract 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 contract prior to exercising other rights under law.

19. Exclusion of Special, Indirect, Consequential, and Liquidated Damages: Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

20. Amendments: This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

ATTACHMENT E - TERMS AND CONDITIONS FOR SERVICES INVOLVING HAZARDOUS SUBSTANCES

December 28, 2006

Initials:
OWNER _____
CONSULTANT *JS*

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.