



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2007-0092

Final Action:

APR 03 2007

Resolution authorizing the Director of Public Works to accept the proposal of Earth Tech to provide consulting services relative to the NR216 Permit compliance requirements for 2007 for a sum not to exceed \$47,752.

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 has continued to provide professional services relative to the City's Stormwater Utility and WPDES permit requirements for 2005 and 2006; and,

WHEREAS, Earth Tech, in the agreement attached hereto, has proposed to develop technical reports and implement monitoring programs required of the WPDES Permit for 2007; and,

WHEREAS, given Earth Tech's comprehensive knowledge of and continued involvement with the City of West Allis storm sewer system, the Director of Public Works has previously provided documentation to the Purchasing/Central Services Division that the work similar to that 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 it accepts the proposal attached hereto, submitted by Earth Tech, Inc. for providing consulting services relative to compliance with the WDNR WPDES Stormwater permit for West Allis, for a sum not to exceed \$47,752, the funding of such services 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.

earth tech-nr216.res

APR 03 2007

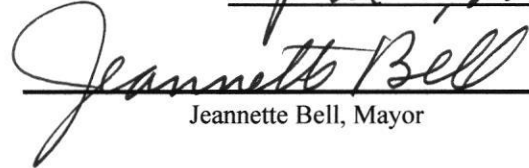
ADOPTED



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

APPROVED

April 5, 2007



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 The City of West Allis ("CLIENT"), with offices at 6300 W. McGeoch Avenue, West Allis, WI 53219.

- 1. ETI agrees to perform the services described in its PROPOSAL dated: March 16, 2007, including attachments and amendments ("SERVICES").
- 2. CLIENT authorizes ETI to perform these SERVICES for the following project and location:

West Allis 2007 NR 216 Compliance

- 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.

CLIENT will pay on a **time and material basis not to exceed** the sum of \$ 47,752. ETI 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: 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 City of West Allis

ETI - EARTH TECH, INC.

By: Michael J Ferris

By: Scott C. Solverson

Name: MICHAEL FERRIS

Name: Scott C. Solverson, P.E.

Title: DIRECTOR OF PUBLIC WORKS

Title: Vice President

Date: APRIL 4, 2007

Date: February 23, 2007



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

2007 NR 216 Storm Water Compliance
for the City of West Allis
March 16, 2007

Project Background

The City of West Allis is in its third year of its second WPDES municipal storm water discharge permit. This permit authorizes and regulates the discharge of storm water from the City's municipal separate storm sewer systems to waters of the state. This permit requires the City of West Allis to be responsible for the following tasks, which are to be conducted and/or submitted to the Wisconsin Department of Natural Resources. Earth Tech will conduct these compliance items listed in this scope for submittal with the City's annual report due to the WDNR by March 31, 2008.

1.0 Illicit Discharge (Dry Weather) Monitoring

In general, the project will be conducted in accordance with the Illicit Connections/Dry Weather Field Screening Proposal submitted to the WDNR in March 2005.

1.1 Field Screening

In spring, summer, and/or fall of 2007 conduct a screening of all 28 major outfalls. Where flow is observed, provide additional information on the Chemical Testing Form including chemical testing on grab samples using portable test kits.

1.2 Memo/Meetings

Meet with the City up to two times, to review the results of each round of field screening. Outfalls where flow was observed and chemical testing indicates potential discharges will be focused on. The decision to conduct any follow-up illicit discharge investigations will be based on the results of that meeting and if necessary, after consultation with the WDNR. Results will be summarized in a format acceptable for inclusion in the City's annual NR 216 report due March 31, 2008.

1.3 Illicit Discharge Investigation (as needed/authorized)

Based on the results of the outfall field screening, if an illicit discharge is suspected, the source of that discharge will be investigated as outlined in Section 4.4 of the Submittal. Efforts to provide follow-up services for wet outfalls to investigate potential illicit discharges will be provided on a time and materials basis since the number of illicit discharges that may be identified is unknown as is the level of effort necessary to locate them. The level of effort will be estimated as necessary based on results/discussion with the City and will be only initiated as authorized by the City.



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2.0 SLAMM Alternative Analysis and Recommendations

Earth Tech will estimate the annual nonpoint source pollution loadings for all major storm sewer outfalls and the cumulative discharge of all known municipal separate storm sewer outfalls using the WDNR SLAMM model (version 9.2). The permit required annual estimated loadings for the following parameters:

SLAMM POLLUTANT LOADINGS CALCULATIONS

Per Section C.(3) Table A

Total Suspended Solids	Total Copper
Total Dissolved Solids	Total Lead
Total Phosphorus	Total Zinc
Dissolved Phosphorus	Ammonia Nitrogen*
Total Kjeldahl Nitrogen	Nitrate + Nitrite Nitrogen*
COD	BOD ₅ *

* NOTE: Those parameters with an asterisk indicate that WinSLAMM does not maintain a database for those pollutants and cannot report estimates at this time. The WDNR understands these limitations of WinSLAMM and will accept results that do not include these parameters.

2.1 Gather Geographic Information

Recompile land use, basin, and best management practices (BMP) information and organize with existing geographic information generated from 2006 investigation and update the data to reflect current conditions.

2.2 Develop Geographic Information

Standardize coding of geographic information to that used in the SLAMM model. Conduct spatial analysis of geographic information using ARCINFO to merge coverages. Review coding of merged files and correct codings that are not recognized by SLAMM 9.2.

2.3 Develop Data Files

Input the updated geographic information into the SLAMM data files for each of the major outfalls. SLAMM data files will be developed for both base conditions and with all existing applicable BMPs.

2.4 Run SLAMM

Estimate annual loadings of nonpoint source pollutants using the WDNR SLAMM model (version 9.2). The model will be run two conditions:

1. Base Conditions with not pollution controls, and
2. Existing Conditions with existing street sweeping and other house keeping controls.



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with drainage controls sufficient to achieve the 2007 20 percent Total Suspended Solid [TSS] reduction. SLAMM pollutant results will be developed for all permit required pollutants that are modeled.

2.5 Estimating Structural Best Management Practices (BMP) Load Reductions

The reduction in nonpoint source pollutant loadings for each of the known City and private water quality BMPs will be estimated. This analysis will include at a minimum the City's Allis Chalmers detention pond and the six redevelopment projects that were approved since 2005. The estimated reduction in pollutant loads from these facilities will be subtracted from the estimates of the existing conditions as additional credit toward the City's required 20 percent reduction.

Should it be shown that the City does not achieve the required 20 percent reduction, "critical" drainage basins (that are the highest sources of nonpoint source pollution) will be targeted for additional structural and non-structural BMPs. The outcome of the modeling exercises will be used to demonstrate the feasibility of implementing additional BMPs to achieve the 20 percent reduction target.

2.6 Cost Estimates and Schedules

Cost estimates and a proposed implementation schedule will be developed in conjunction with the recommendation of any additional stormwater BMPs. Cost comparisons will be prepared to illustrate practices yielding the greatest rate of protection and/or treatment. This will assist in determining the feasibility and the practicability of the recommended alternatives.

2.7 Summarize Data

Compile annual loadings by major sewer system outfall and a cumulative discharge of all known outfalls as required by NR 216 into appropriate tabular format. Prepare memorandum summarizing results, methodology and a brief discussion of the modeling process.

2.8 Review Results

Meet with the City to discuss results. Incorporate comments and include in a final memo to the City for inclusion in the City's Annual Report due March 31, 2008.

3.0 Wet Weather Monitoring

The City of West Allis NR 216 Stormwater Discharge Permit (Part D.1) requires the City to monitor representative outfalls to characterize the quality of storm water discharges from the municipal separate storm sewer system. In an agreement between WDNR and the City the permit requirements were modified to include the following tasks, which Earth Tech will perform in behalf of the City of West Allis in support of on going sampling efforts by the MMSD in and around State Fair Park. It is assumed that Earth Tech will collect the samples referenced here and the MMSD will conduct all laboratory analyzes.

3.1 Coordinate Monitoring in and Around the State Fair Park

3.1.1 Review proposed sampling locations with MMSD regarding how to obtain access to sampling sites and review of proper safety procedures.

- 3.1.2 Earth Tech will serve as a single point of contact for MMSD crews when sampling is to occur. The Earth Tech will then be responsible for notifying the appropriate individuals at State Fair Park and the City of the MMSD's activity.
- 3.1.3 Earth Tech will track and coordinate the selection of sampling events with the MMSD crews and report progress back to the City and State Fair Park.
- 3.1.4 Earth Tech will coordinate two meetings between the City, State Fair Park and the MMSD relative to (1) interpretation of finds and results, and (2) develop recommendations for future follow-up sampling, investigations (smoke testing, dye water testing) or corrective actions.
- 3.1.5 Earth Tech will prepare a memorandum summarizing the results of the samples taken in the City of West Allis and State Fair Park. The memorandum will include the conclusion of the participants in the two meetings as to the interpretation of the analytical results and the recommended next course of action.

3.2 Background Sampling of Honey Creek

Earth Tech will collect three in-stream samples in Honey Creek where it enters the City of West Allis at 76th Street where Honey Creek enters the city. The three events will be coordinated with the timing of the samples taken at State Fair Park by the MMSD. Earth Tech will turn samples over to the MMSD who will provide laboratory services to analyze the samples for the same parameters that are being analyzed for at State Fair Park.

COST ESTIMATE:

Task	NR 216 Stormwater Permit Compliance Requirements	Cost
1.1-1.2	Illicit Discharge (Dry Weather) Monitoring	\$16,256
1.3	Illicit Discharge Follow-up (as needed/authorized)	T&M as Authorized
2.1-2.8	SLAMM Alternative Analysis and Recommendations	\$21,928
3.1-3.2	Wet Weather Monitoring	\$9,568
	Total	\$47,752

ASSUMPTIONS:

The City shall furnish Earth Tech all information, which Earth Tech may rely upon without independent verification in performing the Services. Much of this information may already be available from reports generated by Earth Tech with the City.



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