

18.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2011-0065 Resolution Introduced

Resolution extending the professional services contract with AECOM(formally Earth Tech) to provide consulting services relative to stormwater plan reviews in compliance with DNRs NR151 & NR216 and MMSD's Chapter 13 rules for a sum not to exceed \$10,000.

Introduced: 3/15/2011

Controlling Body: Public Works Committee

Sponsor(s): Public Works Committee

COMMITTEE RECOMMENDATION

Adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>3/15/2011</u>		<input checked="" type="checkbox"/>	Barczak	✓ PW			
			Czaplewski	✓ PW			
		<input checked="" type="checkbox"/>	Kopplin				AF ✓
			Lajsic	A+F ✓			
			Narlock	A+F ✓			
		<input checked="" type="checkbox"/>	Reinke	A+F ✓			
			Roadt	✓ PW			
		<input checked="" type="checkbox"/>	Sengstock	✓ PW			
			Vitale	A+F ✓			
			Weigel	✓ PW			
		TOTAL		PW 5 / 4 ^{A+F}	0 0		A+F 1 / PW-0

SIGNATURE OF COMMITTEE MEMBER

Henry Barczak *Vincent Vitale*
 Chair Vice-Chair Member

COMMON COUNCIL ACTION *adopt*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>3-15-11</u>		<input checked="" type="checkbox"/>	Barczak	✓			
			Czaplewski	✓			
			Kopplin	✓			✓
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt	✓			
		<input checked="" type="checkbox"/>	Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
		TOTAL		9	1		1



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2011-0065

Final Action:

Sponsor(s): Public Works Committee

MAR 15 2011

Resolution extending the professional services contract with AECOM (formally Earth Tech) to provide consulting services relative to stormwater plan reviews in compliance with DNR NR151 & NR216 and MMSD's Chapter 13 rules for a sum not to exceed \$10,000.


WHEREAS, in 2004, the Department of Natural Resources (DNR) issued a Stormwater Permit to the City of West Allis; and,

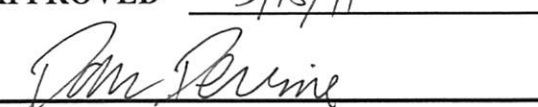
WHEREAS, AECOM, has provided consulting services to the Engineering Department for reviewing storm water management plan submittals and annual inspections required under the City's ordinance; and,

WHEREAS, given AECOM's comprehensive knowledge of and involvement with the City of West Allis storm sewer system and past work with staff members on review of these storm water management plans, 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 February 17, 2011 for consulting services for 2011 submitted by AECOM relative to compliance with the DNR's Stormwater permit and MMSD's Chapter 13 rules for West Allis for a total sum not to exceed \$10,000 be approved, the funding of which shall be paid by the City's Stormwater Utility through appropriate fees or City funds.

BE IT FURTHER RESOLVED that the City Engineer 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 MAR 15 2011

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

APPROVED 3/18/11

Dan Devine, Mayor

7. **Standard of Care:** ATS 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, ATS 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 ATS or any of its agents, subcontractors, or employees in the performance of Services under this Agreement. ATS 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 ATS and not against its officers, employees, directors, or shareholders. Each party agrees to limit the other party's liability due to breach of contract, warranty or negligent acts, errors or omissions of ATS to \$50,000 or the fee paid to ATS under this Agreement, whichever is greater.
9. **Insurance:** During the period that Services are performed under this Agreement, ATS 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 ATS 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 ATS. In the event ATS encounters hazardous substances or contamination significantly beyond that originally represented by CLIENT, ATS may suspend its Services and enter into good faith renegotiation of this Agreement. CLIENT acknowledges that ATS 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 ATS, from any claim or liability, arising out of ATS's performance of work under this Agreement and made or brought against ATS for any actual or threatened environmental pollution or contamination except to the extent that ATS has negligently caused or contributed to any such pollution or contamination. This indemnification includes reasonable attorney fees and expenses incurred by ATS 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, ATS may return all contaminated samples and laboratory byproducts to the CLIENT for proper disposal or treatment.
12. **Buried Utilities:** In those situations where ATS performs subsurface exploration, CLIENT, to the extent of its knowledge, will furnish to ATS information identifying the type and location of utilities and other man-made objects beneath the surface of the project site. ATS will take reasonable precautions to avoid damaging these utilities or objects. Prior to penetrating the site's surface, ATS will furnish CLIENT a plan indicating the locations intended for penetration. CLIENT will approve the location of these penetrations and authorize ATS to proceed.
13. **Documents and Records:** CLIENT acknowledges that ATS'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 ATS prepares for CLIENT under this Agreement will remain the property of ATS. CLIENT will not use any ATS 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. ATS will retain these Records for a period of three (3) years following completion of this project. During this time, ATS will reasonably make available the records to the CLIENT. ATS may charge a reasonable fee in addition to its professional fees for retrieving or copying such records.
14. **Change Orders:** ATS 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. ATS 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 ATS.
16. **Assignment/Status:** The CLIENT will not delegate, assign, sublet, or transfer any interest in this Agreement without the written consent of ATS. ATS 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 ATS 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. Venue for any litigation arising from this Agreement shall be in the Milwaukee County, Wisconsin Circuit Court of the U.S. District Court for the Eastern District of Wisconsin.

APPENDIX A

PROPOSAL Scope of Services February 17, 2011

- 1. Storm Water Management Plan Reviews.** ATS will review the stormwater management (SWM) plans submitted in compliance with the requirements of the City of West Allis's stormwater ordinance. ATS will prepare a letter of recommendation to city staff as to whether the SWM plans meet the ordinance requirements. The letter will describe deficiencies, if any, or recommend approval of the submittal. For approved permit applications, ATS will also complete the permit application form, to the extent information is available, and stamp the plans, indicating ATS's acceptance that the proposed improvements are in compliance with the City of West Allis's stormwater ordinance.
- 2. Storm Water Management Facility Inspections.** ATS will conduct final inspections and review of as-built drawings prepared by the permit applicant of all stormwater management practices prior to final approval by the Client. Client will schedule these inspections, based on their periodic inspections during construction, and provide ATS with a minimum of 72 hour notice prior to the required final inspection.
- 3. Routine Inspection:** ATS will conduct inspections of stormwater facilities as may be required or as directed by the Client to ascertain that the practices are being maintained and operated in accordance with the maintenance agreement.
- 4. Other Services:** ATS will conduct other engineering services as may be directed by the Client.
- 5. Progress Meetings:** ATS will meet with City staff as required to review the progress of permit applications, facility inspections or other issues.

APPENDIX B

PROPOSAL Compensation February 11, 2011

ATS will be compensated for professional services on a time and material basis not to exceed the sum of \$10,000. ATS will invoice by task number, with one task number being assigned to each individual plan review or work assignment issued by the Client.

ATS will bill the CLIENT not more often than monthly, with net payment due in 30 days. Past due invoices will be subject to a service charge at the rate of 1 ½ percent per month. The monthly bill shall consist of a summary of direct labor hours by ATS standard classifications, plus a listing of reimbursable costs incurred. Unless CLIENT provides ATS with a written statement of any objections to the bill within 15 days of receipt, CLIENT shall be deemed to accept the bill as submitted.

CLIENT will be charged for time actually spent on the project. All timesheets are available for inspection at any reasonable time.

Non-project stenographic, general clerical and accounting work, general office expense, and general administrative costs are included in overhead. These costs are not billed separately.

Normal and reasonable time for contract negotiations are also covered in overhead; however, extended contract negotiations or time spent resolving differences in terms and conditions, scopes of work, or change notices will be billed at our project rates.

**PREFERRED CUSTOMER REIMBURSABLE
SCHEDULE 2011**

In addition to regular hourly billing rates listed above, CLIENT will also pay for the following, included in our lump sum time and materials allowance:

- A. Overtime at straight time rates for exempt employees to the extent an employee works more than 40 hours per week for CLIENT.
- B. Cost plus 10 percent of direct expenses.
- C. A \$3.00 per hour charge for the use of computer services in design, project control reporting, cost control reporting and other services.
- D. All reproductions on behalf of the assignment at our standard rates.
- E. Cost for the use of field equipment, safety equipment, and field sampling equipment in accordance with the Equipment Fee Schedule.
- F. Travel and subsistence of ATS personnel incurred on behalf of the project. (Current rate for the use of personal cars is 51.5 cents per mile and is subject to semiannual revision.)
- G. Courier service.
- H. Cost plus 15 percent of outside consulting and/or professional services - such as, analytical, drilling, legal, accounting, engineering, and other specialized services. ATS will obtain CLIENT's approval before authorizing such services.
- K. Pay for expert witness testimony equal to 1 and 1/2 times their hourly billing rate.

