

CONSULTING AGREEMENT AND AUTHORIZATION TO PROCEED

This Agreement between AECOM Technical Services, Inc., a California corporation, ("ATS") with offices at 1020 N. Broadway, Suite 400, Milwaukee, Wisconsin 53202, and the City of West Allis ("CLIENT"), with City Hall at 7525 West Greenfield Avenue, West Allis, Wisconsin.

- 1. ATS agrees to perform the services described in its PROPOSAL dated: February 16, 2012, including attachments and amendments ("SERVICES").
- 2. CLIENT authorizes ATS to perform these SERVICES for the following project and location:

**City of West Allis
2012 NR 216 Stormwater Permit Compliance**

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

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

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

X CLIENT will pay on a **time and material basis not to exceed** the sum of \$ 20,880.00. ATS will invoice according to the per diem rates in effect at the time the services are executed. Upon reaching the foregoing not to exceed limit, ATS will stop performing unless CLIENT authorizes further work in writing.

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

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

4. **Billing:** ATS 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 ATS 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, ATS 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 ATS 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

By: *Dan Darine*
Name: Dan Darine
Title: Mayor
Date: 2/24/12

ATS – AECOM Technical Services, Inc.

By: *Patrick Clifford*
Name: Patrick Clifford, P.E.
Title: Vice President
Date: 2/17/2012



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 SCOPE OF SERVICES

**2012 NR 216 Storm Water Compliance
City of West Allis
February 16, 2012**

Project Background

The City of West Allis is in its fourth year of its third 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 and 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 (WDNR). ATS is prepared to assist the City of West Allis with meeting the required permit items in this scope for submittal with the City's annual report due to the WDNR by March 31, 2013.

As part of our 2011 NR216 Project, ATS recommended the elimination of testing requirements for an additional 2 outfalls, HO-11 and UW-24. This being the fourth year of the new permit and these outfalls being historically dry or without concentrations exceeding expected ranges during the previous (5) years, ATS believes that this reduction in effort is warranted and best utilizes the City's resources to investigate known active outfalls.

However, outfalls W-03B and W-03D have historically had high concentrations of detergents and/or discolorations, odor or turbidity concerns. AECOM conducted a detailed investigation of this area in 2011 and determined that the source of the detergents was the parking structure on the southwest side of the pond. AECOM proposes to work with the City of West Allis and the owner of the parking structure to isolate and remove the elevated concentrations of detergents from the storm sewer system and downstream pond.

1.0 Illicit Discharge Detection and Elimination (IDDE) Screening

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 IDDE Field Screening

In spring, summer, and/or fall of 2012 conduct a screening of 23 City of West Allis major outfalls. Where flow is observed, provide additional information on the Chemical Testing Form including chemical testing on grab samples using CHEMetrics portable test kits as utilized in the past. Testing parameters include pH, detergents, chlorine, phenols and copper. ATS will conduct follow-up investigations, if warranted, as described in the following section.

1.2 IDDE Follow-up Investigations

If one of the aforementioned test parameters exceeds a specific threshold, follow-up investigations will be conducted in upstream areas in an attempt to isolate the potential source of the pollutant(s). The thresholds that will be used are as follows:

- A. pH < 6.0 or pH > 9.0
- B. Detergents >0.50 mg/L



- C. Chlorine > 1.0 mg/L
- D. Phenols > 0.0 mg/L
- E. Copper > 0.1 mg/L

ATS has included ten (10) additional site investigations in our scope of services for confirmation or dispute of test results. The use of these additional site investigations will be authorized by the City of West Allis prior to completion.

1.2.1 Supplemental IDDE Testing

If additional alternate field test parameters appear to have the potential to better define the potential source(s), this will be suggested to the City and would be conducted as authorized based on the Alternate Field Testing as described. ATS will receive immediate authorization from the City of West Allis, by phone call, to conduct this investigation compliant with WDNR philosophy.

ATS also has the capabilities to sample the supplemental IDDE parameters of ammonia, potassium and fluoride. These additional parameters provide chemical screening tools to identify whether the flow is potentially contaminated with wastewater or if the source is tap water or a natural water source. ATS has provided an estimated cost to conduct this additional testing on a per-site basis, not included in our Scope of Services. Current NR 216 regulations do not require the additional testing parameters, but these additional tests can better characterize the potential pollutant(s) and contribution to identified impairment(s) of the receiving water body. ATS will inform the City of West Allis if additional alternate field screening appears to be a benefit to understanding pollutant sources (on a site by site basis) and will only proceed if authorized by the City. ATS would receive immediate authorization from the City of West Allis to conduct this investigation, compliant with WDNR philosophy.

1.3 Report/Meeting

Meet with the City once to review the results of field screening. Outfalls where flow was observed and chemical testing indicated potential discharges and required follow-up investigation will be the focus of the meeting. The decision to conduct any additional follow-up illicit discharge investigations will be based on the findings to date, the results of the meeting and, if necessary, after consultation with the WDNR. Results will be summarized in a report acceptable for inclusion in the City's annual NR 216 report due to the WDNR March 31, 2012.

2.0 Annual Report Assistance

ATS will assist the City of West Allis in the following aspects of the Annual NR 216 Report to WDNR:

2.1 Annual Report Item 3g

ATS will assist with providing input and information regarding pollutant loading removal rates and the status of meeting performance standards. ATS will not provide an updated SLAMM Analysis as part of this work, but will include verbiage about continued redevelopment efforts within the City that address TSS removal.



2.2 Annual Report Item 8

ATS will provide a summary of control measures implemented to reduce any pollutants of concern. This item includes public and private projects to reduce peak flow rates and TSS loading levels in municipal storm sewers. ATS will summarize private stormwater permit applications received in 2012 and will look to the City of West Allis to provide information on any public projects constructed.

3.0 W-03B and W-03D Parking Structure Assistance

ATS has included a \$3,000 allowance for assisting the City of West Allis and the owner of the Parking Structure to modify their standard operating procedures to reduce or eliminate the detergent concentrations from entering the storm sewer system and the downstream pond.

ASSUMPTIONS:

1. The City of West Allis will provide ATS with any record drawings of public works projects constructed in 2012 to aid in the reduction of peak stormwater flow rates and TSS levels.
2. The pH, detergents, chloride, phenols and copper test kit charges are included in the base proposal cost estimate.

DELIVERABLES:

1. 2012 IDDE Report (2 DRAFT copies and 6 FINAL copies)
2. Electronic (Microsoft Word) submittal of text for inclusion by City Staff for annual WDNR report (Items 3g ad 8).

COST ESTIMATE, BASED ON THE KNOWN CONDITIONS AND REQUIREMENTS OF THE PROJECT:

Task	2012 NR 216 Stormwater Permit Compliance	Cost
1.1 & 1.3	IDDE Field Screening and Report/Meeting	\$12,500
1.2	IDDE Follow-up (as required), \$220 per site, 10 sites included.	\$2,200
2.0	Annual Report Updates	\$2,140
	Travel, Testing Supplies, Etc.	\$1,040
3.0	W-03B and W-03D Parking Structure Allowance	\$3,000
	Total	\$20,880

Test Kit Charges (per site):

Test Kit	\$ per Site (Testing ONLY)
pH, detergents, chloride, phenols and copper	\$220
Ammonia, potassium and fluoride	\$340

