

15.



City of West Allis

Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2008-0021	Resolution	In Committee
Resolution amending a professional services contract with Earth Tech to provide consulting services relative to the NR151 & NR216 Permit compliance requirements for a sum not to exceed \$25,000.		
Introduced: 1/15/2008		Controlling Body: Public Works Committee
		Sponsor(s): Public Works Committee

COMMITTEE RECOMMENDATION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>1-15-08</u>			Barczak				
			Czaplewski				
		<input checked="" type="checkbox"/>	Dobrowski	<input checked="" type="checkbox"/>			
			Kopplin	<input checked="" type="checkbox"/>			
			Lajsic				
			Narlock	<input checked="" type="checkbox"/>			
			Reinke				
	<input checked="" type="checkbox"/>		Sengstock	<input checked="" type="checkbox"/>			
			Vitale	<input checked="" type="checkbox"/>			
			Weigel				
			TOTAL	<u>5</u>			

SIGNATURE OF COMMITTEE MEMBER

[Signature] _____
 Chair Vice-Chair Member

COMMON COUNCIL ACTION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>JAN 15 2008</u>			Barczak	<input checked="" type="checkbox"/>			
			Czaplewski	<input checked="" type="checkbox"/>			
		<input checked="" type="checkbox"/>	Dobrowski	<input checked="" type="checkbox"/>			
			Kopplin	<input checked="" type="checkbox"/>			
			Lajsic	<input checked="" type="checkbox"/>			
	<input checked="" type="checkbox"/>		Narlock	<input checked="" type="checkbox"/>			
			Reinke	<input checked="" type="checkbox"/>			
			Sengstock	<input checked="" type="checkbox"/>			
			Vitale	<input checked="" type="checkbox"/>			
			Weigel	<input checked="" type="checkbox"/>			
			TOTAL	<u>10</u>			

**Please send an executed copy to
the Clerk's Office with this note
attached.**

Thank you.

Res. No. R-2008-0021
Date Adopted 1-15-08



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2008-0021

Final Action:

Sponsor(s): Public Works Committee

JAN 15 2008

Resolution amending a professional services contract with Earth Tech to provide consulting services relative to the NR151 & NR216 Permit compliance requirements for a sum not to exceed \$25,000.

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

WHEREAS, Earth Tech, 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 Earth Tech'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 November 30, 2007 for consulting services for 2008 submitted by Earth Tech, Inc. relative to compliance with the WDNR WPDES Stormwater permit for West Allis for a total net sum not to exceed \$25,000 be approved, the funding of which shall be paid by the City's Stormwater Utility through permit fees.

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

JAN 15 2008

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

APPROVED

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 7525 W. Greenfield Avenue, West Allis, Wisconsin.

1. ETI agrees to perform the services described in its PROPOSAL dated: November 30, 2007, including attachments and amendments ("SERVICES").
2. CLIENT authorizes ETI to perform these SERVICES for the following project and location:

**City of West Allis
2008 Stormwater Plan Reviews**

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 \$ 25,000. 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

ETI - EARTH TECH, INC.

By: _____

By: Scott C. Solverson

Name: _____

Name: Scott C. Solverson, P.E.

Title: _____

Title: Vice President

Date: _____

Date: November 30, 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

PROPOSAL

Scope of Services

November 30, 2007

1. Storm Water Management Plan Reviews. Earth Tech will review the stormwater management (SWM) plans submitted in compliance with the requirements of the City of West Allis's stormwater ordinance. Earth Tech 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.

2. Storm Water Management Facility Inspections. Earth Tech will conduct final inspections and review of as-built drawings prepared by the developer (applicant) of all stormwater management practices prior to final approval by the Client.

3. Routine Inspection: Earth Tech 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: Earth Tech will conduct other engineering services as may be directed by the Client.

5. Progress Meetings: Earth Tech will meet with the City Engineer as required to review any outstanding issues.

APPENDIX B

PROPOSAL Compensation November 30, 2007

Earth Tech will be compensated for professional services on a time and material basis not to exceed the sum of \$25,000. Earth Tech will invoice by task number, with one task number being assigned to each individual plan review or work assignment issued by the Client.

Earth Tech will bill the CLIENT not less 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 Earth Tech standard classifications, plus a listing of reimbursable costs incurred. Unless CLIENT provides Earth Tech 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 2008

In addition to regular hourly billing rates listed above the CLIENT will also pay for:

- 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 7 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 Earth Tech personnel incurred on behalf of the project. (Current rate for the use of personal cars is 48.5 cents per mile and is subject to semiannual revision.)
- G. Cost of a record set of CD or DVD to be retained by Earth Tech's files in cases where the CLIENT wants the original documents and for the cost of postage and insurance for mailing such original documents.
- H. Cost of any office space and accompanying services used by Client's representatives.
- I. Courier service.
- J. Cost plus 15 percent of outside consulting and/or professional services - such as, analytical, drilling, legal, accounting, engineering, and other specialized services. Earth Tech 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.

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CLIENT

By: 
Name: Michael Heavner
Title: City Engineer
Date: Jan. 31, 2008

ETI - EARTH TECH, INC.

By: 
Name: Scott C. Solverson, P.E.
Title: Vice President
Date: November 30, 2007

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