

**AGENDA
STORM WATER UTILITY
COMMITTEE**

**MONDAY, MARCH 21, 2011
ROOM 202
6:30 P.M.**

***Anthony Nudo, Chairman
G. John Ruffolo, Vice Chairman
Steve Bostrom***

***Patrick Juliana
Jan Michalski
Ray Misner***

A. APPROVAL OF MINUTES

A-1 Approval of minutes of regular meeting held on March 16, 2011.

C. REFERRED TO COMMITTEE

C-1 Addendum to Professional Services Agreement with Mandlik and Rhodes Information Systems, Inc. for Redemption Processing of Yardwaste Coupons.

C-2 Approval of Professional Services Agreement with AECOM Technical Services, Inc. for Pennoyer Beach Stormwater Best Management Practices as part of the Great Lakes Restoration Initiative Grant.

CITIZENS COMMENTS RELATED ONLY TO JURISDICTION OF STORMWATER UTILITY COMMITTEE

ALDERMAN COMMENTS

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE CALL 653-4050 BEFORE NOON ON THE DATE INDICATED FOR THIS MEETING.

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMEBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

STORM WATER UTILITY COMMITTEE
- MINUTES -

WEDNESDAY, MARCH 16, 2011
4:30 P.M.

Anthony Nudo, Chairman
G. John Ruffolo, Vice Chairman
Steve Bostrom

Patrick Juliana
Jan Michalski
Ray Misner

The regular meeting of the Storm Water Utility Committee was held on Wednesday, March 16, 2011 in Room 202 of the Municipal Building. The following members were present: Chairman Anthony Nudo, Vice Chairman G. John Ruffolo, Aldermen Steve Bostrom, Patrick Juliana, Jan Michalski and Ray Misner. The meeting was called to order at 4:48 PM. Staff members in attendance were Mike Lemens and Shelly Billingsley.

A-1 Approval of minutes of regular meeting held on March 2, 2011.

It was moved by Alderman Michalski, seconded by Alderman Bostrom to approve. Motion passed 6-0.

C-1 Award of Professional Service Contract for Project 11-1411 Parkway Tree Pruning to Trees "R" Us, Inc. (Wauconda, Illinois), in the amount of \$76,000.00. (also referred to Park Commission)

It was moved by Alderman Juliana, seconded by Alderman Bostrom to approve. Motion passed 5-1 (with Alderman Misner voting nay).

C-2 Disbursements for the month of January 2011.

It was moved by Alderman Michalski, seconded by Alderman Juliana to approve items C-2 and C-3. Motion passed 5-1 (with Alderman Misner voting nay).

C-3 Disbursements for the month of February 2011.

ALDERMAN COMMENTS:

Alderman Misner commented on the quality of work done by the tree contractors. He suggested a rebate for citizens who have trees trimmed themselves.

ADJOURNMENT - There being no further business to come before the Storm Water Utility Committee, it was moved, seconded and unanimously approved to adjourn the meeting at 5:17 pm.



ENGINEERING DIVISION
MICHAEL M. LEMENS, P.E.
DIRECTOR/CITY ENGINEER

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

ASSISTANT CITY ENGINEER
SHELLY BILLINGSLEY, P.E.
STORMWATER UTILITY

Ronald L. Bursek, P.E., Director

Municipal Building · 625 52nd ST · RM 305 · Kenosha, WI 53140
Telephone (262) 653-4150 · Fax (262) 653-4056

March 17, 2011

To: Anthony Nudo, Chairman
Stormwater Utility Committee

From: Ronald L. Bursek, P.E. 
Director of Stormwater Utility

Subject: *Addendum to Professional Services Agreement with Mandlik and Rhodes Information Systems, Inc. for Redemption Processing of Yardwaste Coupons.*

BACKGROUND INFORMATION

The Kenosha Stormwater Utility has received an addendum to extend the Mandlik and Rhodes Information Systems, Inc. Professional Service Agreement until December 31, 2011. This contract allows the Stormwater Utility to begin the 2011 Yardwaste Coupon Program as original approved by the Stormwater Utility Committee on September 9, 2011.

The annual administrative cost to Mandlik and Rhodes, dependent upon the number of coupons processed and participating stores, would be approximately \$4,200. The coupon redemption cost will be \$2 per box or bundle of 10 biodegradable bags with an additional \$0.08 retailer incentive per coupon, \$150 coupon setup fee and postage fees.

The Stormwater Utility will offer the \$2 coupon to be used on any box or bundle of 10 City approved biodegradable bags, Bag to Nature, BIOBAG and ECOGUARD.

The coupons will be available once the coupons are printed (an example of the coupon is provided). The Yardwaste Coupon Program is planned to be in place prior to the Spring Yardwaste Curbside Collection Season.

RECOMMENDATION

Approve the Addendum between the Kenosha Stormwater Utility and Mandlik and Rhodes Information Systems, Inc to extend their current contract until December 31, 2011, authorize the Director to execute the contract and approve the 2011 coupon layout. The funding for the yardwaste coupons will be paid for out of the Stormwater Utility account 501-09-50102-219 from which the yardwaste coupon program was budgeted (\$58,650).

**ADDENDUM
EXTENSION OF THE TERM OF AGREEMENT**

THIS ADDENDUM is made part of, and incorporated into, 'Mandlik and Rhodes Information Systems, Inc. Coupon Redemption Processing Agreement' made as of 09/15/2009' of Coupon Processing Services With the **City of Kenosha** referred to hereafter as CLIENT and Mandlik & Rhodes Information Systems, Inc. referred to hereafter as MRIS, signed on 9/15/2009 by CLIENT and 10/02/2009 by MRIS, respectively. As stated under clause 'C' on page 5 of the agreement which states as below:

"The term of this Agreement shall commence as of September 1, 2009 and shall end August 31, 2010."

CLIENT and MRIS, collectively known as the parties agree as follows:

"The term of the abovementioned Agreement is extended until December 31, 2011. The term of the agreement will be in effect until canceled by either party by giving 90 days notice in writing."

City of Kenosha:

By: _____

Name: _____

Title: _____

Date: _____

MRIS:

By: _____

Name: Pradeep Mandlik

Title: _____

Date: _____

Mandlik and Rhodes Information Systems, Inc.
Coupon Redemption Processing Agreement

This Redemption Processing Agreement (this "Agreement") is made this day of _____, 2009, by **City of Kenosha**, with offices at **625 52nd St., Kenosha WI 53140** (hereinafter the "Client"), and **Mandlik and Rhodes Information Systems, Inc.**, an **Illinois** corporation with principal offices at **127 E. Main St., Suite #W, Barrington, Illinois 60010** (hereinafter "MRIS"). MRIS and the Client agree as follows:

- A. MRIS agrees to provide the following services to the Client listed below upon Client's execution of the Agreement:
1. MRIS shall provide the Client with a "ship to" address for the Client's coupons. MRIS shall reimburse retailers and clearinghouses, on Client's behalf, for coupon redemption values as well as postage and transportation costs and handling fees in shipping client's coupons to said "ship to" address, in each case consistent with the terms printed on the respective coupons, provided that funds for said costs have been properly deposited as required under Section B, paragraph 4 below.
 2. Unless the Client specifies otherwise, MRIS shall utilize a process of 100% coupon entry, segregated by retailer, to determine the count for all coupons received. The Client may specify in writing that all store tag overages or store tag overages for certain accounts not be paid.
 3. MRIS shall furnish on-line access to the PARIS Internet system reporting all aspects of the coupon redemption transaction. Upon termination of this Agreement, MRIS shall provide the client, on CD-ROM in a format specified by MRIS, the following data:

Offer master file data with monthly redemption for up to three (3) years of redemption. This file data shall include offer description; distribution quantity, date of distribution, expiration date, distribution method and up to 36 months of redemption history for each Client offer code.
 4. MRIS shall identify to the Client areas where misredemption (including, but not limited to, gang cut mint condition, wrinkled condition and expired coupons) appears to be a problem and shall furnish the Client with all details thereof.
 5. MRIS shall use the customary and reasonable methods and procedures to verify the existence of those who submit the Client's coupons for payment as a bona fide retailer operation before releasing payment to the retailers.
 6. MRIS warrants that it shall conduct all activities pursuant to this Agreement

in a professional and ethical manner, in accordance with industry best practices, Client's written instructions, and all applicable laws and regulations.

7. MRIS shall notify the Client of actual reimbursement to be made to retailers each week, at least one day in advance of such payments, to insure that sufficient funds will be transferred to MRIS to cover such payments. MRIS will make available on-line a Pre-Payment Register Report showing the amounts to be paid to each individual retailer/clearinghouse.
8. MRIS shall prepare reimbursement drafts payable to retailers and clearinghouses who have submitted valid coupons for redemption together with a written explanation of any adjustments utilizing the Joint Industry Guidelines and denial codes.
9. MRIS shall release reimbursement drafts to retailers and clearinghouses submitting valid coupons; provided that the Client's funds required for such disbursements under Section B, paragraph 4 below have been received.
10. MRIS shall retain all coupons valid coupons received for not less than sixty days. After sixty days MRIS shall destroy all valid coupons properly redeemed. Suspect coupons (including but not limited to gang cut, mint condition, expired and wrinkled condition) shall be retained for up to one year at the direction of the Client, subject to Section C below.
11. MRIS shall respond to all correspondence relating to coupon promotions from retailers or others addressed to the Client and directed to MRIS in a prompt and courteous manner designed to maintain goodwill for the Client. All such correspondence shall be retained for one year following its date, and shall be made available to Client during such period upon Client's request. This information will also be available to the client through access to MRIS on-line retailer inquiries. MRIS will immediately forward any unrelated correspondence to the Client.
12. MRIS agrees to maintain the confidentiality of, and not disclose to any third party for any reason, the Client's marketing, future coupon promotion activity, specific coupon redemption performance information, or any other non-public or proprietary information regarding Client that MRIS may become aware of through the provision of services to Client hereunder. This confidentiality obligation shall survive the termination or expiration of this Agreement. In the event MRIS is subject to legal or regulatory process requiring disclosure of any such information, MRIS shall promptly notify Client and cooperate in seeking to contest or limit such disclosure requirement as permitted by applicable law or regulation.
13. MRIS will provide prompt customer service to the Client utilizing data obtained from on-line computerized system. Retailer payment data will be maintained by MRIS for the current month from date of payment, plus up to

36 months On-line. Monthly redemption counts by coupon will be maintained as long as the client is with MRIS if desired, and, upon termination, delivered to Client together with the data package as set forth in paragraph A.3. above.

14. MRIS currently maintains a comprehensive dishonest, disappearance and destruction policy in the amount of \$100,000. MRIS agrees to maintain such coverage in full force and effect, in amounts no less than those indicated above, with a reputable insurance company, throughout the term of this Agreement. MRIS shall supply Client with a certificate of insurance evidencing such coverage if requested.
15. In order to perform the services required hereunder, MRIS will provide the Client access to MRIS' on-line computer system, PARIS Internet. During the term of this Agreement, MRIS will provide the Client access for no additional charge to the client. Upon termination of this Agreement, Client shall have the right, exercisable in its sole discretion by delivery of notice to MRIS on or before the date of termination hereof, to continue having access to the MRIS PARIS Internet System, such right to continue for so long as MRIS continues to use the MRIS PARIS Internet System in connection with its general operations. If Client exercises such right, it shall pay MRIS \$500 per month (payable in advance on the first day of each month) in exchange for such access the MRIS PARIS Internet System. Client acknowledges that use of the MRIS PARIS Internet System will permit Client to have access to proprietary information of MRIS. The parties agree that any and all information revealed by use of access to the MRIS PARIS Internet System (including, without limitation, information related to the function, formatting, programming and software of the MRIS PARIS Internet System itself, as well as the operations of MRIS or its products, services, sales or business) is unique, valuable, confidential and proprietary information of MRIS (the "Confidential Information"). Client agrees to maintain in confidence, and to require its officers, employees and agents to maintain in confidence, all Confidential Information of MRIS. Client further agrees that it will not use for its own benefit, reveal to any third party, reproduce in written form, or permit the use by, revelation to any third party or reproduction in written form, any Confidential Information. Notwithstanding the foregoing provisions, the parties agree that the following shall not constitute Confidential Information of MRIS: (i) any data related to Client, including factual data retrieved through the MRIS PARIS Internet System with respect to actual coupon redemption transactions of Client; (ii) information which is generally available to the public; (iii) information which becomes available to the public through no fault of Client; and (iv) information which became available to Client on a non-confidential basis from a source other than MRIS or the PARIS Internet System.

- B. The Client agrees to provide the following information and abide by the following terms of the Agreement:

1. The Client will enter into PARIS via the PARIS Internet Offer Entry module each coupon offer to be distributed by the Client at the earliest practical date. The client will follow industry guidelines for coupon bar codes and artwork.
2. The Client shall honor all coupons submitted by retailers and clearinghouses to MRIS for a maximum of one hundred and twenty (120) days after the final expiration date of the coupon promotion as printed on the coupon.
3. Full Processing Fee for Client is \$37.50 per thousand coupons submitted. The billing is based on the actual coupons counted by MRIS. Client is billed at the end of each month. In any month, if the monthly Full Processing Fee is less than \$350 then the monthly minimum of \$350 will be billed. The client will also pay \$150 per new offer code as offer set up fee. Monthly invoices will be due upon receipt and will be subjected to late fees and finance charges . In addition, Client will pay a one-time set-up fee of \$1500 upon signing of this agreement and prior to MRIS accepting any of Client's coupon submissions (reduced from our normal charge of \$2000).
4. The Client shall pay to MRIS amounts needed: (i) to cover the reimbursement drafts payable to retailers and clearinghouses; (ii) for reimbursement of retailer and clearinghouse handling fees; and (iii) for postage and transportation costs (as defined in section A, paragraph 1). In addition, client agrees to pay \$0.50 per check cut to retailers plus actual postage. Client agrees to transfer such funds via Automatic Clearing House (ACH) to MRIS's bank. MRIS will not mail checks to the retailers/clearinghouses prior to the funds being deposited. Client agrees to deposit funds within three (3) business days of receiving notification of payment amount and availability of on-line Prepayment Register. MRIS will print checks and mail to the retailers/clearinghouse only after it receives funds from Client.
5. Non-payment of Monthly invoices and/or pass through invoices may result in immediate termination of services at the discretion of MRIS. In the event the client declares bankruptcy, files for assignment for the benefit of the creditors or files chapter 11 or chapter 7 bankruptcy reorganization, MRIS reserves rights to terminate services immediately.
6. Client shall indemnify, defend and hold MRIS harmless against any and all third-party claims, actions, demands, suits, judgments, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or in any way related to Client's coupons or Client's breach of this Agreement. MRIS shall indemnify, defend and hold Client harmless against any and all third-party claims, actions, demands, suits, judgments, liabilities, costs and expenses (including reasonable attorney's fees) arising out of or in any way related to MRIS's breach of this Agreement.
7. The Client shall specify the length of time MRIS shall retain processed but not

paid coupons due to Misredemption up to a maximum of one year.

8. The Client shall have the right, at reasonable intervals, to have the counts, made by MRIS of the Client's coupons verified by any certified public accountant or by the Client's employees. Upon reasonable notice by Client, MRIS shall provide access to such records of MRIS as may be necessary to enable Client or its representatives to perform such verification.
9. If MRIS advises the Client in writing within 90 days, the Client agrees to honor claims for coupons lost or destroyed where the clearinghouse or retailer submits proof reasonably satisfactory to the Client, both of the value of the coupons submitted and of their loss in shipment.

- C. The term of this Agreement shall commence as of September 1, 2009, and shall end August 31 2010. Either party may terminate at any time for any reason upon ninety (90) days' written notice.

Upon termination of the Agreement, MRIS shall give written notification to the Client of any and all coupons it retains pursuant to Section A, paragraph 10, above. The Client shall thereafter have ninety (90) days in which to make arrangements to transfer the coupons and payment records to its custody. After ninety (90) days, MRIS may destroy any coupons and payment records of the Client it may have retained.

- D. This Agreement shall be governed by the following provisions:

1. This agreement shall become effective upon acceptance by MRIS and shall remain in full force and effect until termination as defined in Section C above.
2. This Agreement shall be deemed to be executed in Kenosha County, Wisconsin, and shall be governed by and construed in accordance with the laws of the State of Wisconsin.
3. This Agreement sets forth the entire understanding between the parties and supersedes any and all prior agreements, written or oral, with respect to the subject matter hereof.
4. This Agreement may be amended or modified only by means of a written document signed by both parties and specifically referring to this Agreement.
5. Failure of either party to enforce a specific provision of this Agreement shall not be construed as a general relinquishment or a waiver of that provision or of any other provision of the Agreement.
6. Each provision of this Agreement is severable and the fact that a provision of

this Agreement may be found to be unenforceable shall not affect the enforceability of the remaining provisions, conditions or terms of the Agreement.

7. MRIS shall act as an independent contractor in the performance of the services provided for herein and nothing herein shall be construed to create the relationship of principal and agent, master and servant, or a partnership or a joint venture between MRIS and Client. MRIS is not the agent of Client and is not authorized to enter into any agreements binding upon Client in any way.
8. Anything in this Agreement to the contrary notwithstanding, the parties shall not be required to comply with the terms of this Agreement if precluded from doing so by act of God, strike, lockout, act of the public enemy, war, blockage, public riot, lightning, fire, storm, flood, explosion, or governmental restraint ("force majeure") which, despite the exercise of that party's best efforts, makes it impossible to perform the respective party's obligations. In all cases of force majeure, MRIS shall give prompt written notice to the Client with respect thereto and (i) in the case of coupons destroyed as a result of force majeure shall proceed to pay amounts claimed with respect thereto by verified retailers in the absence of written instructions to the contrary from the Client, and (ii) with respect to any delay in processing or counting coupons occasioned by force majeure, shall use its best efforts to remove the effects of the force majeure as quickly as possible and shall otherwise proceed as MRIS shall be reasonably instructed by the Client in writing.
9. Any and all notices required by this Agreement shall be given in writing, by registered mail, return receipt requested, or by nationally recognized overnight courier service, effective upon the date of delivery with signature receipt to the other party. Such notice shall be sent to each party at its address set forth in the introductory paragraph, or such other notice address as such party shall furnish the other pursuant to this section, and if to Client.
10. This Agreement may not be assigned by MRIS without the prior written consent of Client.

IN WITNESS WHEREOF, the parties have signed the Agreement as of the date of the signature of the party last signing.

**Mandlik & Rhodes Information Systems,
Inc.**

City of Kenosha

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

VOID – PRINTER'S EXAMPLE

**\$2.00
OFF**

(Box or Bundle of 10 bags)
NO CASH VALUE

MAIL TO:

City of Kenosha
c/o Mandlik & Rhodes
PO Box 490, Dept #1044
Tecate, CA 91980

OFFER CODE: 74640



**CITY OF KENOSHA, WI – APPROVED
BIODEGRADABLE YARDWASTE BAGS**

For City of Kenosha Residents ONLY

- **BIOBAG[®]**
- **BAG TO NATURE[™]**
- **ECOGUARD[™]**

**LIMIT: One
Coupon per box.
Limit of four (4)
coupons per visit.**

"To encourage composting and help offset the cost of biodegradable bags."

**DOESN'T APPLY TO PREVIOUS PURCHASES
VALID ONLY AT KENOSHA-AREA RETAILERS**

**Expiration Date:
12/31/2011**



ENGINEERING DIVISION
MICHAEL M. LEMENS, P.E.
DIRECTOR/CITY ENGINEER

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

ASSISTANT CITY ENGINEER
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Ronald L. Bursek, P.E., Director

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March 17, 2011

To: Anthony Nudo, Chairman
Stormwater Utility Committee

From: Ronald L. Bursek, P.E. 
Director of Stormwater Utility

CC: Eric Haugaard
Alderman District 1

Subject: ***Professional Services Agreement with AECOM Technical Services, Inc. for Pennoyer Beach Stormwater Best Management Practices as part of the Great Lakes Restoration Initiative Grant.***

BACKGROUND INFORMATION

The Kenosha Stormwater Utility staff seeked proposals to complete the design of the Pennoyer Beach Outfall Infiltration Basin and upstream best management practices (BMP) as outlined in the Great Lakes Restoration Initiative (GLRI) Grant. The Stormwater Utility contacted 4 firms and received two proposals and has chosen AECOM based on a Qualification Based Selection process.

Staff has negotiated the contract with AECOM to complete and/or aid in the following tasks:

- Project Management – work scheduling, meetings and scope refinement as it deals with developing upstream BMPs
- Public Meetings
- Grant Management Support – GLRI is a new program with outlined EPA requirements relating to monitoring, progress reporting, and testing for effectiveness in meeting the GLRI goals
- Preliminary Engineering – preliminary engineering when identifying upstream BMPs and the feasibility analysis for the sites identified.
- Final Design – Modeling, Geotechnical Analysis, and Construction Drawings and Specifications
- Permitting – Discussion and Approval process with the Wisconsin Department of Natural Resources for construction of the Infiltration Basin on Pennoyer Beach.

RECOMMENDATION

Approve Professional Service Agreement between the Kenosha Stormwater Utility and AECOM Technical Services, Inc. in the amount of \$76,000 to include their quote of \$75,421 with \$579 of contingency and authorize the Director to execute the contract. The funding for this work will be paid for out of CIP SW-10-003 Pollution Prevention and the Great Lakes Restoration Initiative Grant Funding.

CONSULTING AGREEMENT AND AUTHORIZATION TO PROCEED

This Agreement between AECOM Technical Services, Inc. (ATS), with offices at 1020 N. Broadway, Suite 400, Milwaukee, WI 53202 and City of Kenosha "CLIENT", with offices at 625 52nd Street, Room 305, Kenosha, Wisconsin, 53140.

- 1. ATS agrees to perform the services described in Attachment A ("SCOPE OF SERVICES") and Attachment B ("BUDGET").
- 2. CLIENT authorizes ATS to perform these SERVICES for the following project and location: Drainage Improvement Design – Beach Drive / Beach Court.
- 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 \$ 75,421. ATS will invoice according to the per diem rates in effect at the time the services are executed. See Attachment B for details.

_____ 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 forty-five (45) 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 forty-five (45) 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 forty-five (45) 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: X 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. CONSEQUENTLY, CLIENT RECOGNIZES THIS AGREEMENT WILL ACCORDINGLY LIMIT CONSULTANT'S LIABILITY, AS DESCRIBED IN SECTION 10, BELOW.**

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

AECOM Technical Services, Inc.

By: _____

By: Scott Solverson

Name: _____

Name: Scott Solverson, P.E.

Title: _____

Title: VIC PRESIDENT

Date: _____

Date: 3/7/2011



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.

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.

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 and ATS recognize that applying applicable Wisconsin public records laws to particular records requests can be difficult, in light of software copyright and licensing rights. To ensure that applicable laws are followed, both with regard to intellectual property rights, and with regard to public records laws, CLIENT and ATS agree as follows. When CLIENT receives public records requests for matters that CLIENT believes might be proprietary or confidential, CLIENT will notify ATS of the request. Within three (3) days of such notification (subject to extension of time upon mutual written agreement), ATS shall either provide CLIENT with the record that is requested, for release to the requestor; or ATS shall advise CLIENT that ATS objects to the release of the requested information, and the basis for the objection. If for any reason CLIENT concludes that CLIENT is obligated to provide a record to a requestor that is in ATS's possession, ATS shall provide such records to CLIENT immediately upon CLIENT's request. ATS shall not charge for work performed under this paragraph, except for the "actual, necessary and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law.

In addition to, and not the exclusion or prejudice of, any provisions of this agreement or documents incorporated herein by reference, ATS shall indemnify and save harmless and agrees to accept tender of defense and to defend and pay any and all legal, accounting, consulting, engineering and other expenses relating to the defense of any claim asserted or imposed upon the CLIENT, its officers, agents, employees and independent contractors growing out of (i) CLIENT's denial of a records request, based upon objections made by ATS, or (ii) ATS's failure to provide records to CLIENT upon CLIENT's request; or (iii) CLIENT's charges made to a records requestor, based upon reimbursement of costs ATS charged to CLIENT in responding to a records request; or (iv) CLIENT's lack of timely response to a records request, following ATS's failure to timely respond to CLIENT as required herein; or (v) CLIENT's provision of records to a requestor that were provided to CLIENT by ATS in response to a records request.



ATS's claims of intellectual property rights, or any other copyright or confidentiality claims, shall be waived such that CLIENT may provide all requested documents, programs, data, and other records to the requestor, upon failure by ATS to defend, indemnify or hold harmless the CLIENT as required herein, and/or upon judgment of a court having jurisdiction in the matter requiring release of 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.

ATTACHMENT A
SCOPE OF SERVICES
City of Kenosha
Pennoyer Stormwater Project
February 10, 2011

Description

This project generally consists of the providing professional services for public meetings, grant management support, preliminary engineering, and final engineering and design for the Pennoyer Stormwater Project. The ultimate product will be design documents (drawings and specifications) suitable for advertised competitive bidding for the construction of a stormwater best management practice (BMP) adjacent to the outfall located at Pennoyer Beach Park, and BMPs within the drainage basin that drains to the outfall at Pennoyer Beach Park. The following scope of services describes the tasks in more detail.

Task 1: Project Management

This task generally involves work scheduling, work delegation, and billing coordination. It also includes time for up to three project meetings. These meetings would be considered internal meetings and only include attendance from AECOM staff, City Staff, and other applicable officials. It is anticipated that these will include a project kick-off meeting, and two progress meetings. Additional project coordination with City staff is anticipated with phone conference calls, and is included in this task.

Task 2: Public Meetings

Up to five public meetings are planned for this project. This task involves time for meeting preparation, travel, and attendance by the project manager and project engineer. It is anticipated that these meetings will take place at the city hall and will include city staff, stakeholders (e.g. environmental groups), and the general public (e.g. citizens that live within the drainage basin). It is anticipated that each of these meetings will require a brief presentation by AECOM staff (e.g. PowerPoint), along with a question/answer period. The City will be responsible for coordinating the logistics of the meetings and public notifications.

Task 3: Grant Management Support

The City was awarded an Environmental Protection Agency (EPA) Great Lakes Restoration Initiative (GLRI) grant to fund the majority of this project. As a result, the City must submit project status updates to the EPA during the course of the project. This task involves AECOM providing support to the City to complete these submittals. It is assumed that AECOM will perform this task through construction, and until the project is complete.

Because the GLRI is a new program, the specific level of effort for managing the grant is not well known. AECOM has made its best attempt to determine the appropriate level of effort for this work. If it is found through the completing this task that the level of effort is less or more than anticipated, AECOM will communicate this with the City, and as a result, a contract amendment may be required.

It is estimated that construction will be substantially completed by November 30, 2011. However, we would recommend that the project extend through spring of 2012, to include to contractor to complete maintenance of the facilities until base vegetation is established. As a result, the project would have five quarterly reports, four semi-annual reports, and one final report.

Specifically, AECOM will assist with:

3.1 Quarterly Reports

Based on the requirements of part 5[A] of the GLRI Agreement's Programmatic Conditions, and the anticipated project schedule, AECOM will assist the City in completing five quarterly reports. AECOM will complete a draft of each quarterly report based on the Great Lakes Accountability System (GLAS). AECOM can either email applicable information to the City for them to enter into the GLAS system, or AECOM can enter the information directly into the GLAS system, and then the City can review, edit, and submit.

3.2 Semi-annual Reports



Based on the requirements of part 5[B] of the GLRI Agreement's Programmatic Conditions, and the anticipated project schedule, AECOM will assist the City in completing four semiannual reports. AECOM will complete a draft of each semiannual report based and electronically submit to the City for the review. The City can then submit the report to the EPA.

3.3 Final Report

Based on the requirements of part 5[C] of the GLRI Agreement's Programmatic Conditions, AECOM will assist the City in completing a final report of the project at its completion. Based on review of the part 5[C] of the GLRI Agreement's Programmatic Conditions, it is anticipated that an as-built survey of the constructed BMPs will be required. This effort has been included in the level of effort. AECOM will complete a draft of the final report and electronically submit to the City for the review. The City can then submit the report to the EPA.

Task 4: Preliminary Engineering

During the EPA grant application phase, the EPA requested that the City include BMPs in the upper part of the drainage basin as part of this project. Preliminary engineering will include identifying locations in the drainage basin for upstream BMP sites, and then developing a feasibility analysis for these sites. The feasibility analysis will make use of existing geographic information that the City will provide to AECOM in compatible Geographic Information System (GIS) format (e.g. storm sewer system, sanitary sewer system, water main, parcel lines, topography, latest aerial imagery). The feasibility analysis will include:

- a) Reviewing drainage basin topography and sub-basin characteristics to site the BMPs in effective and efficient locations.
- b) Reviewing land use and open space locations for opportunities to site the BMPs.
- c) Reviewing of existing infrastructure for potential utility conflicts.
- d) Developing a base hydrologic/hydraulic (H/H) model including mainline storm sewer. This will be used to verify the BMPs will not impede the conveyance capacity of the drainage system.
- e) Developing, if necessary, a WinSLAMM (Source Loading and Management Model) to evaluate the effectiveness of proposed BMPs.

It is anticipated that approximately six potential upstream BMPs and associated sites will be identified. Subsequent to the feasibility analysis, AECOM will provide a recommendation of BMPs to be included in the final design. This task will be summarized in a "Preliminary Engineering Design" memorandum.

Task 5: Final Design

5.1 Field Survey

For the proposed BMPs identified in the "Preliminary Engineering Design" memorandum (Task 4), field survey of the site limits for each BMP will be completed.

The following information will be collected:

- a) Utilities - Locate all available utilities within and adjacent to the project area. Survey these locations and incorporate in drawings. One Diggers Hotline locate will be ordered for the survey areas. The field survey will include only the utilities as marked by Diggers Hotline.
- b) Trees greater than 4-inches in diameter and other major landscape features
- c) Street right-of-ways and property corners
- d) General site topography

The horizontal control will be based on Wisconsin State Plane coordinate system NAD 27 and the vertical control will be to the NGVD 29 datum or to the City of Kenosha datum. This task also includes office time to reduce final data and create one base drawing which will include contours and be provided in a Civil 3D format.

Because the exact sites are not known at the time of drafting this scope, the level of effort for survey is based on best available information, and may need to be revised once specific sites are identified.

5.2 Geotechnical Analysis

AECOM will complete a geotechnical analysis of the site for the proposed infiltration basin at Pennoyer Beach. This will include completing up to three borings to a depth of 5 feet each, using a hand auger or geo-probe. Representative samples will be taken every 2.5 feet, and classified based on grain size. An estimate of water table will also be recorded for each boring.

To evaluate the infiltration capacity of the soils, a double ring infiltrometer test will also be performed at the site for the proposed infiltration basin at Pennoyer Beach. Up to two infiltrometer tests will be completed.

5.3 Modeling - H/H Analysis and Water Quality

Using data from the updated survey, the previously completed H/H model (Task 4) will be updated and detail will be added as necessary to evaluate the final alternatives. The final alternative will be evaluated using the NRCS (formerly SCS) runoff curve number method for the 50- and 10-percent annual exceedance probability storm (commonly known as the 2- and 10-year storms) using the NRCS Type 2 storm distribution.

A WinSLAMM model will be developed for each BMP included in the final design. The model will be used to size the BMPs and provide an estimate of pollutants removed (e.g. sediment).

5.4 Preparation of design and construction drawings

Construction drawings and specifications shall be developed at a level of detail in which the project is suitable for advertised competitive bidding. The drawings shall be 22"x34" sheets at a minimum horizontal scale of 1 inch = 40 feet, and vertical scale of 1 inch = 4 feet. It is anticipated that six to ten sheets will be required. They will include a grading plan, applicable details, erosion control plan, and landscape/restoration plan.

An 80-percent complete plan set will be submitted to the City for review and comment. Comments will be incorporated into the final drawings. Up to 25 copies of the final drawing set will be provided to the City for the bidding process.

5.5 Preparation of construction specifications

AECOM will prepare a specification book for the project. AECOM will develop technical specifications for the design. It is assumed that the City will provide AECOM "front end" documents (e.g. bid form, advertisement, etc) for incorporation into the specification book.

An 80-percent complete specification book will be submitted to the city for review and comment. Comments will be incorporated into the final book. Up to 25 copies of the final specification book will be provided to the City for the bidding process. AECOM will prepare an engineer's estimate of probable construction costs based on the final design and specifications.

It is assumed that the City will distribute plans and specifications to prospective bidders.

5.6 Information Signage Design

To comply with EPA grant requirement, an informational sign will be part of the project. AECOM will develop a graphic design and develop a specification for the sign. This information will be included in the over bid documents for construction (see Task 5.5).

5.7 Bidding Support

AECOM will be available to answer questions from potential bidders during the bidding process. AECOM will review received bids, checking for balanced bids and conformance to requirements. AECOM will provide a recommendation to which bid the City should award the project.

This scope does not include any construction related services (e.g. pre-construction meetings, construction inspection). Should the City desire, these services can be amended to the project.

Task 6: Permitting



It is anticipated that there will be more than one acre of disturbance and therefore a "Construction Erosion and Sediment Control" permit (Notice of Intent (NOI)) will be required. AECOM will assemble the forms and supporting documentation necessary for this permit application. It is assumed that the City will submit the permit application and any related application fees.

It is anticipated that a WDNR Chapter 30 permit will be required for the work at Pennoyer Beach because it will occur below the Ordinary High Water Mark (OHWM). Based on information available at the time that this scope was drafted, it is assumed that a Chapter 30 General Permit will be required. AECOM will assemble the forms and supporting documentation necessary for this permit application. It is assumed that the City will submit the permit application and any related application fees.

The level of effort for these permits assume that one round of comments will be required to be addressed after the WDNR's initial review of the permit applications.

ATTACHMENT B

BUDGET

Task		Project Manager	Project Engineer	Geotech Engineer	Staff Engineer	RL Surveyor	Word Process.	Total Hours	Estimated Labor Cost	Other Direct Costs	Total Task Cost
1	Project Management	18.0	12.0					30	\$3,894	\$120	\$4,014
2	Public Meetings	18.0	25.0					43	\$5,519	\$200	\$5,719
3	Grant Management Support										
3.1	Quarterly Reports	1.5	20.0		40.0		4.0	66	\$6,144		\$6,144
3.2	Semi-annual Reports	1.5	40.0		64.0		4.0	110	\$10,588		\$10,588
3.3	Final Report	2.0	24.0		40.0	48.0	4.0	118	\$11,030		\$11,030
4	Preliminary Engineering	4.0	24.0		40.0				\$6,772		\$6,772
5	Final Design										
5.1	Survey	1.0				48.0			\$4,453		\$4,453
5.2	Geotechnical Analysis	1.0	2.0	10.0	10.0				\$2,393	\$600	\$2,993
5.3	Modeling	1.0	4.0		40.0			45	\$3,873		\$3,873
5.4	Design and Drawings	2.0	8.0		60.0			70	\$6,126	\$250	\$6,376
5.5	Specifications	1.0	4.0		40.0		8.0	53	\$4,281	\$125	\$4,406
5.6	Informational Sign Design	1.0	6.0		40.0				\$4,123		\$4,123
5.7	Bidding Support	2.0	4.0					6	\$766		\$766
6	Permitting		2.0		40.0			42	\$3,490	\$675	\$4,165
	TOTAL	54	175	10	414	96	20	582	\$73,451	\$1,970	\$75,421

ATS will bill the CLIENT not less than monthly, with net payment due in 45 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.

The above rates include **all** employees' wages, payroll burdens, overhead, and profit.

CLIENT is 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.

Additional work can be added to the project, when agreed to by both the CLIENT and AECOM, which would be based on our standard hourly billing rates.

