

**CONSULTING AGREEMENT AND AUTHORIZATION TO PROCEED**

This Agreement between AECOM Technical Services Inc. (ATS), with offices at 1020 N. Broadway, Suite 400, Milwaukee, Wisconsin 53202, and the City of Racine, WI ("CLIENT"), with offices at City Hall, 730 Washington Avenue, Racine, WI 53403.

1. ATS agrees to perform the services described in its PROPOSAL dated: February 6, 2009 (Appendix B) including attachments and amendments ("SERVICES").
2. CLIENT authorizes ATS to perform these SERVICES for the following project and location:

**Recycling Fee On-Call Services**

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 \$ 25,000.00. ATS 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.

\* 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 below). 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.

**Consultant: AECOM Technical Services, Inc. (ATS)**

**Client: City of Racine**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: James T. Kunz, P.E.

Printed Name: John Dickert

Title: Senior Vice President

Title: Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Janice M. Johnson-Martin

Printed Name: Robert Weber

Title: City Clerk

Title: City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**COUNTERSIGNED:**

Provision has been made to pay the liability that will accrue hereunder.

\_\_\_\_\_  
**Finance Director**

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. *The CLIENT agrees to limit ATS'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.

**APPENDIX A**  
**Special Conditions**

**Term 8:** Delete the last sentence of this article.



## **APPENDIX B**

### **Proposal for Recycling Fee On-Call Services For the City of Racine, Wisconsin**

**September 22, 2009**

#### **Scope of Services**

The City of Racine has decided to implement a recycling fee to fund the City's solid waste collection program. The City would like to have AECOM develop a database similar to that of the sanitary lateral maintenance fee.

The database will be developed from the City's Tax Assessor files and used to assign fees to the various residential and commercial properties. All residential properties will be handled on a flat rate basis with one cart assigned to each residential unit and assigned a \$10 annual fee. Some commercial properties will also receive bills, however many of the commercial properties contract with private recycling vendors for services and would not be included in this fee. The City of Racine will supply AECOM with a list of commercial properties that will receive a recycling fee. Condominiums owners will be handled like commercial properties and will be billed one cart per owner if they do not already have a recycling contract with a private vendor.

#### **Schedule**

Since this fee will be added to the 2009 tax bill, the calculation of the fees will need to be completed by the middle of November, 2009.

