

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 Racine, WI ("CLIENT"), with offices at City Hall, 730 Washington Avenue, Racine, WI 53403.

1. ETI agrees to perform the services described in its PROPOSAL dated: January 25, 2008, including attachments and amendments ("SERVICES").

2. CLIENT authorizes ETI to perform these SERVICES for the following project and location:

2008 Sanitary Sewer Lateral Fee Billing Database, Racine, Wisconsin

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 \$ 12,500.00. 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.**

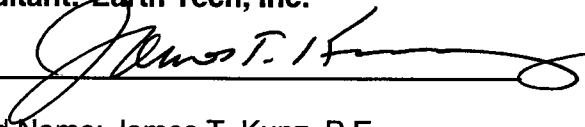


A **tyco** International Ltd. Company

CLIENT confirms reading this document in full (including the terms 7 through 18 below). 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.

Consultant: Earth Tech, Inc.

Client: City of Racine

By: 

By: _____

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

Printed Name: Gary Becker

Title: Senior Vice President

Title: Mayor

Date: 1/25/08

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: 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.



A **tyco** International Ltd. Company

APPENDIX A

Special Conditions

Term 8: Delete the last sentence of this article.

APPENDIX B

Proposal for 2008 Sanitary Sewer Lateral Fee Billing Database For the City of Racine, Wisconsin

January 25, 2008

Background

In 2007 the City of Racine took over maintenance of all active sanitary sewer laterals from the sanitary sewer to the property line. To pay for this maintenance, the City has developed a fee to help offset costs.

The City decided that a flat rate fee system would be the most fair. In keeping with other utility fees, the City will bill all residential properties under the assumption that they all have one active lateral and all non-residential properties will be looked into individually to determine sanitary sewer lateral count. This will be implemented in two phases. Phase one was billed on the 2007 tax bill and included all residential property owners. Phase two will tackle the more complicated non-residential sanitary sewer laterals.

The purpose of this project will be to establish the non-residential lateral inventory billing file to be used in the 2008 tax bills for the non-residential facilities.

Scope of Services

Task 1 – Data Collection

ETI will gather the necessary information to develop a complete sanitary sewer lateral fee billing file. Data needed includes:

1. GIS files
2. sewer databases
3. plumbing records/permits
4. NPDES permits

ETI will meet with City staff to discuss options for obtaining plumbing records and permits and other information that might be useful in determining whether a parcel has a sewer lateral and if so, how many and whether they are active.

Task 2 – Billing File creation

ETI will use data collected in Task 1 to build a sanitary sewer lateral database. GIS files will be used together with the sewer database and 2007 tax assessor defined land use to make an initial determination of which parcels are non-residential and the approximate number of sanitary sewer laterals.

Other information will be used to determine whether the previously identified laterals are active or inactive laterals. Plumbing department records and permits will assist in this evaluation.

ETI will also obtain NPDES permitted site records as an additional source of information to determine the number of active laterals for the larger industrial sites.



A **tyco** International Ltd. Company

ETI will also incorporate changes to the residential lateral data based on new information supplied by the City.

Task 3 – Billing file integration

ETI will coordinate with the finance department to integrate the new billing data into the City's tax billing system. This will be done in conjunction with the Stormwater Utility billing file integration. The billing file will contain sanitary sewer lateral fees for both non-residential and the previously provided residential customers.

Assumptions

1. ETI will not look into residential properties. It is assumed that all residential properties have one active sanitary sewer lateral unless told otherwise by the City.
2. Primary personnel participating in the above tasks are Petra Ahnert, Mark Drollinger and Julie Tochor.
3. Other support staff will be utilized as necessary.

Fees

Total fees for the services described above shall be on a time and materials not-to-exceed basis as identified below:

<u>Task</u>	<u>Fee</u>
Task 1 – Data collection and Evaluation	\$4,500.00
Task 2 – Billing file creation	\$7,700.00
<u>Task 3 – Billing file integration</u>	<u>\$ 300.00</u>
TOTAL FEE	\$12,500.00

Schedule

Tasks one and two will take place in time for the City's budget planning in June. Task two will be revisited just after the Tax Assessor closes his books for the year (October), to capture property changes for the billing file. Task three will be delivered to the City's Finance Department right before the printing of Tax Bills in early December.

<u>Task</u>	<u>Completion Date</u>
Task 1 – Data collection	Ongoing, May 2008
Task 2 – Billing File Creation	On-going, Final 11/2008
Task 3 – Billing File Integration	November 2008



A **tyco** International Ltd. Company