CONTRACT BY AND BETWEEN
THE WISCONSIN DEPARTMENT OF
NATURAL RESOURCES
And
THE CITY OF WEST ALLIS, WISCONSIN
A Municipal Corporation
IN THE MATTER OF
PLATING ENGINEERING SITE

WHEREAS, the City of West Allis ("CITY"), on May 14, 2007, issued an Order to Raze the Plating Engineering building located at 1928 South 62nd Street, West Allis, WI (the "Property"); and,

WHEREAS, the U.S. Environmental Protection Agency ("EPA") conducted site assessment activities on the Property in January, 2007, which revealed that the Property poses an imminent and substantial threat to human health and welfare and to the environment, documented in an EPA Removals Site Assessment Report ("SITE ASSESSMENT") dated March 12, 2007 and prepared by Weston Solutions, Inc.; and,

WHEREAS, the EPA conducted certain remediation of said environmental hazards on the Property commencing in August, 2007, and that said remediation activities left many of the hazards on the Property that were previously identified by the EPA SITE ASSESSMENT; and,

WHEREAS, the Wisconsin Department of Natural Resources ("WDNR") conducted site soil and groundwater assessment activities on the Property during November and December of 2007 and has determined that serious health and environmental issues still exist on the Property; and,

WHEREAS, the owner of the Property is bankrupt (U.S. Bankruptcy Court, Eastern District of Wisconsin, Case No. 07-24976JES) and the Bankruptcy Trustee has abandoned the Property leaving no solvent party to be responsible for further remedial action; and,

WHEREAS, the CITY has commenced an action in Milwaukee County Circuit Court to enforce its Raze Order (Case No. 08CV000054) and on May 7, 2008 obtained a default judgment allowing the CITY to raze buildings on the Property; and,

WHEREAS, the SITE ASSESSMENT specifically raises environmental concerns regarding building demolition, and in particular states: "Any remaining contamination left in the floor materials will need to be dealt with during the building demolition, which the EPA will not conduct. At the time of building demolition, material debris should be characterized for proper waste disposal"; and,

WHEREAS, the Property is located in an area where environmental justice issues are prevalent; and,

WHEREAS, WDNR has determined that the Property has potential for threatening public health, safety or welfare or the environment; and,

WHEREAS, the WDNR and the CITY desire to enter into this contract for the purposes of completing an environmental investigation of the Property, demolition of the building and to conduct specific remedial actions to address threats to public health and to mitigate new discharges into the groundwater.

NOW, THEREFORE, in consideration of, and in exchange for the promises and mutual understandings and covenants contained herein, and to protect the natural resources of the State of Wisconsin, and intending to be bound legally, hereby, the CITY and WDNR, by their authorized representatives, enter into this Contract.

DONNA Volk 577-1310

I. PARTIES BOUND.

A. The WDNR and the CITY (collectively "Parties") enter into this Contract pursuant to Section 66.0301, Wisconsin Statutes, which provides for intergovernmental cooperation.

B. This Contract shall apply to and be binding upon the Parties and their respective agents, officers, and employees.

C. Nothing in this Contract shall be construed as an admission of fact or liability by the CITY for any matters other than the contractual obligation between the Parties and as further described in this Contract. The Parties agree to undertake all actions required by the terms and conditions of this Contract and consent to and will not contest or legally challenge the validity of this Contract, or the other party's authority to enter into this Contract. This Contract is intended to be solely between the Parties and no part of this Contract shall be construed to add, confer, supplement, amend, abridge or repeal existing rights, benefits, or privileges of or to any third party or parties.

II. WDNR AND CITY COMMITMENTS.

In order to assist with the implementation of a ch. NR 716, Wis. Admin. Code, site investigation and remedial action on the Property, WDNR agrees to provide the CITY with reimbursement for activities agreed by WDNR under Section II.A of this Contract. WDNR acknowledges that the CITY has no obligation to investigate or remediate any contamination related to the Property other than for the purpose of reimbursement under this Contract.

A. WDNR agrees to pay the costs of certain necessary actions at the Property including:

1. The removal of structures and other physical impediments necessary to fully characterize the nature and extent of contamination at the Property

2. Demolition, removal and disposal as solid waste of the buildings and structures including hazardous building components (such as fire extinguishers, light ballast, electrical equipment), and asbestos (albeit it is understood that EPA removed friable asbestos. The remaining asbestos has been determined to be non-friable and is intended to be removed/disposed of as solid waste along with the rest of the building demolition debris), and abandonment of sewer/water utilities.

3. Excavation, removal, disposal, treatment and/or capping of soils if deemed appropriate to address an inhalation or direct contact threat to the public.

4. Removal of any underground storage tanks.

5. Site Investigation, as deemed necessary by the WDNR, to characterize the nature and extent of soil, groundwater and vapor contamination originating on the Property.

6. Excavation, disposal, treatment and/or capping of highly contaminated soils that pose a threat to groundwater and an assessment of whether active remediation of the groundwater is required at the Property.

7. The existing monitoring wells on the Property shall be protected during the demolition process so that WDNR may continue monitoring ground water after demolition.

8. A fence and appropriate signage, as directed by WDNR, shall be placed around the Property to reasonably prevent public access and ensure proper storm water and runoff management practices are employed and maintained during the term of this Contract and while funding therefore continues.

9. All review fees appropriate for the review and approval of technical documents required under item III. B.

The WDNR also agrees to reimburse the CITY for other tasks, if agreed to in writing by the Parties.

B. In addition to the items set forth in II. A., above, the Parties acknowledge that certain other activities must take place and the costs therefore must be incurred. Specific provisions for such items are:

1. CITY shall use EPA funds to conduct a Phase I and Phase II Environmental Site Assessment ("ESA") and preparation of plans and specifications for demolition of the building. The scope of work for the Phase II ESA will be limited to conducting two soil probes adjacent to the fuel oil Underground Storage Tank with sampling and analysis of four soil samples for Diesel Range Organic Compounds ("DROs"), Volatile Organic Compounds ("VOCs") and Poly Aromatic Hydrocarbons ("PAHs"); one round of groundwater samples to be collected from the existing monitoring wells, for "VOCs" and metals; and the compilation and evaluation of historic and newly generated data. The CITY has already contracted with an environmental consultant for these services using the FY07 USEPA Site Assessment Grant ("SAG") funds. In addition, the CITY shall conduct an investigation of the northwest corner of the Property to determine if there is an underground storage tank.

2. The CITY shall use its SAG (No. SAG-532-Plating Engineering Company), of $29,875, which is available for use through April 18, 2009 for the following activities listed in items a. and b, below.

a) As part of the demolition, CITY shall have the gas and electrical services to the Property disconnected.

b) The City will provide an environmental consultant to conduct oversight of the Demolition which will be limited to: 1) demolition oversight; 2) participation at Pre-bid and Pre-demo site meetings; and 3) preparation and submittal of a demolition documentation report].

C. In order for a work item proposed in this Contract to qualify for payment, the Parties agree that the following criteria have or will be met for that work item.

1. All response work will follow the requirements of the NR 700, Wis. Adm. Code administrative rule series and all other applicable state, local and federal laws.

2. All state requirements for the use of bonding dollars will be followed, where applicable.

3. The CITY did not cause the contamination.

4. The CITY will provide the WDNR with quarterly financial statements.

5. The City has selected STS (and AECOM, by means of their merger with STS) as their environmental consultant for this project using the CITY's standard purchasing and contracting procedures and the EPA's procurement guidelines. WDNR hereby approves the use of the CITY's

selected consultant for the duration of this project, specifically to perform environmental assessment work at the Property, to manage and oversee the demolition of the building and remediation of contaminants located therein, and other services that may be required for a certificate of completion. Prior to implementation of the demolition, CITY and WDNR must approve the plans and specifications for demolition. Through its environmental consultant, CITY shall manage and administer the demolition and remediation efforts at the Property

6. CITY will take action as quickly as possible to obtain any building plans that may still be on site.

7. All contracts with vendors working on demolishing the building or remediating contamination on the Property shall be approved by CITY and WDNR using state required procurement policies.

D. WDNR shall make periodic payments to the CITY or its contracted vendor within forty-five (45) days after the CITY or its consultant submits to WDNR a report which documents that the CITY or its contracted vendor has completed all or portions of the work items that are eligible for payment under this Contract.

E. In the event that the CITY receives any insurance proceeds or other financial assistance ("Other Sources") that is intended to reimburse the CITY for any portion of the costs previously paid by WDNR, the CITY shall return said portion of the payment within thirty (30) days of receipt of the Other Sources to the WDNR.

F. Nothing in this Contract shall be deemed to waive the right of WDNR to seek out recovery for reimbursement paid under this Contract from any responsible parties who did not contribute funding to this project under a cost share agreement with the WDNR. The CITY will cooperate with WDNR in any efforts by WDNR to recover the State's cost share.

G. The CITY and the WDNR agree to meet periodically to discuss the project and to conduct site inspections.

H. The Phase I Environmental Assessment to be done by CITY under II. B. 1., shall comply with all applicable inquiry requirements and shall specifically state that the assessment claims the Bonafide Prospective Purchaser defense.

I. CITY shall act as the agent for WDNR in accomplishing the purposes of this Contract.

J. WDNR shall complete its responsibilities under this Contract to the extent that it has sufficient funding to do so.

K. CITY shall complete its responsibilities under this Contract to the extent that it has sufficient funding to do so.

III. SUBMISSION OF DOCUMENTS.

A. The CITY or its contracted vendors shall submit such documentation of costs that the WDNR shall reasonably require to substantiate the request for payment of costs covered by this Contract. This documentation shall include, at a minimum, a copy of invoices received by the CITY for the activities and documentation showing what work was performed (the "Supporting Documents"). The WDNR shall submit such information provided by CITY to the Wisconsin Department of Administration, and upon approval, shall pay for demolition, investigation and remediation costs associated with work that has received approval by the WDNR, as prescribed in Paragraph B, below.

B. The CITY agrees to submit the following technical documents for review and approval by the WDNR, prior to conducting the work relating to that technical document for which the CITY is seeking WDNR approval and recovery of its costs:

1. Draft demolition and site security plans, including cost estimates

2. Draft Site Investigation Workplan – as required by and in conformance with NR 716.09

3. Draft Site Investigation Report – as required by and in conformance with NR 716.15

4. Draft Remedial Action Options Report and Proposed Remedial Action – as required by and in conformance with NR 722.13

5. Draft Remedial Design and Specifications Report – as required by and in conformance with NR 724.09 and 724.11

6. Draft O & M plan, if applicable – as required by and in conformance with NR 724.13

7. All reports required under the NR 700 series shall be submitted to the WDNR, unless otherwise agreed to by the WDNR and the CITY.

8. Any reports required by other agencies, such as the Department of Commerce, shall be submitted to the WDNR as a courtesy.

C. Documents sent by the City to the WDNR shall be submitted to:

1. John J Hnat, WDNR Project Manager
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
Southeast Region – Milwaukee Service Center
P.O. Box 12436
Milwaukee, Wisconsin 53212

2. Marie Stewart - RR/8
Wisconsin Department of Natural Resources
Bureau of Remediation and Redevelopment
P.O. Box 7921
Madison, Wisconsin 53707

D. Documents sent by the WDNR to the CITY shall be submitted to:

1. John F. Stibal, Director of City Development
City of West Allis
7525 West Greenfield Avenue
West Allis, Wisconsin 53214
(414) 302-8462

2. Scott E. Post, City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, Wisconsin 53214
(414) 302-8450

E. Reimbursement sent by the WDNR to the CITY under this Contract shall be submitted to:

Gary Schmid, Finance Director
City of West Allis
7525 West Greenfield Avenue
West Allis, Wisconsin 53214
(414) 302-8252

IV. The CITY is permitted to act as authorized agent for the WDNR for the purposes of disposing and/or recycling hazardous and non-hazardous waste materials that are generated as part of this agreement for any or all of the following purposes:

1. Preparing and/or signing waste profiles and treatment, storage, recycling, and/or disposal contracts.

2. Signing certifications and other documents necessary to comply with the disposer's and/or recycler's regulatory permit, or company policy requirements.

3. Signing certifications and/or notices for compliance with land ban restrictions.

4. Signing waste manifests for shipment of wastes to treatment, storage, recycling, or disposal facilities.

5. Preparing and/or signing amendments to waste profile sheets.

All waste materials requiring disposal must be sent to a DNR-approved waste disposal site. WDNR Project Manager will provide a list of approved disposal sites to the CITY.

The City will notify WDNR prior to any action authorized above, and will provide WDNR with copies of any documents to which amendments or signatures have been made under this authorization. WDNR shall be listed as the waste generator.

V. EFFECTIVE DATE.

This Contract shall be executed by the CITY before being executed by WDNR. When WDNR executes this Contract, the WDNR shall enter an effective date immediately below the WDNR's signature which shall be a minimum of five (5), but not greater than ten (10) business days after the date of mailing (first class postage prepaid) by the WDNR to the CITY of a fully executed copy of the Contract.

SIGNATURES CONTINUE ON NEXT PAGE

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By: _____
Matthew J. Frank, Secretary

Date: 4/6/09

CITY OF WEST ALLIS

By: _____
John F. Stibal, Director of Development

Date: 3-9-09

Approved as to form this 12th day of ~~February~~ March 2009. D.O.

_____
Scott E. Post, City Attorney

COMPTROLLER'S CERTIFICATE

Countersigned this 12 day of ~~February~~ March 2009 and I certify that the necessary funds have been provided to pay the liability that may be incurred by the Community Development Authority of the City of West Allis under this Contract.

_____
Gary Schmid, Manager of Finance/Comptroller