

**CITY OF PALMER ACTION MEMORANDUM NO. 09-017**

**SUBJECT:** Authorize City Manager to Award and Execute a Professional Services Agreement with Ecological Engineering Group, Inc. for a Feasibility Study Not to Exceed \$15,000 to Evaluate Two (2) Ecological Treatment Options for a Wastewater Treatment and Potential Reuse System for a Two Million Gallon per Day (2MGD) Design Flow

**AGENDA OF: February 24, 2009**

**Council action:** Authorized

**Approved for presentation by B. B. Allen, City Manager** B. B. Allen

Route To:	Department/Individual:	Initials:	Remarks:
X	Originator – Public Works	<i>AK</i>	
X	City Clerk	<i>JY</i>	
X	City Attorney	<i>[Signature]</i>	
	Director of Public Safety		
X	Director of Administration	<i>D</i>	
	Director of Community Development		
	Director of Community Services		
	Director of Public Works		

**Attachment(s):** Proposal from Ecological Engineering Group, Inc.

**Finance Director's Certification of Funds:**

	No fiscal impact.	
X	Funds are budgeted from this account number:	02-00-00-1702
	Funds are not budgeted. Budget modification is required. Affected account number:	

Finance Director Signature: *[Signature]*

**Summary statement:** The study will provide analysis of the potential effects of new technology on the City's waste water treatment process. The new technology has the potential to make the effluent cleaner before it leaves the City's system. The study will assist the City as it evaluates options for future development of its waste water treatment plant, and will help phase future improvements. The phases need to be identified to get "shovel ready" projects as soon as possible for federal stimulus funding.

The study will evaluate two ecological treatment options for the City's wastewater treatment and the potential reuse system for a two million gallon per day design flow. Each option will evaluate and

compare the 30-year life cycle costs and the opportunity to use a greenhouse cover to control the treatment environment, generate combined heat and photovoltaic power from the collected solar energy. A preliminary construction-phasing plan for each option will be included as part of the study.

The two specific options which will be evaluated during the study are the cost and effectiveness of a standalone Solar Aquatic System and the option of integrating solar aquatic system design principles with the existing aerated lagoons. The latter option would involve covering at least one of the lagoons with a greenhouse type cover and converting the last lagoon into an anaerobic subsurface flow constructed wetland to denitrify and bring the effluent to advanced tertiary effluent discharge limits.

**Administration recommendation:** Approve action memorandum no. 09-017.



## Ecological Engineering Group, Inc.

*Ecological Engineers and Designers*  
*where Life informs design®*

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February 5, 2009

Carter R. Cole  
Public Works Director  
Phone: (907) 745-7604  
Cell: (907) 863-0741  
Email: ccole@palmerak.org

RE: Consulting and Feasibility Study (Preliminary Engineering Report)

Dear Mr. Cole:

This letter and attached Standard Terms and Conditions shall constitute an Agreement between Department of Public Works, Palmer, Alaska (Client), and the Ecological Engineering Group, Inc. (EEG and/or Consultant). Whereas the Client requires assistance with consulting and feasibility assessment (Preliminary Engineering Report) of ecological wastewater alternatives for the Palmer wastewater treatment facility (Project), and the Consultant has the requisite professional experience and expertise to render such assistance, the parties agree to the items outlined below.

### **Scope of Services**

EEG shall provide the following scope of services:

#### I. Consulting Services

- a. EEG shall provide consulting on an hourly basis using the rates identified in the attached schedule.
- b. EEG shall consult with the Client on the following requested and recommended subjects:
  - i. Evaluate two (2) ecological treatment options for a wastewater treatment and potential reuse system for a 2MGD design flow. Each option will evaluate and compare the 30-year life cycle costs and the opportunity to use the greenhouse cover to control the treatment environment, generate

combined heat and photovoltaic power from the collected solar energy. A preliminary construction-phasing plan will be included.

- ii. The options to be evaluated are
  - 1. A Stand-alone Solar Aquatic System (SAS)
  - 2. Integrating the SAS design principles with the existing aerated lagoons that would involve covering at least one of the lagoons with a greenhouse and converting the last lagoon into an anaerobic subsurface flow constructed wetland to denitrify and bring the effluent to advanced tertiary effluent discharge limits.
- c. The feasibility study (Preliminary Engineering Report) shall examine each topic with guidance provided by the Client and discuss both ecologically based solutions as well as range of probable costs suitable for budgetary purposes.

## II. Attend preliminary scoping meeting

- a. An EEG senior scientist shall attend one preliminary scoping meeting to gather current and historical data on the existing treatment plant.
- b. Meeting time and all associated preparatory work shall be billed on an hourly basis using the rates identified in the attached schedule. For the purposes of this proposal, each meeting shall be assumed to require 8 hours of preparatory work, travel, and meeting time.

## III. Write a report of the findings and deliver said report to Client.

Further services including detailed design, permitting, and construction supervision are not included in this proposal. EEG shall provide a separate proposal for such services upon the completion of the feasibility study and at the request of the Client.

### **Tasks to be Completed by Client**

The client shall provide the following:

- 1. Appropriate human, financial and information resources needed by the Consultant in the performance of the tasks set forth in the Scope of Services.
- 2. Provide timely review of all memoranda, documents, and electronic updates from the Consultant and timely response to Consultant's questions including requests for available information and day-to-day decisions on methodology and direction of work during the course of the project.
- 3. Contract(s) with suppliers of services, materials, and subcontracts on a timely basis as authorized by Client.

4. Advance funds as required to pay invoices upon receipt by the Client to the Consultant and subcontractors for services, contracts, materials, and expenses as authorized by the Client.
5. Provide all requested site and project related data as requested by the Consultant to include but not be limited to: Program of use, site civil and architectural plans, and site plans.

### **Time of Performance**

The scope of services outlined above shall be completed within 20-30 business days following receipt of a signed copy of this Agreement and all necessary information as requested by the Consultant.

The terms and conditions herein shall expire and be considered null and void if progress on the scope of services does not commence, for any reason, within 180 days of the executed Agreement.

### **Fees for Services**

- Feasibility Study (Preliminary Engineering Report):      \$7,600.00

It is understood that an initial retainer of \$ 2,500 will be remitted to bind this Agreement and will be applied towards Client account prior to final project invoice.

**THEREFORE, THE CONSULTANT AND THE CLIENT HEREBY AGREE TO THE TERMS AND CONDITIONS AS SET FORTH IN THIS AGREEMENT AND ATTACHED STANDARD TERMS AND CONDITIONS ON THE LATEST DATE BELOW.**

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**Client Authorized Representative**

**Ecological Engineering Group, Inc.**



**President**

**Date February 5, 2009**

**Date**



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### **ECOLOGICAL ENGINEERING GROUP, INC. (EEG) STANDARD HOURLY RATES As of January 1, 2008**

#### **COMPENSATION AS FOLLOWS:**

##### Hourly rates for our services:

Draftsman	\$63
Garden Designer	\$68
Grade 6 Licensed Operator	\$72
Associate Engineer	\$76
Staff engineer/architect	\$95
Engineer PE	\$120
Architect AIA or ALA	\$120
Wetlands/Habitat scientist	\$100
Surveyor team	\$150
Ecological Systems Designer	\$160
Senior Scientist PhD	\$175
Principal/Partner	\$200

Client-approved subcontracts will be billed at cost-plus-10 % management fee, subject to the need for subcontract management by EEG and the Client.

##### Expenses:

Out-of-pocket expenses and materials will be billed at cost. Mileage will be invoiced at 40.5 cents per mile. Special arrangements will be made for out-of-state projects.



# Ecological Engineering Group, Inc.

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## ECOLOGICAL ENGINEERING GROUP, INC. (EEG) STANDARD TERMS AND CONDITIONS

### 1. RECOGNITION OF UNIQUE PROFESSIONAL SERVICES

Unlike conventional water, wastewater, and solid waste treatment designers, the Consultant's reputation has grown based upon its unique ability to solve difficult environmental problems for Clients while exceeding the fundamental tenets of protecting public and environmental health and welfare. These sustainable strategies are successful because we provide pollution prevention with ecological integrity. These services typically require a multi-stages program, which may include some or all of the following steps:

- Developing a custom strategy and plan of accomplishment with the client
- Careful study of regulatory and political constraints
- Detailed analysis of existing conditions
- Design and engineering which often requires for a conventional system design as well as an advanced treatment system design for new construction. In such cases, the conventional system may not be constructed but acts as an insurance policy for regulators.
- Negotiating with public agencies and private stakeholders
- Testifying before public boards and commissions
- Adjusting the strategy and re-engineering the plan subject to the desires of the approving parties. If a plan is approved at the local or state level, then project then enters the construction management and system evaluation phase.
- In most cases, construction contractors are more familiar with conventional treatment systems than with our recommended alternative systems and therefore additional oversight may be required during the procurement and construction process.
- In many cases, the approval strategy will require a period of evaluation by the permitting agencies to ensure that the operation of the system complies with permit requirements. This evaluation may include sampling and testing of various parameters and reporting the results to the permitting agency, as well as an on-going operation and maintenance contract, which could be provided by EEG.

### 2. CONSULTANT GENERAL SERVICES

While completing the scope of services outlined in the attached Letter of Agreement (LOA) the Consultant shall:

- Execute tasks detailed in the LOA
- Keep accurate records
- Use his best efforts to complete the assignment within a Time of Performance period to be determined by mutual agreement
- Meet regularly with the Client by teleconference and/or in-person to review progress, evaluate findings, coordinate efforts and otherwise expedite progress of the project. As the project progresses, findings may require changes in the tasks. Such changes in the scope or level of effort of the tasks within the contract limits will be subject to the written approval of the Client.
- Be responsible for providing the Client with the Consultant's best professional advice at all times, but the Client will make all final decisions and determinations of policy regarding this project and program.
- Coordinate with Client's contractors.

### **3. COMPENSATION**

Hourly rates for services provided by EEG are available upon request. Client-approved subcontracts will be billed at cost-plus-10 % management fee, subject to the need for subcontract management by EEG and the Client.

Out-of-pocket expenses and materials will be billed at cost. Mileage will be invoiced at 40.5 cents per mile. Special arrangements will be made for out-of-state projects. Potential expenses include, but are not limited to, laboratory testing fees, hydrogeological studies, and subcontractor equipment.

Invoices, which remain unpaid for 30 days or longer, will be charged with Massachusetts standard 1.8% interest rate.

### **4. BILLING CYCLE**

Client will be invoiced bi-weekly. Payment terms are "Due on Receipt"

### **5. INDEPENDENT CONTRACTOR STATUS**

EEG acknowledges that it is an independent contractor and is not an agent, partner, joint venturer, nor employee of CLIENT. EEG shall have no authority to bind or otherwise obligate CLIENT in any manner nor shall EEG represent to anyone that it has a right to do so.

### **6. REPRESENTATIONS AND UNDERSTANDINGS OF STANDARD OF CARE**

- a. EEG represents that it is experienced in activities such as those to be conducted for the CLIENT and in the design, permitting, construction, and operation of water harvest, storage, and wastewater treatment reuse systems.
- b. CLIENT recognizes that EEG's services require decisions that are not based on science alone, but on judgments that include considerations such as cost, aesthetics, and maintenance requirements.
- c. CLIENT recognizes that site conditions, access points, mechanical equipment, and system operations may vary in status and repair and may change with time.
- d. Under no circumstances is any warranty, expressed or implied, made in connection with EEG providing these services.
- e. EEG shall not be held liable for any services provided by subcontractors or other entities including, but not limited to, laboratory analysis, equipment, and labor.
- f. EEG shall not be liable for representations not made in writing

- g. EEG shall not be responsible for treating radioactive, hazardous or toxic substances not shall EEG be responsible for impacts on treatment processes due to the illegal introduction of such substances into a treatment waste stream.

## **7. TERMINATION**

This AGREEMENT may be terminated by either party without penalty seven (7) days after written notice is given, provided, however, that CLIENT shall be obligated pursuant to the terms hereof to pay for services performed and obligations incurred by EEG on Client's behalf through the date of termination, plus those associated with termination and post-termination activities such as demobilization, modification of schedules, reassigning personnel, decontaminating and disposing of equipment, and the like.

## **8. RISK ALLOCATION**

Many risks potentially affect EEG by virtue of entering into this AGREEMENT to perform services on behalf of CLIENT including the risk of human error by EEG. Therefore, CLIENT agrees to the following:

- EEG's liability shall be limited to CLIENT and to all other parties combined, for claims arising out of EEG's performance of the services described in this AGREEMENT.
- The aggregate liability of EEG will not exceed \$50,000, or the total fees paid to EEG under this AGREEMENT, whichever is less, for negligence, errors or omissions, or any other conduct, and CLIENT agrees to indemnify and hold harmless EEG from and against all liabilities in excess of the monetary limit established above.
- Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery, including, but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that CLIENT will not seek damages in excess of the limitations indirectly through suits with other parties who may join EEG as a third-party defendant. "Parties" means the CLIENT and EEG and their officers, employees, agents, affiliates, subcontractors, heirs, and assigns.
- Both CLIENT and EEG agree that they will not be liable to each other, under any circumstances, for indirect, incidental and consequential or punitive damages arising out of or related to this AGREEMENT.
- EEG shall not be held liable for consequential damages resulting from the work or work associated with this AGREEMENT.

## **9. DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS**

CLIENT represents that CLIENT has made a reasonable effort to evaluate whether hazardous materials are on or near the project site, and that CLIENT has informed EEG of CLIENT's findings relative to the possible presence of such materials.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. EEG and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work, or termination of services. EEG and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for EEG to take immediate measures to protect health and safety. CLIENT agrees to compensate EEG for any and all equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

EEG agrees to notify CLIENT when unanticipated hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold EEG harmless for any and all consequences of disclosure made by EEG, which are required by governing law. In the event the project site is not owned by CLIENT, CLIENT waives any claim against EEG and, to the maximum extent permitted by law, agrees to defend, indemnify, and save EEG harmless from any claim, liability and defense costs for injury or loss arising from EEG's discovery of unanticipated hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of the project and any costs associated with possible reduction of any property value. CLIENT will be responsible for ultimate disposal of any samples secured by EEG that are found to be contaminated.

## 10. DEFAULT AND DISPUTE RESOLUTION

All claims, disputes, and other matters in controversy between EEG and CLIENT arising out of or in any way related to this AGREEMENT will be submitted to mediation, so long as mediator is acceptable to EEG, as a condition precedent to litigation. If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation instead of mediation, then:

- a. the claim will be brought and tried in Middlesex County and CLIENT waives the right to remove the action to any other county or judicial jurisdiction
- b. in the event a suit or action is filed to enforce this AGREEMENT or with respect to this AGREEMENT, the prevailing party or parties shall be reimbursed by the other party for all costs and expenses incurred in connection with the suit or action, including without limitation, reasonable attorney's fees associated with any litigation, mediation, or appeal.

## 11. NEGATION OF LICENSE

No rights or licenses, expressed or implied, are hereby granted to CLIENT under any patents, copyrights, intellectual property or trade secrets of EEG as a result of or related to this AGREEMENT.

## 12. CONFIDENTIALITY

The parties acknowledge that certain Confidential Information (as hereinafter described) of EEG has been disclosed during the negotiation of this agreement, and that disclosure or unauthorized use thereof may cause irreparable harm and loss to the other partner.

For purposes of this agreement, "Confidential Information" shall mean:

- a. financial information of EEG, including but not limited to financial statements, balance sheets, income statements and other financial data
- b. plans, specifications, processes, methods, means or techniques utilized by EEG in the practice of it's business except those which are widely known and in common practice
- c. information concerning the business of EEG including without limitation customer identities, supplier, contractor and vendor identities, sources of materials, and marketing methods
- d. pricing schedules and information for products or services quoted or supplied by EEG
- e. correspondence between the parties hereto which relate to any of the above.

In consideration of the mutual covenants and undertakings pursuant to this agreement, CLIENT agrees:

- to use the Confidential Information only as may be necessary for the performance of obligations under this agreement
- not to copy, disseminate, or disclose, in whole or in part, any Confidential Information to any person outside of CLIENT'S business, and not to disclose such information to its agents, employees, or assigns unless such person is bound by a similar obligation of confidentiality
- to limit dissemination of Confidential Information to only those of CLIENT'S employees or agents who have a need to know to perform obligations under this agreement
- not to use the Confidential Information for the benefit of third parties without the express written permission of EEG; and

- not to use the Confidential Information to compete against EEG.

### 13. MISCELLANEOUS PROVISIONS

- a. The provisions of this AGREEMENT shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.
- b. CLIENT will grant or obtain for EEG free, unobstructed access to the site for all equipment and personnel necessary for EEG to perform the work set forth in this AGREEMENT.
- c. CLIENT is responsible for accurately delineating the locations and access points to the buildings and surrounds, and agrees to indemnify, defend and hold harmless EEG from any claim or liability for injury or loss, including costs of defense, arising from damage done to equipment, structures and utilities not identified and/or accurately located.
- d. No waiver of any provision of this AGREEMENT shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- e. No waiver shall be binding unless agreed to in writing by all parties.
- f. This AGREEMENT shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
- g. The AGREEMENT is comprised of these Standard Terms and Conditions and accompanying Letter of Agreement (LOA) which collectively constitute the entire AGREEMENT between the parties pertaining to its subject matter and supersede all prior Agreements, representations and understandings of the parties. No supplement, modification or amendment of this AGREEMENT shall be binding unless executed in writing by all parties.