

**SANITARY SEWER IMPROVEMENTS
FY 2015 PHASE II CIP PIPE LINING PROJECT
CONSTRUCTION-RELATED SERVICES**

**CITY OF WATERLOO, IOWA
PROFESSIONAL SERVICE AGREEMENT**

This Agreement is made and entered by and between AECOM Technical Services, Inc., 501 Sycamore Street, Suite 222, Waterloo, Iowa, hereinafter referred to as "ATS" and City of Waterloo, Iowa, hereinafter referred to as "CLIENT."

IN CONSIDERATION of the covenants hereinafter set forth, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

ATS shall perform professional Services (the "Services") in connection with CLIENT's facilities in accordance with the Scope of Services set forth in Exhibit A attached hereto.

II. ATS'S RESPONSIBILITIES

ATS shall, subject to the terms and provisions of this Agreement:

- (a) Appoint one or more individuals who shall be authorized to act on behalf of ATS and with whom CLIENT may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon ATS as to all matters pertaining to this Agreement and the performance of the parties hereunder.
- (b) Use all reasonable efforts to complete the Services within the time period mutually agreed upon, except for reasons beyond its control.
- (c) Perform the Services in accordance with generally accepted professional engineering standards in existence at the time of performance of the Services. If during the two year period following the completion of Services, it is shown that there is an error in the Services solely as a result of ATS's failure to meet these standards, ATS shall re-perform such substandard Services as may be necessary to remedy such error at no cost to CLIENT. Since ATS has no control over local conditions, the cost of labor and materials, or over competitive bidding and market conditions, ATS does not guarantee the accuracy of any construction cost estimates as compared to contractor's bids or the actual cost to the CLIENT. ATS makes no other warranties either express or implied and the parties' rights, liabilities, responsibilities and remedies with respect to the quality of Services, including claims alleging negligence, breach of warranty and breach of contract, shall be exclusively those set forth herein.
- (d) ATS shall, if requested in writing by CLIENT, for the protection of CLIENT, require from all vendors and subcontractors from which ATS procures equipment, materials or services for the project, guarantees with respect to such equipment, materials and services. All such guarantees shall be made available to CLIENT to the full extent of the terms thereof. ATS's liability with respect to such equipment, and materials obtained from vendors or services from subcontractors, shall be limited to procuring guarantees from such vendors or subcontractors and rendering all reasonable assistance to CLIENT for the purpose of enforcing the same.



- (e) ATS will be providing estimates of costs to the CLIENT covering an extended period of time. ATS does not have control over any such costs, including, but not limited to, costs of labor, material, equipment or services furnished by others or over competitive bidding, marketing or negotiating conditions, or construction contractors' methods of determining their prices. Accordingly, it is acknowledged and understood that any estimates, projections or opinions of probable project costs provided herein by ATS are estimates only, made on the basis of ATS's experience and represent ATS's reasonable judgment as a qualified professional. ATS does not guaranty that proposals, bids or actual project costs will not vary from the opinions of probable costs prepared by ATS, and the CLIENT waives any and all claims that it may have against ATS as a result of any such variance.

III. CLIENT'S RESPONSIBILITIES

CLIENT shall at such times as may be required for the successful and expeditious completion of the Services;

- (a) Provide all criteria and information as to CLIENT's requirements; obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the project; and designate a person with authority to act on CLIENT's behalf on all matters concerning the Services.
- (b) Furnish to ATS all existing studies, reports and other available data pertinent to the Services, and obtain additional reports, data and services as may be required for the project. ATS shall be entitled to rely upon all such information, data and the results of such other services in performing its Services hereunder.

IV. INDEMNIFICATION

ATS agrees to indemnify and hold harmless CLIENT from and against any and all suits, actions, damages, loss, liability or costs (including, without limitation, reasonable attorneys' fees directly related thereto) for bodily injury or death of any person or damage to third party property if and to the extent arising from the negligent errors or omissions or willful misconduct of ATS during the performance of the Services hereunder.

V. INSURANCE

Commencing with the performance of the Services, and continuing until the earlier of acceptance of the Services or termination of this Agreement, ATS shall maintain standard insurance policies as follows:

- (a) Workers' Compensation and/or all other Social Insurance in accordance with the statutory requirements of the state having jurisdiction over ATS's employees who are engaged in the Services, with Employer's Liability not less than One Hundred Thousand Dollars (\$100,000) each accident;



- (b) Commercial General Bodily Injury and Property Damage Liability and Automobile liability insurance including (owned, non-owned, or hired), each in a combined single limit of One Million Dollars (\$1,000,000) each occurrence for bodily injury and property damage liability. This policy includes Contractual Liability coverage. ATS agrees to name CLIENT as Additional Insured on this policy, but only to the extent of ATS's negligence under this Agreement and only to the extent of the insurance limits specified herein.
- (c) Professional Liability Insurance with limits of \$1,000,000 per claim and in the aggregate covering ATS against all sums which ATS may become legally obligated to pay on account of any professional liability arising out of the performance of this Agreement.

ATS agrees to provide CLIENT with certificates of insurance evidencing the above described coverage prior to the start of Services hereunder and annually thereafter if required. ATS shall provide prompt notice to the CLIENT in the event of cancellation, material change, or non-renewal per standard ISO Acord Form wording and the policy provisions.

VI. COMPENSATION AND TERMS OF PAYMENT

Compensation for the services shall be on an hourly basis in accordance with the hourly fees and other direct expenses in effect at the time the services are performed. Total compensation is an estimated fee of One Hundred Thirty-Six Thousand Dollars (\$136,000.00).

ATS may bill the CLIENT monthly for services completed at the time of billing. CLIENT agrees to pay ATS the full amount of such invoice within thirty (30) days after receipt thereof. In the event CLIENT disputes any invoice item, CLIENT shall give ATS written notice of such disputed item within ten (10) days after receipt of invoice and shall pay to ATS the undisputed portion of the invoice according to the provisions hereof. CLIENT agrees to abide by any applicable statutory prompt pay provisions currently in effect.

VII. TERMINATION

CLIENT may, with or without cause, terminate the Services at any time upon fourteen (14) days written notice to ATS. The obligation to provide further Services under this Agreement may be terminated by either party upon fourteen (14) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, providing such defaulting party has not cured such failure, or, in the event of a non-monetary default, commenced reasonable actions to cure such failure. In either case, ATS will be paid for all expenses incurred and Services rendered to the date of the termination in accordance with compensation terms of Article VI.

VIII. OWNERSHIP OF DOCUMENTS

- (a) Sealed original drawings, specifications, final project specific calculations and other instruments of service which ATS prepares and delivers to CLIENT pursuant to this Agreement shall become the property of CLIENT when ATS has been compensated for Services rendered. CLIENT shall have the right to use such instruments of service solely for the purpose of the construction, operation and maintenance of the Facilities. Any other use or reuse of original or altered files shall be at CLIENT's sole risk without liability or legal exposure to ATS and CLIENT agrees to release, defend and hold ATS harmless from and against all claims or suits asserted against ATS in the



event such documents are used for a purpose different than originally prepared even though such claims or suits may be based on allegations of negligence by ATS. Nothing contained in this paragraph shall be construed as limiting or depriving ATS of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement.

- (b) Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced and ATS makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings and the electronic files, the sealed drawings will govern.

IX. MEANS AND METHODS

- (a) ATS shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety measures and programs including enforcement of Federal and State safety requirements, in connection with construction work performed by CLIENT's construction contractors. Nor shall ATS be responsible for the supervision of CLIENT's construction contractors, subcontractors or of any of their employees, agents and representatives of such contractors; or for inspecting machinery, construction equipment and tools used and employed by contractors and subcontractors on CLIENT's construction projects and shall not have the right to stop or reject work without the thorough evaluation and approval of the CLIENT. In no event shall ATS be liable for the acts or omissions of CLIENT's construction contractors, subcontractors or any persons or entities performing any of the construction work, or for the failure of any of them to carry out construction work under contracts with CLIENT.
- (b) In order that ATS may be fully protected against such third party claims, CLIENT agrees to obtain and maintain for the benefit of ATS the same indemnities and insurance benefits obtained for the protection of the CLIENT from any contractor or subcontractor working on the project and shall obtain from that contractor/subcontractor insurance certificates evidencing ATS as an additional named insured.

X. INDEPENDENT CONTRACTOR

ATS shall be an independent contractor with respect to the Services to be performed hereunder. Neither ATS nor its subcontractors, nor the employees of either, shall be deemed to be the servants, employees, or agents of CLIENT.

XI. PRE-EXISTING CONDITIONS

Anything herein to the contrary notwithstanding, title to, ownership of, legal responsibility and liability for any and all pre-existing contamination shall at all times remain with CLIENT. "Pre-existing contamination" is any hazardous or toxic substance present at the site or sites concerned which was not brought onto such site or sites by ATS. CLIENT agrees to release, defend, indemnify and hold ATS harmless from and against any and all liability which may in any manner arise in any way directly or indirectly caused by such pre-existing contamination except if such liability arises from ATS's sole negligence or willful misconduct.



CLIENT shall, at CLIENT's sole expense and risk, arrange for handling, storage, transportation, treatment and delivery for disposal of pre-existing contamination. CLIENT shall be solely responsible for obtaining a disposal site for such material. CLIENT shall look to the disposal facility and/or transporter for any responsibility or liability arising from improper disposal or transportation of such waste. ATS shall not have or exert any control over CLIENT in CLIENT's obligations or responsibilities as a generator in the storage, transportation, treatment or disposal of any pre-existing contamination. CLIENT shall complete and execute any governmentally required forms relating to regulated activities including, but not limited to generation, storage, handling, treatment, transportation, or disposal of pre-existing contamination. In the event that ATS executes or completes any governmentally required forms relating to regulated activities including but not limited to storage, generation, treatment, transportation, handling or disposal of hazardous or toxic materials, ATS shall be and be deemed to have acted as CLIENT's agent.

For ATS's Services requiring drilling, boring, excavation or soils sampling, CLIENT shall approve selection of the contractors to perform such services, all site locations, and provide ATS with all necessary information regarding the presence of underground hazards, utilities, structures and conditions at the site.

XII. LIMITATION OF LIABILITY

CLIENT agrees that ATS's liability for the act, error or omission in its performance of services under this Agreement shall in no event exceed the amount of the total compensation received by ATS. It is intended by the parties to this Agreement that ATS's services in connection with the project anticipated herein shall not subject ATS's individual employees, officers, or directors to any personal legal exposure for the risks associated with this project.

XIII. DISPUTE RESOLUTION

If a dispute arises out of, or relates to, the breach of this Agreement and if the dispute cannot be settled through negotiation, then ATS and the CLIENT agree to submit the dispute to mediation. In the event ATS or the CLIENT desires to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation in accordance with the procedures and rules of the American Arbitration Association (or any successor organization) then in effect. The deadline for submitting the dispute to mediation can be changed if the parties mutually agree in writing to extend the time between receipt of notice and submission to mediation. The expenses of the mediator shall be shared 50 percent by ATS and 50 percent by the CLIENT. This requirement to seek mediation shall be a condition required before filing an action at law or in equity. However, prior to or during the negotiations or the mediation either party may initiate litigation that would otherwise be barred by a statute of limitations, and ATS may pursue any property liens or other rights it may have to obtain security for the payment of its invoices.

XIV. MISCELLANEOUS

- (a) This Agreement constitutes the entire agreement between the parties hereto and supersedes any oral or written representations, understandings, proposals, or communications heretofore entered into by or on account of the parties and may not be changed, modified, or amended except in writing signed by the parties hereto. In the event of any conflict between this contract document and any of the exhibits hereto, the terms and provisions of this contract document shall control. In the event of any conflict among the exhibits, the exhibit of the latest date shall control.



- (b) This Agreement shall be governed by the laws of the State of Iowa.
- (c) ATS may subcontract any portion of the Services to a subcontractor approved by CLIENT. In no case shall CLIENT's approval of any subcontract relieve ATS of any of its obligations under this Agreement.
- (d) In no event shall either party be liable to the other for indirect or consequential damages, including, but not limited to, loss of use, loss of profit or interruption of business, whether arising in contract, tort (including negligence), statute, or strict liability.
- (e) In the event CLIENT uses a purchase order form to administer this Agreement, the use of such form shall be for convenience purposes only, and any typed provision in conflict with the terms of this Agreement and all preprinted terms and conditions contained in or on such forms shall be deemed stricken and null and void.
- (f) This Agreement gives no rights or benefits to anyone other than CLIENT and ATS and does not create any third party beneficiaries to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year written below.

APPROVED FOR CLIENT

APPROVED FOR AECOM TECHNICAL SERVICES, INC.

By: _____

By:  _____

Printed Name: _____

Printed Name: Douglas W. Schindel, P.E.

Title: _____

Title: Associate Vice President

Date: _____

Date: December 16, 2014

**SANITARY SEWER IMPROVEMENTS
FY 2015 PHASE II CIP PIPE LINING PROJECT
CONSTRUCTION-RELATED SERVICES**

**CITY OF WATERLOO, IOWA
EXHIBIT A**

A. Project Description

The project consists of cured-in-place (CIP) pipe lining of approximately 56,000 LF of sanitary sewer and rehabilitation of approximately 281 sanitary sewer manholes in Sewer Service Area Nos. 11, 15 and 16 in accordance with the plans, specifications and contract documents previously approved for the work.

The sanitary sewer in Service Area Nos. 15 and 16 are subject to high rates of infiltration and inflow, and this project is one step in reducing the extraneous flows in the sanitary sewer system.

The pipe lining proposed in Service Area No. 11 is to address a current defective sanitary sewer, and the infiltration and inflow considerations are a secondary concern in this pipe.

The contract for constructing the CIP pipe lining was awarded, and this agreement is to provide the engineering for the construction-related services (CRS) for the project.

B. Scope

Services to be provided for CRS under this agreement are as follows:

1. Conduct a Preconstruction Conference with the contractor, City representatives, utility representatives and other interested parties to discuss the project schedule, bypass pumping, traffic control and other pertinent issues.
2. Review product submittal information required in the specifications.
3. Provide periodic on-site review to observe the contractor's work, project progress and address contractor's issues and/or concerns. On-site review of the CIP pipe lining will be based on providing up to 240 hours on-site time.
4. Prepare partial pay requests and submit them to the City for payment throughout the course of the work.
5. Conduct a final review of the project, review final TV reports with the City, and prepare a punch list of items to be addressed by the contractor prior to project completion.
6. Prepare a set of record drawings of the project based on the contractor's records and site observations.
7. Assist the City with close-out of the CIP pipe lining project.
8. Implement a flow monitoring program involving approximately ten locations in the collection system to determine wastewater flows to assess flow reductions and the effectiveness of the pipe lining and foot drain disconnections.