

**Consulting Services Contract  
City of Waukesha – Strand Associates, Inc.  
Project Name: Clean Water Plant Biogas Utilization Study**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Strand Associates, Inc., 910 West Wingra Drive, Madison, WI 53715, referred to herein as the Consultant. Together, the City and Consultant are referred to as the Parties.

## **Recitals**

Strand Associates, Inc. was selected for Clean Water Plant (CWP) Biogas Utilization Study through the City's Request for Proposals process.

Now, therefore the City and the Consultant agree and contract as follows:

1. **Scope of Services.** The Consultant shall perform the Services described on Schedule A, according to the terms and conditions of this Contract. Schedule A is incorporated into this Contract by reference.
2. **Standard of Care.** Consultant will perform the Services with the care and skill ordinarily used by members of Consultant's profession practicing under similar circumstance as the same time and in same locality.
3. **Payment.** The City shall pay to Consultant a lump sum of nineteen thousand eight hundred and twenty dollars (\$19,820) for performance of the Service in compliance with the terms and conditions of this Contract. Consultant shall invoice the City, monthly. All invoices shall be payable net 30 days. Nonpayment 30 days after the date of the receipt of invoice may, at Consultant's option, result in assessment of a one percent carrying charge on the unpaid balance of the outstanding invoice(s). Nonpayment 45 days after the date of receipt of invoice may, at Consultant's option, result in suspension of services upon five days' notice to the City. Consultant will have no liability to the City, and the City agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this agreement by the City. Upon receipt of payment in full of all outstanding sums due from the City, or curing of such other breach which caused Consultant to suspend services, Consultant will resume services and there will be an equitable adjustment to the remaining project schedule and compensation as a result of suspension.
4. **Time.** Consultant shall commence the Services as promptly after execution of this Contract as is possible, and shall complete the Services no later than **July 13, 2018**, subject only to delays for circumstances beyond Consultant's control, provided Consultant recommences Services promptly in good faith upon the return of normal circumstances.
5. **Ownership of Work Product.** All materials produced in the performance of the Services shall be the sole property of the City, and shall be kept confidential and not disclosed to any third party without the prior written permission of the City. Re-sue of any work product by the City for purpose other than intended for this project shall be at City's sole risk and without liability to Consultant.
6. **Changes.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Services, or the total amount to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.
7. **Indemnification.** Consultant shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of any negligent act, error, or omission of Consultant, its agents, or employees, including court costs and reasonable attorney fees.
8. **Insurance.** Consultant shall maintain insurance of the following kinds and for not less than the following limits, at Consultant's sole expense, at all times during the performance of the Services. Policies shall be occurrence, and not claims-made, policies. Consultant shall obtain an endorsement making the City an additional insured and loss payee, and Consultant's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Consultant shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
  - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
  - c. Excess liability-umbrella, \$5,000,000.
  - d. Worker compensation, statutory requirements.
  - e. Professional liability-errors and omissions, \$2,000,000, with extended-reporting period endorsement.
9. **Record Keeping.** Consultant shall keep all documents and records generated in the performance of the Services for no less than 7 years after completion of the Services, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
10. **Cooperation by City.** The City shall cooperate with the Consultant in the performance of the Services, and shall respond timely to all reasonable requests for information and access.
11. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
12. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
13. **Permits and Licenses.** Consultant shall be responsible, at Consultant's expense, for obtaining all permits and licenses required for the performance of the Services unless expressly agreed by the City.
14. **Assignment Prohibited.** This Contract, and the Consultant's responsibility to perform the Services under this Contract, may not be assigned by the Consultant without the City's written consent.
15. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:
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|----------------|--|
| To the City:   | Attention Jeff Harenda<br>City of Waukesha<br>130 Delafield Street<br>Waukesha WI 53188            |
| To Consultant: | Attention Travis Anderson<br>Strand Associates, Inc.<br>910 West Wingra Drive<br>Madison, WI 53715 |
16. **Corporate Authorization.** The individuals executing this Contract on behalf of the Consultant warrant and represent that they are duly authorized to bind the Consultant to this Contract. Consultant warrants and represents that the execution of this Contract is not prohibited by the Consultant's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Consultant shall provide proof upon request.
17. **Assistance of Counsel, Voluntary Contract.** The Consultant acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.

18. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
19. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including reasonable attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
20. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
21. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
22. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
23. **Integration.** This Contract constitutes the entire agreement of the Parties formed by the City's RFP and the Consultant's responsive proposal; however, if any ambiguity in this Contract requires resolution, or this Contract is silent on a material point, then reference may be made to the RFP and the Consultant's proposal, in that order of priority, to construe this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.
24. **Termination.** Either party may terminate this Contract without cause by giving written notice of termination to the other party, with termination to occur no sooner than 20 days after delivery of the notice. Upon termination, Consultant shall be paid for all Services completed as of the date of termination.

# CITY REVIEW

City of Waukesha

By Shawn N. Reilly, Mayor

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

Attested by Gina L. Kozlik, City Clerk

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

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance

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

Strand Associates, Inc.

By Matthew S. Richards

Title: Corporate Secretary

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

## Schedule A

### SCOPE OF SERVICES FOR BIOGAS UTILIZATION STUDY

Consultant will provide the following Services to the City.

1. Participate in a project kickoff meeting at the City's CWP to review project goals, schedule, and gather field information. Develop a request for information including data necessary for evaluating project alternatives. Attend up to six biweekly teleconference meetings to discuss project progress.
2. Review City-provided data including current and projected flows and loadings. Develop analysis of energy production/demand at the anaerobic digestion facilities (biogas, heat, and electricity, as appropriate) under current and future conditions. Prepare a capacity assessment for the anaerobic digestion and biogas facilities.
3. Identify up to six potential biogas utilization alternatives for evaluation based on cost and nonmonetary evaluations. Prepare a present-worth analysis for the identified alternatives based on potential revenue, capital costs, operating costs, maintenance costs, future equipment replacement costs, salvage costs, and nonmonetary considerations.
4. Attend an interim meeting at approximately 75 percent completion at the CWP to discuss the project evaluations, project budget, and schedule.
5. Develop the draft CWP Biogas Utilization Study report summarizing the analyses included in the scope of services. The draft report will be submitted electronically as a portable document format file.
6. Attend a final review teleconference and incorporate City comments, as appropriate. Provide City with three hard copies of the final report.

### SERVICE ELEMENTS NOT INCLUDED

The following services are not included in this Contract. If such services are required, they will be provided as noted.

1. Bidding- and Construction-Related and Design Services: Bidding- and construction-related and design services for the project will require a separate contract with City.
2. Flood Studies: Any services involved in performing flood and floodway studies, if required, will be provided through an amendment to this Contract or through a separate contract with City.
3. Geotechnical Engineering: Geotechnical engineering information will be required and provided through City and City's geotechnical consultant. Consultant will assist City with defining initial scope of geotechnical information that is required to allow City to procure geotechnical engineering services.
4. Permit and Plan Review Fees: All permit and plan review fees payable to regulatory agencies shall be paid for by City.
5. Preparation for and/or Appearance in Litigation on Behalf of City: This type of service by STRAND will be provided through a separate contract with City.
6. Revising Designs, Drawings, Specifications, and Documents: Any services required after these items have been previously approved by state or federal regulatory agencies, because of a change in project scope or where such revisions are necessary to comply with changed state and federal regulations that are put in force after Services have been partially completed, will be provided through an amendment to this Contract.

7. Services Related to Buried Wastes and Contamination: Should buried solid, liquid, or potentially hazardous wastes or subsurface or soil contamination be uncovered at the site, follow-up investigations may be required to identify the nature and extent of such wastes or subsurface soil or groundwater contamination and to determine appropriate methods for managing of such wastes or contamination and for follow-up monitoring. Investigation, design, or construction-related services related to buried solid, liquid, or potentially hazardous wastes or soil or groundwater contamination will be provided through a separate agreement with City.