

## AGREEMENT FOR TECHNICAL SERVICES

### CITY OF MANITOWOC AND STRAND ASSOCIATES, INC.®

**This Agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, between the City of Manitowoc, Wisconsin, hereinafter referred to as CITY, located at 900 Quay Street, Manitowoc, Wisconsin 534220, and Strand Associates, Inc.®, hereinafter referred to as ENGINEER. This Agreement shall be in accordance with the following elements.

#### Scope of Services

Services to be provided under this Agreement can be described as engineering, scientific, computer-aided design drafting, clerical, and administrative activities performed in accordance with the terms and conditions of this Agreement and subsequently issued Task Orders. Prior to ENGINEER's engagement by CITY, a mutually agreeable Task Order document shall be developed and executed by both parties. The Task Order will include **Project Information**, a detailed **Scope of Services**, **Compensation**, and **Schedule**. The general form of the Task Order shall be in accordance with the enclosed sample Task Order.

#### Service Elements Not Included

The following services are not included under this Agreement. If such services are required, they will be provided as noted in each subsequently issued task order.

1. Additional and Extended Services: Any services during construction made necessary by:
  - a. Work damaged by fire or other cause during construction.
  - b. A significant amount of defective or neglected work of any contractor.
  - c. Prolongation of the time of the construction contract.
  - d. Default by contractor under the construction contract.
2. Additional CITY-required Site Visits and/or Meetings: Additional CITY-required site visits or meetings.
3. Archaeological or Botanical Investigations: ENGINEER will assist CITY in engaging the services of an archaeologist or botanist, if required, to perform the field investigations necessary for agency review.
4. Bidding Alternatives and Bid Phasing: Any services involved in providing bidding alternatives or bidding phases.
5. Bidding- and Construction-Related Services: Any services involved in performing bidding- and construction-related services.
6. Drawings and Specifications: Final design services including drawings and specifications.
7. Flood Studies: Any services involved in performing flood and floodway studies.

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8. Geotechnical Engineering: Geotechnical engineering information, if required, shall be provided through CITY and CITY's geotechnical consultant. ENGINEER will assist CITY with defining initial scope of geotechnical information that is required to allow CITY to procure geotechnical engineering services.
9. Land and Easement Surveys/Procurement: Any services of this type including, but not limited to, a record search, field work, preparation of legal descriptions, or assistance to CITY for securing land rights necessary for the Task Order-specified project.
10. Permit and Plan Review Fees: All permit and plan review fees payable to regulatory agencies shall be paid for by CITY.
11. Preparation for and/or Appearance in Litigation on Behalf of CITY: Any services related to litigation.
12. Review of Product Substitutions Proposed by Contractor: The terms of the construction Contract call for the construction contractor to reimburse CITY for ENGINEER's cost for evaluating substitute products. ENGINEER's cost for such evaluations is not included.  
  
Review of Product Substitutions Proposed by Contractor: ENGINEER's cost for evaluating substitute products is not included.
13. 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 the 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.
14. Services Furnished During Readvertisement for Bids, if Ordered by CITY: Any services of this type if a contract is not awarded pursuant to the original bids.
15. 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.

### **Compensation**

CITY shall compensate ENGINEER for Services indicated in each subsequently issued Task Order for a lump sum or for an estimated fee on an hourly rate basis plus expenses.

Expenses incurred such as those for subconsultants, travel, meals, printing, postage, copies, computer, electronic communication, and long distance telephone calls will be billed at actual cost plus ten percent.

Only sales taxes or other taxes on Services that are in effect at the time this Agreement is executed are included in the Compensation. If the tax laws are subsequently changed by legislation during the life of this Agreement, this Agreement will be adjusted to reflect the net change.

The lump sum or estimated fee for the Services is based on wage scale/hourly billing rates, adjusted annually on July 1, that anticipates the Services will be completed as indicated. Should the completion

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time be extended, it may be cause for an adjustment in the lump sum or estimated fee that reflects any wage scale adjustments made.

The lump sum or estimated fee will not be exceeded without prior notice to and agreement by CITY but may be adjusted for time delays, time extensions, amendments, or changes in the **Scope of Services**. Any adjustments will be negotiated based on ENGINEER's increase or decrease in costs caused by delays, extensions, amendments, or changes.

### **Schedule**

Services will begin upon execution of this Agreement, which is anticipated the week of November 13, 2023. This Agreement will terminate five years following its execution. The schedule for individual tasks will be included on each subsequently issued Task Order.

### **Standard of Care**

The Standard of Care for all Services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at a similar time and in a similar locality. ENGINEER is employed to render Services, and any payments made to ENGINEER are compensation for such Services rendered and recommendations made in carrying out the Services. ENGINEER agrees to indemnify, defend, and hold harmless CITY from and against all liability arising out of negligent errors or sole negligent omissions of ENGINEER, its agents, employees, or representatives in the performance of ENGINEER'S duties under this Agreement.

### **CITY's Responsibilities**

1. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Task Order-specified project including previous reports, previous drawings and specifications, and any other data relative to the scope of the Task Order-specified project.
2. Furnish to ENGINEER, as required by ENGINEER for performance of Services as part of this Agreement, data prepared by or services of others obtained or prepared by CITY relative to the scope of the Task Order-specified project, such as soil borings, probings and subsurface explorations, and laboratory tests and inspections of samples, all of which ENGINEER may rely upon in performing the Task Order-specified project Services under this Agreement.
3. Provide access to and make all provisions for ENGINEER to enter upon public and private lands as required for ENGINEER to perform Task Order-specified project Services under this Agreement.
4. Examine all reports, sketches, estimates, special provisions, drawings, and other documents presented by ENGINEER and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the performance of ENGINEER.
5. Provide all legal services as may be required for the development of the Task Order-specified project.
6. Retain the services of a soils consultant to provide any necessary geotechnical evaluation and recommendations. CITY's soils consultant shall provide all necessary geotechnical testing during construction. CITY's soils consultant shall notify CITY and ENGINEER of any geotechnical testing indicating any materials that are not in accordance with the Contract

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Documents (nonconforming materials) and if any nonconforming materials have been incorporated into the work.

7. Provide the front end documents that require the contractor to name ENGINEER as an additional insured on contractor's General Liability and Automobile Liability insurance policies and to indemnify ENGINEER to the same extent that the contractor insures and indemnifies CITY.
8. Pay all permit and plan review fees payable to regulatory agencies.

### **Opinion of Probable Cost**

Any opinions of probable cost prepared by ENGINEER are supplied for general guidance of CITY only. ENGINEER has no control over competitive bidding or market conditions and cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.

### **Observation Services**

In furnishing observation services, ENGINEER's efforts will be directed toward determining for CITY that the completed project will, in general, conform to the Contract Documents; but ENGINEER will not supervise, direct, or have control over the contractor's work and will not be responsible for the contractor's construction means, methods, techniques, sequences, procedures, or health and safety precautions or programs, or for the contractor's failure to perform the construction work in accordance with the Contract Documents.

### **Payment Requests**

ENGINEER's review of Payment Requests from contractor(s) will not impose responsibility to determine that title to any of the work has passed to CITY free and clear of any liens, claims, or other encumbrances. Any such service by ENGINEER will be provided through an amendment to this Agreement.

### **Changes**

1. CITY may make changes within the general scope of this Agreement in the Services to be performed. If such changes cause an increase or decrease in ENGINEER's cost or time required for performance of any Services under this Agreement, an equitable adjustment will be made and this Agreement will be modified in writing accordingly.
2. No services for which additional compensation will be charged by ENGINEER will be furnished without the written authorization of CITY. The fee established herein will not be exceeded without agreement by CITY but may be adjusted for time delays, time extensions, amendments, or changes in the **Scope of Services**.
3. If there is a modification of Agency requirements relating to the Services to be performed under this Agreement subsequent to the date of execution of this Agreement, the increased or decreased cost of performance of the Services provided for in this Agreement will be reflected in an appropriate modification of this Agreement.

### **Extension of Services**

This Agreement may be extended for additional Services upon CITY's authorization. Extension of Services will be provided for a lump sum or an hourly rate plus expenses.

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### **Payment**

CITY shall make monthly payments to ENGINEER for Services performed in the preceding month based upon monthly invoices. Nonpayment 30 days after the date of receipt of invoice may, at ENGINEER's option, result in assessment of a 1 percent per month carrying charge on the unpaid balance.

Nonpayment 45 days after the date of receipt of invoice may, at ENGINEER's option, result in suspension of Services upon five calendar days' notice to CITY. ENGINEER will have no liability to CITY, and 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 CITY. Upon receipt of payment in full of all outstanding sums due from CITY, or curing of such other breach which caused ENGINEER to suspend Services, ENGINEER will resume Services and there will be an equitable adjustment to the remaining project schedule and compensation as a result of the suspension.

Failure to make payments to ENGINEER is cause for termination upon two-week notice to CITY.

### **Termination**

This Agreement may be terminated with cause in whole or in part in writing by either party subject to a two-week notice and the right of the party being terminated to meet and discuss the termination before the termination takes place. ENGINEER will be paid for all completed or obligated Services up to the date of termination.

### **Data Provided by Others**

ENGINEER is not responsible for the quality or accuracy of data nor for the methods used in the acquisition or development of any such data where such data is provided by or through CITY, contractor, or others to ENGINEER and where ENGINEER's Services are to be based upon such data. Such data includes, but is not limited to, soil borings, groundwater data, chemical analyses, geotechnical testing, reports, calculations, designs, drawings, specifications, record drawings, contractor's marked-up drawings, and topographical surveys. All maps, data, inventory, reports, drawings, surveys or other documents supplied by CITY are the property of CITY; and ENGINEER, its agents, employees, assigns or officers shall not share the documents supplied by CITY without the expressed written permission of CITY.

### **Third-Party Beneficiaries**

Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against either CITY or ENGINEER. ENGINEER's Services under this Agreement are being performed solely for CITY's benefit, and no other party or entity shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of Services hereunder. CITY and ENGINEER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in the Task Order-specified project to carry out the intent of this provision.

### **Amendments**

This Agreement may not be modified or altered except in writing signed by both parties with the same formality as this Agreement.

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### **Assignment**

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement is not to be assigned by either CITY or ENGINEER without the prior written consent of the other.

### **Construction**

All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any party whatsoever by virtue of that party having drafted the document or any portion thereof.

### **Default**

A material breach or default shall include, but not be limited to, the failure of a party to comply with any or all terms, provisions, requirements or covenants under this Agreement. The breaching or defaulting party shall have ten calendar days in which to cure such material breach or default. Failure to cure may result in the non-breaching or non-defaulting party to choose to terminate this Agreement immediately if they so desire. The parties may agree to a different time period to cure if curing cannot be completed within ten calendar days. The material breaching party or defaulting party shall be responsible to the other party for any costs and expenses incurred relating to or arising from a material breach or default under this Agreement.

### **Insurance**

ENGINEER shall maintain during the life of this Agreement, the following minimum public liability and property damage insurance to cover claims for injuries, including accidental death, as well as from claims for property damages, which may arise from the performance of services under this Agreement.

1. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability and broad form property damage liability. The combined single limit for bodily injury and property damage shall not be less than \$1,000,000.
2. Statutory workers compensation and employer's liability insurance as required by the state having jurisdiction.
3. Professional liability insurance covering damages resulting from negligent acts, errors, and omissions of ENGINEER.

ENGINEER shall furnish to CITY a Certificate of Insurance prior to beginning services demonstrating that ENGINEER has the appropriate insurance. Said Certificate shall be approved by the City Attorney, contain a 30-day notice of cancellation and shall list CITY as an additional insured. ENGINEER shall furnish the appropriate additional insured endorsement along with the Certificate of Insurance.

### **Integration**

This Agreement represents the entire understanding of CITY and ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties.

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### **Jurisdiction**

This Agreement shall be administered and interpreted under the laws of the State of Wisconsin. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

### **Notice and Demand**

Any notice, demand or communication under this Agreement by any party to the other party shall be given or delivered by first class mail, registered or certified mail, postage paid, return receipt requested or delivered in person as follows to:

**CITY:** CITY CLERK  
900 Quay Street  
Manitowoc, WI 54220

**ENGINEER:** STRAND ASSOCIATES, INC.®  
Joseph M. Bunker, Corporate Secretary  
910 West Wingra Drive  
Madison, WI 53715

The above addresses or designated party may be changed at any time by the parties by giving notice in writing in the manner provided above.

### **Suspension of Services**

CITY may suspend, in writing, all or a portion of the services under this Agreement in the event unforeseen circumstances beyond the control of CITY make normal progress in the performance of the services impossible. ENGINEER may request that the services be suspended by notifying CITY, in writing, of circumstances, which are interfering with normal progress of the services. The time for completion of the services shall be extended by the number of days the services is suspended.

### **Dispute Resolution**

Except as may be otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question between CITY and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided first by mediation, if the parties mutually agree, or with a bench trial in a court of competent jurisdiction within the State of Wisconsin.

### **Remedies**

Neither ENGINEER nor CITY shall be liable to the other for special, indirect, punitive, or consequential damages for claims, disputes, or other matters in question arising out of this or relating to this Agreement. This mutual waiver is applicable, without limitation, due to either party's termination of this Agreement.

### **Terms and Conditions**

The terms and conditions of this Agreement and subsequently issued Task Orders will apply to the Services defined in the **Scope of Services** and represent the entire Agreement and supersede any prior proposals, Requests for Qualifications, or Agreements. CITY-supplied purchase order is for processing payment only; terms and conditions on the purchase order shall not apply to these Services.



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IN WITNESS WHEREOF the parties hereto have made and executed this Agreement.

**STRAND ASSOCIATES, INC.®**

**CITY OF MANITOWOC**

By: \_\_\_\_\_  
**Joseph M. Bunker**  
**Corporate Secretary**

By: \_\_\_\_\_  
**Justin M. Nickels**  
**Mayor**

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

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

By: \_\_\_\_\_  
**Matthew S. Richards**  
**Chairman and CEO**

By: \_\_\_\_\_  
**Mackenzie Reed**  
**City Clerk and Deputy Treasurer**

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

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

**NOT FOR SIGNATURE**