

AMENDED @ 4:00 P.M. Thursday, 9/2/09 to add to C-3 – “Discussion regarding Park St. sewer backup, and possible direction to city staff on sanitary sewer backup claim”.

**CITY OF WHITEWATER
COMMON COUNCIL AGENDA**

Special Common Council Meeting

Tuesday, September 8, 2009 – 6:30 p.m.

City of Whitewater Municipal Building Community Room

312 W. Whitewater Street Whitewater, Wisconsin

CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE.

CONSIDERATIONS:

C-1	Award of bid for Contract 4-2009:Wastewater Treatment Plant Equipment Replacement Project. (DPW Director Request).
C-2	Approval of Amendment #2 to Strand Associates Agreement for Planning & Design Services for Wastewater Treatment Plant Equipment Replacement Project. (City Manager Request).
C-3	Presentation by Dennis Tweedale, Chief Executive Officer of League of Wisconsin Municipalities Insurance Program on Sanitary Sewer Backup Claims & Municipal Liability/ Discussion regarding Park St. sewer backup, and possible direction to city staff on sanitary sewer backup claim (City Manager Brunner Request).
C-4	Councilmember requests for future agenda items.
C-5	Adjourn.

Anyone requiring special arrangements is asked to call the Office of the City Manager / City Clerk at least 72 hours prior to the meeting.

- **Items denoted with asterisks will be approved on the Consent Agenda unless any council member requests that it be removed for individual discussion.**

Kevin M. Brunner, City Manager
312 W. Whitewater Street
Whitewater, WI 53190
kbrunner@ci.whitewater.wi.us

City of Whitewater

Memo

To: Common Council Members
From: Kevin Brunner
Date: 09/03/2009
Re: Sanitary Sewer Backup Claims

As discussed at last week's City Council meeting, I have invited Dennis Tweedale, League of Wisconsin Municipalities Liability Insurance Chief Executive Officer, to attend next week's special Council meeting to make a presentation of sewer main backup claims and municipal liability.

I want to provide you with some general information about sewer main backups and what has happened here in Whitewater with regard to such claims historically.

Currently, there are some 330 municipalities in the State of Wisconsin insured through the League Liability Insurance Program. Since 2003, I was informed that the program has received 363 sewer backup claims and that 95 of those or approximately 26% were paid. The average dollar amount for claims paid is \$1500. In every case the municipality was found to be liable because of 1) failure to remedy a sewer main blockage that it was aware of prior to the private property backup or 2) failure to adequately install and/or maintain the sewer mains that they are responsible for.

Many communities have maintained public information programs letting property owners know what their alternatives are with regard to sewer backups. City staff has produced the attached flyer which we provide to property owners but that also we plan to distribute with future utility billings.

This issue has come before the Common Council in the past. In August 2004, the Council had a discussion regarding possible purchase of an additional "no fault" rider on its liability insurance to cover private property sanitary sewer backup claims (see attached minutes from that meeting). The Council at that time elected to take no action and declined to purchase such insurance at that time.

Doug Saubert has researched what such coverage would cost the City and the estimate received from the League Liability Program is approximately \$18,000 per year.

Most cities are not funding in any way for sewer back up claims. The City could choose to self-fund as opposed to the no fault coverage as the League Program has no problem with that. Rick

Kalscheuer of R&R Insurance, which serves as the City's insurance agent, recommends the following points to consider if the City chose to self fund these types of claims:

1. If the City decides to self fund, an independent 3rd party should be hired to adjust the loss. Otherwise, the City runs the risk of citizens reporting items that should not be covered such as foundation damage etc. I am sure Midwest Claims could do this for a fee. Probably \$250 per claim but that would need to be worked out with Dennis Tweedale and Midwest Claims
2. 3rd party losses are adjusted on an actual cash value basis not replacement cost. So if a TV is damaged in a basement the payment is for the value of a used TV not the value of a new flat screen.
3. How will you handle a sewer back up disaster like what occurred in nearby Jefferson last year? If you self fund it is recommended that a per occurrence and a yearly aggregate limit would be funded by the City.
4. The best program is to educate your citizens that the City is not usually responsible for these claims. The City does maintain their sewers on a regular basis and is not normally responsible should a back up occur. Citizens can and should buy sewer back up coverage on their homeowners or renters policy if this is a concern. Approximate cost for \$10,000 of coverage is \$65 per year; \$25,000 of coverage is about \$125 per year. This would provide the replacement cost coverage they want. Personal lines insurance companies policy features differ so your citizens should contact their individual agent for consultation.

A history of the City's sanitary sewer claims received since 2003 is attached for your review and information. Unfortunately, the City switched liability carriers in 2003 from Wausau to the League and pre-2003 data is not available. As you can see, the City does not receive many of these types of claims (none were received during 2008 for example) and they are frequently not paid.

Unfortunately, the City finds itself in a very difficult situation with 1st Lt. Joe Cull's claim for the sanitary sewer damages at his property located on Park Street. On the one hand, you certainly want to help him out since he is faithfully serving his country overseas and shouldn't have to worry about such matters. But on the other hand, making a payment to him admits liability and opens all the claims previously denied to others open to possible payment or lawsuit as well as to all future similar such claims. The Common Council made a conscientious decision five years ago to not fund such denied claims by deciding to not purchase the no fault insurance available.

You should know that a number of local service organizations including the American Legion and Whitewater Rotary Club are spearheading efforts to assist 1st Lt. Cull financially. Perhaps the best alternative in all of this is for the City to make a contribution to that special fund assisting him without admitting that it has liability for the sewer backup that occurred.

Cc-Dean Fischer, Tim Reel and Doug Saubert

C-1

**CITY of WHITEWATER
SEWER BACKUP CLAIMS HISTORY
2004 TO PRESENT**

Loss Date	Loss Notice	Close Date	Total Incurred	Description
02/04/2004	02/06/2004	03/04/2004	\$0.00	815 NORTH ST.
04/21/2004	05/13/2004	06/09/2004	\$0.00	215-223 NORTH PRAIRIE
05/08/2004	05/20/2004	06/16/2004	\$0.00	149 N. FRANKLIN
05/09/2004	08/23/2004	10/13/2004	\$0.00	129 S. LOCUST LANE
05/22/2004	08/23/2004	09/30/2004	\$0.00	129 S. LOCUST LANE
09/04/2004	09/09/2004	10/06/2004	\$0.00	268 SOUTH COTTAGE
02/02/2005	02/03/2005	12/07/2006	\$759.28	149 N. FRANKLIN
06/14/2005	06/15/2005	01/04/2006	\$6,126.76	1140 BLOOMINGFIELD.
12/20/2005	12/22/2005	03/15/2006	\$0.00	806,810,816 EAST MAIN STREET
03/26/2006	04/17/2006	05/19/2006	\$0.00	602 WALTON CIRCLE
04/09/2006	04/17/2006	05/23/2006	\$0.00	936 HIGHLAND
04/19/2006	05/01/2006	06/15/2006	\$536.20	231 S. ELIZABETH
07/27/2006	08/01/2006	09/20/2006	\$0.00	351 SUMMITT
03/15/2007	03/19/2007	05/14/2007	\$0.00	256 S. EASTERLY STREET.
07/04/2007	07/06/2007	07/16/2007	\$0.00	824 E. MAIN STREET.
10/10/2007	10/12/2007	12/03/2007	\$0.00	315 S. WHITON
12/13/2007	12/18/2007	12/27/2007	\$0.00	904 WALWORTH AVENUE
12/14/2007	12/19/2007	12/27/2007	\$0.00	910 WEST WALWORTH AVENUE
01/01/2008	12/31/2008			NO SEWER BACKUP CLAIMS WERE MADE
07/02/2009	07/07/2009	07/08/2009	\$0.00	281 N. PARK STREET.
08/23/2009	08/24/2009	OPEN	\$0.00	221 SOUTH COTTAGE

2a



INFORMATION FOR HOMEOWNERS & RESIDENTS

- Facts About Sewer Backup Incidents -

Sewer backups are an unfortunate but common problem in U.S. cities and towns. Although municipal departments make every effort to prevent such incidents, they still may occur. The following information is offered to help property owners and residents understand why backups happen, how they can be prevented, and what steps citizens should take if a sewer backup affects their property. The following questions and answers may be helpful:

What causes a sewer backup?

Sanitary sewer overflows can be caused by a number of factors. They usually involve sewer pipe blockages in either main sewer lines or service laterals (lines between buildings and the main line). Causes may include pipe breaks or cracks due to tree roots, system deterioration, insufficient system capacity due to illegal sump pumps, residential or commercial growth, or construction mishaps. In home and office plumbing systems, the main cause is accumulation of grease, tree roots, hair, or solid materials, such as disposable diapers or sanitary napkins that are too large for wastewater pipes to handle. Such materials may cause major backups in City lines as well as in residents' lateral lines. A frequent cause of water stoppages within the City's system, however, is vandalism. Leaves, sticks, rocks, bricks and trash have been found stuffed down manholes. We hope you will report observations of any such activity.

Is there anything I can do to prevent sewage backup into my home?

- Avoid putting grease down your garbage disposal or household drain. It can solidify, collect debris and accumulate in City lines, or build up in your own system.
- Never flush disposable diapers, sanitary napkins or paper towels down the toilet. They could plug up your drains and may damage your plumbing system.
- If the lateral line in your older home has a jointed pipe system, consider whether the roots of large shrubs or trees near the line could invade and break pipes. It is a good idea to know the location of your lateral line(s). Property maps can often be acquired from your city planning department.
- If the lowest level of your home is below ground level, such as a basement floor drain, it may one day be affected by a backup. One way to prevent sewage backup through such below ground areas is to install a "back-flow valve" on the lowest drain(s). You can also use a plumber's test plug to close these drains when not in use.
- Always make sure that your plumbing system vent pipe is not plugged. (bird and squirrel activity is often the cause)
- For further information about preventive measures, contact a plumber or plumbing supply dealer.

How could a sewer backup affect me?

If the backup occurs in a City maintained line, the wastewater will normally overflow out of the lowest possible opening, which is usually a manhole. However, in some homes—especially those with basements, or where the lowest level is even with the sewer lines—the overflowing wastewater may exit through the home's lower drains and toilets.

What should I do if sewage backs up into my home?

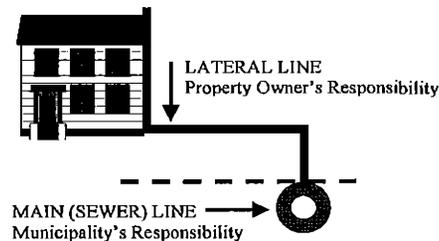
First, take action to protect people and valuable property:

- Keeping in mind that ceramic plumbing fixtures such as toilets are fragile, quickly close all drain openings with stoppers or plugs. Tub, sink, and floor drains may need additional weight to keep them sealed. A string mop can be used to help plug toilet openings.
- Don't run any water down your drains until the blockage has been cleared. (i.e. dishwashers and laundry should be turned off)
- Call the Wastewater Utility immediately. Numbers are listed at the end of this flyer.

- A quick check with nearby neighbors will help determine if the backup appears to be in your neighbor's wastewater line, and/or widespread in your neighborhood.
- Call a plumber if the problem is in your lateral service line. (seeking quotes for all anticipated work is advised)

If I call the city, what will they do about a sewer backup onto my property?

- You will be asked questions about the backup severity, possible causes and occurrence frequency etc.
- City personnel will check for blockages in the main line. In any case, the mainline will be immediately cleaned. It should be noted that mainline cleaning may dislodge obstructions in laterals due to the pressures generated during the process.
- If the main line is not blocked, you will be advised to call a plumbing or sewer contractor (a list of contractors is available for your convenience) to check your lateral line. Maintenance and repair of the lateral line is the owner's responsibility. (See diagram below.)
- To minimize damage and negative health effects, you should arrange for cleanup of the property as soon as possible. There are qualified businesses that specialize in this type of cleanup.
- If the sewer backup onto your property resulted from blockage in the main sewer line it is still advised that you arrange for cleanup. Insurance issues can be dealt with after the health issues are remedied.



What does the municipality do to prevent this problem?

- Every attempt is made to prevent backups in the public wastewater system before they occur. Sewer lines are specially designed to prevent accumulation and stoppages.
- In addition, we have maintenance crews that are devoted to inspecting and cleaning wastewater lines throughout the City on a regular schedule.
- Even with our maintenance schedule, however, backups are often beyond the City's control. Most that do occur are confined to the sewage pipeline, rather than backing up into a home.

Will insurance cover any damage to my home or property?

- In the majority of cases, a special rider will need to be added to your homeowner's or renter's insurance policy to cover damages related to sewage backups or water damage. This optional coverage is usually not very expensive, but you must usually request that it be added to your policy. Call your insurance agent today to discuss this policy option.
- As with the majority of municipalities in the country, the City cannot assume financial responsibility for damages resulting from sewage backups that are beyond the City's control. That is why it is important that property owners confirm that they are adequately insured—particularly if areas of their home lie below ground level. It also reinforces the importance of properly maintaining your homes plumbing system through some simple steps mentioned above.

How and where should I report a sewer backup?

Emergency crews are on call 24 hours a day to assist you. In an emergency such as a sewer line backup, or if you observe any vandalism associated with the wastewater or sewer lines, **contact the Wastewater Utility M-F from 7am – 3:30pm @ (262)-473-5920. All other hours, please contact (262)-473-0555.**

8/17/2004

V31-72

	boundary line, thence north 1,400'	11.16.080	No parking
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SECTION 2: This Ordinance shall take effect upon passage and publication as required by law.

Ordinance introduced by Councilmember Stewart, who moved its adoption. Seconded by Councilmember Bilgen. AYES: Scott, Uselman, Bilgen, Hixson, Allen, Stewart. NOES: Kienbaum. ABSENT: None. ADOPTED: August 17, 2004.

Dean Fischer, Interim City Manager

Michele Smith, City Clerk

AWARD OF CONTRACT TO PIEPER POWER FOR INSTALLATION OF STANDBY GENERATION EQUIPMENT AT WASTEWATER UTILITY. There was only one bid received for the contract for installation of standby generation equipment at the Wastewater Treatment facility. The bid was from Pieper Power of Milwaukee in the amount of \$61,277. Fischer noted that a second bid did arrive at the office 45 minutes late, which he (Fischer) rejected. It was moved by Bilgen and seconded by Stewart to approve an award of contract to Pieper Power of Milwaukee, Wisconsin in the sum of \$61,277, contingent upon the sale of the present emergency power system. AYES: Scott, Uselman, Bilgen, Hixson, Allen, Kienbaum, Stewart. NOES: None. ABSENT: None.

DISCUSSION REGARDING POSSIBLE PURCHASE OF SEWER BACK UP INSURANCE COVERAGE. Rick Kalschneur of R & R Insurance presented information regarding extended sewer back up insurance. Kalschneur explained that the City is currently covered for a negligent sewer system backup. However, there is no coverage for a sewer back up incident for which the city is not legally responsible. Examples given were heavy rain which would overwhelm the system or a back up which occurs after a reasonable maintenance schedule. He noted that the extended coverage did have exclusions. Public Works Director Fischer noted that sewers are maintained regularly in the City and trouble spots are cleared weekly. Kalschneur stated that most of his competitors do not offer sewer back up coverage. Kalschneur also stated that most homeowners can purchase coverage through their property insurance to cover this type of loss at an approximate cost of \$45-60 per year for \$10,000 worth of coverage. DPW Director Fischer noted that training employees well on how to handle such matters reduces exposure. No formal action was taken.



APPOINTMENT OF COUNCIL REPRESENTATIVE TO WAWORTH COUNTY SMART GROWTH TECHNICAL ADVISORY COMMITTEE. It is necessary to appoint a council representative to the County committee. Code Enforcement Director/Zoning Administrator Bruce Parker indicated that he will be involved in the process, but an elected member is also needed. Marilyn Kienbaum volunteered to serve. It was moved by Stewart and seconded by Hixson to appoint Marilyn Kienbaum to serve on the Smart Growth Committee (with Jim Allen serving as alternate appointee). AYES: Scott, Uselman, Bilgen, Hixson, Allen, Kienbaum, Stewart. NOES: None. ABSENT: None.

DISCUSSION REGARDING ACCEPTANCE OF CREDIT CARDS IN PAYMENT OF CITY FEES. A very lengthy discussion ensued regarding acceptance of credit cards in payment of city fees. Finance Director Doug Saubert reported that he has spoken with various Department Heads in the City and they are in favor of accepting credit cards. Saubert's investigation has indicated that very few people will use credit cards. Saubert requested Council input on just how far they wanted to go with credit card acceptance. Saubert noted that there are fees charged when credit cards are used, and his investigation has revealed that the Credit Card Companies do not allow their vendors to "charge back" that fee to the customer. It was noted that several places do charge back the fee to the consumer. Saubert did have reservations about the use of credit cards to pay real estate tax bills. Councilmember Uselman indicated that he has been employed through a Company which assists businesses in accepting electronic payments. Uselman had very detailed information on the procedures and Finance Director Saubert agreed to meet with Uselman to discuss many of the details. Uselman did acknowledge that credit card fraud is a major concern. Further information will be forthcoming at a future date.

MEMORANDUM

To: Kevin Brunner, City Manager
Fr: Dean Fischer, Director of Public Works
Date: September 3, 2009



**Subject: Approval of Contract 4-2009
Wastewater Treatment Plant Improvements**

Attached is the bid tabulation for Contract 4-2009.

KBK Services Inc was the low base bidder for the project. KBK Services Inc was prequalified for this project.

Tim Reel, Jane Carlson, and I reviewed the alternative bids requested. The bid alternatives are attached for your information. As Jane noted, staff is recommending the Council approve the contract with Bid Alternatives 2 & 3 included.

The base bid and alternatives 2 & 3 total \$4,519,660, which is within the budget for this project.

Staff is recommending the Council approve Contract 4-2009 with KBK Services, Inc, Ashland, WI for the base bid of \$4,490,000 plus Bid Alternative #2 for \$19,360 & Bid Alternative #3 for \$10,300 for a total contract of \$4,519,660 contingent upon DNR verification that the city will receive a Cleanwater Loan and Grant to fund the project.

C: Project File



September 2, 2009

910 West Wingra Drive
Madison, WI 53715
Phone: 608-251-4843
Fax: 608-251-8655

Office Locations

Madison, WI
Joliet, IL
Louisville, KY
Lexington, KY
Mobile, AL
Columbus, IN
Columbus, OH
Indianapolis, IN
Milwaukee, WI
Cincinnati, OH
Phoenix, AZ

www.strand.com

Mr. Dean Fischer, DPW
City of Whitewater
312 West Whitewater Street
Whitewater, WI 53190

Re: Wastewater Treatment Plant Improvements
Contract 4-2009
City of Whitewater, Wisconsin

Dear Dean,

Bids for the above-referenced project were opened on August 28, 2009. Six bids were received with the resulting bid tabulation enclosed. The low bid of \$4,490,000 was less than ENGINEER's opinion of probable construction cost.

KBK Services, Inc. of Ashland, WI was the apparent low bidder. The bid included a bid bond for 10 percent and Addenda Nos. 1 and 2 were acknowledged.

We have reviewed the supplemental unit price; it appears reasonable and we recommend approval. After discussion with you and City staff and comparison with the project budget, we also recommend the City accept Bid Alternative No. 2—the addition of two Secondary Clarifier Density Current Baffles for \$19,360; and Bid Alternative No. 3—the addition of Supervisory Control and Data Acquisition System (SCADA) human-machine interface (HMI) graphics services for \$10,300. If the City agrees to accept these two Bid Alternatives, they will be included in Change Order No. 1 to be signed with the construction Agreement and the awarded contract price including the Change Order will be \$4,519,660.

We do not recommend the City accept any of the other Bid Alternatives at this time. Decisions regarding Equipment Alternatives should be made within 60 days of the effective date of the construction Agreement.

Strand Associates, Inc.[®] has previously worked with KBK Services, Inc., on two projects for the City of Bayfield, Wisconsin. Based on our previous experience with this contractor, we have found them to be responsible.



Mr. Dean Fischer, DPW
City of Whitewater
Page 2
September 2, 2009

We understand that the City prequalified KBK Services, Inc. prior to the bid date.

If you have any questions, please call.

Sincerely,

STRAND ASSOCIATES, INC.®

A handwritten signature in black ink that reads 'Jane M. Carlson'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Jane M. Carlson, P.E.
Senior Associate

Enclosure

Bids Received: 11:00 AM
Friday, August 28, 2009

STRAND ASSOCIATES, INC.®
910 West Wingra Drive
Madison, Wisconsin 53715

WASTEWATER TREATMENT PLANT (WWTP) IMPROVEMENTS
CONTRACT 4-2009
CITY OF WHITEWATER, WISCONSIN

BID TABULATION SUMMARY

Bidder and Address	Bid Bond or Guarantee	Addenda Acknowledged	Lump Sum Bid
KBK Services, Inc. 1207 Lakeshore Drive East Ashland, WI 54806	10%	Yes	\$4,490,000.00
H&H Industries, Inc. 2801 Syene Road Madison, WI 53713	10%	Yes	\$4,704,860.00
Hooper Corporation 2003 Pennsylvania Avenue Madison, WI 53704	10%	Yes	\$4,875,000.00
Staab Construction Corporation 1800 Laemle Avenue Marshfield, WI 54449	10%	Yes	\$5,092,000.00
J.F. Ahern Co. 855 Morris Street Fond du Lac, WI 54935	10%	Yes	\$5,147,000.00
Rawson Contractors, Inc. PO Box 566 Sussex, WI 53089	10%	Yes	\$5,990,000.00

Reviewed by: *Jane M Carlson*

C-2

Bids Received: 11:00 AM
Friday, August 28, 2009

STRAND ASSOCIATES, INC.®
910 West Wingra Drive
Madison, Wisconsin 53715

10

WASTEWATER TREATMENT PLANT (WWTP) IMPROVEMENTS
CONTRACT 4-2009
CITY OF WHITEWATER, WISCONSIN

BID ALTERNATIVES

Bidder and Address	Bid Alternative No. 1	Bid Alternative No. 2	Bid Alternative No. 3	Bid Alternative No. 4	Bid Alternative No. 5
KBK Services, Inc. 1207 Lakeshore Drive East Ashland, WI 54806	(-) 1,000.00	(+) \$19,360.00	(+) \$10,300.00	(-) \$195,600.00	(-) \$512,000.00
H&H Industries, Inc. 2801 Syene Road Madison, WI 53713	(+) \$2,300.00	(+) \$19,433.00	(+) \$11,180.00	(-) \$164,789.00	(-) \$419,594.00
Hooper Corporation 2003 Pennsylvania Avenue Madison, WI 53704	(+) \$1,700.00	(+) \$35,000.00	(+) \$11,742.00	(-) \$160,700.00	(-) \$251,000.00

Reviewed by: *Jane M. Carlson*

BID ALTERNATIVES

C-2

BID ALTERNATIVE NO. 1:

CONTRACTOR shall include in the cost of the bid alternative ALL work associated with providing the scope listed below.

The price of \$ _____ shall be (deducted) or (added) (*strike one*) from the contract lump sum base bid if OWNER elects to use fiberglass stop gates as specified in Section 06612-Fiberglass Stop Gates in lieu of stainless steel gates as specified in Section 05501-Stop Gates.

BID ALTERNATIVE NO. 2:

CONTRACTOR shall include in the cost of the bid alternative ALL work associated with providing the scope listed below.

The price of \$ _____ shall be added to the contract lump sum base bid if OWNER elects to have CONTRACTOR provide two Secondary Clarifier density current baffles as specified in Section 13100-FRP Density Current Baffles.

BID ALTERNATIVE NO. 3:

CONTRACTOR shall include in the cost of the bid alternative ALL work associated with providing the scope listed below.

The price of \$ _____ shall be added to the contract lump sum base bid if OWNER elects to have CONTRACTOR's SCADA integrator provide the HMI graphics associated with the SCADA work specified in Section 16940-Controls and Instrumentation.

BID ALTERNATIVE NO. 4:

CONTRACTOR shall include in the cost of the bid alternative ALL work associated with providing the scope listed below.

The price of \$ _____ shall be deducted from the contract lump sum base bid if OWNER elects to delete the sludge storage tank aluminum cover specified in Section 13133-Prefabricated Aluminum Dome Structures and make other modifications as noted on the Drawings.

BID ALTERNATIVE NO. 5:

CONTRACTOR shall include in the cost of the bid alternative ALL work associated with providing the scope listed below.

The price of \$ _____ shall be deducted from the contract lump sum base bid if OWNER elects to delete the UV equipment specified in Section 11396, the fiberglass planking specified in Section 06600, the two serpentine weirs associated with the UV system and specified in Section 06614, the associated beam and hoist specified in Section 14600, and all associated structural, electrical, and other work as noted on the Drawings.

MEMORANDUM

To: Kevin Brunner, City Manager
Fr: Dean Fischer, Director of Public Works
Date: September 3, 2009



**Subject: Contract 4-2009 Amendment #2 for Construction Services
Wastewater Treatment Equipment Replacement Project**

Attached is the proposed amendment to the Strand Associates contract dated April 30, 2009 for construction services for the Wastewater Treatment Equipment Replacement Project. I have included the April 30, 2009 contract for your information also.

Jane Carlson's memo explains how the fee was calculated. Jane noted that the fee was reduced by \$25,000 for SCADA graphics services as these services were included in the bids for the project.

These construction services cannot be provided by the city's staff. These services involve mechanical and structural expertise as can be provided by Strand Associates.

Jane Carlson will be attending the meeting to address any questions the Council may have.

This is a time and material fee contract with a not to exceed amount of \$440,200.

Staff is recommending that the Council approve this contract amendment contingent upon DNR verification that the City will receive a Cleanwater Loan and Grant to fund the project.

C: Project File



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 Madison, WI 53715
 Phone: 608-251-4843
 Fax: 608-251-8655

Office Locations

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www.strand.com

September 2, 2009

Mr. Dean Fischer
 City of Whitewater
 312 West Whitewater Street
 P.O. Box 178
 Whitewater, WI 53190

Re: Proposed Amendment for Wastewater Treatment Plant (WWTP)
 Contract 4-2009 Construction-Phase Services

Dear Dean,

Enclosed please find the proposed Amendment No. 2 for the WWTP Contract 4-2009 construction-phase services. Amendment No. 1 included the scope and fee for bidding services; this Amendment would replace Amendment 1 with the total construction-phase services.

As we do for all of our WWTP projects, we used several methods to develop the construction-phase services fee and then made adjustments for project-specific considerations. For this project, our fee development method is outlined below.

1. Wisconsin Department of Natural Resources (WDNR) Fee Tables

The WDNR developed an *A/E Procurement Information Packet for Municipal Wastewater Treatment Projects Funded by the Clean Water Fund* in February 1992. The tables include low (10 percent), mean, and high (90 percent) engineering fees compared to construction costs based on data collected by the WDNR. Strand's fees for construction-phase services typically fall in the range of the mean to mean plus 10 percent. For your project, we assumed a construction cost of \$4.5 million. The WDNR tables indicate the mean total construction services engineering fee would be \$422,600 for a \$4.5 million project. The mean plus 10 percent would be \$464,900.

2. Previous WWTP Construction Projects

We reviewed past projects that were a similar size, scope, and distance from our offices to determine the fee as a percentage of construction cost. Two of these were in Wisconsin and a third, which involved significant rehabilitation like your project, was in Illinois close to our Joliet office. The total construction services engineering fee for these projects when normalized to a \$4.5 million construction cost would be about \$430,000 to \$475,000.



Mr. Dean Fischer
 City of Whitewater
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 September 2, 2009

3. Project-Specific Factors

We reviewed project-specific factors to help determine whether the fee should be on the high or low end of the fees calculated by the above two methods.

Factors that would tend to reduce the fee follow:

- a. The WWTP is close to our office locations; however, this was considered when selecting past projects for comparison in method 2 above.
- b. The project involves a great deal of aboveground construction and equipment installation as opposed to work that will be buried or concealed and involves little concrete work, so a full-time resident project representative will not be needed.

Factors that would tend to increase the fee follow:

- a. The project involves rehabilitation of several areas of the WWTP, and rehabilitation projects tend to require more engineering time during design and construction.
- b. The WWTP staff is interested in a more robust operation and maintenance (O&M) manual than would typically be provided and has requested the manual be provided in a hard copy and electronic format (portable document format).

Based on the above analysis, we are proposing a not-to-exceed fee of \$440,200 for construction-phase services for this project. This fee includes \$22,000 for the bidding and Clean Water Fund assistance services that were included in Amendment No. 1. This fee does not include \$25,000 that was included in the WDNR Clean Water Fund budget sheet for Strand to provide Supervisory Control and Data Acquisition (SCADA) graphics services; at your request, SCADA graphics services will be provided by the Contractor instead.

We truly appreciate the opportunity to work with the City of Whitewater on this project. If you have any questions about this letter or Amendment No. 2, please call.

Sincerely,

STRAND ASSOCIATES, INC.®

A handwritten signature in cursive script that reads 'Jane M. Carlson'.

Jane M. Carlson, P.E.
 Senior Associate

c/enc: Tim Reel, Superintendent, Whitewater WWTP



910 West Wingra Drive
Madison, WI 53715
Phone: 608-251-4843
Fax: 608-251-8655

Office Locations

Madison, WI
Joliet, IL
Louisville, KY
Lexington, KY
Mobile, AL
Columbus, IN
Columbus, OH
Indianapolis, IN
Milwaukee, WI
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September 2, 2009

City of Whitewater
312 West Whitewater Street
P.O. Box 178
Whitewater, WI 53190

Attention: Mr. Dean Fischer, Director of Public Works

Re: Amendment No. 2 to the April 30, 2009, Agreement for Planning and Design
Services
Wastewater Treatment Plant Equipment Replacement Project

This is Amendment No. 2 to the referenced Agreement.

Under **Scope of Services**, Construction-Related Services, DELETE Item No. 8.

Under **Compensation**, DELETE and REPLACE the second paragraph with the following:

“The total limiting fee for Construction-Related Services shall not exceed \$440,200. This fee is based on the **Schedule** as indicated and includes 1,720 hours of RPR time.”

Under **Schedule**, ADD the following:

“Assuming WDNR approval of funding by December 2009, it is anticipated that construction will begin in January 2010 and all Construction-Related Services will be completed by May 31, 2011.”

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

ENGINEER:

OWNER:

STRAND ASSOCIATES, INC.®

CITY OF WHITEWATER

Matthew S. Richards
Corporate Secretary

Date

Kevin Brunner
City Manager

Date



910 West Wingra Drive
Madison, WI 53715
Phone: 608-251-4843
Fax: 608-251-8655

Office Locations

Madison, WI
Joliet, IL
Louisville, KY
Lexington, KY
Mobile, AL
Columbus, IN
Columbus, OH
Indianapolis, IN
Milwaukee, WI
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April 30, 2009

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312 West Whitewater Street
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Attention: Mr. Dean Fischer, Director of Public Works

Re: Agreement for Planning and Design Services
Wastewater Treatment Plant Equipment Replacement Project

www.strand.com

This is an Agreement between the City of Whitewater, Wisconsin, hereinafter referred to as OWNER, and Strand Associates, Inc.[®], hereinafter referred to as ENGINEER, to provide planning, design, and construction-related services (Services) for the Wastewater Treatment Plant (WWTP) Equipment Replacement, hereinafter referred to as the PROJECT. This Agreement shall be in accordance with the following elements.

Scope of Services

General

The Services to be provided can generally be described as an engineering report, design, and construction-related services for replacing the influent pumps, replacing the screenings conveyor with a screenings wash press, rehabilitating or replacing primary and final clarifier collector mechanisms, rehabilitating rotating biological contactor (RBC) building ventilation, rehabilitating or replacing effluent filtration equipment, upgrading or replacing disinfection equipment, rehabilitating or replacing existing sludge pumps, replacing digester gas safety equipment, replacing primary and secondary digester mixing systems, replacing the secondary digester cover and access, and purchase of pre-owned land application equipment.

Planning Services

The engineering report will include information on projected wastewater flows and loadings, the need for the PROJECT, and costs. One meeting with the Wisconsin Department of Natural Resources (WDNR) reviewer in Madison is also included.



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Design Services

Design Services will include preparation of drawings and specifications, attendance at up to four review meetings with OWNER, incorporation of OWNER's comments into design documents, preparation of an opinion of probable cost for OWNER's use in Clean Water Fund applications, furnishing eight sets of final drawings and specifications for governmental review and OWNER review, and reporting to OWNER on the progress of the design services.

Construction-Related Services

Construction-Related Services will include the following major elements with the completion dates to be determined following WDNR approval of drawings and specifications.

1. Furnishing up to 50 sets of drawings and specifications for bidding.
2. Preparation of a parallel cost ratio and plan of operation for OWNER's use in Clean Water Fund Financial Assistance Agreement, and provision of information for Clean Water Fund disbursement requests prepared by OWNER.
3. Assistance in obtaining construction bids, tabulating and analyzing bid results, assisting OWNER in the award of construction contracts, preparation of formal Contract Documents for the award of contracts, consultation and advice during construction, reviewing contractor's shop drawings, reviewing contractor's periodic estimates and final estimates for payment, making visits to the job site during construction to review the PROJECT, attending approximately monthly construction progress meetings, providing punch list of construction issues remaining to be completed at substantial completion, and making final inspection with OWNER and contractor for acceptance of work.
4. Providing a part-time resident project representative (RPR) for observation of construction. In furnishing observation services, ENGINEER's efforts shall be directed toward determining for OWNER that the completed PROJECT will, in general, conform to the Contract Documents; but ENGINEER shall not supervise, direct, or have control over contractor's work, and shall not be responsible for contractor's construction means, methods, techniques, sequences, procedures, health or safety precautions or programs, or for contractor's failure to perform the construction work in accordance with the Contract Documents.
5. Drafting of record drawings based on contractor's marked-up drawings maintained throughout the PROJECT construction. Record drawings will be transmitted in paper format.



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6. Preparation of an amendment to the Operation and Maintenance Manual for the Wastewater Treatment Plant that addresses this PROJECT. Copies will be provided in both written and electronic portable document file (PDF) format.
7. Start-up services including consultation with OWNER regarding training of operators, operating assistance during start-up, and responding to operator's inquiries.
8. Supervisory Control and Data Acquisition (SCADA) system programming services for the existing Wastewater Treatment Plant SCADA System. Services include configuring Human-Machine-Interface software and developing process control graphic screens.
9. Related consultation, assistance, and communications with OWNER.

ENGINEER will provide civil, structural, mechanical, and electrical engineering services along with technical personnel and a part-time RPR. The hours of engineering time, resident and technician time, and secretarial time will be determined with OWNER following WDNR approval of drawings and specifications. ENGINEER is providing drafting services only for record drawings based on the records presented to ENGINEER by contractor and OWNER. ENGINEER shall not be liable for the accuracy of the record drawing information provided by contractor and OWNER.

Service Elements Not Included

The following services are not included in this Agreement. If such services are required, they shall be provided in accordance with terms and conditions outlined in an amendment to this Agreement.

1. Additional and Extended 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.

Any services of this type shall be provided through an amendment to this Agreement.

2. Archaeological or Botanical Investigations: The compensation does not include the cost for archaeological or botanical investigations should these be required. ENGINEER shall assist OWNER in engaging the services of an archaeologist or botanist, if required, to perform the field investigations necessary for agency review.



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3. Flood Studies: Any services involved in performing flood and floodway studies, if required, shall be provided for by an amendment to this Agreement or through a separate agreement with OWNER.
4. Geotechnical Engineering: The compensation does not include the cost for geotechnical engineering. It is anticipated ENGINEER's need for geotechnical engineering information will be coordinated through OWNER and OWNER's Geotechnical Consultant. The compensation does not include the cost for soil borings. If soil borings are required, ENGINEER shall assist OWNER in direct procurement of drilling services.
5. Land and Easement Surveys/Procurement: Any services of this type including, but not limited to, a record search, field work, preparation of legal descriptions, and/or assistance to OWNER for securing land rights necessary for siting sanitary sewer, tanks, and appurtenances shall be provided through a separate agreement with OWNER.
6. User Charge System Development: If a preliminary or final user charge system is required of the ENGINEER, it shall be provided through a separate agreement with OWNER.
7. Permit and Plan Review Fees: All permit and plan review fees payable to regulatory agencies shall be paid for by OWNER.
8. Preparation for and/or Appearance in Litigation on Behalf of OWNER: Any services of this type required to be provided by ENGINEER shall be provided through a separate agreement with OWNER.
9. Review of Product Substitutions or Means, Method, Technique, Sequence, or Procedure Substitutions Proposed by Contractor: The terms of the construction Contract (GC 6.05B and GC 6.05E) call for the construction contractor to reimburse OWNER for ENGINEER's cost for evaluating substitute products, means, method, technique, sequence, or procedure of construction. ENGINEER's cost for such evaluations is not included in the scope of this Agreement. Provision of such service by ENGINEER shall be provided for by an amendment to this Agreement.
10. 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, shall be provided for by an amendment to this Agreement.



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11. Services Furnished During Readvertisement for Bids, if Ordered by OWNER: If a Contract is not awarded pursuant to the original bids, any services of this type shall be provided for by an amendment to this Agreement.
12. 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 shall be provided for through a separate agreement with OWNER.

Compensation

Planning Services and Design Services will be provided on an hourly rate basis, plus expenses, for a total limiting fee not to exceed \$315,000.

Expenses incurred such as those for travel, meals, printing, postage, copies, computer, electronic communication, and long distance telephone calls shall be billed at actual cost plus 10 percent.

The limiting fee includes a wage scale that assumes the Services are completed as indicated. Should the completion time be extended, it may be cause for an adjustment in the limiting fee that reflects any wage scale adjustments made.

The limiting fee shall not be exceeded without prior notice to and agreement by OWNER but may be adjusted for time delays, time extensions, amendments, and changes in the **Scope of Services**. Any adjustment shall be negotiated based on ENGINEER's increase in costs caused by delays, extensions, amendments, or changes.

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 shall be adjusted to reflect the net change.

Compensation by OWNER to ENGINEER for Construction-Related Services will be determined following WDNR approval of drawings and specifications.

Schedule

ENGINEER intends to begin Services on or about April 20, 2009. It is anticipated the engineering report will be submitted to the WDNR by about May 15, 2009. If



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ENGINEER can begin design on May 6, 2009, it is anticipated that completion of drawings and specifications and submittal to the WDNR will occur by June 30, 2009. Final drawings and specifications for bidding purposes will be prepared within about one month of receiving WDNR comments on the drawings and specifications. It is anticipated that all Planning Services and Design Services will be completed by October 31, 2009.

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 the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

OWNER's Responsibilities

1. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to this PROJECT including previous reports, previous drawings and specifications, and any other data relative to the scope of this 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 OWNER relative to the scope of this 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 Services under this Agreement.
3. Provide access to the site as required for ENGINEER to perform Services under this Agreement.
4. Guarantee access to and make all provisions for ENGINEER to enter upon public and private lands as required for ENGINEER to perform Services under this Agreement.
5. Examine all reports, sketches, estimates, special provisions, drawings, and other documents presented by ENGINEER and shall render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the performance of ENGINEER.
6. Provide all legal services as may be required for the development of this PROJECT.



7. Retain the services of a Soils Consultant to provide any necessary geotechnical evaluation and recommendations, if requested by the ENGINEER.
8. Agree to hold harmless and indemnify ENGINEER against all damages, claims, and losses, including defense costs, arising out of OWNER's modification or reuse of any of the drawings and specifications without the written authorization of ENGINEER. ENGINEER acknowledges that the drawings and specifications prepared in performance of this Agreement shall be property of OWNER for this PROJECT upon payment. Therefore, ENGINEER will, within the scope of this Agreement, provide OWNER with reproducible copies including electronic copies of PROJECT drawings and specifications and authorizes OWNER to make copies of such drawings.

Opinion of Cost

Any opinions of cost prepared by ENGINEER are supplied for general guidance of OWNER 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 OWNER.

Payment Requests

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

Changes

1. OWNER 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 of or time required for performance of any Services under this Agreement, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.
2. No services for which additional compensation will be charged by ENGINEER shall be furnished without the written authorization of OWNER. The fee established herein shall not be exceeded without agreement by OWNER but may be adjusted for time delays, time extensions, amendments, or changes in the **Scope of Services**.
3. If there is a modification of WDNR 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



City of Whitewater
Page 8
April 30, 2009

Services provided for in this Agreement shall be reflected in an appropriate modification of this Agreement.

Extension of Services

This Agreement may be extended for additional services upon authorization by OWNER. Extension of Services shall be provided either on a lump sum fee or an hourly rate basis plus expenses.

Payment

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

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 OWNER, 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.

Utilization of Women and Minority Businesses

ENGINEER agrees that qualified women and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of WDNR financially assisted contracts and subcontracts. This pertains to the PROJECT as it is anticipated that a Wisconsin Clean Water Fund grant and loan will be used to finance the PROJECT.

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 shall be paid for all completed or obligated Services up to the date of termination.



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April 30, 2009

Third-Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER. ENGINEER's services under this Agreement are being performed solely for OWNER'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. OWNER and ENGINEER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this project to carry out the intent of this provision.

Dispute Resolution

Except as may be otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question between OWNER 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.

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

ENGINEER:

OWNER:

STRAND ASSOCIATES, INC.®

CITY OF WHITEWATER

Matthew S. Richards
Corporate Secretary

Date

Kevin M. Brunner 5/6/09

Kevin Brunner
City Manager

Date