



**RESOLUTION OF THE COUNTY BOARD
WILL COUNTY, ILLINOIS**

***Authorizing the County Executive to Execute a Professional Services Contract
with SCS Energy for the Prairie View Landfill Gas Upgrading EPC System Build***

WHEREAS, Will County desires to contract for the Prairie View Landfill Gas Upgrading EPC System Build, and

WHEREAS, pursuant to Resolution #20-75, approved on February 20, 2020, the County Executive's Office has completed a successful negotiation process with SCS Energy, Long Beach, CA, for Prairie View Landfill Gas Upgrading EPC System Build, based upon the attached proposal, and

WHEREAS, the Resource, Recovery & Energy Director has requested and the Executive Committee concurs that the County Executive be authorized to execute a professional services contract with SCS Energy, Long Beach, CA, for the Prairie View Landfill Gas Upgrading EPC System Build.

NOW, THEREFORE, BE IT RESOLVED, that the Will County Board authorizes the County Executive to execute a professional services contract with the firm of SCS Energy, Long Beach, CA, for the Prairie View Landfill Gas Upgrading EPC System Build based upon the attached proposal.

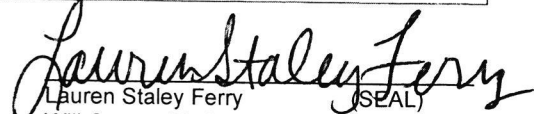
BE IT FURTHER RESOLVED, that the contract is subject to the review and approval of the Will County State's Attorney's Office.

BE IT FURTHER RESOLVED, that the Preamble of this Resolution is hereby adopted as if fully set forth herein. This Resolution shall be in full force and effect upon its passage and approval as provided by law.

Adopted by the Will County Board this 19th day of March, 2020.

| | |
|----------------|---|
| AYES: | Newquist, Ogalla, Koch, Moustis, Rice, Tyson, Harris, Traynere, Fritz, Mueller, Gould, VanDuyne, Balich, Fricilone, Brooks Jr., Winfrey, Parker, Ventura, Dollinger, Marcum, Berkowicz, Cowan, Tuminello, Weigel, Kraulidis |
| ABSENT: | Ferry |

Result: Approved - [Unanimous]


Lauren Staley Ferry (SEAL)
Will County Clerk

Approved this 20th day of March, 2020.


Lawrence M. Walsh
Will County Executive

**AGREEMENT BETWEEN SCS AND WILL COUNTY
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT (hereafter "Agreement") is made by and between Will County, Illinois and (hereafter "Client"), and Stearns, Conrad and Schmidt Consulting Engineers, Inc. dba SCS Engineers and/or SCS Field Services (hereafter "SCS").

WHEREAS, Client intends to engage SCS to perform professional services for a project known as the Prairie View Landfill Gas Upgrading System 30% Conceptual Design, Air Permit Application development and submittal (hereafter "Project").

NOW, THEREFORE, Client and SCS do hereby agree as follows:

ARTICLE 1--SCOPE OF SERVICES. SCS shall provide professional services (hereafter "Services") as set forth in Attachment A, in accordance with the terms and conditions of this Agreement. Unless expressly stated therein, the scope of work does not include testimony or responding to subpoenas. In the event SCS receives a subpoena or other legal order for the production of project records or testimony, the client agrees to pay for all time and expenses of SCS related thereto.

ARTICLE 2--RESPONSIBILITIES OF THE CLIENT. Client will:

- 2.1 Provide all criteria and full information as to its requirements for the Project.
- 2.2 Furnish SCS with data, reports, surveys, and other materials and information required for the Project, except such of the foregoing as are included in the Services to be provided by SCS.
- 2.3 Acquire all land and rights-of-way as required for the Project.
- 2.4 Provide access to the Project site and make all provisions for SCS to enter upon public and private lands as required for SCS to perform its Services under this Agreement.
- 2.5 Examine all studies, reports, sketches, construction costs, specifications, drawings, proposals and other documents presented by SCS to Client, and promptly render in writing Client's decisions pertaining thereto within a week, or, if a longer time is needed, within a period mutually agreed upon.
- 2.6 Give prompt written notice to SCS whenever Client observes or otherwise becomes aware of any defect in the Services rendered by SCS.
- 2.7 Furnish to SCS, prior to execution of this Agreement, a copy of any design, construction or other standards Client requires SCS to follow in performing Services under this Agreement.
- 2.8 Provide to SCS all budget requirements, if any, applicable to the Services and the Project.

ARTICLE 3--CHANGES IN THE SERVICES.

- 3.1 Changes may be made to the Services. Client may order additional Services upon the agreement of SCS. Client may delete previously ordered Services.
- 3.2 The provisions of this Agreement, with an equitable adjustment in SCS' compensation and schedule, shall apply to all changes in the services.

3.3 All changes to the Services shall be made pursuant to the Change Order form set out in Attachment B.

3.4 In the event Client directs SCS to perform changed Services without executing a Change Order in the form set out in Attachment B, SCS shall be compensated for the changed Services in accordance with SCS' then current standard rates as set out in Attachment C, unless otherwise agreed in writing by the Parties.

ARTICLE 4--PROJECT SCHEDULE.

4.1 The parties will mutually agree upon a schedule for performance of the Services ("Project Schedule").

4.2 SCS will begin performance of the Services upon Client's performance of all such Client responsibilities, as set out in Article 2, which are reasonably required in order for SCS to begin and perform the Services in accordance with the Project Schedule.

ARTICLE 5--COMPENSATION. For the Services as set forth in the Scope of Services, SCS shall be compensated as set forth below. Changes to the Services under Article 3 shall be compensated at SCS' then current standard rates as set out in Attachment C unless otherwise agreed in writing by the parties.

5.1 SCS will be compensated for time and expenses in accordance with SCS' standard rates in effect at the time of performance. Copies of SCS' current rates are attached in Attachment C. These rates are subject to adjustment on January 1 and June 30 of each year. Unless otherwise amended, total compensation will not exceed \$296,738.55.

ARTICLE 6--PAYMENT. Payment for Services rendered by SCS shall be in accordance with the following:

6.1 Invoices will be submitted by SCS every month and will indicate:

(a) for time and expenses compensation, the time and expenses incurred during the period.

6.2 Client will pay SCS according to the **Local Government (50 ILCS 505/) Prompt Payment Act.**
6.3 Payments for invoices issued by SCS are due and payable upon receipt.

6.4 If Client does not make timely payments, SCS may suspend performance of its Services on the basis of non-performance on the part of Client. When all amounts due are paid and adequate assurances of payment are given for all Services which have been rendered but not yet invoiced, as well as all future Services, SCS will continue its Services.

6.5 Client agrees to pay all costs and expenses of SCS, including reasonable attorney fees, arising out of or in connection with collecting amounts for which Client is responsible pursuant to this Agreement

ARTICLE 7--INSURANCE. SCS shall, during the performance of this Agreement, keep in force Workers' Compensation Insurance, including Employer's Liability Insurance for its employees, and Commercial General Liability Insurance with a combined minimum limit of \$1,000,000 for bodily injury and property damage.

ARTICLE 8--LIMITATION OF LIABILITY.

8.1 This Article 8 states the agreement of the parties with respect to allocation of the risks inherent in the type of project undertaken herein. The parties agree that SCS' liability under this Agreement and for the Project shall be limited to the amount covered, if any, by SCS' liability insurance then in effect up to \$1,000,000, or the amount of SCS' total fees hereunder (whichever is greater).

8.2 If Client desires that SCS assume more of the risk under this Agreement and for the Project than is specified in Article 8.1, and is willing to compensate SCS for the greater assumption of risk then in consideration of Client paying a surcharge (in addition to the compensation specified in Article 5, SCS' total liability under this Agreement and for the Project shall be limited.**ARTICLE 9--RELEASE AND INDEMNIFICATION.**

9.1 It is understood and agreed that, in seeking the Services of SCS under this Agreement, the Client may be requesting SCS to undertake obligations for the Client's benefit involving the presence or potential presence, or release or potential release to the environment, of hazardous substances and other contaminants. Therefore, Client agrees that SCS will not be responsible for, and does hereby release, hold harmless, indemnify, and defend SCS from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with the presence, discharge, release or escape of hazardous substances or contaminants of any kind, excepting only such liability as may arise out of the sole negligence of SCS.

9.2 Except as provided in Article 9.1 above, and to the extent provided in Article 8 above, SCS shall indemnify and hold harmless Client from and against any liabilities, claims and causes of action which Client may suffer as a result of negligent acts, errors, or omissions, or the willful and reckless disregard of obligations under this Agreement on the part of SCS or SCS' agents, employees or subcontractors in the performance of this Agreement, excepting such liability as may arise out of Client's negligence.

ARTICLE 10--GENERAL PROVISIONS.

10.1 SCS will perform its Services hereunder, as specified in Attachment A, in a timely manner. SCS is not responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time this Agreement was executed.

10.2 SCS shall be entitled to rely on information provided by Client. SCS shall be entitled to an equitable adjustment in the price and schedule if conditions differ materially from information provided by the Client, or differ materially from what reasonably could have been anticipated given the nature of the Services.

10.3 SCS shall perform its Services in accordance with the professional standards applicable to the Services provided (i.e., engineering, planning, consulting or others), at the time such Services are rendered. SCS makes no other warranty, either expressed or implied, as part of this Agreement.

10.4 SCS shall not disclose, or permit disclosure of any information designated by Client as confidential, except to its employees and other consultants who need such information in order to properly execute the Services of this Agreement. This provision shall not apply to information which: (1) has been published and is in the public domain, (2) has been provided to SCS by third parties who have the legal right to possess and disclose the information, (3) was in the possession of SCS prior to the disclosure of such information to SCS by Client, (4) is required by law or any governmental agency to be disclosed, or (5) would require disclosure to comply with the ethical obligations of SCS to protect the public.

10.5 Statements made by SCS concerning probable construction costs and detailed cost projections represent SCS' judgment with respect thereto. It is recognized, however, that SCS has no control over actual site conditions, the cost of labor, materials, or equipment, a contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, SCS cannot and does not represent or guarantee that bids or ultimate Project costs will not vary from any statement of probable construction cost or other cost projection prepared by SCS.

10.6 All drawings, specifications, reports, notes and data developed pursuant to this Agreement are instruments of service, and as such the original documents are and remain the property of SCS.

10.7 If construction at the site is to be performed by a person other than SCS, Client agrees to require such person to assume sole and complete responsibility for job site conditions during the course of construction, including safety of all persons and property. SCS shall have no responsibility for site health and safety for anyone

other than its own employees and its subcontractors, unless SCS expressly has agreed to provide such services. Client agrees SCS shall not be responsible for and does hereby release, hold harmless, indemnify and defend SCS from and against all claims, losses, damages, liability and costs, including costs of defense thereof, arising out of or in any way connected with performance of construction work by persons other than SCS and its subcontractors.

10.8 To the extent specifically provided in the Services, SCS will be available for advice and consultation, and will monitor on a limited basis construction work performed by persons other than SCS. SCS accepts no responsibility and makes no warranty whatsoever that construction work performed by other persons meets the design specifications (this being the sole responsibility of Client) unless the Services provides specifically for SCS to assume such responsibility. In no event shall SCS be responsible for the means, method or manner of performance of any persons other than SCS or its Subcontractors.

10.9 At no time shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to SCS, nor shall any provision of this Agreement be interpreted to permit or obligate SCS to assume the status of a "generator," "owner," "operator," "transporter," "arranger," or "treatment, storage or disposal facility" under state or federal law.

ARTICLE 11--TERMINATION OF AGREEMENT. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party without cause; by mutual written agreement of the parties; or by either party with five (5) days written notice to the other in the event of continuing substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this Agreement is terminated, SCS shall be paid for all Services performed by SCS to the effective date of termination. The indemnities of Article 9 and Article 10 shall survive any termination of this Agreement.

ARTICLE 12--DELEGATION OF DUTIES; ASSIGNMENT; SUCCESSORS. Neither party shall delegate its duties under this Agreement without the written consent of the other party. Each party binds itself to the successors, administrators and assigns of the other party in respect of all covenants of this Agreement.

ARTICLE 13--EXTENT OF AGREEMENT. This Agreement represents the entire and integrated agreement between Client and SCS and supersedes all prior negotiations, representations, or agreements, either written or oral, for Project. In the event any provision of this Agreement is determined to be invalid, the remaining provisions of this Agreement shall continue in full force and effect.

ARTICLE 14 – PARTIES TO AGREEMENT. For the purposes of this Agreement, the term "SCS Engineers" shall mean SCS Engineers P.C. for projects in North Carolina, and Stearns, Conrad and Schmidt Consulting Engineers, Inc. for all other projects.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of last date written below.

CLIENT: Will County STEARNS, CONRAD AND SCHMIDT CONSULTING ENGINEERS, INC.:

SIGN: _____

SIGN: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

**PRAIRIE VIEW LANDFILL GAS UPGRADING SYSTEM
SCOPE OF WORK -- 30% CONCEPTUAL DESIGN**

DELIVERABLES

SCS Energy prepare the following deliverables, which will constitute a 30% Conceptual Design:

- 1) Process Flow Diagrams (PFDs);
- 2) Piping and Instrumentation Diagrams (P+IDs);
- 3) Site General Arrangement Plan;
- 4) Equipment/Building General Arrangement Plan;
- 5) Definition of Interface Points (Battery Limits);
- 6) Priced Vendor Proposals for Major Equipment;
- 7) Geotechnical Investigation;
- 8) Foundation Layout Plan;
- 9) Piping Transposition Plan;
- 10) Single Line Diagrams; and
- 11) Air Permit Application.

SCS Energy will collaborate with the County and Waste Management to develop a plan for relocation of the Waste Management diesel fuel pumps that are located at the Gas Upgrading System plant site.

SCHEDULE

SCS Energy will complete the above work within 90 days of notice to proceed. SCS Energy will then provide a Guaranteed Maximum Price (GMP) based on the 30% Conceptual Design. SCS Energy's target for submittal of the GMP will be 30 days after completion of the 30% Conceptual Design.

SCS Energy will prepare a landfill gas recovery projection, in the form of a memo report, based on information supplied by the County. SCS Energy will submit this within one week of notice to proceed, provided that the County provides information that SCS Energy has requested at least one week prior to the notice to proceed.

PROJECT REVIEWS

The County and SCS Energy will meet within a week after delivery of the landfill gas recovery projection, and at that meeting the County will decide which plant configuration that the County desires -- 5,000 scfm (only) -- versus 5,000 scfm (easily expandable to 7,500 scfm later). If this decision is not made by the end of the second week after notice to proceed, then the 90 day completion period will be extended day to day. SCS will hold a design review conference call or a meeting to review preliminary deliverables about two months after notice to proceed. SCS Energy will also make a presentation of its Guaranteed Maximum Price (GMP) proposal to the County, after its submittal. SCS Energy will also hold biweekly status calls with the County.

PROJECT COST

SCS Energy's not to exceed cost, for the above work, as cited in SCS Energy's proposal to the County, was \$252,000.

The County suggested that SCS Energy engage Harbour Construction as SCS Energy's constructor under the future SCS/County EPC Agreement. After discussion with the County and SCS Energy, Harbour Construction proposed to collaborate with SCS Energy during the 30% Percent Conceptual Design, and has prepared a proposal for services during the 30% Conceptual Design. The cost of these services, as outlined on the attached Harbour Construction proposal (\$40,305), after SCS Energy's 11% mark-up is \$44,738.55.

SCS Project Number _____

ATTACHMENT B

**CHANGE ORDER PURSUANT TO AGREEMENT
BETWEEN SCS ENGINEERS AND CLIENT FOR PROFESSIONAL SERVICES**

CHANGE ORDER # _____

1. Scope of Services to be Changed:

2. Schedule to be Changed:

3. Compensation to be Changed:

4. Special Provisions:

5. Agreement by the Parties: The parties have caused this Change Order to be executed by their duly authorized representatives.

SCS ENGINEERS:

CLIENT: _____

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____