



1202 Muscatine Street
Muscatine, IA 52761-1645
(563) 263-2752
Fax (563) 263-3720

MEMORANDUM

WATER & RESOURCE RECOVERY FACILITY

To: Gregg Mandsager, City Administrator

CC: Nancy Lueck, Finance Director
Cinda Hilger, Secretary

From: Jon Koch, WRRF Director

Date: Sept 29, 2019

Re: Air Permitting Assistance

INTRODUCTION: The City has requested the assistance of Stanley Consultants to permit the existing biogas burner. This is required by the DNR and must be done now to avoid fines and move the HSW project forward. The work proposed is for \$15,600. This cost will be added to the HSW project.

BACKGROUND: During the last construction project an air permit for the new biogas burner was not obtained. There is no background records on why this was done and the DNR has no record of the burner being installed. They are requiring that the City obtain an As Built Permit for the biogas burner installed in 2010 before the HSW project can be completed. Stanley Consultants is performing the required engineering study to submit the permit application.

RECOMMENDATION/RATIONALE: Staff recommends approval of the air permit assistance and study from Stanley Consultants for \$15,600.

BACKGROUND:

1. Proposed contract



September 24, 2019

Mr. Jon Koch
Water & Resource Recovery Facility Director
City of Muscatine
1202 Musser Street
Muscatine, IA 52761

RE: Proposal for Air Compliance and Construction Permitting Assistance

Dear Mr. Koch:

Muscatine Water & Resource Recovery Facility (MWRRF) is requesting assistance with responding to a request from Iowa Department of Natural Resources (IDNR) regarding air construction permitting needs at their facility. The facility has a number of existing air emission sources. It is unknown whether any of those sources, at any time, was required to have applied for an air construction permit from the Iowa Department of Natural Resources (IDNR). Under 567 IAC-22.1(1), the facility is required to obtain a construction permit prior to the initiation of construction, installation, or alteration of any portion of a qualifying air emission source.

IDNR has requested an inventory of the existing emission units at the MWRRF facility to determine if air quality construction permits are needed or if exemptions may apply to sources that have emissions. The inventory, along with calculated potential emissions for the applicable sources, is due to IDNR from the facility by October 18, 2019. Air construction permit applications are required to be submitted from the facility to IDNR by November 8, 2019. Following IDNR review of the permit applications, an air dispersion analysis may be required. IDNR has notified the facility that enforcement actions may be pursued if the above submittal deadlines are not met.

Scope of Services

Assistance with responding to the IDNR request can be divided into two phases, as follows:

- Phase 1: Inventory of existing air emission sources and potential to emit calculations.
- Phase 2: Preparation of construction permits.

Phase 1 - Upon receipt of an equipment list from MWRRF, Stanley Consultants will generate an emissions inventory in the form of a spreadsheet that will include the facility-wide potential to emit (PTE). In order to complete this deliverable, MWRRF will need to provide to Stanley Consultants a list of all emissions sources, including but not limited to; all stationary engines, boilers, make-up air units, and the anaerobic digester and flare(s). Information required includes the equipment identification, model number, design capacity, date of installation and dates of any subsequent modifications, exhaust flow rate and temperature. Additional information such as the exhaust gas composition and monitoring method will also be required for the anaerobic digester flare(s). A draft inventory and PTE will be provided to MWRRF for review prior to submittal to IDNR.



Phase 2 - Stanley Consultants will prepare construction permit applications for emission sources that require construction permits. The inventory will be used to determine the number of construction permits that are needed. The permit application materials will consist of the following elements, as required:

1. A narrative project overview explaining the goals of the application.
2. The following construction permit application forms:
 - Form AF – Construction Permit Application Fee
 - Form FI – Facility Information
 - Form CP – Application Cover Page
 - Form EU – Emission Unit(s)
 - Form CE – Control Equipment Information
 - Form EC – Emission Calculations (with supplemental EC-3A form(s) as necessary) for each
 - Form EI – Facility Emission Inventory
 - Form EP – Emission Point Information

Based on instructions from John Curtain and Reid Bermel of IDNR on September 20, 2019, Form MD (Non-PSD Modeling Determination) will not be included with the application submittal. However, IDNR may require air dispersion modeling after review of the application package. This proposal does not include modeling. If IDNR requires the facility to perform modeling, those services can be provided under a separate scope and fee. This proposal includes construction permit applications for up to three (3) emission points; additional applications can be provided under a separate scope and fee. This proposal includes up to 4 hours for post-application submittal support in the form of answering questions the IDNR permit writer may have during processing and providing comments on any draft permits provided to MWRRF for review prior to issuance.

IDNR has issued a questionnaire used to assist in the determination of whether MWRRF is considered a major source for the purpose of Prevention of Significant Deterioration (PSD) or Title V permitting. Since the City of Muscatine owns both MWRRF and Muscatine Power and Water, a single source determination will be required. This proposal includes assistance (up to four hours) with completing the questionnaire based on information provided by MWRRF.

This proposal assumes that MWRRF will provide Stanley Consultants with the necessary data to complete the application package. Any permit application fees will be paid directly to IDNR by MWRRF.

Project Schedule

Stanley Consultants understands that the facility is required to submit the inventory and PTE to IDNR by October 18, 2019. As such, a draft inventory will be prepared within one week of receipt of all required information. In order to allow time to perform emission calculations, allow MWRRF time to review the draft, and submit the final inventory to IDNR within the submittal deadline, all information should be provided to Stanley Consultants by October 4, 2019. This proposal assumes comments on the draft will be provided to Stanley Consultants by October 11, 2019.



Mr. Jon Koch
September 24, 2019

IDNR has identified November 8, 2019 as the deadline for submittal of construction permit applications. Stanley Consultants will provide MWRRF the draft construction permit applications package by October 30, 2019. Comments on the draft will be provided to Stanley Consultants by November 1, 2019, and a final application submittal will be provided to MWRRF by November 5, 2019.

Project Fees

Stanley Consultants will complete the proposed scope of services on a lump sum basis as follows:

Phase	Description	Cost
Phase 1	Emissions Inventory and PTE	\$4,950
Phase 2	Construction Permit Application Package	\$10,650
Total		\$15,600

Our Standard Terms and Conditions are attached. If you approve, please sign below or provide us with a purchase order referencing this letter and its conditions. In the event there are additional services required that have not been identified in the scope of services, Stanley Consultants will provide written notification to MWRRF. If City so elects, we can proceed immediately with the Phase 1 work with City authorization.

We appreciate this opportunity and look forward to assisting with your air permitting needs. Should you have any questions regarding this proposal, please contact Cindy Stevenson at 319-626-5317 or stevensoncindy@stanleygroup.com.

Sincerely,

Jay Brady, P.E.
Principal Environmental Engineer
Stanley Consultants, Inc.

Attachments: Standard Terms and Conditions

Phase 1 Authorized [☐] Date: _____ Authorized Signature: _____

Title: _____

Attest: _____

Phase 2 Authorized [☐] Date: _____ Authorized Signature: _____

Title: _____

Attest: _____



Standard Terms and Conditions

1. CLIENT'S RESPONSIBILITIES

1.1 Name CLIENT's representative with authority to receive information and transmit instructions for CLIENT.

1.2 Provide CLIENT's requirements for project, including objectives and constraints, design and construction standards, bonding and insurance requirements, and contract forms.

1.3 Provide available information pertinent to project upon which CONSULTANT may rely.

1.4 Arrange for access by CONSULTANT upon public and private property, as required.

1.5 Examine documents presented by CONSULTANT, obtain legal and other advice as CLIENT deems appropriate, and render written decisions within reasonable time.

1.6 Obtain consents, approvals, licenses, and permits necessary for project.

1.7 Advertise for and open bids when scheduled.

1.8 Provide services necessary for project but not within scope of CONSULTANT's services.

1.9 Indemnify CONSULTANT, its employees, agents, and consultants against claims arising out of CONSULTANT's design, if there has been a deviation from the design beyond the CONSULTANT's control or failure to follow CONSULTANT's recommendation and such deviation or failure caused the claims.

1.10 Promptly notify CONSULTANT when CLIENT learns of contractor error or any development that affects scope or timing of CONSULTANT's services.

1.11 Nothing in this agreement shall create a fiduciary duty between the parties.

2. PERIOD OF SERVICE

2.1 CONSULTANT is not responsible for delays due to factors beyond its control.

2.2 If CLIENT requests changes in project, compensation for and time of performance of CONSULTANT's services shall be adjusted appropriately.

3. CONSTRUCTION COST AND COST ESTIMATES

3.1 **Construction Cost.** Construction cost means total cost of entire project to CLIENT, except for CONSULTANT's compensation and expenses, cost of land, rights-of-way, legal and accounting services, insurance, financing charges, and other costs which

are CLIENT's responsibility as provided in this Agreement.

3.2 **Cost Estimates.** Since CONSULTANT has no control over cost of labor, materials, equipment or services furnished by others, over contractors' methods of determining prices, or over competitive bidding or market conditions, its estimates of project construction cost will be made on the basis of its employees' experience and qualifications and will represent their best judgment as experienced and qualified professionals, familiar with the construction industry. CONSULTANT does not guarantee that proposals, bids, or actual construction cost will not vary from its estimates of project cost.

4. GENERAL

4.1 Termination.

4.1.1 Either party may terminate their obligation to provide further services upon twenty (20) days' written notice, after substantial default by other party through no fault of terminating party.

4.1.2 CLIENT may terminate CONSULTANT's obligation to provide further services upon twenty (20) days' written notice if project is abandoned. In such event, progress payments due to CONSULTANT for services rendered plus unpaid reimbursable to expenses, shall constitute total compensation due.

4.2 Reuse of Documents.

4.2.1 All tangible items prepared by CONSULTANT are instruments of service, and CONSULTANT retains all copyrights. CLIENT may retain copies for reference, but reuse on another project without CONSULTANT's written consent is prohibited. CLIENT will indemnify CONSULTANT, its employees, agents, and consultants against claims resulting from such prohibited reuse. Said items are not intended to be suitable for completion of this project by others.

4.2.2 Submittal or distribution of items in connection with project is not publication in derogation of CONSULTANT's rights.

4.2.3 **Confidentiality.** Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the agreement except as may be required by a court or governmental authority. CLIENT and CONSULTANT shall keep all information and communications related to the project confidential in the same manner each



Standard Terms and Conditions

party protects its own confidential information, to the extent that it is marked "proprietary" or "confidential" or with a similar label or which by the nature of the information generally would be regarded as proprietary or confidential. This clause shall not apply to information that is previously known by either party, lawfully becomes public knowledge, or is required to be disclosed by law or a court order.

4.3 Payment.

4.3.1 CONSULTANT shall submit a monthly statement for services rendered and reimbursable expenses incurred. CLIENT shall make prompt monthly payments.

4.3.2 If CLIENT fails to make payment within thirty (30) days after receipt of statement, interest at maximum legal rate or at a rate of 18%, whichever is less, shall accrue; and, in addition, CONSULTANT may, after giving seven (7) days' written notice, suspend services until it has been paid in full all amounts due it.

4.3.3 CLIENT has provided or shall provide for payment from one or more lawful sources of all sums to be paid to CONSULTANT.

4.3.4 CONSULTANT's compensation shall not be reduced on account of any amounts withheld from payments to contractors.

4.3.5 If services performed by CONSULTANT are subject to state or local sales taxes, said taxes will be reflected in the invoices and remitted according to state law. If CLIENT claims a status that would make the transaction exempt, then CLIENT shall provide appropriate proof of exempt status to CONSULTANT.

4.4 **Controlling Law.** Agreement shall be governed by Iowa law, excluding its choice of law rules.

4.5 Successors and Assigns.

4.5.1 The parties bind themselves, their successors, and legal representatives to the other party and to successors and legal representatives of such other party, in respect to all covenants and obligations of this Agreement.

4.5.2 Neither party shall assign, sublet, or transfer any interest in this Agreement without written consent of the other, provided CONSULTANT may employ such independent consultants, associates, and subcontractors as it may deem appropriate.

4.5.3 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

4.6 **CONSULTANT's Accounting Records.** Records of CONSULTANT's personnel time, reimbursable

expenses, and accounts between parties shall be kept on a generally-recognized accounting basis.

4.7 **Separate Provisions.** If any provisions of this Agreement shall be held to be invalid or unenforceable, remaining provisions shall be valid and binding.

4.8 **Waiver.** No waiver shall constitute a waiver of any subsequent breach.

4.9 Warranty.

4.9.1 CONSULTANT shall use reasonable care to reflect requirements of all applicable laws, rules, or regulations of which CONSULTANT has knowledge or about which CLIENT specifically advises in writing, which are in effect on date of Agreement. CONSULTANT INTENDS TO RENDER SERVICES IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL STANDARDS, BUT NO OTHER WARRANTY IS EXTENDED, EITHER EXPRESS OR IMPLIED, IN CONNECTION WITH SUCH SERVICES. CLIENT's rights and remedies in this Agreement are exclusive.

4.9.2 CONSULTANT shall not be responsible for contractors' construction means, methods, techniques, sequences, or procedures, or for contractors' safety precautions and programs, or for contractors' failure to perform according to contract documents.

4.9.3 The CONSULTANT believes that any computer software provided under this Agreement is suitable for the intended purpose, however, it does not warrant the suitability, merchantability, or fitness for a particular purpose of this software.

4.9.4 Subject to the standard of care set forth in Paragraph 4.9.1, CONSULTANT and its Subconsultants may use or rely upon design elements, work, and information ordinarily or customarily furnished by others, including, but not limited to, CLIENT or his authorized representatives, public record, specialty contractors, manufacturers, suppliers, and publishers of technical standards.

4.9.5 If the Scope of Services include the review or recommendation of available technologies or recommendations of specific technologies or vendors or systems, the CONSULTANT will conduct an impartial review of such technologies, systems or vendors. The CONSULTANT is not responsible for the selection of same by the Client or for the usability, or results of such technology, vendor or system.

4.10 **Period of Repose.** Any applicable statute of limitations or repose shall commence to run and any alleged cause of action shall be deemed to have accrued not later than completion of services to be performed by CONSULTANT.



Standard Terms and Conditions

4.11 Indemnification. To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, employees, and agents from and against any and all third party claims for bodily injury and for damage to tangible property to the extent caused by the negligent acts or omissions of CONSULTANT or CONSULTANT's officers, directors, partners, employees, agents, and CONSULTANT's consultants in the performance and furnishing of CONSULTANT's services under this Agreement. Any indemnification shall be limited to the terms and amounts of coverage of the CONSULTANT's insurance policies and Section 4.12, Limitation of Liability.

To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONSULTANT, CONSULTANT's officers, directors, partners, employees, and agents and CONSULTANT's consultants from and against any and all third party claims for bodily injury and for damage to tangible property to the extent caused by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, agents, and CLIENT's consultants with respect to this Agreement on the Project. In addition to the indemnity provided under this section, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONSULTANT and its officers, directors, partners, employees, and agents and CONSULTANT's consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of, or relating to the presence, discharge, release, or escape of asbestos, PCBs, petroleum, hazardous waste, or radioactive material at, on, under, or from the Project site.

4.12 Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONSULTANTS), TO CLIENT AND ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, OR WARRANTIES EXPRESSED OR IMPLIED, OF CONSULTANT OR CONSULTANT'S CONSULTANTS, SHALL NOT EXCEED \$300,000.00 OR THE TOTAL COMPENSATION RECEIVED BY CONSULTANT, WHICHEVER IS GREATER. THIS LIMITATION INCLUDES LIABILITY UNDER SECTION 4.11. IN NO EVENT SHALL CONSULTANT

BE LIABLE TO CLIENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT. CONSULTANT SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES THAT ARISE OUT OF ITS PERFORMANCE ON THIS PROJECT.

4.13 Extent of Agreement. This Agreement represents the entire agreement between the parties and may be amended only by written instrument signed by both parties.

4.14 INSURANCE. CONSULTANT shall purchase and maintain insurance for the coverages and for not less than the limits of liability set forth below:

(a) Workers' Compensation: workers' compensation insurance as required by the laws of the states or countries with jurisdiction of the services to be performed, including employer's liability insurance, with a limit of \$1,000,000 per accident.

(b) Commercial General Liability: commercial general liability, including coverage for all premises, operations, operations of independent contractors, products and completed operations, and contractual liability. Coverage shall have limits of not less than \$1,000,000 for each occurrence and aggregate.

(c) Commercial Automobile Liability: commercial automobile liability covering the use of all owned, non-owned, and hired automobiles with minimum combined single limits of \$1,000,000.

(d) Professional Liability: professional liability insurance for claims arising out of performance of professional services caused by any negligent error, omission, or act for which the insured is legally liable, with a minimum limit of \$1,000,000, to be kept in force for two (2) years after completion of project.

CONSULTANT shall provide certificates or other evidence from insurance carriers of the required insurance coverages, if requested by CLIENT in writing within 30 days of start of performance. All insurance except workers' compensation and professional liability shall designate CLIENT as additional insured.

(e) Cyber Liability: Data Breach and Privacy/Cyber Liability Insurance in a limit of not less than \$1,000,000 per occurrence.

4.15 Subrogation Waiver. The parties waive all rights against each other, and against contractors, consultants, agents, and employees of the other for damages covered by any property insurance during construction, and each shall require similar waivers from their contractors, consultants, and agents.

4.16 Force Majeure. Parties will not be liable for delays in delivery or for failure to perform obligations, other than payment, due to causes beyond their reasonable control, including, but not limited to, product allocations, material shortages, labor disputes, transportation delays, unforeseen circumstances, acts



Standard Terms and Conditions

of God, acts or omissions of other parties, acts or omissions of civil or military authorities, government priorities, fire, strikes, floods, epidemics, quarantine restrictions, riots, terrorists acts, or war. CONSULTANT's time for delivery or performance will be automatically extended by the period of such delay or CONSULTANT may, at its option, cancel any services, in whole or in part, without liability by giving notice to CLIENT.

4.17 EQUAL EMPLOYMENT OPPORTUNITY CLAUSE. When applicable, the CONSULTANT and SUBCONSULTANT shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), 60-741.5(a) and Appendix A of Subpart A of 29 CFR 471. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime CONSULTANTS and SUBCONSULTANTS take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.