



**To: Mayor and City Council**

**Cc: Gregg Mandsager, City Administrator  
Brian Stineman, Public Works Director**

**From: Kristy Korpi, Solid Waste Manager**

**Date: Monday, July 17, 2017**

**Re: Request for approval of a Regulatory Assistance contract with Barker Lemar Engineering**

**Introduction: Barker Lemar Engineering Consultants provides environmental services to the City of Muscatine on behalf of the landfill permit holder, Muscatine County Solid Waste Management Agency. There are circumstances where we require additional assistance, that is not covered in the annual services contract. These fees are billed on a time and expense basis. Barker Lemar's proposal for Fiscal Year 2018 is \$15,000. Tasks included, but not limited to include:**

- 1. Regulatory correspondence**
- 2. Permit amendment requests**
- 3. Landfill survey and staking**
- 4. Long range planning**

**Recommendation: Staff recommends approval of the regulatory assistance contract with Barker Lemar Engineering to ensure compliance with permits and Iowa Administrative Code for the landfill, Transfer Station and closed C&D landfill.**



June 23, 2017

Ms. Kristy Korpi  
Muscatine County Solid Waste Management Agency  
1000 South Houser  
Muscatine, Iowa 52761

RE: Regulatory Assistance – Fiscal Year 2018 (July 1, 2017 through June 30, 2018)  
Muscatine County Sanitary Landfill, Muscatine Recycling and Transfer Station,  
and Muscatine C&D Landfill  
Proposal No. 174924

Dear Kristy:

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) appreciates the opportunity to provide services to the Muscatine County Solid Waste Management Agency (Client). The purpose of the proposed scope of services is to provide regulatory assistance and administrative services when requested for facilities owned and/or operated by the Client.

### **1.0 PROJECT UNDERSTANDING**

The Client owns and/or operates the Muscatine County Sanitary Landfill, the Muscatine Recycling and Transfer Station, and the Muscatine C&D Landfill. Situations arise where outside assistance is requested for small activities, not justifying a full scope. Therefore, this establishes an agreement between the Client and BARKER LEMAR for providing assistance, as requested, throughout the duration of this scope of services.

### **2.0 SCOPE OF SERVICES**

The purpose of this scope of services is to provide services associated with general landfill/recycling operations, waste/recycling management activities, and regulatory compliance. Tasks may include, but are not limited to, the following:

- Regulatory Correspondence;
- Permit Amendment Requests;
- Landfill Survey and Staking Activities;
- Long Range Planning Activities; and
- Other Miscellaneous Projects as Directed by the Client.

### **3.0 LIMITATIONS**

Services not set forth in the scope of services are excluded from the scope of BARKER LEMAR'S services, and BARKER LEMAR assumes no responsibility to perform such services and no liability associated with the non-performance of such services.

#### **4.0 SCHEDULE**

This scope of services will be completed as requested by the Client from July 1, 2017 through June 30, 2018.

#### **5.0 COMPENSATION**

The fees for the proposed scope of services will be billed on a time and expense basis not to exceed \$15,000 and are valid for 60 days following the date of this proposal. Our invoices will be submitted monthly and will reflect the time and expenses incurred during the invoice period. Payment terms are to be followed as stated in the attached Terms and Conditions. Should conditions be encountered that require significant changes or an increase in the scope of work, we will contact you and proceed further only with your authorization.

#### **6.0 HEALTH AND SAFETY**

This proposal assumes that Level D safety precautions are adequate and that confined space entry will not be required. Level D safety attire generally consists of a normal work uniform including safety shoes, hard-hat where required, and appropriate eye protection. The costs will be adjusted accordingly if site-specific conditions require more stringent health and safety or confined space entry procedures.

#### **7.0 CONDITIONS**

Items to be provided by the Client include the right-of-entry to conduct on-site activities requested by the Client. The Client is responsible for making BARKER LEMAR aware of any restrictions or special requirements regarding the site and its required activities prior to the commencement of the fieldwork. We have enclosed our Terms and Conditions that should be considered part of this proposal.



**CONFIRMATION OF NOTICE TO PROCEED**

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**Proposal No. 174924**

***The above proposal and attached Terms and Conditions are understood and accepted.***

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) agrees to perform and complete the following Services for the Client at its facilities located in Muscatine County, Iowa.

The scope of services is described as tasks as requested by the Client, examples of which are noted in Section 2.0 scope of services; and provide other technical and/or administrative services as needed and outlined in this proposal.

BARKER LEMAR agrees to perform the above scope of services on a labor and expense basis. Total compensation is not to exceed \$15,000. Client will only be invoiced for services provided in accordance with BARKER LEMAR's current rate schedule.

If this proposal meets with your approval, sign and return s copy via email or fax to 515.256.0572.

If you have questions regarding any of the information above, please contact one of the authorized signers below at 515.256.8814, or 800.707.4248.

FOR BARKER LEMAR ENGINEERING CONSULTANTS

CITY OF MUSCATINE

Nathan Dhrt

Senior Groundwater Specialist

Date: June 23, 2017

Name (print): Diana Broderson

Signed:

Date: July 20, 2017

Timothy C. Buelow, P.E.

Principal Engineer

Date: June 23, 2017

Copies: Addressee  
File

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## TERMS AND CONDITIONS

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### PAYMENT TERMS

Payment is due upon receipt of our invoice. If payment is not received within 30 days from the invoice date, Client agrees to pay a finance charge on the principal amount of the past due account of 1 1/2% per month. If 1 1/2% per month exceeds the maximum allowed by law; the charge shall automatically be reduced to the maximum legally allowable. In the event the Client requests termination of the services prior to completion, a termination charge in an amount not to exceed 30% of all charges incurred through the date services are stopped plus any shutdown costs may, at the discretion of Barker, Lemar & Associates, Inc., be made. If during the execution of the services, Barker, Lemar & Associates, Inc., is required to stop operations as a result of changes in the scope of services such as requested by the Client or requirements of third parties, additional charges will be applicable. Client is responsible for all cost of the collection of unpaid accounts, including reasonable attorney fees.

### INSURANCE

Barker, Lemar & Associates, Inc. maintains Workers' Compensation and Employers Liability Insurance in conformance with applicable state law. In addition, we maintain Commercial General Liability Insurance with combined Single Bodily Injury and property damage limits of \$1,000,000 and Automobile Liability Insurance with combined Single Bodily Injury and property damage limits of \$1,000,000. A certificate of insurance can be supplied evidencing such coverage, which contains a clause providing that 10 days written notice be given prior to cancellation. Cost of the above coverage is included in our quoted fees. If additional coverage or increased limits of liability are required, Barker, Lemar & Associates, Inc. will endeavor to obtain the requested insurance and charge separately for costs associated with additional coverage or increased limits.

### LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and Barker, Lemar & Associates, Inc., the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants shall not exceed the applicable insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Client agrees that Barker, Lemar & Associates, Inc.'s liability for any damage on account of any error, omission, or other professional negligence by Barker, Lemar & Associates, Inc. will be limited to a sum not to exceed \$50,000 or the amount presently due Barker, Lemar & Associates, Inc. for services rendered hereunder, whichever is greater.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Barker, Lemar & Associates, Inc., their respective officers, directors, partners, employees, contractor or sub consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. The mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Barker, Lemar & Associates, Inc. shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and sub contracts with others involved in this project. Barker, Lemar & Associates, Inc. is not liable for consequential damages.

Barker, Lemar & Associates, Inc. shall not be responsible for any acts or omissions of the Contractor, any sub contractor, any entity performing any portions of the Work or any agents or employees of any of them. Barker, Lemar & Associates, Inc. does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

### POLLUTION CLAIMS

Client hereby understands and agrees that Barker, Lemar & Associates, Inc. has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Client's premises, or in connection with or related to this project with respect to which Barker, Lemar & Associates, Inc. has been retained to provide professional engineering services. Barker, Lemar & Associates, Inc.'s total liability to Client resulting from any release or threatened release of any hazardous waste, substance, pollutant or contaminant, whether or not directly or indirectly generated by Barker, Lemar & Associates, Inc.'s performance of the work hereunder (including any injury to persons or property or death resulting there from), shall not exceed the amount due Barker, Lemar & Associates, Inc. for services rendered hereunder. This limitation applies to all liabilities, including indemnification liabilities, whether based on contract, tort (including negligence), and strict liability or otherwise. This limitation of liability does not in any way limit or affect Client's obligations to indemnify and hold Barker, Lemar & Associates, Inc., its owners, officers, directors, and employees harmless. This limitation of liability shall not apply to the extent it is held that the loss or damage arose from Barker, Lemar & Associates, Inc.'s gross negligence or intentional misconduct. In addition, Client agrees to limit Barker, Lemar & Associates, Inc.'s liability to the same extent that Client's liability is limited pursuant to its contract with its client (if one exists).

### DOCUMENTS

Barker, Lemar & Associates, Inc.'s liability to Owner for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. Barker, Lemar & Associates, Inc. makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by Barker, Lemar & Associates, Inc. under this Agreement. In no event shall Barker, Lemar & Associates, Inc., its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damages relating to any computer programs, software products, or related data furnished hereunder.

### STANDARD OF CARE

In providing services under this Agreement, Barker, Lemar & Associates, Inc. shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same or similar locality. Barker, Lemar & Associates, Inc. makes no warranty, express or implied, as to its professional services rendered under this Agreement.

### RIGHT-OF-ENTRY

Unless otherwise agreed, Client will furnish right-of-entry on the property for Barker, Lemar & Associates Inc. to make the planned borings, surveys, tests, and/or explorations. Barker, Lemar & Associates Inc. will take reasonable precautions to limit damage to the property caused by our operations, but we have not included in our fee the cost of restoration of damage that may result. If Client desires Barker, Lemar & Associates Inc. to restore the property to its former condition, we will accomplish this, to the extent reasonably possible, and add the cost to the proposed fee.

### SITE VISITS

Barker, Lemar & Associates, Inc. shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and Barker, Lemar & Associates, Inc., in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of Barker, Lemar & Associates, Inc.'s work but rather are to allow the Consultant to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, Barker, Lemar & Associates, Inc. shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work.

If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by Barker, Lemar & Associates, Inc. as A. Services in accordance with the terms of this Agreement.

Barker, Lemar & Associates, Inc. shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected neither by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

#### **SAMPLING OR TESTING OF LOCATION**

The fees do not include costs associated with surveying of the site or the accurate horizontal and vertical locations of tests, unless otherwise specifically agreed to by the parties. Field test or boring locations described in Barker, Lemar & Associates, Inc.'s report contemplated by these Terms and Conditions or shown on sketches are based on specific information furnished by others or estimates made in the field by our technicians. Such dimensions, depths, or elevations should be considered as approximations unless otherwise stated in the reports contemplated by these Terms and Conditions.

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. Barker, Lemar & Associates, Inc. may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. Barker, Lemar & Associates, Inc. shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

#### **SAMPLE DISPOSAL AGREEMENT**

Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests unless otherwise regulatory required. Upon written request, Barker, Lemar & Associates, Inc. will retain test specimens or drilling samples for mutually acceptable storage charge and period of time.

#### **DAMAGE TO EXISTING MAN-MADE OBJECTS**

It shall be the responsibility of the Client or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects and underground utilities relative to field tests or boring locations. Barker, Lemar & Associates, Inc.'s field personnel are trained to recognize clearly identifiable stakes or markings in the field and without special written instruction to initiate field testing drilling and/or sampling within a reasonable distance of each designated location. If Barker, Lemar & Associates, Inc. is cautioned, advised, or given data in writing that reveals the presence or potential presence of underground or over ground obstructions, such as utilities, Barker, Lemar & Associates, Inc. will give special instructions to its field personnel. As evidenced by Client's acceptance of this proposal, Client agrees to indemnify and save harmless from all claims, suits, losses, personal injuries, death, and property liability resulting from unusual subsurface conditions or damages to subsurface structures, including utility lines, owned by Client or third parties, occurring in the performance of the proposed services, whose presence and, exact locations were not revealed to Barker, Lemar, & Associates, Inc. In writing, and to reimburse Barker, Lemar & Associates, Inc. for expenses in connection with any such claims or suits, including reasonable attorney fees.

#### **DISPOSAL**

Barker, Lemar & Associates, Inc. is not, and has no authority to act as, a handler, generator, operator, trested, storer, transporter or disposer of hazardous waste, substances, pollutants or contaminants found or identified at the site. Barker, Lemar & Associates, Inc. shall have no responsibility for the transportation, storage, treatment or disposition of contaminated or potentially contaminated waste materials of any kind, which are directly or indirectly generated from Barker, Lemar & Associates, Inc.'s performance of the work in accordance with these Terms and Conditions. Client shall be responsible for the disposal of any such waste materials.

#### **SAFETY**

Should Barker, Lemar & Associates, Inc. provide periodic observations or monitoring services at the job site during construction, Client agrees that in accordance with generally-accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's procedures conducted by Barker, Lemar & Associates, Inc. is not intended to include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.

#### **CONSTRUCTION COST OPINIONS**

Opinions of probable cost for the facilities considered and designed under this Agreement are prepared by Barker, Lemar & Associates, Inc. through exercise of its experience and judgment in applying presently available cost data, but it is recognized that Barker, Lemar & Associates, Inc. has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that Barker, Lemar & Associates, Inc. cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from Barker, Lemar & Associates, Inc.'s opinion of probable construction costs.

#### **OWNERSHIP OF DOCUMENTS**

All documents, including, but not limited to, drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations, and estimates, prepared by Barker, Lemar & Associates, Inc. are instruments of service pursuant to these Terms and Conditions and shall be the sole property of Barker, Lemar & Associates, Inc. Client agrees that all documents of any nature furnished to Client or Client's agents or designees, if not paid for, will be returned to Barker, Lemar & Associates Inc. upon demand and will not be used by Client for any purpose whatsoever. Client further agrees that under no circumstances shall any documents produced by Barker, Lemar & Associates Inc., pursuant to these Terms and Conditions, be used at any location or for any project not expressly provided for in these Terms and Conditions without the written permission of Barker, Lemar & Associates, Inc. At the request and expense of Client, Barker, Lemar & Associates, Inc. will provide Client with copies of documents created in the performance of the work for a period not exceeding five years following submission of the report contemplated by these Terms and Conditions.

#### **SUCCESSORS AND ASSIGNS**

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties of this Agreement.

#### **SEVERABILITY**

If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

#### **WAIVER**

Barker, Lemar & Associates, Inc.'s waiver of any term, condition, or breach of any term, condition, covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

#### **GOVERNING LAW**

These Terms and Conditions shall be governed in all respects by the laws of the State of Iowa. Any litigation to be filed by either party to the contract shall be filed in Polk County, Iowa District Court or Federal Court for the Southern District of Iowa.

#### **ENTIRE AGREEMENT**

This Agreement, and its attachments, contains the entire understanding between Owner and Barker, Lemar & Associates, Inc. relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement.