



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

WATER & RESOURCE RECOVERY FACILITY

MEMORANDUM

To: Jerry Ewers, Fire Chief/Richard Klimes, Director Parks and Recreation ,Sharing Interim City Administrator Duties

CC: Nancy Lueck, Finance Director
Cinda Hilger, Secretary

From: Jon Koch, WRRF Director

Date: November 14, 2019

Re: Engineering and Platform Safety Improvements for Lift Stations

INTRODUCTION: The Water and Resource Recovery Facility (WRRF) staff requested a quote from Stanley Consultants, Inc.(SCI) for an engineering study of the platforms in the Papoose and Isett Lift Stations to determine their safety and to recommend improvements. SCI has submitted a Professional Services Agreement (PSA) in the amount of \$15,700.00 for this study. \$20,000.00 was budgeted for this study.

BACKGROUND: The Papoose and Isett Lift Stations were built over 50 years ago and little has been done to improve their safe work environment. The dry well that houses the pumps have long shafts from the motors above them that require regular maintenance. Multiple valves are 20-30 feet off the ground with little access for maintenance. Current practices to grease joints and bearing along the pump shafts have been determined to be unsafe and long ladder access is limited. There have been efforts to build safety measures in-house but liability issues require an engineered solution to ensure the safety of City staff and protect the City from litigation. More modern stations have been designed to allow for safe maintenance.

RECOMMENDATION/RATIONALE: Staff recommends approval of the PSA from SCI in the amount of \$15,700.00 to study and recommend improvements to the platforms at the Papoose and Isett Lift Stations.

BACKGROUND:

1. PSA



PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of November __, 2019, between CITY OF MUSCATINE (CLIENT) and STANLEY CONSULTANTS, INC (CONSULTANT). CLIENT intends to alter access platforms at CLIENT's Papoose Creek and Isett Avenue Pump Stations (hereinafter called "project").

CLIENT and CONSULTANT agree:

1. **Scope of Services.** CONSULTANT shall perform professional services as stated in Exhibit 1.
2. **Compensation.** CLIENT shall compensate CONSULTANT for CONSULTANT's services as stated in Exhibit 2.
3. **Terms and Conditions.** CONSULTANT shall provide professional services in accordance with the terms and conditions stated in Exhibit 3. If client issues a purchase order or other document to initiate the commencement of services hereunder, it is agreed that any terms and conditions appearing thereon shall have no application and only the provisions of this Agreement shall automatically apply.
4. **Special Provisions.** Special provisions to this Agreement, if any, are stated in Exhibit 4.
5. CLIENT has provided or shall provide for payment from one or more lawful sources of all sums to be paid to CONSULTANT.
6. Following exhibits are attached to and made part of this Agreement:

- Exhibit 1 - Scope of Services
- Exhibit 2 - Compensation
- Exhibit 3 - Standard Terms and Conditions
- Exhibit 4 - Special Provisions

IN WITNESS WHEREOF, the parties below have executed this Agreement as of the day and year first above written.

STANLEY CONSULTANTS, INC

CITY OF MUSCATINE

By: _____

Jeff Decoteau
Jeff Decoteau, Vice President

By: _____

[Signature]
[Signature]

Attest: _____

[Signature]

Attest: _____

Address for giving notices:

225 IOWA AVENUE
MUSCATINE, IA 52761

Address for giving notices:

215 SYCAMORE ST
MUSCATINE, IA 52761



If CLIENT is a public body, attach evidence of authority to sign and resolution or other document authorizing execution of AGREEMENT.



EXHIBIT 1 SCOPE OF SERVICES

Background

The Papoose and Isett Pump Stations have below ground dry wells that contain the pumps, valves, piping, and shafts to the motors located above ground above flood level. The valves and motor shaft bearings located high above the floor need to be accessed for routine maintenance. The existing stairs, catwalks and platforms do not provide safe access for personnel to perform the maintenance. This project is to develop the design concepts and construction cost estimate for modifying the stair and platform system to improve personnel access to valves and motor shafts.

Basic Services

1. Perform initial site visit to view existing access and discuss potential approaches with Client.
2. Migrate pump station designs from paper drawings to CAD.
3. Assist Client in making critical field measurements.
4. Develop sketch concepts to share with Client for initial feedback.
5. Meet with Client to adjust and finalize concepts.
6. Prepare budgetary cost estimate to assist Client with budget preparation.
7. Summarize final concepts, sketches, and cost estimate in short report to Client.

Additional Services

1. Prepare preliminary contract documents consisting of drawings and specifications for Client review. Electronic pdf files of the drawings and specifications and two printed copies of the documents (1/2 size set of drawings and project manuals) will be provided to Client.
2. Prepare update to construction cost estimate based on preliminary design documents.
3. Meet with Client to review and discuss preliminary design.
4. Finalize contract documents for bidding and construction. Issue electronic pdf files of contract documents and two printed copies of the documents for Client (1 full size and 1/2 size set of drawings and two project manuals).
5. Bidding Phase
 - a. Respond to bidder questions and inquiries.
 - b. Prepare and issue addenda if necessary.
 - c. Review and recommend responsive bidder. Transmit notice of award.
 - d. Prepare conformed contract documents for signature by both parties.
 - e. Transmit notice to proceed.
6. Construction Phase – Construction will be administered and overseen by Client. No construction phase services are included in Basic Services.



EXHIBIT 2 COMPENSATION

1. Compensation for Basic Services:

Client shall compensate Consultant a Lump Sum amount of Fifteen Thousand Seven Hundred Dollars (\$15,700) for Basic Services described in Exhibit 1 – Scope of Services.

2. Compensation for Additional Services:

Additional Services performed by the Consultant at Client's direction, shall be compensated on an Hourly basis for Direct Labor, Plus Reimbursable Expenses in accordance with the attached current "Hourly Fees and Charges 2019-2020" (Form BC 19-20).



Standard Terms and Conditions Exhibit 3

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



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to the project confidential in the same manner each 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



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accrued not later than completion of services to be performed by CONSULTANT.

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,



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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 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.



PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of January 2, 2020, between CITY OF MUSCATINE (CLIENT) and STANLEY CONSULTANTS, INC (CONSULTANT). CLIENT intends to modify electrical service entrance grounding at CLIENT's Papoose Creek, Mississippi Mist Fountain, and Riverfront Park lighting systems connected to transformer adjacent to Papoose Creek Pump Station (PCPS) (hereinafter called "project").

CLIENT and CONSULTANT agree:

- 1. Scope of Services. CONSULTANT shall perform professional services as stated in Exhibit 1.
2. Compensation. CLIENT shall compensate CONSULTANT for CONSULTANT's services as stated in Exhibit 2.
3. Terms and Conditions. CONSULTANT shall provide professional services in accordance with the terms and conditions stated in Exhibit 3.
4. Special Provisions. Special provisions to this Agreement, if any, are stated in Exhibit 4.
5. CLIENT has provided or shall provide for payment from one or more lawful sources of all sums to be paid to CONSULTANT.
6. Following exhibits are attached to and made part of this Agreement:

- Exhibit 1 - Scope of Services
Exhibit 2 - Compensation
Exhibit 3 - Standard Terms and Conditions
Exhibit 4 - Special Provisions

IN WITNESS WHEREOF, the parties below have executed this Agreement as of the day and year first above written.

STANLEY CONSULTANTS, INC

CITY OF MUSCATINE

By: Guy Carpenter, Water Market Leader

By: Mayor

Attest: Greg M. Brady

Attest: Greg Jenkins

Address for giving notices: 225 IOWA AVENUE MUSCATINE, IA 52761

Address for giving notices: 215 SYCAMORE ST MUSCATINE, IA 52761

If CLIENT is a public body, attach evidence of authority to sign and resolution or other document authorizing execution of AGREEMENT.



EXHIBIT 1 SCOPE OF SERVICES

Background

The City of Muscatine (Client) Water Resource Recovery Facility (WRRF) owns and operates the Papoose Creek Pump Station (PCPS) located at the Muscatine riverfront. Muscatine Power and Water (MPW) is changing the transformer that provides electrical service to PCPS, the Mississippi Mist fountain pump station (FPS), and riverfront park lighting. Client owns and operates PCPS, FPS and the park lighting systems.

Client recently replaced PCPS VFDs. The new VFDs have a ground bus at the bottom, but the service into the PCLS is a 3-wire service (2 sets of phase conductors) with no ground or neutral. VFD supplier requires that the VFDs be grounded.

The intended scope of this project is to gather enough data and information to be able to produce an engineering drawing to add grounding to the PCLS and other services as required by MPW and as desired by the Client.

Basic Services

Consultant will perform the following professional services:

1. Meet at PCPS with Client staff. (already accomplished)
2. Review existing PCPS and FPS system drawings. FPS drawings to be provided by Client.
3. Meet at PCPS with representatives from MPW, Muscatine Parks & Rec, Muscatine WRRF, and the Muscatine Building Department electrical inspector.
 - a. Field examine existing electrical systems.
 - b. Verify objectives/purpose of the grounding project.
 - c. Determine consensus approach to meeting the grounding requirements of the utility and WRRF.
 - d. Determine any further actions, responsible parties, and deadlines.
 - e. Summarize meeting in electronic notes distributed to attendees.
4. Develop draft grounding plan drawing and send to the meeting attendees for review and comment.
5. Finalize grounding plan drawing sealed by professional engineer. Provide two half-size (11x17) printed copies and an electronic pdf file for Client use.

Additional Services

Additional Services are services not included in the Basic Services and can be performed upon written agreement with Client.

1. Field investigations and testing.
2. Resolution of conflicting directions from the involved parties.
3. Changes made due to building department review after sealed drawing produced.
4. Additional trips, site visits, meetings over above those listed in Basic Services.
5. Bidding and Construction Support.
6. Additional services not included in Basic Services.



EXHIBIT 2 COMPENSATION

1. Compensation for Basic Services:

Client shall compensate Consultant a Lump Sum amount of Five Thousand Seven Hundred Dollars (\$5,700) for Basic Services described in Exhibit 1 – Scope of Services.

2. Compensation for Additional Services:

Final scope of services for design, bidding, and construction phases and compensation will be determined upon completion of the Basic Services and incorporated by Supplemental Agreement.

Other Additional Services performed by the Consultant at Client's direction, shall be compensated on an Hourly basis for Direct Labor, Plus Reimbursable Expenses in accordance with the attached current "Hourly Fees and Charges 2019-2020" (Form BC_C 19-20).



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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.

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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



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to the project confidential in the same manner each 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.

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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.

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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



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accrued not later than completion of services to be performed by CONSULTANT.

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,



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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 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.



Stanley Consultants

HOURLY FEES AND CHARGES

Fiscal Year 2019-2020

- I. Compensation for office-based personnel in the United States for time in the performance of the work shall be in accordance with the following Hourly Fees:

Classification	Hourly Fee	Classification	Hourly Fee	Classification	Hourly Fee
BC-1	40.00	BC-11	143.00	BC-21	271.00
BC-2	51.00	BC-12	158.00	BC-22	285.00
BC-3	60.00	BC-13	167.00	BC-23	299.00
BC-4	69.00	BC-14	180.00	BC-24	317.00
BC-5	81.00	BC-15	193.00	BC-25	333.00
BC-6	90.00	BC-16	206.00		
BC-7	100.00	BC-17	216.00		
BC-8	110.00	BC-18	229.00		
BC-9	119.00	BC-19	243.00		
BC-10	130.00	BC-20	254.00		

Travel time in the interest of the work and away from the assigned office, either local or intercity, will be charged in accordance with the foregoing schedule.

- II. Compensation for items of expense and other charges incurred in connection with the performance of the work shall be in accordance with the following schedule:

Automobile	\$0.65/mile
Automobile Assigned to Project Site	\$48.00/cal. day
Four-Wheel Drive Vehicles	\$0.80/mile
Four-Wheel Drive Vehicles Assigned to Project Site	\$59.00/cal. day
Ground Transportation (rental car, taxi, etc.)	At Cost Plus 10%
Air Travel (commercial and charter)	At Cost Plus 10%
Living Expenses (away from assigned office)	At Cost Plus 10%
Telephone and Facsimile	At Cost Plus 10%
Equipment Rental	At Cost Plus 10%
Laboratory Work	At Cost Plus 10%
Soils Testing and Analysis	At Cost Plus 10%
Outside Photographic Work	At Cost Plus 10%
Duplicating Work	(schedule supplied upon request)
Technical Testing and Surveying Equipment	(schedule supplied upon request)

- III. Compensation for purchases, items of expense, and other charges not scheduled above, incurred in connection with the performance of the work, shall be at cost plus 10%.
- IV. Interest at the rate of 1½% per month will be charged on invoices not paid within 30 days.
- V. Fees and charges are subject to revision on or after March 28, 2020.