

PERSONAL/PROFESSIONAL SERVICE AGREEMENT

This Agreement dated as of August 20, 2014 is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 ("COUNTY"), on behalf of the Hennepin County Environmental Services Department, 701 Fourth Avenue South Suite 700, Minneapolis, Minnesota 55415-1600 ("DEPARTMENT") and Morris, Manning & Martin, LLP, 1401 Eye Street, N.W. Suite 600, Washington, D.C. 20005 ("CONTRACTOR").

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

CONTRACTOR agrees to furnish services to the COUNTY commencing August 18, 2014 and expiring June 30, 2015, unless cancelled or terminated earlier in accordance with the Default and Cancellation/Termination provisions of this Agreement.

The total cost of this Agreement, including all reimbursable expenses, shall not exceed Fifty Thousand Dollars (\$50,000.00).

2. SERVICES TO BE PROVIDED

CONTRACTOR shall provide counsel related legal services during contract negotiations to operate the County's waste to energy facility (HERC), as requested by the COUNTY.

The services rendered under this Agreement shall be performed solely at the request and under the direction of the COUNTY. CONTRACTOR agrees that the COUNTY has no contractual obligation with respect to CONTRACTOR to retain CONTRACTOR as legal counsel for a specific matter or to utilize any other services of CONTRACTOR as set forth herein, except as the COUNTY shall determine in its sole discretion, which determination may include the contracting of other legal counsel to the exclusion of CONTRACTOR.

3. FEES FOR SERVICES

The COUNTY shall pay the CONTRACTOR for services completed in accordance with the attached Exhibit A.

Except as provided herein, the CONTRACTOR shall not bill for ordinary out-of-pocket expenses other than courier (e.g., FedEx, UPS, etc.) and legal research (e.g., LexisNexis, WESTLaw, etc.) authorized by the COUNTY. The CONTRACTOR may, with prior written approval of the COUNTY, be reimbursed for certain extraordinary out-of-pocket expenses incurred in performing work under this Agreement, including transportation,

meals and lodging, when requested by the COUNTY to attend in-person meetings in the Twin Cities metropolitan area. Reimbursement for travel expenses shall be governed by the expense reimbursement provision of the Hennepin County travel policy.

4. PAYMENT FOR SERVICES

Payment for services shall be made directly to CONTRACTOR after completion of the services upon the presentation of a claim as provided by law governing the COUNTY's payment of claims and/or invoices. CONTRACTOR shall submit invoices for services rendered on forms which may be furnished by the COUNTY. Payment shall be made within thirty-five (35) days from receipt of the invoice.

All CONTRACTOR invoices must be approved by the Hennepin County Attorney's Office before submission for payment.

CONTRACTOR shall not provide services under this Agreement without receiving a purchase order or purchase order number supplied by the COUNTY. All invoices shall display the COUNTY purchase order number and be sent to the central invoice receiving address supplied by the COUNTY.

5. INDEPENDENT CONTRACTOR

CONTRACTOR shall select the means, method, and manner of performing the services. Nothing is intended or should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting CONTRACTOR as an employee of the COUNTY for any purpose. CONTRACTOR is and shall remain an independent contractor for all services performed under this Agreement.

CONTRACTOR shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of CONTRACTOR or other persons while engaged in the performance of any work or services required by CONTRACTOR will have no contractual relationship with the COUNTY and will not be considered employees of the COUNTY. The COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or the Workers' Compensation Act of the State of Minnesota on behalf of any personnel, including, without limitation, claims of discrimination against CONTRACTOR, its officers, agents, contractors, or employees. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind from the COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

6. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

A. In accordance with the COUNTY's policies against discrimination, CONTRACTOR agrees that it shall not exclude any person from full employment rights nor prohibit participation in or the benefits of, any program, service or

activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin. No person who is protected by applicable Federal or State laws against discrimination shall be subjected to discrimination.

- B. If CONTRACTOR fails to demonstrate good faith efforts to correct any identified non-discrimination deficiencies and/or fails to submit requested reports or information required by the COUNTY and/or has engaged in discriminatory practices, the COUNTY may consider this a violation of this Agreement and may exercise any remedies available to it in law or in equity, including, but not limited to, cancellation or termination of this Agreement.

7. INDEMNIFICATION

CONTRACTOR agrees to defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from the negligence or a breach of legal duty of the CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose negligence or breach of legal duty they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CONTRACTOR to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of CONTRACTOR personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirement of the Data Practices provisions set forth in Section 9 hereof.

8. INSURANCE

- A. With respect to the services provided pursuant to this Agreement, CONTRACTOR agrees at all times during the term of this Agreement, to have and keep in force professional liability insurance in an aggregate amount of not less than \$20,000,000. The CONTRACTOR agrees that thereafter it shall maintain professional liability insurance in the same amount for the entire period (taking into account any applicable statute of limitations) in which it and each of the attorneys providing services under this Agreement may incur any professional liability in connection with the performance or failure to perform services under this Agreement.
- B. Upon written request, CONTRACTOR shall promptly submit copies of insurance policies to the COUNTY. CONTRACTOR shall not commence work until it has obtained required insurance and filed with the COUNTY, a properly executed

Certificate of Insurance establishing compliance. If CONTRACTOR receives notice of cancellation/termination from an insurer, CONTRACTOR shall fax or email a copy of the notice to the COUNTY within two business days.

CONTRACTOR shall furnish to the COUNTY updated certificates during the term of this Agreement as insurance policies expire. If CONTRACTOR fails to furnish proof of insurance coverages, the COUNTY may withhold payments and/or pursue any other right or remedy allowed under the contract, law, equity, and/or statute. The COUNTY does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section.

- C. **Duty to Notify.** CONTRACTOR shall promptly notify the COUNTY of any claim, action, cause of action or litigation brought against CONTRACTOR, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement. CONTRACTOR shall also notify the COUNTY whenever CONTRACTOR has a reasonable basis for believing that CONTRACTOR and/or its employees, officers, agents or subcontractors, and/or the COUNTY, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement. Failure to provide the notices required by this section is a material violation of the terms and conditions of this Agreement.

9. **DATA PRACTICES; CONFIDENTIALITY**

CONTRACTOR shall comply with its ethical obligations concerning data privacy and confidentiality. CONTRACTOR understands that it is subject to the Minnesota Data Practices Act which recognizes attorney-client communication as data which is not subject to public review. CONTRACTOR routinely uses electronic mail (e-mail), facsimile transmission and cellular telephones. It is possible that those means of communication could be misrouted or intercepted and thereby result in an inadvertent disclosure of confidential information to third parties. However, because of the speed and efficiency, the COUNTY hereby consents to CONTRACTOR utilizing such electronic communications.

10. **RECORDS – AVAILABILITY/ACCESS**

Subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5, CONTRACTOR agrees that the COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions relating to this Agreement. CONTRACTOR shall maintain these materials and allow access

during the period of this Agreement and for six (6) years after its expiration, cancellation or termination.

11. **SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS**

- A. CONTRACTOR binds itself, its partners, successors, assigns and legal representatives to the COUNTY for all covenants, agreements and obligations contained in the contract documents.
- B. CONTRACTOR shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of the COUNTY. A consent to assign shall be subject to such conditions and provisions as the COUNTY may deem necessary, accomplished by execution of a form prepared by the COUNTY and signed by CONTRACTOR, the assignee and the COUNTY. Permission to assign, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement.
- C. CONTRACTOR shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of the COUNTY. Permission to subcontract, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement. Further, CONTRACTOR shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CONTRACTOR and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions specified herein. CONTRACTOR shall make contracts between CONTRACTOR and subcontractors available upon request.
- D. CONTRACTOR shall notify the COUNTY in writing if another person/entity acquires, directly or indirectly, more than 50 percent of the voting power of the partnership interests of CONTRACTOR. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. The COUNTY reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

12. **MERGER AND MODIFICATION**

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties.

13. DEFAULT AND CANCELLATION/TERMINATION

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, it shall be in default. Unless CONTRACTOR's default is excused by the COUNTY, the COUNTY may upon written notice immediately cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for the COUNTY to delay payment until CONTRACTOR's compliance. In the event of a decision to withhold payment, the COUNTY shall furnish prior written notice to CONTRACTOR.
- B. Upon cancellation or termination of this Agreement, at the discretion of the COUNTY and as specified in writing by the Contract Administrator, CONTRACTOR shall deliver to the Contract Administrator copies of all writings so specified by the COUNTY and prepared by CONTRACTOR in accordance with this Agreement. The term "writings" is defined as: Handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording, including electronic media, any form of communication or representation, including letters, works, pictures, drawings, sounds, or symbols, or combinations thereof.
- C. Notwithstanding any provision of this Agreement to the contrary, the CONTRACTOR shall remain liable to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Agreement by CONTRACTOR. Upon notice to CONTRACTOR of the claimed breach and the amount of the claimed damage, the COUNTY may withhold any payments to CONTRACTOR for the purpose of set off until such time as the exact amount of damages due the COUNTY from CONTRACTOR is determined. Following notice from the COUNTY of the claimed breach and damage, CONTRACTOR and the COUNTY shall attempt to resolve the dispute in good faith. The above remedies shall be in addition to any other right or remedy available to the COUNTY under this Agreement, law, statute, rule, and/or equity.
- D. The COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- E. This Agreement may be canceled/terminated with or without cause by either party upon thirty (30) day written notice.

14. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement include but are not limited to: Section 5 (INDEPENDENT CONTRACTOR); Section 7 (INDEMNIFICATION); Section 8 (INSURANCE); Section 9 (DATA PRACTICES); Section 10 (RECORDS-AVAILABILITY/ACCESS); Section 13 (DEFAULT AND CANCELLATION/TERMINATION); and Section 22 (MINNESOTA LAW GOVERNS).

15. CONTRACT ADMINISTRATION

In order to coordinate the services of CONTRACTOR with the activities of the COUNTY so as to accomplish the purposes of this Agreement, the Hennepin County Attorney's Office, Civil Division ("Contract Administrator"), shall manage this Agreement on behalf of the COUNTY and serve as liaison between the COUNTY and CONTRACTOR.

16. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CONTRACTOR shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. CONTRACTOR certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings.

17. CONFLICT OF INTEREST

- A. CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR'S involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this of interest become known to CONTRACTOR, CONTRACTOR will immediately notify the COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict of potential conflict, and will advise the COUNTY whether CONTRACTOR will or will not resign from the other engagement or representation.
- B. Upon termination of this Agreement, the Contractor must receive permission from the COUNTY before undertaking representation of a client with interests adverse to the COUNTY with regard to litigation, administrative proceedings, or negotiation or in lobbying the County on behalf of a client, concerning the subject matter for which the CONTRACTOR was retained to assist the COUNTY. The Hennepin County Attorney's Office will make all final determination concerning whether a conflict of interest exists, and if so, the COUNTY in consultation with the County Attorney will decide if it will be waived.
- C. The CONTRACTOR agrees to be bound by the COUNTY'S decision with regard to resolution of any conflict of interest.

18. PAPER RECYCLING

The COUNTY encourages CONTRACTOR to develop and implement an office paper and newsprint recycling program.

19. NOTICES

Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator with a copy to the originating Department at the address given in the opening paragraph of the Agreement. Notice to CONTRACTOR shall be sent to the attention of R. Stuart Broom at the address stated in the opening paragraph of the Agreement.

20. CONFLICT OF INTEREST

CONTRACTOR shall comply with its ethical obligations relative to conflicts of interest adverse to the COUNTY, as client of the CONTRACTOR.

21. PROMOTIONAL LITERATURE

From time to time, CONTRACTOR may furnish a list of its representative clients to prospective clients and disclose the nature and matters addressed in our representation,

provided that the same is a matter of public record or has been publicly disclosed. The COUNTY may inform R. Stuart Broom if it does not wish the CONTRACTOR to include the COUNTY as a representative client or disclose information concerning its representation that is a matter of public record or has been publicly disclosed.

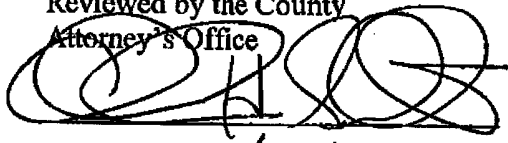
22. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

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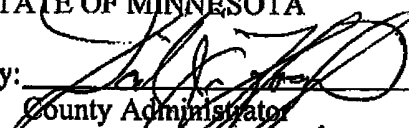
COUNTY ADMINISTRATOR APPROVAL

Reviewed by the County
Attorney's Office



Date: 9/15/14

COUNTY OF HENNEPIN
STATE OF MINNESOTA

By: 
County Administrator

Date: 9/18/14

Morris, Manning & Martin LLP.
CONTRACTOR warrants that the person who
executed this Agreement is authorized to do so on
behalf of CONTRACTOR as required by its
applicable governing documents.

By: 

Printed Name: R. Stuart Broom

Printed Title: Partner

Date: August 25, 2014

Exhibit A

Hourly rate for Stuart Broom* \$425.00

Hourly rate for Bradley Nowak* \$400.00

*** Subject to annual escalation of 2% each January 1.**

