

**RESOLUTION NO. 2020-0219**

**RESOLUTION APPROVING THE CONTRACT FOR THE  
EQUIPMENT PURCHASE AND INSTALLATION  
FOR THE DIGESTER REHABILITATION PROJECT**

WHEREAS, the City of Muscatine solicited for a Proposal for the Anaerobic Digester Rehabilitation Equipment Package; and

WHEREAS, the City of Muscatine received only one Proposal from DVO, Inc. of Chilton, Wisconsin, for \$715,000.00 that includes all equipment, installation, warranty and performance agreements; and

WHEREAS, DVO, Inc. has submitted a contract for services and equipment to the City; and

WHEREAS, Stanley Consultants, Inc. has an approved Professional Services Agreement with the City of Muscatine for engineering and design for the Digester Rehabilitation Project; and

WHEREAS, DVO, Inc. must supply Stanley Consultants, Inc. with preliminary drawings and submittals to begin design services and solicit bids for a contractor to complete the Digester Rehabilitation Project;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that the City of Muscatine approve the contract for supplying and installing the necessary equipment for the Digester Rehabilitation Project from DVO, Inc. and authorize initial payment of \$71,500.00 pending preliminary drawings and submittals provided by DVO, Inc.

PASSED, APPROVED, AND ADOPTED THIS 18<sup>th</sup> DAY OF JUNE, 2020.

CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA

BY: \_\_\_\_\_  
Diana Broderson Mayor

ATTEST:

\_\_\_\_\_  
Greg Jenkins, Interim City Administrator

## CONTRACT FOR ANAEROBIC DIGESTER

This Contract for Anaerobic Digester (“Agreement”) is entered into on this 18th day of June, 2020 (“Effective Date”), by and between DVO, Inc., a corporation duly organized and existing under the laws of the State of Wisconsin (“DVO”), and the City of Muscatine (“Owner”). Hereinafter, DVO and Owner may each be referred to as a “Party” and may be collectively referred to as the “Parties.”

### RECITALS

WHEREAS, Owner wishes to refurbish and operate an anaerobic digester located at The City of Muscatine Water and Resource Recovery Facility (the “Site”);

WHEREAS, DVO is in the business of designing, engineering, and installing its patented Two-Stage Mixed Plug Flow™ anaerobic digester and related systems; and

WHEREAS, Owner wishes to purchase a Two-Stage Mixed Plug Flow™ anaerobic digester from DVO to be installed at the Site (the “Digester”), and DVO agrees to this engagement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

#### 1.0 Definitions.

1.1 Business Day. The term “Business Day” shall mean any day other than a Saturday or Sunday or a day on which banks in the jurisdiction of the recipient of a notice are authorized to be closed.

1.2 Components. The term “Components” shall mean all equipment and parts supplied to Owner by DVO pursuant to Exhibit A.

1.3 Services. The term “Services” shall mean those work activities set forth in Exhibit A that are provided to Owner by DVO in support of the Digester and Components.

1.4 Start-Up. The term “Start-Up” shall mean the earliest date on which all Components supplied by DVO have been installed and are operating correctly.

1.5 Technology. The term “Technology” shall mean any and all proprietary information relating to the Digester supplied to or obtained by Owner directly or indirectly from DVO, including, but not limited to, Components, improvements, technical data, plans, specifications, research, records, design, and operating data of the Digester.

#### 2.0 Sale and Purchase.

2.1 Owner agrees to purchase from DVO and DVO agrees to sell to Owner the Digester and the related Services and Components as expressly enumerated in Exhibit A (“Scope of Work”), attached hereto.

2.2 Owner agrees to pay consideration to DVO for the Digester as set forth in Exhibit B (“Contract Price”), attached hereto. All prices are expressed and shall be payable in US Dollars. The Contract Price is based on the Services and Components stated in Exhibit A. Any change to the Services and Components after execution of this Agreement may result in a change to the Contract Price.

### **3.0 Responsibilities of Owner.**

3.1 Owner shall be responsible for all other aspects of design, construction and operation of the Digester not otherwise expressly provided in Exhibit A.

3.2 Owner shall utilize and follow the technical information and advice provided by DVO, including specifications and instructions set forth in DVO’s Operations and Maintenance (“O&M”) Manual, a copy of which will be provided to Owner upon Start-Up. The O&M Manual is hereby fully incorporated as part of this Agreement. Any design variances shall be implemented only with the written approval of DVO.

3.3 Owner shall be responsible for obtaining any and all necessary permits, licenses, governmental approvals, and certifications that are necessary to permit the sale of Digester by DVO hereunder, and the purchase and use of the Digester by Owner hereunder. Owner shall comply with all laws, ordinances, codes, and regulations (“Governmental Laws”) which may be applicable to Owner by reason of its execution of this Agreement and its performance hereunder.

### **4.0 Responsibilities of DVO.**

4.1 DVO will provide all Services in a timely, professional, and workmanlike manner. The Digester, Components and Services will comply with all specifications and requirements as set forth in this Agreement.

4.2 DVO shall remove all debris from the Site and otherwise maintain the Site in a clean and safe condition; provided, however, DVO will not be responsible for the debris or site condition to the extent caused by Owner or its agents, contractors, or subcontractors.

4.3 DVO shall comply with all Governmental Laws which may be applicable to DVO by reason of its execution of this Agreement and its performance hereunder.

**5.0 Exclusions.** The Contract Price is exclusive of any applicable sales tax, as well as costs, fees, and charges associated with shipping, transportation, and freight, the payment of which is the responsibility of the Owner.

### **6.0 Payment Terms.**

6.1 A Preliminary Engineering Fee in the amount of 10% of the Contract Price may be charged by DVO to Owner in the event that digester vessel preliminary plans are provided to

Owner prior to the commencement of construction, for the purpose of obtaining required permits or construction bids.

6.2 Owner shall pay 25% of the Contract Price upon delivery of digester vessel stamped plans, minus any Preliminary Engineering Fee paid by Owner pursuant to Section 6.1.

6.3 Upon the start of construction, the balance of the Contract Price, minus a 5% retainage, will be charged to Owner in the form of progress payments, billed every thirty (30) days, based on the percentage of project completion, as reasonably determined by DVO ("Progress Payments"). All Progress Payments shall be due thirty (30) days from date of invoice.

6.4 Any balance more than thirty (30) days past due shall be subject to interest at a rate of 1.5% per month or 18% per annum.

6.5 Owner may retain 5% of the Contract Price until Digester Start-Up is complete ("Retainage"). Retainage shall be due and payable to DVO upon delivery of biogas measuring at 50% CH<sub>4</sub> content, as measured by DVO. Written certification of CH<sub>4</sub> content shall be provided to Owner, upon delivery of which the Retainage shall become due and payable.

**7.0 Limited Warranty.** DVO warrants against defects in the Digester, as defined by the Scope of Work, for a period of one (1) year from the date of Start-Up, subject to the following terms and conditions:

7.1 DVO's obligation under this Warranty is limited to promptly investigating claims and correcting, at no charge to Owner, any Components which shall be found defective, or Components which have been installed improperly. Repair or replacement is at DVO's option. DVO shall not be obligated to pay for, nor reimburse Owner for, the cost of unauthorized repairs.

7.2 This Limited Warranty shall not apply to any Components which have been subject to misuse, negligence, tampering, accident, unless performed or caused by DVO, or any Components which have been repaired or altered by anyone other than DVO, unless authorized in writing by DVO.

7.3 Any alteration, addition, including the addition of harmful or detrimental materials or substrates (including, but not limited to those identified in the "Digester Operation Standards" section of the O&M Manual) into the Digester, change, or repair to the Digester or any Digester Component not authorized by DVO in writing shall nullify and void all warranty protection offered herein.

7.4 DVO disclaims all liability for loss, damage, or expense to the Owner as a result of any unauthorized use of DVO's Technology, or improper operation or maintenance of the Digester.

7.5 This Limited Warranty shall not include: cost of routine maintenance; sand removal; or Digester failure caused by defects in construction not in accordance with DVO's plans, designs, and specifications, except to the extent authorized or directed by DVO in writing.

7.6 No person or agent is authorized to offer any other warranties on behalf of DVO unless made in writing and signed by DVO.

7.7 DVO's Limited Warranty does not extend any warranty offered by a third party on third party equipment not manufactured by DVO. Any equipment not manufactured by DVO is subject to the original manufacturer's warranty, which shall run concurrently with this Limited Warranty.

7.8 DVO offers no guarantees, warranties, or representations with respect to expected electrical production.

7.9 DVO shall provide to Owner a complete Digester O&M Manual, detailing Digester specifications; operation and maintenance instructions; best practices; and troubleshooting. Owner shall utilize the O&M Manual for Digester operations and maintenance, and shall not materially deviate from the specifications, instructions, and recommendations set forth therein without prior written authorization, which shall not be unreasonably withheld.

7.10 Other than the warranties contained in this Section 7, DVO makes no other warranty whatsoever, with respect to the Digester or any part, Component, attachment, or accessory thereof. THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY DVO AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. DVO EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. If Owner desires that DVO provide broader warranty coverage and DVO is willing to provide the same, then DVO will adjust upward the prices for the Digester to reflect the additional expense to DVO of providing such broader warranty coverage.

**8.0 Advertising Rights; Facility Access.** With Owner's consent, DVO shall have the option to publicize the Owner as a client of DVO. DVO and Owner shall have the right to advertise or publicize the consummation of this Agreement and the identity of any of DVO's equipment suppliers, with both Parties' consent and in a manner that they mutually deem appropriate. DVO shall have the right to apply its trademark, brand, or logo to the Digester. DVO shall request authorization from Owner to apply its trademark, brand, or logo to any portion of the Owner's facility not part of the Digester. After Digester Start-Up, DVO may, from time to time, request access to the Digester and the surrounding facility for educational, marketing, testing, or other purposes. Owner agrees to cooperate with DVO to facilitate access to the Digester and surrounding facility, to the extent reasonably possible and as mutually agreed to by the Parties.

## **9.0 Protection of DVO Proprietary Information and License for Use.**

9.1 Acknowledgement of Proprietary Information. Owner recognizes and acknowledges (i) that the Technology is a commercially valuable proprietary product of DVO, the design and development of which has involved the expenditure of a substantial amount of money and the use of skilled development experts over a long period of time and which affords DVO a commercial advantage over its competitors; (ii) that the Technology constitutes a trade

secret which is transferred to Owner for use at the Site on the basis of the confidential relationship between DVO and Owner under this Agreement and is to be used only as may be expressly permitted by the terms and conditions of this Agreement; (iii) that the loss of this competitive advantage due to unauthorized disclosure or use of such proprietary information would cause great injury and harm to DVO; and (iv) that the restrictions imposed upon Owner by this Section 9 are necessary to protect the secrecy of such proprietary information and to prevent the occurrence of any injury and harm.

9.2 Confidentiality Covenant. Each Party may (as “Disclosing Party”) disclose certain of its confidential and proprietary information (“Confidential Information”) to the other Party (as “Receiving Party”) in connection with this Agreement. Confidential Information shall include all information disclosed by the Disclosing Party related to the Purpose, including all trade secrets, intellectual property, research and development, data, specifications, calculations, materials, products, technology, customer information, financial information, business plans, marketing plans, and any other information disclosed to the Receiving Party or Receiving Party’s representatives and designated by the Disclosing Party or the Disclosing Party’s Representatives as confidential, either orally, in writing, or by any other media. With respect to DVO, Confidential Information shall include all Technology disclosed by DVO. A Party’s representatives include its employees (including employees of subsidiaries and affiliates), officers, directors, agents, and shareholders who otherwise have a need to know the Confidential Information and whose knowledge is required to make an appropriate evaluation of the Purpose.

9.2.1 Receiving Party agrees to hold the Confidential Information in strict confidence and not disclose the Confidential Information, other than to its Representatives who (i) need to know the Confidential Information in connection with its obligations or rights under the Agreement, (ii) have been informed of the confidential nature of the Confidential Information, and (iii) are required by Receiving Party to maintain such Confidential Information as confidential. Receiving Party agrees to bear full responsibility for use and distribution of Confidential Information among its representatives, shall control the flow of Confidential Information to such representatives, and shall be responsible for any breach of this Agreement by its representatives. Owner and DVO shall cause all written materials relating to or containing the Technology, including all blueprints, plans, drawings, specifications, reports, notes, and all copies, reproductions, reprints and translations thereof, to be plainly marked to indicate the secret and confidential nature thereof and to prevent unauthorized use or reproduction.

9.2.2 Receiving Party agrees to protect the Confidential Information in accordance with the terms of this Agreement using the same degree of care, but no less than a reasonable degree of care, as Receiving Party uses to protect its own confidential information of a like nature. Subject to the terms of this Agreement, Receiving Party may not use the Confidential Information for anything other than the fulfillment of its obligations hereunder or in connection with the rights granted to such Party herein.

9.3 Exceptions. This Section 9 shall not apply to any Confidential Information (i) that shall become generally known in the trade through no fault of Receiving Party; (ii) that shall

be disclosed to Receiving Party by a third party having legitimate possession thereof and the unrestricted right to make such disclosure; (iii) that Receiving Party can demonstrate was within its legitimate possession prior to the time of the disclosure by Disclosing Party; (iv) that Receiving Party subsequently develops through entirely independent efforts; (v) that Disclosing Party approves for unrestricted release by written authorization; or (vi) that is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order. Disclosures made under this Agreement which are specific shall not be deemed to be within the foregoing exceptions merely because they are embraced by more general information in the public domain or in the prior possession of Owner. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the possession of Owner, but only if the combination itself and its principle of operation are in the public domain or in the possession of Owner.

9.4 License. The Digester and its Components are herein licensed and adapted only for the commercial use by Owner as listed in this Agreement and at the Site identified in this Agreement. Licenses for other uses will require the purchase of appropriate licenses from DVO. Owner shall not itself and shall not permit any other person to reverse engineer the Digester, the Components, or its operation. This Agreement implies no rights, conditions, or obligations other than as expressly set forth herein.

9.5 Receiving Party acknowledges and understands that the use or disclosure of the Confidential Information in any manner inconsistent with this Agreement will cause the Disclosing Party irreparable damage. Accordingly, Receiving Party agrees that if it makes such use or disclosure or threatens such use or disclosure, Disclosing Party will have available, in addition to any other right or remedy available, the right to obtain an injunction against Receiving Party from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any nondisclosure or nonuse provisions of this Agreement, and Receiving Party hereby consents to the issuance of such injunction and to the ordering of specific performance under such circumstances. The obligations of this Section 9 shall survive any termination of this Agreement for a period of 5 years, and shall be binding on Owner's successors and assigns; provided, however, the protections available under applicable law to any Confidential Information constituting a trade secret will not be shortened or diminished by this provision. Owner will obtain and deliver to DVO the written agreement by any permitted transferee of the title or possession of the Digester to be bound by the confidentiality obligations. Receiving Party shall promptly notify Disclosing Party in writing of any violations of the confidentiality obligations. ***Any material violation by Owner of the confidentiality obligations shall automatically result in the loss of all express warranties given by DVO under this Agreement.***

9.6 Improvements. Any improvements to the Digester, Components or Technology made by DVO shall be deemed commissioned work/service inventions and shall belong exclusively to DVO.

9.7 Non-Competition and Non-Circumvention. Owner further agrees that it shall not, at any time, use the Confidential Information in any manner to commercially exploit, to the detriment of DVO, the proposed and existing business opportunities, transactions, relationships,

concepts and business plans related to Confidential Information of DVO. Owner further agrees not to use any of DVO's Confidential Information for the purpose of designing or building a digester or digester facility without the assistance of DVO, either through the Owner's own efforts, or through or with the assistance of any third party. Owner acknowledges and agrees that any attempts by Owner or its agents to reverse engineer the Digester, Components, Technology, or Confidential Information shall constitute a breach of this provision and of this Agreement.

## **10.0 Infringement.**

10.1 Notice of Alleged Infringement. If any action, claim, or suit is threatened in writing, filed, or made in writing against Owner, or Owner and DVO jointly, based upon alleged infringement by the Technology of a patent or other proprietary right, then Owner shall promptly notify DVO of such action, claim, or suit. If any action, claim, or suit is threatened in writing, filed, or made in writing against DVO, or Owner and DVO jointly, based upon alleged infringement by the Technology of a patent or other proprietary right, then DVO shall promptly notify Owner of such action, claim, or suit.

10.2 Responses to Alleged Infringement. In the event of any alleged infringement against Owner pursuant to this Section 10, DVO shall, at its sole discretion and at its cost, take one of the following actions:

(a) Defending Technology. DVO may defend any such action, claim or suit. Owner shall cooperate with DVO in its defense of such action, claim, or suit, and Owner shall, upon reasonable notice, use its best efforts to have any of its employees, officers, directors, managers, and any other representatives testify when requested by DVO, and shall, upon reasonable notice, use its best efforts to make available to DVO all relevant records, papers, information, samples, specimens, and the like.

(b) Modifying Process. DVO may modify the process to avoid infringement without materially affecting the performance of the Digester, the Components, or the Technology.

(c) Replacing Equipment. DVO may replace any equipment or portions thereof supplied by or specified by DVO and utilized in the process to avoid infringement without materially affecting the performance of the Digester, the Components, or the Technology.

(d) Obtaining License. DVO may obtain a license from the third party alleging infringement, at its sole cost and expense, enabling Owner to utilize the process or equipment.

10.3 Liability. If DVO is successful in effecting one of the options provided in Section 10.2 above in case of any alleged infringement, DVO shall have no further liability hereunder

with respect to such infringing or alleged infringing use of the Technology by Owner hereunder. If DVO is unsuccessful in effecting any of the options provided in Section 10.2 above, DVO will hold Owner harmless from and indemnify it against all damages, expenses and claims arising out of such infringement; provided, however, that the following conditions precedent are first met: (i) Owner shall have materially complied with the provisions of this Section 10, and (ii) Owner shall have been in material compliance with all provisions of this Agreement and in material conformance with DVO's instructions to Owner regarding the use thereof.

**11.0 Indemnification; Limitation of Liability.** Owner agrees to hold DVO harmless from and indemnify DVO against all liabilities, costs, losses, and expenses, including attorney's fees, resulting from any claims or damages related or allegedly related to the use of the Digester, Components, or Technology, except to the extent that (i) such liability, cost, loss, or expense is a result of DVO's negligence, willful act or omission, or breach of this Agreement, or (ii) DVO is specifically liable for such cost, loss or expense pursuant to the provisions of Sections 7 or 10 hereof. DVO agrees to hold Owner harmless from and indemnify Owner against all liabilities, costs, losses, and expenses, including attorney's fees, resulting from any claims or damages related or allegedly related to DVO's breach of this Agreement, except to the extent that (i) such liability, cost, loss or expense is a result of Owner's negligence, willful act or omission, or breach of this Agreement, or (ii) Owner is specifically liable for such cost, loss or expense. In no event shall DVO, its employees, contractors, subcontractors, or subconsultants be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental, consequential or punitive damages such as, but not limited to, delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of the equipment or system, non-operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power. Furthermore, Owner expressly agrees that the remedies provided herein are exclusive and that under no circumstance shall the total aggregate liability of DVO under any theory of recovery, whether in contract, tort, strict liability, warranty or otherwise, exceed the Contract Price.

**12.0 General Contracting Services.** Unless otherwise agreed to in writing, DVO will not provide general contracting services for any aspect of the Digester design, construction, installation, or Start-Up. If Owner desires general contracting services, it is Owner's responsibility to independently obtain and pay for such services. DVO hereby disclaims all duties, responsibilities and liabilities associated therewith. DVO and Owner may mutually agree, in writing, to the provision of general contracting services by DVO. Such agreement shall be evidenced by a separate writing, and no such agreement may be inferred by virtue of this Agreement.

**13.0 Influent Materials.** Owner understands and acknowledges that proper functioning of the Digester depends upon the amount, composition, and quality of influent materials. Owner bears sole responsibility for determining, maintaining, and monitoring the amount, composition, and quality of influent materials for proper Digester function. DVO hereby waives and disclaims all liability for any loss, damage or expense incurred by Owner as a result of any unauthorized alteration, addition, change, or repair to the Digester or Components.

**14.0 Term and Termination.**

14.1 This Agreement shall begin on the Effective Date and shall continue until (i) Start-Up is complete, and the Contract Price has been paid in full by Owner; or (ii) unless terminated by either Party.

14.2 Each Party shall have the right to terminate this Agreement, for cause, according to the terms set forth in this Agreement. In the event that one Party defaults in the performance of any of the terms or conditions or fails to perform any of the obligations set forth in this Agreement, the other Party shall notify the defaulting Party in writing. If the default is not cured or remedied within sixty (60) days after the delivery of such notice, the Party giving notice shall have the right, at its election, to terminate this Agreement in accordance with the terms set forth herein. Termination shall not affect the Parties' obligations that are intended to survive this Agreement, including Sections 7-11.

**15.0 Relationship of Parties.** No agency, employment, partnership, joint venture, or franchise is created by this Agreement. Each Party's business is separate and apart from any other business operated by the other Party. Neither Party to this Agreement shall make any representations intending to create apparent agency, employment or partnership. Neither Party will have authority to act for the other Party in any manner to create obligations or debts.

**16.0 Assignments.** This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the heirs, successors, and assigns of the parties hereto.

**17.0 Force Majeure.**

17.1 Force Majeure. The term "force majeure," as applied in this Section 17, shall mean acts of government, acts of God, strikes or other concerted acts of workmen, fires, floods, explosions, riots, civil disturbances, insurrections, earthquakes, wars, rebellion, epidemics, sabotage, shortages, or any other cause, whether similar or dissimilar to those enumerated, not within the reasonable control of the affected party and that prevents, restricts, delays, or interferes with the performance of this Agreement or any obligation hereunder, other than the payment of money.

17.2 Effect of Force Majeure. In the event that a party is delayed in its performance hereunder because of force majeure, such delay shall not constitute a breach of this Agreement if such party notifies the other party thereof. Notwithstanding the foregoing, in the event such delay shall exceed three (3) months, the first mentioned party shall be considered to be in default of this Agreement.

**18.0 Governing Law; Venue.**

18.1 Governing Law. Regardless of the place of contracting, place of performance, or otherwise, this Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the Parties hereunder, shall be construed under, and be governed by, the laws of the State of Wisconsin and the United States of America. All provisions of this Agreement have been mutually drafted and prepared by the Parties and shall not be construed against either Party under any rules of construction.

18.2 Venue. Any action commenced by Owner hereunder shall be venued in the State of Wisconsin as the sole and exclusive jurisdiction. Owner waives any defenses or objections to this jurisdiction, including without limitation, the defense of forum non convenience.

**19.0 Miscellaneous.**

19.1 Notices. All notices shall be in writing and shall be sent by email and registered or express mail to the following:

(a) If to DVO:

**DVO, Inc.**

Attn: Steve Dvorak, President

Address: P.O. Box 69, 820 W. Main St., Chilton, WI 53014

Email: steved@dvoinc.com

(b) If to Owner:

**City of Muscatine**

Attn: Jon Koch, Director WPCP

Address: 1202 Musser St., Muscatine, IA 52761

Email: jkoch@muscatineiowa.gov

Any such notice or report shall be deemed to have been duly given to the Party at the time of (i) personal delivery or receipt; (ii) transmission, in the event notice was provided by email; or (iii) three days following delivery to a private courier company or posting with the postal service. A Party may change its address by written notice to the other.

19.2 Nonwaiver of Default. Any failure of either party, at any time, or from time to time, to enforce and require the strict keeping and performance of any of the terms and conditions of the Agreement shall not constitute a waiver of any such terms or conditions at any future time and shall not prevent such party from insisting on the strict keeping and performance of such terms and conditions at a later time.

19.3 Amendment and Rescission. This Agreement shall not be modified or rescinded except in accordance with this Agreement and by a written instrument signed by an authorized representative of both parties hereto.

19.4 Partial Invalidity. If any term or provision of this Agreement shall be held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, such term or provision

shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, which shall remain in full force and effect.

19.5 Entirety of Agreement. This Agreement, the Exhibits attached hereto, and the O&M Manual, comprise the entire Agreement between the Parties hereto with respect to the subject matter hereof, and there are no agreements, undertakings, covenants, conditions, oral or written, express or implied, concerning such subject matter that are not merged herein or superseded hereby, including all prior confidentiality and noncompetition agreements between the Parties with respect to the Digester contemplated by this Agreement. If any conflicts arise between the terms contained in any Proposal or Purchase Order and this Agreement, this Agreement shall prevail.

19.6 Counterparts. This Agreement may be executed by signatures/corporate seals exchanged via facsimile, email, or other electronic means and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

19.7 Captions. The captions or headings of the Sections or other subdivisions hereof are inserted only as a matter of convenience or for reference and shall have no effect on the meaning of the provisions hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective corporate names as of the Effective Date by their respective duly authorized corporate officers:

**DVO, INC.**

**[City of Muscatine]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**  
**Scope of Work**

<b>Digester Engineering</b>
1. Heat Calculations and Control System Design for Digester Internal Heating System
2. Digester Vessel Equipment Layout
3. General Equipment Building Layout
4. Site Inspection
<b>Digester Components</b>
1. Internal Heat Exchangers
2. Hot Water Storage/Distribution Skid (including stainless steel tank and Grundfos pumps)
3. Biogas Mixing Blower System
4. Sludge Recirculation Piping/Pump
5. Installation Labor/Mobilization
<b>Equipment Building</b>
1. Electrical related to DVO's Heating and Mixing System with Controls
2. Flame Arrestors and Flare Equipment
3. Temperature Probes/Access Hoods
4. Controls for Digester Heating and Biogas Mixing System
5. Heating System and Biogas Mixing System Interior Plumbing/Labor
<b>Other</b>
1. Assist with Digester Start-Up

**Exhibit B**  
**Contract Price**

- I. Digester Heating System**
  - a. Acid Chamber Heat Exchangers
  - b. Internal Heat Exchangers
  - c. Hot Water Storage/Distribution Skid (including stainless steel tank and Grundfos pumps)
  - d. Circulation Pumps/Solenoids
  - e. Sludge Recirculation Pump
  - f. Miscellaneous Piping/Valves
  - g. Installation Labor/Mobilization
  
- II. Gas Mixing System**
  - a. Blower/Solenoids
  - b. Installation Labor/Mobilization
  
- III. Building Interior Plumbing and Electrical**
  - a. Electrical related to DVO's Heating and Mixing System with Controls
  - b. Automatic Flare and Flame Arrestors
  - c. Installation Labor/Mobilization
  
- IV. Engineering**
  - a. Digester Vessel Design
  - b. General Building Layout
  - c. Site Inspection

**Total: \$715,000.00**