



## MEMORANDUM

Water Pollution Control Plant  
 1702 Mission Street  
 Muscatine IA 52761-1646  
 (563) 263-2752  
 Fax (563) 263-3790

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 WATER & RESOURCE RECOVERY FACILITY
 

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**To:** Greg Jenkins, Interim City Administrator

**CC:** Nancy Lueck, Finance Director  
 Cinda Hilger, Secretary

**From:** Jon Koch, WPCP Director

**Date:** July 13, 2020

**Re:** Request To Approve Non-Disclosure Agreement with Innovative Waste Recycling, LLC.

**INTRODUCTION:** The City of Muscatine Water and Resource Recovery Facility (WRRF) staff and Innovative Waste Recycling, LLC. (IWR) have drafted a mutual Non-Disclosure Agreement (NDA) so that IWR can bring organic material to the Muscatine Organics Recycling Center (MORC) without breach of proprietary information from Open Records Laws. The City attorney has reviewed and approved of the agreement.

**BUDGET:** There is no cost to this agreement. It will allow significant amounts of material to be delivered to the MORC from multiple sources throughout the region producing tipping fee revenue for the City.

**BACKGROUND:** WRRF staff approached IWR several years ago in anticipation of the MORC being completed. They represent large food manufacturers in the area that wish to utilize the MORC for inedible packaged food destruction for beneficial reuse. The NDA that has been drafted allows these manufacturers to protect proprietary information when delivering material to the City so that the City does not violate Open Records Laws.

**RECOMMENDATION/RATIONALE:** Staff recommends approval of the NDA with Innovative Waste Recycling, LLC. and recommends the Mayor signs the agreement as drafted.

**BACKGROUND:** 1. NDA

## MUTUAL NON-DISCLOSURE AGREEMENT

This Non-disclosure Agreement (this "Agreement") is made effective as of July 16<sup>th</sup>, 2020 (the "Effective Date"), by and between Innovative Waste Recycling, LLC (the "IWR"), and City of Muscatine, IA Water & Resource Recovery Facility. (the "City"), each individually a "Party" and collectively the "Parties" to this Agreement.

Information about business and investment plans and strategies will be disclosed to the City to determine the viability of the plans and to determine whether the City could assist with the development and execution of the plans. The Parties agree that they will protect the confidential material and information which may be disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"). Therefore, the Parties agree as follows:

**I. SUNSHINE LAWS.** The Parties understand that the City is subject to, among other laws, the Iowa Open Meetings Law, Iowa Code Chapter 21, pursuant to which meetings of governmental bodies shall be held in open session unless closed sessions are expressly permitted by law, and the Iowa Open Records Law, Iowa Code Chapter 22, pursuant to which all documents and records made or received by the City shall, absent an exemption or law to the contrary, constitute a public record subject to disclosure. These laws are collectively referred to as Iowa's "Sunshine Laws." Notwithstanding the terms of this Agreement, the Parties understand and acknowledge that confidential or proprietary information disclosed under the terms of this Agreement are subject to Iowa's Sunshine Laws.

**II. CONFIDENTIAL INFORMATION.** The term "Confidential Information" means any information or material which is proprietary to the Disclosing Party, whether or not owned or developed by the Disclosing Party, which is not generally known other than by the Disclosing Party, and which the Receiving Party may obtain through any direct or indirect contact with the Disclosing Party. Regardless of whether specifically identified as confidential or proprietary, Confidential Information shall include any information concerning the business, technology and information of the Disclosing Party and any third party with which the Disclosing Party deals, including, without limitation, business records and plans, trade secrets (as defined under Iowa Code Chapter 550), technical data, product ideas, contracts, financial information, pricing structure, discounts, computer programs and listings, source code and/or object code, copyrights and intellectual property, inventions, sales leads, strategic alliances, partners, and customer and client lists. The nature of the information and the manner of disclosure are such that a reasonable person would understand it to be confidential.

**A. "Confidential Information" does not include:**

- matters of public knowledge that result from disclosure by the Disclosing Party;
- information rightfully received by the Receiving Party from a third party without a duty of confidentiality;
- information independently developed by the Receiving Party;
- information disclosed by operation of law, including Iowa's Sunshine Laws;

- information disclosed by the Recipient with the prior written consent of the Owner;
- and any other information that both parties agree in writing is not confidential.

**III. PROTECTION OF CONFIDENTIAL INFORMATION.** The Parties understand and acknowledge that the Confidential Information has been developed or obtained by the Disclosing Party by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of the Disclosing Party which provides the Disclosing Party with a significant competitive advantage, and needs to be protected from improper disclosure. In consideration for the receipt by the Receiving Party of the Confidential Information, the Receiving Party shall agree as follows:

**A. No Disclosure.** Subject to Article IV, the Receiving Party will hold the Confidential Information in confidence and will not disclose the Confidential Information to any person or entity without the prior written consent of the Disclosing Party.

**B. No Copying/Modifying.** The Receiving Party will not copy or modify any Confidential Information without the prior written consent of the Disclosing Party.

**C. Unauthorized Use.** The Receiving Party shall promptly advise the Disclosing Party if the Receiving Party becomes aware of any possible unauthorized disclosure or use of the Confidential Information.

**D. Application to Employees.** The Receiving Party shall not disclose any Confidential Information to any employees of the Receiving Party, except those employees who are required to have the Confidential Information in order to perform their job duties in connection with the limited purposes of this Agreement. Any employee, agent or affiliate of a Receiving Party to whom disclosure of confidential or proprietary information is made shall be required to comply with the terms hereof. The Receiving Party will be responsible for any breach by them of the provisions hereof.

**IV. REQUIRED DISCLOSURES.** If either Party is required, pursuant to a governmental law, regulation or order, to disclose any Confidential Information of the other Party, the Receiving Party (i) shall give advance written notice to the Disclosing Party, (ii) shall make a reasonable effort to assist the other Party to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required and (iii) shall use and disclose the Confidential Information solely to the extent required by the law or regulation.

**V. UNAUTHORIZED DISCLOSURE OF INFORMATION - INJUNCTION.** If it appears that the Receiving Party has disclosed (or has threatened to disclose) Confidential Information in violation of this Agreement, the Disclosing Party shall be entitled to an injunction to restrain the Receiving Party from disclosing the Confidential Information in whole or in part. The Disclosing Party shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

**VI. RETURN OF CONFIDENTIAL INFORMATION.** Subject to Article IV, upon the written request of the Owner, the Receiving Party shall return to the Disclosing Party all written materials containing the Confidential Information. The Receiving Party shall also deliver to the Owner written statements signed by the Recipient certifying that all materials have been returned within five (5) days of receipt of the request.

**VII. RELATIONSHIP OF PARTIES.** Neither party has an obligation under this Agreement to purchase any service or item from the other party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

**VIII. WARRANTY AGAINST INFRINGEMENT; OTHER AS-IS WARRANTY.** Disclosing Party represents and warrants that any confidential or proprietary materials originating from the Disclosing Party will not infringe upon, violate or misappropriate any patent, copyright, trade secret, trademark, contract or other right or interest of any third party. The Receiving Party acknowledges and agrees that the Confidential Information is provided on an "AS IS" basis. THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE OWNER BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. The Disclosing Party does not represent or warrant that any product or business plans disclosed to the Receiving Party will be marketed or carried out as disclosed, or at all. Any actions taken by the Receiving Party in response to the disclosure of the Confidential Information shall be solely at the risk of the Receiving Party.

**IX. LIMITED LICENSE TO USE.** The Receiving Party shall not acquire any intellectual property rights under this Agreement except the limited right to use as set forth above. The Receiving Party acknowledges that, as between the Disclosing Party and the Receiving Party, the Confidential Information and all related copyrights and other intellectual property rights, are (and at all times will be) the property of the Disclosing Party, even if suggestions, comments, and/or ideas made by the Receiving Party are incorporated into the Confidential Information or related materials during the period of this Agreement.

**X. INDEMNITY.** Each party agrees to defend, indemnify, and hold harmless the other party and its officers, directors, agents, affiliates, distributors, representatives, and employees from any and all third party claims, demands, liabilities, costs and expenses, including reasonable attorney's fees, costs and expenses resulting from the indemnifying party's material breach of any duty, representation, or warranty under this Agreement.

**XI. ATTORNEY'S FEES.** In any legal action between the parties concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

**XII. TERM.** The obligations of this Agreement shall survive 3 years from the Effective Date or until the Disclosing Party sends the Receiving Party written notice releasing the Receiving Party from this Agreement.

**XIII. GENERAL PROVISIONS.** This Agreement sets forth the entire understanding of the parties regarding confidentiality. Any amendments must be in writing and signed by both parties. This Agreement shall be construed under the laws of the State of Iowa. This Agreement shall not be assignable by either party. Neither party may delegate its duties under this Agreement without the prior written consent of the other party. The confidentiality provisions of this Agreement shall remain in full force and effect at all times in accordance with the term of this Agreement. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall remain in full force and effect and construed so as to best effectuate the original intent and purpose of this Agreement.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute the Agreement effective the date and year first above written.

ACCEPTED AND AGREED:

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

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

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

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

Name: Steve Widdicombe

Title: Sales Manager

City of Muscatine  
215 Sycamore St.  
Muscatine, IA 52761

Innovative Waste Recycling, LLC  
115 Elm St  
Farmington, MN 55024