

CITY CLERK ORIGINAL

C-8263
12/17/2012

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into this 17 day of December, 2012, and is effective between the City of Glendale, an Arizona municipal corporation ("City"), and Yellow Jacket Drilling Services, LLC., an Arizona limited liability company authorized to do business in the State of Arizona ("Contractor").

RECITALS

- A. City intends to undertake a project for the benefit of the public, with public funds, that is more fully set forth in **Exhibit A** attached ("Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project;
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. Project.

- 1.1 Scope. Contractor will provide all services and material necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors, providers or consultants retained by City.
- 1.2 Project Team.
 - a. Project Manager. Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, to complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Contractor will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Contractor.
 - c. Sub-contractors.
 - (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
 - (2) Contractor will remain fully responsible for Sub-contractor's services.
 - (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
 - (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. If not otherwise stated in Exhibit A, the Project shall be completed no later than December 31, 2012.

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services and materials for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Contractor warrants that:

- a Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approval or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default of this Agreement.

3.3 **Compliance.** Services and materials will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, or other standards and criteria designated by City.

3.4 **Coordination; Interaction.**

- a If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities").
- b Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c If the Project does not involve Coordinating Entities, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 **Hazardous Substances.** Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project.

3.6 **Warranties.** At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment.

3.7 **Bonds.** Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance Bonds as required under A.R.S. § 34-608.

4. **Compensation for the Project.**

4.1 **Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$11,221.00, as specifically detailed in **Exhibit B** ("Compensation").

- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.
- a. Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

5. Billings and Payment.

5.1 Applications.

- a. Unless Exhibit B (Compensation) dictates otherwise, the Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of.
 - (1) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.
- c. Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale Transaction Privilege License and Federal Taxpayer identification numbers.
- d. City will temporarily withhold Compensation amounts as required by A.R.S. § 34-221(C).

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Contractor will be equitably compensated any services and materials furnished prior to receipt of the termination notice and for reasonable costs incurred.

- b. Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages.
- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. Insurance.

7.1 Requirements. Contractor must obtain and maintain the following insurance ("Required Insurance"):

- a. Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively "Contractor's Policies"), until each Parties' obligations under this Agreement are completed.
- b. General Liability.
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and 1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- d. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- e. Equipment Insurance. Contractor must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors.
- f. Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and

- (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.

g. Certificates of Insurance.

- (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
- (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under this Agreement.

h. Other Contractors or Vendors.

- (1) Other contractors or vendors that may be contracted by Contractor with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
- (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

i. Policies. Except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as additional insureds on all liability policies required by this section.

- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
- (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.

7.2 Sub-contractors.

- a. Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- c. Contractor and Sub-contractors must provide to the City proof of Required Insurance whenever requested.

7.3 Indemnification.

- a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including

sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense," collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

7.4 Waiver of Subrogation. Contractor waives, and will require any Subcontractor to waive, all rights of subrogation against the City to the extent of all losses or damages covered by any policy of insurance.

8. **Immigration Law Compliance.**

- 8.1 Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 8.2 Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 8.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 8.1 above.
- 8.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 8.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 8.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 8.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 8.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

9. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating,

negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

10. **Foreign Prohibitions.** Contractor certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
11. **Non-Discrimination Policies.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, religion, color sex or national origin. Contractor must develop, implement and maintain non-discrimination policies and post the policies in conspicuous places visible to employees and applicants for employment. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section.

12. **Notices.**

12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing, and
- b. Delivered in person or by private express overnight delivery service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 Representatives.

- a. Contractor. Contractor's representative ("Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Yellow Jacket Drilling Services, LLC.
Attn: Richard LeBlanc
3922 East University Drive, Suite 1
Phoenix, Arizona 85034

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
Attn: Ernie Ruiz, Landfill Supervisor
6210 West Myrtle, Suite 111
Glendale, Arizona 85301

With required copies to:

City of Glendale
City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

City of Glendale
City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be considered to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.
- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

13. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

14. **Entire Agreement; Survival; Counterparts; Signatures.**

14.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Any solicitation, addendums and responses submitted by the Contractor are incorporated fully into this Agreement as Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

14.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

14.3 Survival. Except as specifically provided otherwise in this Agreement each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

14.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval.

14.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

14.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.

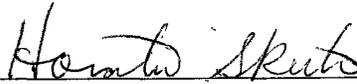
14.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

15. **Dispute Resolution.** Each claim, controversy and dispute ("Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.
16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.
- | | |
|-----------|--------------------|
| Exhibit A | Project |
| Exhibit B | Compensation |
| Exhibit C | Dispute Resolution |

(The remainder of this page left blank intentionally. Signatures appear on the following page.)

The parties enter into this Agreement as of the date shown above.

City of Glendale,
an Arizona municipal corporation



By: Horatio Skeete
Its: Acting City Manager

ATTEST:



City Clerk (SEAL)

APPROVED AS TO FORM:



City Attorney

Yellow Jacket Drilling Services, LLC.
an Arizona limited liability company



By: Richard LeBlanc
Its: Operations Manager

WOMEN-OWNED/MINORITY BUSINESS [] YES [] NO

**EXHIBIT A
CONSTRUCTION AGREEMENT**

PROJECT

[See attached]

**CITY OF GLENDALE LANDFILL
SPECIFICATIONS FOR NEW 3-STAGE LFG MONITORING PROBE
EXHIBIT A
NOVEMBER 2012**

SECTION 02500

PART 1 - GENERAL

1.01 REQUIREMENTS INCLUDED

This section sets forth the requirements for furnishing all materials and providing complete installation for one (1) LFG monitoring probe and appurtenances as shown on the Construction Drawings.

PART 2 - EQUIPMENT

2.01 PIPE AND FITTINGS

- A. The PVC pipe and fittings for the probe completion shall be Schedule 80, and shall conform to all applicable requirements of these Specifications and Construction Drawings.
- B. LFG monitoring probe pipe perforations shall be as shown on the Construction Drawings. The pipe sizes shall be 1/2-inch or 3/4-inch Schedule 80 PVC. The bottom of the perforated pipe shall be capped.

2.02 BACKFILL MATERIALS

- A. The rock backfill around the perforated pipe shall consist of homogenous, clean (washed), non-corrosive, inert material, having the following gradation:

<u>SIEVE SIZE</u>	<u>TOTAL % PASSING</u>
1/2"	98.5%
3/8"	65.9%
5/16"	24.7%
1/4"	2.5%
Pan	1.0%

This 1/2" x 1/4" rock is available from Tacna Sand and Gravel, {Phone (928) 785-4584} or approved equal. A sample of this material must be submitted to the ENGINEER for approval 5 days before probe installation is to begin. Material of an equal or smaller percentage of fines may be substituted with Engineer approval.

- B. The backfill in the probe bore above the cement/bentonite grout shall be a cement-bentonite grout (70% cement grout/30% bentonite power).
- C. The native soil shall be clean and uncontaminated with no pieces larger than 6-inches.

2.03 WELL I.D. TAGS

Each stage of monitoring probe shall have an identification tag. The tags shall be brass and contain the well identification number, the total depth of the boring, the length of solid casing and the length of perforated casing.

PART 3 - EXECUTION

3.01 GENERAL REQUIREMENTS

- A. The drilling subcontractor must have experience drilling on landfills and provide the City of Glendale (COG) with references upon request. The LFG monitoring probes bores shall be produced by an air rotary drill rig, or an approved equal method. The CONTRACTOR and subcontractor must be aware they will encounter landfill gas containing substantial quantities of methane, which when mixed with air, can reach explosive levels. The drilling subcontractor shall regulate the amount of water used in the drilling process to reduce the chance of fire. The CONTRACTOR and subcontractor will not be compensated for stopping and starting drilling due to these levels of methane.
- B. The CONTRACTOR is responsible for preparing and submitting a Site Health and Safety Plan to the COG for review prior to any work being performed. The Site Health and Safety Plan shall include methane monitoring in the breathing zone during drilling.
- C. The CONTRACTOR shall lay out the location of the LFG monitoring probe in the field for the approval of the ENGINEER. The LFG monitoring probe location shall be within $\pm 1'$ horizontally and vertically. The elevation of the existing ground surface will also be provided to the ENGINEER at the LFG monitoring probe location.
- D. The hole drilled for the probe shall be a minimum of eight (8) inches in diameter and a maximum of twelve (12) inches in diameter. The depth of the probe shall be as shown on the Construction Drawings.
- E. The bore for the probe shall be straight, and the probes three (3) pipes shall be equally spaced from each other and the sides of the bore. The CONTRACTOR shall take all necessary precautions to maintain the probe pipes vertically plumbed during backfilling of the bore. If the pipes are installed out of plumb, the CONTRACTOR shall correct the alignment at no cost to the COG.

- F. The excavation, backfill, and disposal of excavated material related to the construction of the LFG monitoring probe shall conform to all applicable requirements of these Specifications.
- G. If, during the drilling of the borehole, contact with an obstruction is made such that the monitoring probe cannot be completed to the full depth as called for on the Construction Drawings, the ENGINEER shall be consulted as to whether the borehole has advanced to a sufficient depth. If, in the opinion of the ENGINEER, the borehole has reached a sufficient depth, the CONTRACTOR shall be required to complete the monitoring probe, and he will be compensated based on the depth actually reached.
- H. If, during the drilling of the borehole, contact with an obstruction is made such that the monitoring probe cannot be completed to the full depth as called for on the Construction Drawings, the ENGINEER shall be consulted as to whether the borehole has advanced to a sufficient depth. If, in the opinion of the ENGINEER, the borehole has not reached a sufficient depth to function as an effective monitoring probe as a result of an in-place obstruction in the landfill, the CONTRACTOR shall abandon this borehole by backfilling it with soil. The backfill material shall be placed in the borehole in three-foot lifts and tamped by the drill rig. The CONTRACTOR is responsible for repairing the landfill soil cap per the Drawings and Specifications. The CONTRACTOR will be compensated for this work as listed in the bid schedule (drilling only).
- I. If, during the drilling of the borehole, the monitoring probe cannot be completed to the full depth as called for on the Construction Drawings, the ENGINEER shall be consulted as to whether the borehole has advanced to a sufficient depth. If, in the opinion of the ENGINEER, the borehole has not reached a sufficient depth to function as an effective collection well due to the fault of the driller, the CONTRACTOR shall abandon this borehole by backfilling it with soil. The backfill material shall be placed in the borehole in three-foot lifts and tamped by the drill rig. The CONTRACTOR is responsible for repairing the landfill soil cap per the Drawings and Specifications at no cost to the COG. The CONTRACTOR will not be compensated for this work as specified in the bid proposal.
- J. Confirmation of the cement-bentonite grout depths will be obtained by the ENGINEER once the grout has been installed. After this confirmation, the CONTRACTOR shall install and compact the clean soil backfill.
- K. The completed probes stages shall be extended above grade and temporarily capped until the probe vault cover and lid are installed. The caps shall not be glued.

- L. The CONTRACTOR shall complete the LFG monitoring probes concrete seal, cover, and lid according to the Construction Drawings and shall include all associated appertunances.
- M. Excavated material from the borehole shall be the responsibility of the CONTRACTOR.
- N. The CONTRACTOR shall maintain As-Built drawings during the probe boring and installation and record any deviations from the Drawings or Specifications such as boring depth and length of probe casing perforations.

3.02 ACCESS TO MONITORING PROBE LOCATION

- A. The CONTRACTOR, at his own expense, shall be responsible for providing access to the monitoring probe location. CONTRACTOR shall consult the Owner regarding access restrictions. The monitoring probe location on landfill slopes shall require the construction of an access road and pad for the drill rig. Access roads to the monitoring probe location shall be constructed by placing clean soil fill on the landfill slope, if required. The CONTRACTOR shall not cut into in-place cover material to create necessary access roads. Access roads shall be removed by the CONTRACTOR after installation of the monitoring probe.

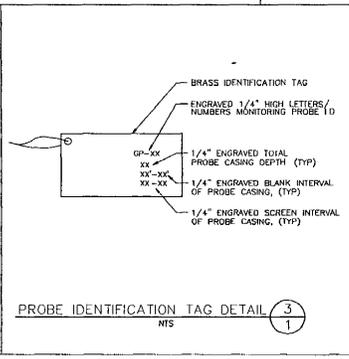
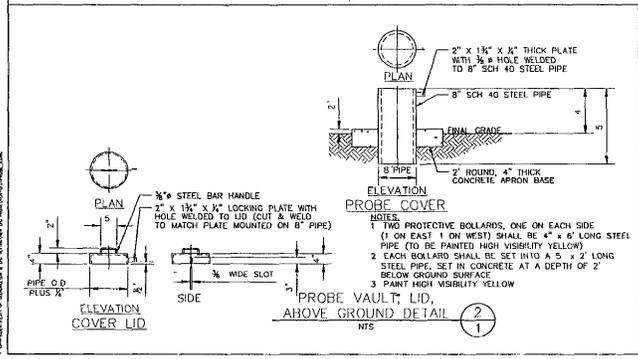
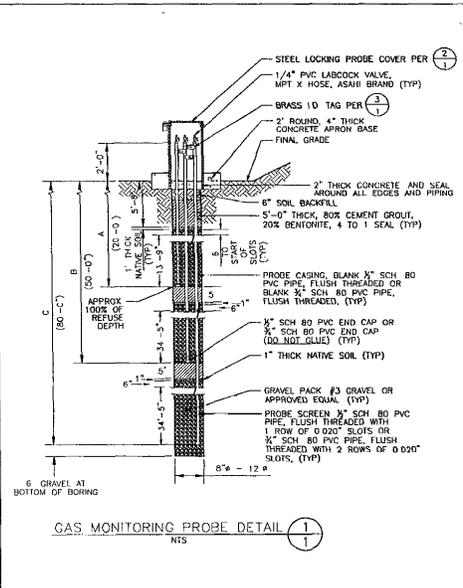
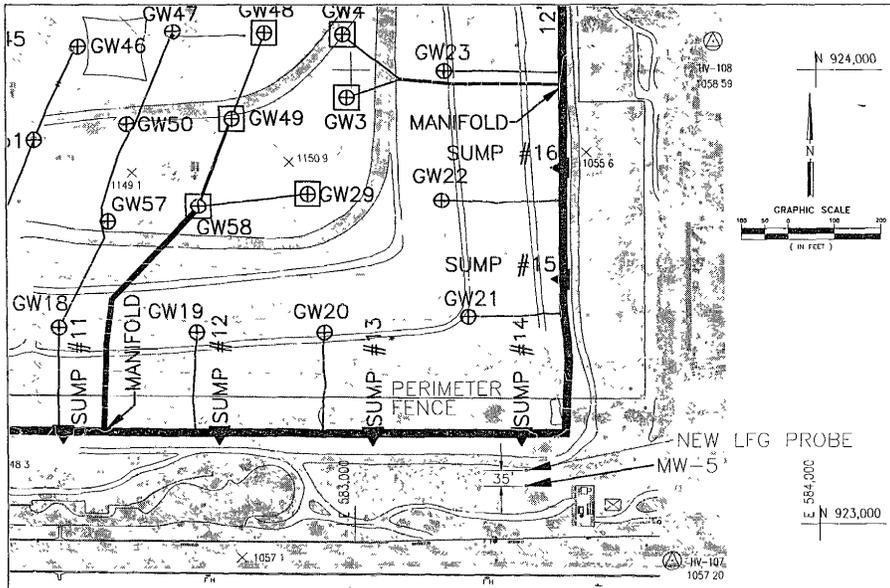
3.03 VERIFICATION OF PROBE DEPTHS

- A. The CONTRACTOR shall provide survey data (coordinates and elevations) of the probe location prior to drilling. No drilling will be performed without prior authorization by the ENGINEER, and the probe shall not be completed before the ENGINEER has measured the depth of the boring.

3.04 EQUIPMENT DECONTAMINATION

- A. If the CONTRACTOR intends for on-site decontamination of the drill rig and equipment, the CONTRACTOR shall first submit a plan to the ENGINEER for the ENGINEER's approval.

END OF SECTION



LANDFILL GAS MONITORING PROBES GENERAL NOTES:

- PROBE LOCATIONS, DEPTHS, AND SCREEN LENGTHS SHALL BE FINALIZED BY A TETRA TECH GEOLOGIST OR ENGINEER AND SHALL BE DESIGNED TO ACCOMMODATE THE FOLLOWING SPECIFIC SITE CHARACTERISTICS AND POTENTIAL MIGRATION PATHWAYS OR BARRIERS, INCLUDING, BUT NOT LIMITED TO:
 - LOCAL SOIL AND ROCK CONDITIONS,
 - HYDROGEOLOGICAL CONDITIONS AT THE DISPOSAL SITE,
 - THE HYDRAULIC CONDITIONS SURROUNDING THE DISPOSAL SITE,
 - LOCATIONS OF BUILDINGS AND STRUCTURES RELATIVE TO THE WASTE DISPOSAL AREA,
 - ADJACENT LAND USE AND INHABITABLE STRUCTURES WITHIN 1000 FEET OF THE DISPOSAL SITE PERMITTED FACILITY BOUNDARY
 - MAN-MADE PATHWAYS, SUCH AS UNDERGROUND CONSTRUCTION,
 - THE NATURE AND AGE OF THE WASTE AND ITS POTENTIAL TO GENERATE LANDFILL GAS
- LANDFILL GAS PERIMETER MONITORING PROBES SHALL BE INSTALLED AROUND THE WASTE DISPOSAL FOOTPRINT BUT NOT WITHIN REFUSE
- THE DEPTH OF THE WELLBORE OF ALL LANDFILL GAS MONITORING PROBES SHALL EXCEED THE MAXIMUM DEPTH OF WASTE, THE NUMBER AND DEPTHS OF LANDFILL GAS MONITORING PROBES WITHIN THE WELLBORE SHALL BE INSTALLED PER THE DESIGN DRAWING
- ALL LANDFILL GAS MONITORING PROBES SHALL BE INSTALLED ABOVE THE PERMANENT HIGH SEASONAL WATER TABLE, ABOVE AND BELOW PERCHED GROUND WATER, AND BEDROCK.
- LANDFILL GAS MONITORING PROBES SHALL BE DRILLED BY A LICENSED DRILLING CONTRACTOR OR BY A DRILLING CREW UNDER THE SUPERVISION OF THE ENGINEER OR GEOLOGIST
- LANDFILL GAS MONITORING PROBES SHALL BE LOGGED DURING DRILLING TO ISOLATE MONITORED ZONES WITHIN THE WELLBORE AND PREVENT CONTAMINATION OF PERCHED GROUND WATER AND PERMANENT GROUND WATER
- THE OPERATOR SHALL PROVIDE A MINIMUM WELLBORE SEAL OF FIVE (5) FEET

NO.	REVISIONS TO DRAWINGS	DATE	BY	CHKD BY
1	ISSUED FOR PERMITS	02/20/23	NTS	NTS
2	ISSUED FOR PERMITS	02/20/23	NTS	NTS
3	ISSUED FOR PERMITS	02/20/23	NTS	NTS

PROJECT NO.	1118-104
CITY OF GLENDALE, ARIZONA	PUBLIC WORKS/ENGINEERING
PROJECT NAME	NEW LFG PROBE INSTALLATION
DRAWING NO.	1118-104-001
DATE	02/20/23
DESIGNED BY	NTS
CHECKED BY	NTS
DATE	02/20/23

CITY OF GLENDALE, ARIZONA	PROJECT NO.	1118-104	
PROJECT NAME	NEW LFG PROBE INSTALLATION	DATE	02/20/23
DRAWING NO.	1118-104-001	DATE	02/20/23
DESIGNED BY	NTS	DATE	02/20/23
CHECKED BY	NTS	DATE	02/20/23

**EXHIBIT B
CONSTRUCTION AGREEMENT**

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid, including all services, materials and cost.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$11,221.00

DETAILED PROJECT COMPENSATION

Per bid schedule, amount awarded as follows:

Base bid	\$11,221.00
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YELLOW JACKET

DRILLING SERVICES

The Southwest's Premier Provider of Innovative Drilling and Well Services

Mr Ernie Ruiz
City of Glendale Landfill
11480 W. Glendale Avenue
Glendale, AZ 85307

Date: 11/16/12
Bid # (A)JT12-1876

Subject:

Drilling Services -- Installation of New LFG Monitoring Probe, Glendale AZ

Scope of Work:

Utilizing a Speedstar 50K (Air Rotary Casing Hammer 'ARCH') drilling
Drill and install one (1) 5" SCH. 80 PVC groundwater monitoring well to a depth of 195' (collect bulk soil samples every 5' from cyclone discharge).

Note: Well construction will be as outlined in 'Client' provided RFP dated 10/30/12.

'YJD' Proposal Assumptions & Conditions:

- 1.) 'Client' to provide all Local, State, Federal project specific permits.
- 2.) All drilling locations are to be clear of any and all overhead & subsurface utilities.
- 3.) All drilling locations are accessible by way of 2-wheel drive truck mounted drilling & related equipment. If required - grubbing, clearing, and/or earthwork to access drilling locations will be pre-arranged by 'Client' at no charge to 'YJD'.
- 4.) All drill cuttings & fluids generated will be stockpiled on visqueen plastic.
- 5.) All drill cuttings & fluids will be placed for storage within 100' of the working area. Containment beyond a distance of 100' will require the use of a forklift and/or loader.
- 6.) Profiling and disposal of all drill cuttings & fluids generated will be the responsibility of the 'Client'.
- 7.) An equipped 'Client' arranged/approved on-site water supply source will be made available during all drilling and related phases of the project.
- 8.) During the drilling operation, if there is no return of the circulated drilling medium for a period of at least two (2) continuous hours, the 'Client' representative will be notified. 'YJD' will be compensated for the period of drilling under "Lost Circulation" condition at the rate of \$450.00/hour. Also 'YJD' will be compensated for all drilling fluid materials and additives required during the period of lost circulation. The condition of this section shall apply from the beginning of the time of notification until such time as circulation is regained with full or partial returns of the drilling medium to the land surface. After an initial lost circulation is lost again, the conditions of the paragraph will go into effect immediately and continue until such time as circulation is regained with full returns of the drilling medium at the land surface.
- 9.) During the drilling operation, if a "Hard or Unstable Formation" is encountered that results in a penetration rate of 5 feet per hour or less for a continuous period of two (2) hours, 'YJD' will be compensated for the drilling conditions at the rate of \$450.00/hour. Also there will be reasonable compensation to 'YJD' for all drilling bits and other materials used during the period of hard/unstable drilling conditions. The conditions shall apply from the beginning of the time of low penetration (less than 5 feet per hour) and shall continue only until such time as drilling is resumed at a rate of 5 feet per hour or greater.
- 10.) In the event that down-hole tooling (augers, drill pipe, drill collars, stabilizers, adaptor subs, down-hole hammers, drill bits..) is lost in the process of drilling in adverse ground conditions; 'Client' will reimburse 'YJD' for the replacement of the tooling at current replacement cost.

11.) In the event that sampling equipment (split-spoon, simulprobe, hydro punch..) is lost or damaged in the process of sampling in adverse ground conditions; 'Client' will reimburse 'YJD' for the replacement of the equipment at current replacement cost.

12.) Schedule/Pricing is based on a single rig operation; utilizing one (1) crew, working +/- 10/hour shifts, working a 5/on (Days) 2/off (Days) work schedule (M-F; Including Mob/Demob/Travel Time).

13.) Project is not subject to surcharges for Union/Davis Bacon/Prevailing labor rates.

14.) Drill rig standby due to unreadiness of the drilling locations or 'Client' delays will be billed at the provided hourly rate.

15.) If the project encounters difficulties beyond our control or if the scope of work is altered, 'YJD' reserves the right to renegotiate the price.

16.) Materials; due to the market price fluctuations of steel and petroleum based products; 'YJD' cannot guarantee the price of the materials required to complete the project beyond a period of 10-working days from the date in which the pricing is provided. In the event that a material price increase occurs; 'YJD' reserves the right to pass on the difference in the form of a revised proposal or by using the change order process.

17.) EIA Fuel Use Market Adjustment; due to the current price fluctuations of petroleum products 'YJD' has based the provided pricing on the most recent available weekly retail gasoline and diesel prices as reported by the Energy Information Administration ('EIA' - Official Energy Statistics from the US Government). 'YJD' has used the reported area average of (\$4.15-Gallon) to calculate it's bid, in the event that the cost of fuel increases prior to the start and/or during the course of the project 'YJD' will invoice for the additional costs on a per-day basis. The per-day charge will be based on the difference of the fuel cost per-gallon at the time of bid; plus 20% mark-up versus the actual cost per-gallon during the time period in which the project is completed.

*NOTE: The multiplier to calculate the fuel use market adjustment on a per-day basis is based on the equipment package utilized; for this bid the daily multiplier is based on a fixed amount of 200-gallons.

18.) This proposal is valid for (60) days from the above date.

All services rendered will be billed promptly upon completion of work. Terms are net **thirty (30) days** unless otherwise agreed in writing in advance. A delinquency charge of 1.5% per month will apply to all past due invoices, unless a lower rate is required by law. Client agrees to pay all court costs and attorneys fees, should court proceedings be initiated or attorneys be retained to collect past due amounts.

We at Yellow Jacket Drilling Services thank you for the opportunity to provide this proposal. If you have any questions, or if we can be of any further assistance please do not hesitate to contact us at (602) 453-3252. We look forward to hearing from you soon.

Sincerely,
Yellow Jacket Drilling Services, LLC

John Truax

John Truax

Acceptance of all outlined pricing, terms and conditions:

Company Name: City of Glendale.

Authorized Representative (Name & Title): Ernie Ruiz, LF Supervisor

Signature: *Ernie Ruiz*

**CITY OF GLENDALE FIELD OPERATIONS DEPARTMENT
 GLENDALE LANDFILL - ONE NEW THREE STAGE LANDFILL GAS MONITORING PROBE
 PROBE DRILLING & COMPLETION BID SHEET**

PAY ITEM	DESCRIPTION	UNITS	UNIT PRICE	APPROX. QTY.	AMOUNT
1	Equipment mobilization/demobilization	EA	2,000.	1	2,000.
2	Well Drilling, 1 - 8" to 12" diameter bore hole per detail 1/1	LF	75.	80.5	6,037.
3	Installation of landfill gas probe per detail 1/1 completed with 1/2" or 3/4" pvc slip-on caps	LF	10.	156	1,560.
4	Installation of concrete apron base	CF	25.	0.7	17.
5	Installation of pea gravel base	CF	25.	0.3	7.
6	Retrofit existing landfill gas probe casing with male adapter/treaded cap & tee/nipples/transition fitting/reducer per detail 1/1	EA	150.	3	450.
7	Painting of Probe I.D. numbers on probe cover per detail 2/4	EA	100.	3	300.
8	Probe I.D. Tags on each probe stage per detail 3/4	EA	100.	3	300.
9	Installation of probe vault and lid per detail 2/4	EA	150.	1	150.
10	Traffic control	LS	N/R	1	-
11	Dust control	LS	400.	1	400.
	Note: Subsurface conditions may require the relocation and/or field fitting of some system components. Water will be available at no cost to the contractor.				
Bids Due November 16, 2012 Return bids to: Ernie Ruiz at 6210 W. Myrtle, Suite 111 Glendale, AZ 85301 or E-mail: er Ruiz@glendaleaz.com				Total	\$11,221.
				Date: October 29, 2012	

yellow Jacket Bid
 ER

**EXHIBIT C
CONSTRUCTION AGREEMENT**

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently

alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.