

SERVICES AGREEMENT

LANDFILL REFRIGERATED APPLIANCES RECOVERY SERVICES City of Glendale Solicitation No. RFP 21-32

This Services Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City") and A-Gas US, Inc. dba Rapid Recovery, a Delaware corporation, authorized to do business in Arizona, ("the Contractor") as of the ____ day of _____, 2021 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds (the "Project");
- B. City desires to retain the professional services of Contractor to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit A, Project Scope of Work, RFP 21-32** ("Scope");
- C. Contractor desires to provide City with services ("Services") consistent with industry-best practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Contractor and Subcontractors.

1.1 Services. Contractor will provide all Services necessary to assure the Project is completed timely and efficiently consistent within 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, retained by City.

2. **Schedule**. The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

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 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 currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Contractor nor any Subcontractor 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 Approvals or Debarment changes during the Agreement's duration. The failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 Compliance.

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
- b. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Contractor grants to City exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (c.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City will also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Subcontractors will not exceed **\$75,000** for the entire term of the Agreement 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 as outlined in the Project is significantly modified.

- a. Adjustments to 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 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.

- 4.3 Allowances. An "Allowance" may be identified only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.
- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts and any unused allowance at the completion of the Project will remain with City.
 - b. Contractor may not add any mark-up for work identified as an Allowance and which is to be performed by a SubContractor.
 - c. Contractor will not use any portion of an Allowance without prior written authorization from the City.
 - d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

5. **Billings and Payment.**

5.1 Applications.

- a. 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 SubContractors; and
 - (2) Unconditional waivers and releases on final payment from all SubContractors 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.

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 **30** days following the date of delivery.

- a. Contractor will be equitably compensated for Services 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 Services furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provisions of Sec. 5.
 - 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. **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 Contractor of any other party to this Agreement.
8. **Insurance.** For the duration of the term of this Agreement, Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Contractor, its agent(s), representative(s), employee(s) and any subcontractors.
 - 8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:
 - a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
 - c. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
 - 8.2 **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 SubContractor or Subcontractor 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 will 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.

8.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Contractor or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Project, the **Contractor's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.

8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Contractor has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.5 **Waiver of Subrogation.** **Contractor hereby agrees to waive its rights of subrogation which any insurer may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agent(s) and subcontractor(s).

8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Contractor's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Contractor's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Contractor to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.7 **Subcontractors.** Contractor shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

- 8.8 Special Risk or Circumstances. The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Contractor, the Project or the insurer.
9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrants its compliance and that of its SubContractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or SubContractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and SubContractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The Contractor and SubContractor shall cooperate with the City's random inspections, including granting the City entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
10. **No Boycott of Israel.** The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393. Unless and until the District Court's injunction in *Jordahl v Brnovich*, 336 F.Supp.3d 1016 (D.Ariz. 2018) is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. §35-393.01 (A)) (if applicable to this agreement) is unenforceable and the City will take no action to enforce it.
11. **Attestation of PCI Compliance.** When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
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 overnight courier 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 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 service; 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 (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

A-Gas US, Inc. dba Rapid Recovery
c/o Kathryn Buchans, Contract Administrator
1100 Haskins Road
Bowling Green, OH 43402
Tel: 623-295-8083
Email: Kathy.buchans@raprec.com

- 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
c/o Bill Stout, Landfill Supervisor
11480 W Glendale Avenue
Glendale, AZ 85307

With required copy to:

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

City Attorney
City of Glendale
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 deemed to have been received by City's representative until the time that it has also been received by the City Manager and the 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.

13. Entire Agreement; Survival; Counterparts; Signatures.

13.1 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. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts, if any, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

13.2 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.

- 13.3 **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.
- 13.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 13.5 **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.
- 13.6 **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 with applicable law.
- 13.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. Term.

- 14.1 The term of this Agreement commences upon the effective date and continues for a one (1) year period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four (4) years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and any such price adjustment will be a determining factor for any renewal. There are no automatic renewals of this Agreement.
- 14.2 **Extension for Procurement Processes.** Upon the expiration of the Term of this Agreement, including the initial term and any renewals, at the City's sole discretion, this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City to complete its procurement process to select a vendor to provide the services/materials similar to those provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension provided under this subsection will continue under the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
15. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
16. **Cooperative Use of Contract.** This agreement may be extended for use by other governmental agencies and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link:
<http://www.mesaaz.gov/business/purchasing/save>
17. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A Scope of Work
Exhibit B Compensation

[SIGNATURES ON FOLLOWING PAGE.]

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

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager

ATTEST:

Julie K. Bower
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

A-Gas US, Inc. dba Rapid Recovery
a Delaware corporation

Kathryn Buchans
By: Kathryn S. Buchans
Its: Contract Administrator

EXHIBIT A
LANDFILL REFRIGERATED APPLIANCES RECOVERY SERVICE

SCOPE OF WORK

1. SCOPE OF WORK

A-Gas US Inc. dba Rapid Recovery shall provide refrigerated appliances recovery services for the Glendale Municipal Landfill located at 11480 West Glendale Avenue, Glendale, AZ 85307. The Contractor shall also provide this service to other City of Glendale sites and facilities when needed by the City.

- A. The Contractor shall provide all necessary equipment, tools, vehicles, materials, and personnel in the performance of this contract.
- B. The Contractor's materials, techniques and processes used for this contract shall comply with all Federal, State, local laws, regulations, permits, standards and ordinances pertaining to health, safety and environmental protection.
- C. The Contractor must be experienced and EPA-certified and must provide refrigerant documentation when requested by the City.
- D. Contractor must maintain a current copy of the Federal, state or local certification for recovery of refrigeration equipment.
- E. The Contractor shall meet EPA Regulations (40 CFR Part 82, Subpart F) under Section 608 of the Clean Air Act requiring refrigerant and recycling equipment to be tested to meet EPA requirements.
- F. All recovery services shall be performed at the Glendale Municipal Landfill site on an "as needed" basis. Landfill staff shall designate the location of the appliances so the Contractor will have safe and efficient access to each appliance.
- G. When requested by the City, the Contractor shall perform recovery services during the City's regular workdays which is Monday through Friday between the hours of 8:00 AM through 3:00 PM, excluding holidays.
- H. Contractor shall not schedule any overtime services without express authorization from the City's Contract Administrator or his designee.
- I. Contractor may use sub-contractors to perform the requirements of this contract. However, subcontractors must meet and comply with all requirements, terms and conditions set forth herein. All subcontracted services shall be warranted by and will be the responsibility of the Contractor.

EXHIBIT B
LANDFILL REFRIGERATED APPLIANCES RECOVERY SERVICES

COMPENSATION

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 **\$75,000**.

DETAILED PROJECT COMPENSATION

See Contractor's response to RFP 21-32 (ATTACHMENT 1).

ATTACHMENT 1

PRICING WORKBOOK

Contractor's **UNIT PRICE** shall include, but not limited to, all equipment, materials, shipping and delivery, labor, tools, supplies, licenses, fees, insurance, warranty, fuel surcharges, profit and any other associated direct or indirect costs (excluding Sales Tax).

Sales tax shall not be included in the **Unit Price** for the purpose of determining the lowest cost. However, after contract award, the Contractor shall charge sales tax as a separate item in their invoices.

LANDFILL REFRIGERATED APPLIANCES RECOVERY SERVICES					
Item#	Description	Unit of Measure	Estimated Annual Quantity (A)	Unit Price (B)	Extended Price (A x B)
1	Landfill Refrigerated Appliances Recovery Services	Each	1000	\$10.00/Ea	\$10,000
Grand Total					\$10,000

DISCOUNT/PAYMENT TERMS: The City standard is 2% 20 days

Comply: YES

CONTRACTOR'S NAME: A-Gas US Inc. dba Rapid Recovery