

AMENDMENT NO. One (1)

Landfill Gas, Groundwater and Stormwater Systems Installation Maintenance, Parts and Service
(Rummel Construction, Inc., Contract No. C20-0293)

This Amendment No. One (1) (“Amendment”) to the Landfill Gas, Groundwater and Stormwater Systems Installation Maintenance, Parts and Services (“Agreement”) is made this _____ day of _____, 2023, (“Effective Date”), by and between the City of Glendale, an Arizona municipal corporation (“City”) and Rummel Construction, Inc., an Arizona corporation, authorized to do business in Arizona (“Contractor”).

RECITALS

- A. City and Rummel Construction, Inc. (“Contractor”) entered into Landfill Gas, Groundwater and Stormwater Systems Installation Maintenance, Parts and Services, Contract No. C20-0293, dated March 24, 2020 (“Agreement”); and
- B. City and Contractor entered into Contract Extension No. 1, extending the term of the Agreement from March 24, 2021, through March 23, 2022; and
- C. City and Contractor entered into Contract Extension No. 2, extending the term of the Agreement from March 24, 2022, through March 23, 2023; and
- D. City and Contractor entered into Contract Extension No. 3, extending the term of the Agreement from March 24, 2023, through March 23, 2024; and
- E. City and Contractor wish to modify and amend the Agreement subject to and strictly in accordance with the terms of this Amendment.

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
- 2. **Term.** The term of the Agreement is unchanged.
- 3. **Scope of Work.** The Scope of Work has been expanded to include additional tasks necessary to complete ongoing projects and to add new projects to address unforeseen stormwater and landfill gas management needs. These projects include, but are not limited to:

Horizontal gas collectors in lift one, header extension and sump installations in the North Cell and various sump pump rehabs and repairs, gas well installs, repairs, lateral extensions and well rehabs, storm water channel modifications, culvert construction projects and a center down drain project for the South Cell.

4. **Compensation.** Compensation is increased by \$2,000,000 to provide funds to complete the projects identified in the amended Scope of Work. The new not-to-exceed amount of Compensation available under this Agreement is \$5,500,000.
5. **Insurance Certificate.** Current certificate will expire on April 12, 2024. A new certificate applying to the extended term must be provided prior to this date to Materials Management and the Contract Administrator.
6. **Non-discrimination.** 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.
7. **No Boycott of Israel.** To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.
8. **Uyghur Forced Labor Prevention Act (UFLPA).** Contractor certifies that it does not currently, and during the term of this Agreement, will not use:
 - (a) the forced labor of ethnic Uyghurs in the People’s Republic of China;
 - (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
 - (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.
9. **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.
10. **Ratification of Agreement.** City and Contractor hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

[Signatures on the following page.]

CITY OF GLENDALE, an Arizona
municipal corporation

Kevin R. Phelps, City Manager

ATTEST:

Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

Rummel Construction, Inc.
an Arizona corporation



By: Erik Decker
Its: Vice President



C20-0293-3

CONTRACT EXTENSION LETTER

January 31, 2023

Rummel Construction, Inc
ATTN TO: Eric Decker
SENT VIA EMAIL: EDecker@rummelconstruction.com
7520 E Adobe Dr
Scottsdale, AZ 85255

Subject: Contract Extension 3 of 4 for Contract No. C20-0293/ 320000548
Contract Title: Landfill Gas, Groundwater and Stormwater Systems Installation,
Maintenance, Parts and Service IFB#20-17

Dear Mr. Decker,


Contract No. C20-0293 will be expiring on March 23, 2023. By signing this letter, Rummel Construction, Inc hereby acknowledges this contract extension and its intent to follow all terms of the original contract. This is for an extension only. The extension term is March 24, 2023 (Effective Date) through March 23, 2024.

Consistent with the language contained in Section 15 of the Agreement (Term), price adjustments were reviewed during the renewal process. The City agrees to the price increase requested by the Contractor contained in the attached Exhibit B and the new prices are incorporated into the Agreement. Nothing in this renewal waives or otherwise affects the City's right to approve or deny any subsequent price change requested by the Contractor.

Please send a signed copy of the updated insurance certificate for the extension term to the address or email below before the new extension starts.

City of Glendale Procurement
C/O Shoalynn Gilliland
5850 W. Glendale Ave.
Glendale, AZ 85301
SGilliland@glendaleaz.com

Rummel Construction, Inc



Vendor Signature Above
Eric Decker, Vice President

E-SIGNED by Michelle Woytenko
on 2023-03-16 07:49:55 MST

City Department Director Approval

PROCUREMENT REVIEW:  (initials)

E-SIGNED by Julie K. Bower
on 2023-03-16 07:55:57 MST

Julie K. Bower, City Clerk
City of Glendale

5850 W. Glendale Ave. 623 930 2000
Glendale, AZ 85301

rev. 11/30/2022



2022 STANDARD T&M RATES
Equipment rates do NOT include operator

EFFECTIVE MAY 2022

MOTOR GRADERS	
CAT 140	\$ 105
CAT 150	\$ 115
CAT 14	\$ 140
CAT 18	\$ 160
WHEEL LOADERS	
CAT 950	\$ 90
CAT 966	\$ 120
CAT 980	\$ 155
CAT 988	\$ 230
SCRAPERS	
CAT 613 ELEVATING SCRAPER	\$ 100
CAT 623 ELEVATING SCRAPER	\$ 185
CAT 627 PUSH PULL SCRAPER	\$ 245
CAT 631 SCRAPER	\$ 240
CAT 637 PUSH PULL SCRAPER	\$ 315
CAT 657 PUSH PULL SCRAPER	\$ 415
DOZERS	
D4D6K2	\$ 80
D6 CRAWLER TRACTOR	\$ 135
D8 CRAWLER TRACTOR	\$ 195
D9 CRAWLER TRACTOR	\$ 280
D10 CRAWLER TRACTOR	\$ 395
SKIP LOADERS / BACKHOES	
DEERE 210LJ GANNON TRACTOR	\$ 45
CAT 420F/DEERE 310SL BACKHOE	\$ 50
CAT 420F/DEERE 310SL BACKHOE W/ 1,500# HAMMER	\$ 90
EXCAVATORS	
CAT 314/DEERE 135G EXCAVATOR	\$ 70
CAT 314/DEERE 135G EXCAVATOR W/ 1,500# HAMMER	\$ 110
CAT 325 EXCAVATOR	\$ 85
CAT 325 EXCAVATOR W/ 4,500# HAMMER	\$ 165
CAT 336 EXCAVATOR	\$ 120
CAT 336 EXCAVATOR W/ 6,000# HAMMER	\$ 245
CAT 336 EXCAVATOR W/ LEADING EDGE RIPPER BUCKET	\$ 190
CAT 349 EXCAVATOR	\$ 185
CAT 349 EXCAVATOR W/ 12,000# HAMMER	\$ 380
CAT 374 EXCAVATOR	\$ 225
TRUCKS	
10 WHEEL DUMP TRUCK	\$ 65
ROCK TRUCKS	
25-30 TON ARTICULATED ROCK TRUCKS	\$ 130
35-45 TON ARTICULATED ROCK TRUCKS	\$ 165
60 TON RIGID FRAME ROCK TRUCKS	\$ 205
COMPACTION / PROCESSING	
CAT CP583E VIBRATORY COMPACTOR	\$ 60
CAT PS360C 7 WHEEL PNEUMATIC ROLLER	\$ 75
AG TRACTOR & DISK OR REEGEE	\$ 150
WATER SUPPORT	
10,000 GALLON WATER PULL	\$ 195
8,000 GALLON WATER PULL (SINGLE ENGINE)	\$ 150
8,000 GALLON WATER PULL (TWIN ENGINE)	\$ 190
5,000 GALLON WATER PULL	\$ 95
4,000 GALLON WATER TRUCK (8X6)	\$ 100
4,000 GALLON WATER TRUCK	\$ 70
2,000 GALLON WATER TRUCK	\$ 80
12" HURRICANE PUMP (WEEKLY)	\$ 1,100
10,000 GALLON KLEIN TANK (WEEKLY)	\$ 500
MISC. EQUIPMENT	
REACH FORK (10K)	\$ 45
VACUUM SWEEPER	\$ 125
GPS MACHINE CONTROL/ROVER ADD	\$ 20
UTV	\$ 8
PICKUP	\$ 17
CREW TRUCK	\$ 22
MECHANIC TRUCK	\$ 40
LABOR	
SUPERVISOR	\$ 75
OPERATOR	\$ 50
CDL DRIVER	\$ 45
GRADE CHECKER	\$ 50
LABORER	\$ 38
MECHANIC/WELDER	\$ 55

NOTES

- 1) Rates do not apply to Davis Bacon Wage Projects, Weekend, or Holiday work.
- 2) Construction water or other materials will be charged at a rate of cost plus 15% (overhead & profit)
- 3) Trucking rates are subject to current market rates and do not include any applicable travel time.
- 4) Additional charges may apply for Rock or Severe Application jobs.
- 5) Mobilization and Demobilization to be charged separately.
- 6) Rates based on \$5.00 per gallon fuel cost. Any increase above 5% subject to increase/surcharge.

Vendor Name: _____

C- _____

(For City of Glendale Use Only)



CITY OF GLENDALE PROCUREMENT DIVISION INVITATION FOR BIDS

SOLICITATION NUMBER: IFB 20-17

BID NUMBER: 42000018

PUBLISHED DATE: DECEMBER 19, 2019

TITLE: LANDFILL GAS, GROUNDWATER AND STORM
WATER SYSTEMS INSTALLATION,
MAINTENANCE, PARTS AND SERVICE

PRE-BID CONFERENCE: JANUARY 9, 2020 10:00 AM Local Time
A pre-bid conference will be held on January 9, 2020, 10:00 AM Local Time, at the City of Glendale Landfill Administration, Building C Conference Room, 11480 W Glendale Avenue, Glendale AZ 85307. Attendance is not required but strongly encouraged.

BID DUE DATE AND TIME: JANUARY 17, 2020 BEFORE 2:00 PM LOCAL TIME

NOTE: This is a sealed proposal process requiring proposals to be submitted **ONLINE** via the Vendor Self-Service (VSS) system at <https://glendaleaz.munisselfservice.com> before the date/time shown above. The Vendor Self-Service system will not accept late proposals.

CONTACT: Elmer Garcia, CPPB, Contract Analyst
Purchasing-Procurement Division
623-930-2866
Email: egarcia1@glendaleaz.com

Bids must be submitted electronically to Procurement through Vendor Self Service System.

Bids shall be opened publicly at the time, date, and location identified herein; and, the name of each Offeror shall be publicly read and recorded. All other information contained in the proposals shall be confidential to avoid disclosure of contents prejudicial to competing Offerors.

BIDDERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.


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Fillable Forms – (Response Workbook)
To be completed by Bidder and submitted as their response:
Cover Sheet
Offer Sheet
Price Sheet
Other Optional Products or Services
Required References

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1.0 INTRODUCTION

- 1.1 The City of Glendale, Arizona (“City”), is requesting bids from qualified vendors for the installation, maintenance, repair and purchase of supplies and services for the City Landfill methane gas, groundwater and stormwater systems, including, but not limited to, earthmoving, backhoe, trenching and shoring services.
- 1.2 The City of Glendale Landfill Division manages the daily operations and maintenance of the Landfill methane gas, groundwater and stormwater systems.

2.0 PROBLEM STATEMENT

- 2.1 The existing contract for the installation, maintenance and repair of the methane gas, groundwater and stormwater systems will expire in early 2020. Maintenance and repair services are essential to avoid stoppage or breakdown of the Landfill methane gas and water management systems.

3.0 OJBECTIVE


- 3.1 To contract with a qualified vendor capable of providing reliable and competent maintenance and repair services to the Landfill Division’s gas and water management systems.

4.0 CITY MISSION, VISION AND VALUES

- 4.1 All work will be performed through the understanding and adherence to the City of Glendale’s Mission, Vision and Values (See Appendix A)

5.0 SCOPE OF WORK

- 5.1 The Contractor shall furnish all labor, materials, supplies and equipment necessary to fabricate, install and deliver products to the City Landfill for maintaining its methane gas and water management systems.
- 5.2 Contractor must be able to perform maintenance and service on, but not limited to, the following products:
 - a. SDR 11 HDPE
 - b. HDPE and PVC-18”, 12”, 6”, 4” and 2” pipe
- 5.3 Majority of these services will be performed on-site at the City of Glendale Landfill located at 11480 W. Glendale Avenue, Glendale, AZ 85307. However, the Contractor may also be requested to perform these services on other City properties.

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- 5.4 Maintenance services and inspections shall be completed as requested and in accordance with manufacturer's recommendations and warranty requirements.
- 5.5 Contractor will be required to return calls for service within 24 hours.
- 5.6 Contractor must provide a minimum of one (1) year warranty for labor and parts for services provided to the City.
- 5.7 Travel charges will be allowable for Contractor on-site trips. However, the City will not pay travel charges for technician if work is performed off-site at the Contractor's location.

6.0 CONTRACTOR REQUIREMENTS

- 6.1 The Contractor shall have at least five (5) years of experience in providing fabrication, maintenance and installation of methane gas recovery and ground water monitoring systems products and services.
- 6.2 The Contractor shall maintain in current status all Federal, State, County and Local licenses and permits required to operate the Contractor's business.
- 6.3 The Contractor shall comply with Occupational Safety and Health Administration (OSHA) standards during the performance of all contracted services.
- 6.4 Contractor should be available on NORMAL BUSINESS HOURS (Monday through Friday, 7:00 AM to 6:00 PM), and AFTER BUSINESS HOURS. The City observes the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving and Christmas.
- 6.5 All of 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.


7.0 GENERAL REQUIREMENTS

- 7.1 Term. The term of the resultant contract shall be for a one (1) year initial term. The City may, at its option and upon mutual agreement with the Contractor(s), extend the term of this agreement for an additional four (4) years.
- 7.2 Option to Extend. Based on satisfactory Contractor performance, the City, may at its option and upon mutual agreement with the Contractor, extend the term of this agreement for an additional four (4) years renewable on an annual basis. Contractor

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shall be notified in writing by the City Materials Manager of the City's intention to extend the contract period at least ninety (90) calendar days prior to the expiration of the original contract period.

- 7.3 Quantities. Quantities listed in this solicitation are the City's best estimate only. The City's actual requirements during the period of this agreement shall be determined by the actual needs and availability of appropriated funds.
- 7.4 Brand Name or Equivalent. There are a number of products that have been determined, through evaluation or testing, to be equivalent to the requirements of the specifications. The list of these brands is not intended to limit or restrict competition. Rather, it is to set the standard of quality, design, performance and characteristics of the products specified herein. Any bid which proposes products that are of equivalent quality, type of material, design and performance will be considered if sufficient evidence and information is given to establish it as equivalent and the City determines the product to be equivalent to the brand name and specifications.
- 7.5 Performance of Service. Performance of the required services shall be completed in accordance with the Scope of Services.
- 7.6 Changes to Products or Services. Throughout the term of this contract, the City reserves the right to add, revise or make changes to products or services within the scope of the work as may be deemed necessary to best serve the needs of the City.
 - a. In the event of such a substitution or deletion of service areas, the City will give the Contractor 10-days notice prior to date of discontinuance of maintenance services and responsibilities.
 - b. The Contractor shall not be compensated for the loss of work due to deletions or substitutions.
 - c. In the event the City and the Contractor cannot agree on additional service or equipment charges, the City reserves the right to perform the additional services with City personnel, or other outside contract services.
- 7.7 Safety Standards. Equipment and supplies supplied by the Contractor under this contract shall comply with the current applicable Occupational Safety and Health Standards of the State of Arizona (OHSHA), the National Electric Code (NEC), and the National Fire Protection Association standards (NFPA).
- 7.8 Defective Products and Services. All defective products/services delivered to the City shall be replaced and exchanged by the Contractor. The cost of replacing the product/service and other similar expenses shall be paid by the Contractor.

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7.9 Subcontractors. When subcontractors are used in the performance of certain functions under the contract, subcontractors shall be subject to the same terms and conditions as the Contractor.

7.10 Post-Award Conference. After award of the contract(s), Contractors may be required to attend a post-award conference when requested by the City.

7.11 Pricing. Contractor's pricing shall include, but is not limited to, labor, salaries, employee benefits, vehicles, equipment, tools, materials, supplies, fuel, shipping, licenses, fees, insurance, profit, and any other associated direct or indirect costs (except sales taxes) necessary to provide the requested product and services.

All prices quoted shall be firm and fixed for the specified contract period. The City shall NOT be invoiced at prices higher than those stated in the resultant contract. Other than contract pricing, NO additional cost, fees or surcharges shall be allowed by the City.

7.12 Price Changes. Contractor may submit a request for price adjustment 90 days prior to the contract renewal date. The request shall be in writing and include supportive justification for the proposed price changes. Supporting justification may include cost increase that was clearly unpredictable at the time of the bid and is directly correlated to the price of the product; formal announcement from the manufacturer that the cost of the contract product has been increased, etc.

The City will review the request and will determine if the price adjustments shall be granted or if an alternate option is in the best interest of the City. The price adjustment, if approved, will be effective and executed via a contract amendment.

7.13 Order Acceptance. Work products/services delivered to the City will be subject to a complete inspection by the Department. Inspection criteria includes conformity to the specifications, quality and performance standards.

The Contractor shall be fully responsible for shipping charges for replacement products to correct items not in compliance with specifications and/or work quality.

7.14 Contractor Performance or Quality Deficiency.

- a. When Contractor is notified of a performance or quality deficiency, the Contractor shall have 48 hours from the time of notification to initiate corrective action in any specific instances of unsatisfactory performance or quality. Failure to correct unacceptable product or to provide suitable material within the specified time frame may result in reduction of payment or non-payment for service. If the Contractor fails to correct the problem, the City reserves the right to correct the situation by whatever is deemed in the best interest of the City (e.g. with City personnel or by separate contract, and the cost of such actions deducted from the Contractor's monthly invoice).



**SOLICITATION NUMBER: IFB 20-17
LANDFILL GAS, GROUNDWATER AND
STORMWATER SYSTEMS INSTALLATION,
MAINTENANCE, PARTS AND SERVICE**

**CITY OF GLENDALE
Procurement Division
5850 West Glendale Avenue,
Suite 317
Glendale, Arizona 85301**

- b. In the event the Contractor has been notified of a deficiency and the deficiency is not corrected, Landfill Operations may perform the services using city personnel or by a separate contract. The cost for follow-up inspections and of the services performed may be deducted from the Contractor's monthly invoice.
- c. Failure to correct the deficiency within a reasonable timeframe may result in termination of the contract for default.

7.15 Damage to City Property. When damages to City property occurs as a result of Contractor's negligence, the City will arrange for repairs to be made and the costs for making repairs to the areas will be deducted from final payments to the Contractor.

7.16 Waste. In the performance of the required services, the Contractor, at his expense, shall remove and dispose waste products and debris from the site in compliance with Federal, State, County and City laws and regulations. Contractor should factor in the environmental fees in their contract price.

7.17 Billing or Invoicing. Contractors shall provide a detailed monthly invoice which includes the following:

- City Purchase Order reference number
- Itemized products or services purchased
- Separate line item for any product discount (if applicable)
- Separate line item for sales tax

8.0 EMERGENCY BUSINESS SERVICES

During an emergency, natural disaster or homeland security event, there may be a need for the City to access the Contractor's services when needed. All products or services provided to meet an emergency request shall be supplied as per the contract prices, terms and conditions. In general, emergency orders may be placed using a City Procurement Card.

9.0 CONTRACT ADMINISTRATION

The Landfill Superintendent or designee shall perform all Contract Administrative functions associated with this document.



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LANDFILL GAS, GROUNDWATER AND
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**CITY OF GLENDALE
Procurement Division
5850 West Glendale Avenue,
Suite 317
Glendale, Arizona 85301**

APPENDIX A: Glendale Mission, Vision and Values

MISSION STATEMENT

WE IMPROVE THE LIVES OF THE PEOPLE WE SERVE EVERY DAY.

VISION STATEMENT

WE ARE THE COMMUNITY OF CHOICE FOR RESIDENTS, BUSINESSES, AND EMPLOYEES.



VALUE STATEMENTS

COMMUNITY

WE ARE DRIVEN TO IMPROVE THE COMMUNITY EXPERIENCE

Our top priority is to serve all people who live, work, do business in, and visit Glendale. We value community engagement and we constantly seek feedback to assess the varying needs of our community. We welcome everyone and value the richness of skills, background, and experience that a diverse community provides. With compassion, we observe, listen, understand and assist our stakeholders to ensure we are equitably delivering the services that are most valued and needed in our community. We do this to honor our heritage, to create openness, and to improve service delivery.

INTEGRITY

WE PROVIDE OPEN AND HONEST GOVERNANCE

Throughout our organization there is an unquestionable level of integrity, ethics, transparency, and honesty guiding our communications, interactions, and decision-making. We are fair, principled, accountable, and inclusive in all that we do. The example is set by City Council, City Management, and every staff member. We do this to build trust within the organization and throughout the community.

EXCELLENCE

WE MAKE EXCELLENCE A HABIT, NOT A GOAL.

Our approach to service begins with a positive attitude and a focus on excellence. We are committed to delivering high quality services to our diverse community at an affordable cost, with demonstrated value, in an expeditious manner. We design our services with our stakeholder's needs in mind. We provide opportunities to gather feedback on our services in an inclusive way and look for merit in every idea. We do this to ensure we are good stewards of taxpayer dollars, to create organizational and community pride in the services we provide, and to create added value for our community.

INNOVATION


WE DELIVER BETTER SERVICE THROUGH CREATIVITY AND INGENUITY.

We are an organization that constantly examines how we can get better and welcomes creative ideas and new thinking. We value efficiency, technology, and agility; and, we have the courage to try new approaches. We strive to be leaders in public sector innovation. We do this to create a flexible organization that can respond quickly to change, to create value by providing more cost-effective services, and to foster employee ownership in the services we provide.

LEARNING

WE VIEW LEARNING AS ESSENTIAL TO IMPROVEMENT.

We know that our ability to develop and deliver the highest quality services and to achieve operational excellence for our stakeholders is dependent upon having a highly trained and developed workforce and elected leaders. We are committed to developing skills and cultivating leaders. We do this to ensure that we are constantly getting better in everything we do and creating lifelong learners.

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1.0 SPECIAL TERMS AND CONDITIONS

1.1 INCORPORATION BY REFERENCE All responses shall incorporate by reference the Scope/Specifications, terms and conditions, general instructions and conditions and any attachments. The Standard Terms and Conditions applicable to this solicitation are posted on the Internet. They are available for review and download at the City’s Procurement Internet home page, www.glendaleaz.com/purchasing. Bidders are advised to review all provisions of the General Instructions and Conditions for this solicitation.


1.2 PUBLIC RECORD Contractor acknowledges that the City is a public agency and must comply with all Public Records laws. All Bids submitted in response to the Solicitation shall become the property of the City and, subsequent to award recommendation, become a matter of public record available for review pursuant to Arizona Public Records Law.

If a Contractor believes that a specific section of its response is confidential, that should be withheld from the public record, Contractor shall isolate the pages and mark each page confidential in a specific and clearly labeled section of its Proposal response. The Contractor shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed. The City Procurement Division will review the material and make a determination as to the confidentiality of any of the information and/or material contained within the Submittal. In the event of a public records request for documents Contractor deems confidential, the City will notify Contractor of the request and if Contractor claims such documents are confidential, it shall be the Contractor’s sole responsibility, including sole cost, to take appropriate action, including legal action, to protect such documents.

1.3 COOPERATIVE USE OF CONTRACT This agreement may be extended for use by other governmental agencies and political subdivisions of the State including all members of SAVE (Strategic Alliance for Volume Expenditures). 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>

1.4 PRICE AND PRICE ADJUSTMENTS All prices quoted shall be firm and fixed for the initial contract period. Price adjustments shall be addressed a minimum of sixty (60) days prior to the contract renewal date, shall be in writing and include supportive justification for the proposed increase. The rate increase shall only be considered at time of contract extension. The City will review the request and shall determine if the increase shall be granted or if an alternate option is in the best interest of the City. The

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price increase adjustment, if approved, will be effective and executed via a contract amendment.

- 1.5 **DELIVERY** All deliveries shall be in accordance with the Scope of Services
- 1.6 **DELIVERY TIME** All deliveries shall be made in accordance with the Scope of Services.
- 1.7 **TERM OF AGREEMENT** The term of this agreement shall be for a one (1) year initial period.
- 1.8 **OPTION TO EXTEND** The City, may, at its option, and upon mutual agreement with the Contractor, extend the term of this agreement for an additional four (4) years. Contractor shall be notified in writing by the City Materials Manager of the City's intention to extend the contract period at least thirty (90) calendar days prior to the expiration of the original contract period.
- 1.9 **CHANGES OR ADDITIONS OF PRODUCTS OR SERVICES** Throughout the term of this contract, the City reserves the right to revise or make changes within the general Specifications as deemed necessary to best serve the interest of the City. All changes shall be documented by formal amendment to the contract., the City reserves the right to add, revise or make changes to the specifications to best serve the needs of the City.
- 1.10 **KEY PERSONNEL** Contractor shall assign specific individuals to the key positions in support of the Contract.
- 1.11 **INSURANCE, BOND AND INDEMNIFICATION** The Contractor, performing as an independent Contractor hereunder, shall be fully responsible for providing Workers' Compensation or other applicable insurance coverage for itself and its employees and the City shall have no responsibility of liability for such insurance coverage.

Contractor shall provide to the City a copy of the policy or a certification by the insurance carrier, showing the Contractor to have in effect during the term of this contract, a General Liability Insurance policy, which shall be the primary coverage for Contractor activities under this contract. The coverage limits of such insurance shall not be less than those listed below.

The insurance company issuing the policy required above shall have an AM Best financial rating of "A-" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. The certificate and policy shall name the City as an additional insured and shall be primary and non-contributory coverage. The City shall also be an additional insured to the full limits of



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the liability insurance purchased by the Consultant even if those limits are in excess of those required by this contract.

The City reserves the right to terminate any Contractor agreement if the Contractor fails to maintain such insurance coverage.

Contractor must provide certification of insurance compliance within ten (10) calendar days after notification of award. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement the policy will not be canceled or failed to be renewed without thirty (30) days written notice to the City.

Certification to be submitted to: Procurement, 5850 West Glendale Avenue, Suite 317, Glendale, Arizona 85301.

<u>Type of Insurance</u> <u>(Minimum)</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	
Each Accident	\$100,000
Disease-Each Employee	\$100,000
Disease-Policy Limit	\$500,000

Commercial General Liability shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, independent Contractors, and broad form contractual coverage.

Each Occurrence	\$1,000,000
Personal and Advertising	\$1,000,000
General Aggregate	\$2,000,000
Products-Completed Operations	\$1,000,000


Automobile Liability – Including bodily injury and property damage for any owned, hired and non-owned vehicles used in the performance of the services.

Combined Single Limit (CSL)	\$1,000,000
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Professional Liability (Errors and Omissions) coverage shall apply to liability for a professional error, act or omission arising out of the scope of services as defined.

Per Claim	\$1,000,000
Policy Aggregate	\$2,000,000

1.12 WORKERS' COMPENSATION Contractor shall be in full compliance with the provisions of the Arizona Workers' Compensation Law (Title 23, Chapter 6, Arizona

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Revised Statutes) as amended, and all rules and regulations of the Industrial Commission of Arizona made in pursuance thereof. Contractor shall secure payment of compensation to employees by insuring the payment of such compensation with the State Compensation Fund or any insurance company authorized by the Insurance Department of Arizona to transact business in the State of Arizona.

Contractor further agrees that he shall require any and all subcontractors performing work under the agreement to comply with said Workers' Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the Contractor, or any of his subcontractors, shall be considered the employees of such Contractor, or his subcontractor(s), and not the employees of the City.

1.13 INDEMNIFICATION CLAUSE To the extent allowed by law, Contractor shall defend, indemnify, and hold harmless the City of Glendale, and its departments, boards, commissions, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City of Glendale, its officers, officials, agents, employees and volunteers for losses arising from the work performed by the Contractor for the City of Glendale.

1.14 CONTRACT CANCELATION The City reserves the right to cancel the whole or any part of the contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as in any of the following:

- The Contractor provides personnel that do not meet the requirements of the contract.
- The Contractor fails to perform adequately the services required in the contract.
- The Contractor attempts to impose on the City personnel which are of an unacceptable quality.
- The Contractor fails to furnish or finish the required product and/or service within the time stipulated in the contract.

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- The Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the contract.

If the Contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the City may resort to any single or combination of the following remedies:

- a. Cancel the contract;
- b. Reserve all rights or claims to damage for breach of any covenants of the contract;
- c. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliant with the specifications, the actual expense of testing shall be borne by the Contractor;
- d. In case of default, the City reserves the right to purchase materials or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the contractor by:
 1. Deduction from an unpaid balance;
 2. Any combination of the above or any other remedies as provided by law.

1.15 WARRANTIES Contractor warrants that all materials, service, or construction delivered under this contract shall conform to the specifications of this contract. Any defects of design, workmanship, or materials, that would result in non-compliance with the contract specification, shall be fully corrected by the Contractor (including labor and materials) without additional cost to the City.

1.16 NON-DISCRIMINATION By submitting this Bid, Contractor agrees not to 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.

1.17 CERTIFICATION By signature on the Offer/Bid page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Contractor certifies:

The submission of the offer did not involve collusion, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition or other anti-competitive practices. The Contractor shall not discriminate against any employee or applicant for employment in violation of Federal or State law. The Contractor has not given, offered to give, nor



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intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer. The Contractor hereby certifies that the individual signing the submittal is an authorized agent for the Contractor and has the authority to bind the Contractor to the Contract.

By signing the bid, the bidder certifies that the bid submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

2.19 FORCE MAJEURE

- a. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the part affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders, fire; flood; lockouts; injunctions-interventions-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- b. Force majeure shall not include the following circumstances:
 - i. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market.
 - ii. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - iii. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

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2.0 SPECIAL INSTRUCTIONS

2.1 RETURN OF BID Bids shall be submitted ONLINE through the Vendor Self-Service (VSS) system at <https://glendaleaz.munisselfservice.com>

The Offeror shall complete all sections of the solicitation in the format given in the space provided. If additional space is needed than what is given, enter “See attachment for detail.”

Bids that do not conform to the above format may be rejected. The Offeror shall bear all costs associated with submitting the proposal, including proposal preparation, site visitation or any travel connected with submission of the proposal. The City shall have no liability whatsoever for such costs.

2.2 PRE-BID CONFERENCE AND SITE VISIT


A pre-bid conference will be held on **January 9, 2020, 10:00 AM Local Time**, at the **City of Glendale Landfill Administration, Building C Conference Room, 11480 W Glendale Avenue, Glendale AZ 85307**. Attendance is not required but strongly encouraged.

Copies of the Invitation for Bids (IFB) will NOT be available at the meeting. The purpose of the conference will be to clarify the contents of the solicitation to prevent any misunderstanding of the City of Glendale’s position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the City at the conference. The City will determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. Oral statements or instructions will not constitute an amendment to the solicitation.

2.3 PREPARATION OF BID PACKAGE The following items shall be completed and returned ONLINE through VSS. Failure to include all the items may result in a bid being rejected. Bid packages shall be submitted in the following order:

- COVER SHEET
- OFFER SHEET
- PRICE SHEET
- OTHER OPTIONAL PRODUCTS OR SERVICES
- REQUIRED REFERENCES
- Addendum (return all Addenda, if applicable)

2.4 EVALUATION CRITERIA Invitation for Bids (IFB) are awarded to the lowest, responsible and responsive bidder whose bid conforms in all material respect to the requirements and criteria set forth in the Invitation for Bids.

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2.5 **TYPE OF AWARD** The City reserves the right to make multiple awards or to award by group of line items, or to make an aggregate award, whichever is deemed most advantageous to the City. If the City determines that an aggregate award to one bidder is not in the City's best interest, "all or none" Bids shall be rejected.


2.6 **ALTERNATE BIDS/EXCEPTIONS**
 Bids submitted as alternates, or on the basis of exceptions to specific conditions of purchase and/or required specifications, must be submitted as an attachment referencing the specific paragraph number(s) and adequately defining the alternate or exception submitted. Offeror shall clearly and specifically detail all exceptions to the exact requirements imposed by this solicitation. Detailed product brochures and/or technical literature, suitable for evaluation, must be submitted with the Bid. If no exceptions are taken, City will expect and require complete compliance with the specifications and all conditions of purchase.

2.7 **BRAND NAME OR EQUAL** Specification which uses a brand name, manufacturer's name or product number is used for the purpose of designating the standard of quality, performance, and characteristics needed to meet City requirements and is not intended to limit or restrict competition. Products substantially equivalent to those designated may be considered for award.

2.8 **ESTIMATED QUANTITIES** Quantities listed in this solicitation are the City's best estimate. The City may order some, all, more, or none of the individual quantities. The City's actual requirements during the period of this agreement shall be determined by the actual needs and availability of appropriated funds.

2.9 **PROPRIETARY INFORMATION**
 Bidders shall clearly mark any proprietary information contained in its bid with the words "Proprietary Information." Bidder shall not mark any Solicitation Form as proprietary. Pricing data shall not be considered proprietary. Marking all, or nearly all, of a bid as proprietary may result in rejection of the bid.

Bidders acknowledge that the City is required by law to make certain records available for public inspection. In the event that the City receives a request for disclosure of Proprietary Information by any person, court, agency or administrative body, or otherwise has a reasonable belief that it is obligated to disclose the Proprietary Information to any such person or authority, the City will provide Bidder with prompt written notice so that Bidder may seek a protective order or other appropriate remedy. The Bidder, by submission of materials marked Proprietary Information, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Bidder in the event that the City must legally disclose the Proprietary Information.

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- 2.10 INQUIRIES** Any question related to this solicitation shall be directed to the Contract Analyst whose name appears above. Any Bidder shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Analyst may require any and all questions be submitted in writing. Bidders are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate solicitation number, page and paragraph number. An envelope containing questions should be identified as such; otherwise it may not be opened until after the official Bid due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the solicitation will be **binding**.
- 2.11 ADDITIONAL INFORMATION** The City reserves the right to secure additional information from any Bidder as it deems necessary to establish the competence and financial stability of any Bidder submitting a bid.
- 2.12 PRIOR EXPERIENCE** Experiences with the City and entities that evaluation committee members represent and that are not specifically mentioned in the solicitation response may be taken into consideration when evaluating Bids.
- 2.13 EVALUATION LITERATURE**
Bids submitted for products considered by the seller to be equal to or better than the brand names or manufacturer's catalog references specified herein, must be submitted with technical literature and/or detailed product brochures with written statements if the literature or brochure is not specific as to the specification for the City's use to evaluate the product(s) offered. Bids submitted without this product information may be considered as non-responsive and rejected.
- 2.14 WITHDRAWAL OF BID** At any time prior to the specified solicitation due date and time, a Bidder may formally withdraw the bid by a written letter, facsimile or electronic mail from the Bidder or a designated representative. Telephonic or oral withdrawals shall not be considered.
- 2.15 NO CONTACT, NO INFLUENCE DURING THE IFB PROCESS** The City is conducting a competitive IFB process for the contract, free from improper influence or lobbying. There shall be no contact concerning this IFB from Bidders submitting a bid with any member of the City Council, Evaluation Committee Members, or anyone connected with the process for or on behalf of the City. Contact includes direct or indirect contact by the Bidder, its employees, attorneys, lobbyists, surrogates, etc. in an attempt to influence the IFB process.

From the time the IFB is issued until the expiration of the protest period or the resolution of any protest, whichever is later (the "Black-Out Period"), Bidders, directly or indirectly through others, are restricted from attempting to influence in any



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manner the decision making process through, including but not limited to, the use of paid media; contacting or lobbying the City Council or City Manager or any other City employee (other than Material Management employees); the use of any media for the purpose of influencing the outcome; or in any other way that could be construed to influence any part of the decision-making process about this IFB. This provision shall not prohibit a Bidder from petitioning an elected official or engaging in any other protected first amendment activity after the protest period has run or any protest has been resolved, whichever is later.

Violation of this provision will cause the bid of the Bidder to be found in violation and to be rejected.

- 2.16 NOTICE OF INTENT TO AWARD AND PROTEST PERIOD** Information about the recommended award for this solicitation will be posted on the Internet. The information will be available for review on the City's Procurement Internet home page www.glendaleaz.com/purchasing immediately after the City has completed its evaluation process of the Bids received. If you have any questions, or would like further information about an intended award, contact the contract analyst immediately. Any protest must be submitted to the Materials Manager no later than seven (7) calendar days from the date of posting on the Internet.

Please go to:

<http://www.glendaleaz.com/Purchasing/doingbusinesswithglendale.cfm> for information and instructions on how to file a protest with the City of Glendale.

- 2.17 CONFLICT OF INTEREST** The Bidder shall disclose any and all possible conflicts of interest if any senior or managing personnel of the Contractor have a potentially conflicting business or personal relationship with any City employees that have or may have a role in the selection or management of the services or goods being solicited. Providing such disclosure will not necessarily disqualify a Contractor from providing a proposal or bid. Failure to disclose a potential conflict of interest may result in rejection of the proposal or bid or termination of a resultant contract.



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(SAMPLE AGREEMENT)

C

AGREEMENT FOR

City of Glendale Solicitation No.

This Agreement for _____ ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and _____, a _____, authorized to do business in Arizona, (the "Contractor"), as of the _____ day of _____, 20_____.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. _____ (the "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 attached hereto;
- 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. Key Personnel; Sub-contractors.

1.1 Services. Contractor will provide all services 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 or consultants, retained by City.

1.2 Project Team.

a. Project Manager.

- (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, 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;
- (2) The City must approve the designated Project Manager; and
- (3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.

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.



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- c. **Discharge, Reassign, Replacement.**
- (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.
 - (2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.
 - (3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

d. **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 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 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 Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.** 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.

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.



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3.4 Coordination: Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, 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 Work Product.

- a. **Ownership.** Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the 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 (e.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 shall 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 Sub-contractors will not exceed \$ _____, as specifically detailed in **Exhibit B** (the "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.

- a. Adjustments to the 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.

5. **Billings and Payment.**

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- 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 or as specified in the solicitation.
- 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.
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 Goods or 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 Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 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 of 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 consultant of any other party to this Agreement.
8. **Insurance.**
- 8.1 Requirements. Contractor must obtain and maintain the following insurance ("Required Insurance"):



**SOLICITATION NUMBER: IFB 20-17
LANDFILL GAS, GROUNDWATER AND
STORMWATER SYSTEMS INSTALLATION,
MAINTENANCE, PARTS AND SERVICE**

**CITY OF GLENDALE
Procurement Division
5850 West Glendale Avenue,
Suite 317
Glendale, Arizona 85301**

- 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 referred to herein as the "Contractor's Policies"), until each Party's 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 \$ per occurrence and \$ annual aggregate for each property damage and contractual property damage.
 - (2) Subcontractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$ per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, 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 \$ per accident for Contractor and \$ 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. 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.
- f. 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 the Agreement.
- g. Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.



**SOLICITATION NUMBER: IFB 20-17
LANDFILL GAS, GROUNDWATER AND
STORMWATER SYSTEMS INSTALLATION,
MAINTENANCE, PARTS AND SERVICE**

**CITY OF GLENDALE
Procurement Division
5850 West Glendale Avenue,
Suite 317
Glendale, Arizona 85301**


- (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).
- h. Policies. Except with respect to workers' compensation and employer's liability coverages, 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 reasonably acceptable to all parties.

8.2 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 the Required Insurance whenever requested.

8.3 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.

	SOLICITATION NUMBER: IFB 20-17 LANDFILL GAS, GROUNDWATER AND STORMWATER SYSTEMS INSTALLATION, MAINTENANCE, PARTS AND SERVICE	CITY OF GLENDALE Procurement Division 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301
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9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their 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 parties shall cooperate with the City's random inspections, including granting the inspecting party 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 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); and
 - 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 service 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; and
 - 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:
 c/o
- 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
 Glendale, Arizona 85301

	SOLICITATION NUMBER: IFB 20-17 LANDFILL GAS, GROUNDWATER AND STORMWATER SYSTEMS INSTALLATION, MAINTENANCE, PARTS AND SERVICE	CITY OF GLENDALE Procurement Division 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301
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623-930-

With required copy to:

City Manager	City Attorney
City of Glendale	City of Glendale
5850 West Glendale Avenue	5850 West Glendale Avenue
Glendale, Arizona 85301	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 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. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as 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. Electronic signature blocks do not constitute execution.

	SOLICITATION NUMBER: IFB 20-17 LANDFILL GAS, GROUNDWATER AND STORMWATER SYSTEMS INSTALLATION, MAINTENANCE, PARTS AND SERVICE	CITY OF GLENDALE Procurement Division 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301
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- 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 deemed 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. **Term.** The term of this Agreement commences upon the effective date and continues for a one (1)-year initial 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.
16. **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.
17. **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 |

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

City of Glendale,
 an Arizona municipal corporation

 By:
 Its: City Manager

ATTEST:

 Julie K. Bower
 City Clerk (SEAL)
 APPROVED AS TO FORM:

 Michael D. Bailey
 City Attorney

a

 By:
 Its:


 <p>Glendale ARIZONA</p>	<p>SOLICITATION NUMBER: IFB 20-17 LANDFILL GAS, GROUNDWATER AND STORMWATER SYSTEMS INSTALLATION, MAINTENANCE, PARTS AND SERVICE</p>	<p>CITY OF GLENDALE Procurement Division 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301</p>
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EXHIBIT A

PROJECT

DETAILED PROJECT DESCRIPTION

EXHIBIT B

COMPENSATION

METHOD AND AMOUNT OF 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 **\$2,500,000.**

DETAILED PROJECT COMPENSATION

**AGREEMENT FOR
LANDFILL GAS, GROUNDWATER AND STORMWATER SYSTEMS INSTALLATION,
MAINTENANCE, PARTS AND SERVICE**

City of Glendale Solicitation No. IFB 20-17

This Agreement for Landfill Gas, Groundwater and Stormwater Systems Installation, Maintenance, Parts and Service ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Rummel Construction, Inc., an Arizona corporation, authorized to do business in Arizona, (the "Contractor"), as of the 24 day of March, 2020.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. IFB 20-17 (the "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 attached hereto;
- 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. Key Personnel; Sub-contractors.

- 1.1 Services. Contractor will provide all services 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 or consultants, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, 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;
 - (2) The City must approve the designated Project Manager; and
 - (3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.
 - 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. Discharge, Reassign, Replacement.
 - (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.

- (2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.
- (3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

d. 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 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 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 Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. 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.

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 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, 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 Work Product.

- a. **Ownership.** Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the 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 (e.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 shall 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 Sub-contractors will not exceed \$3,500,000 for the entire term of the project, as specifically detailed in Exhibit B (the "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.
 - a. Adjustments to the 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.

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 or as specified in the solicitation.

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.

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 Goods or 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 Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 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 of 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 consultant of any other party to this Agreement.

8. **Insurance.**

8.1 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 referred to herein as the "Contractor's Policies"), until each Party's 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 for each property damage and contractual property damage.
 - (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, 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. 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.
- f. 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 the Agreement.

g. Other Contractors or Vendors.

(1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.

(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).

h. Policies. Except with respect to workers' compensation and employer's liability coverages, 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 reasonably acceptable to all parties.

8.2 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 the Required Insurance whenever requested.

8.3 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.

9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their 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 parties shall cooperate with the City's random inspections, including granting the inspecting party 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); and
- 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 service 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; and
- 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:

Eric Decker, Vice President
c/o Rummel Construction, Inc.
7520 E Adobe Drive
Scottsdale, AZ 85255
Tel: 480-222-9922

Email: edecker@rummelconstruction.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, Arizona 85307
623-930-4737

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 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. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as 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. Electronic signature blocks do not constitute execution.
- 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 deemed 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. **Term.** The term of this Agreement commences upon the effective date and continues for a one (1)-year initial 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.
16. **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.
17. **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 |

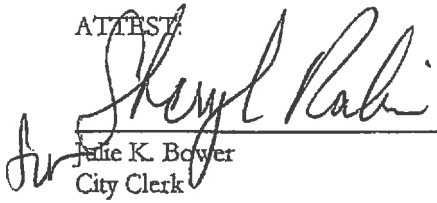
(Signatures appear on the following page.)

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

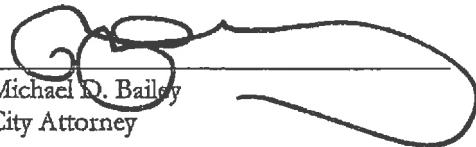
City of Glendale,
an Arizona municipal corporation

for 
By: Kevin R. Phelps
Its: City Manager

ATTEST:


Julie K. Bower
City Clerk (SEAL)

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

Rummel Construction, Inc.,
an Arizona corporation


By: Erik Decker
Its: Vice President

EXHIBIT A
**LANDFILL GAS, GROUNDWATER AND STORMWATER SYSTEMS INSTALLATION,
MAINTENANCE, PARTS AND SERVICE**

PROJECT

Rummel Construction, Inc. shall furnish all labor, materials, supplies and equipment necessary to install, maintain and repair the City of Glendale Landfill methane gas, groundwater and stormwater systems in accordance with IFB 20-17 Scope of Work.

EXHIBIT B
LANDFILL GAS, GROUNDWATER AND STORMWATER SYSTEMS INSTALLATION,
MAINTENANCE, PARTS AND SERVICE
COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Payment shall be as per Section 5 of the Agreement.

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 \$3,500,000.

DETAILED PROJECT COMPENSATION

Contractor's pricing shall include, but is not limited to, labor, salaries, employee benefits, vehicles, equipment, tools, materials, supplies, fuel, shipping, licenses, fees, insurance, profit, and any other associated direct or indirect costs necessary to provide the requested product and services (except sales taxes).

All prices shall be firm and fixed for the specified contract period. The City shall NOT be invoiced at prices higher than those stated in this contract. Other than contract pricing, NO additional cost, fees or surcharges shall be allowed by the City.

Item No.	Description	Estimated Quantities (A)	Unit of Measure	Unit Price (B)	Extended Amount (A X B)
1.	Standard services performed during normal business hours (Monday through Friday, 7:00 AM to 6:00 PM) which includes fabrication, installation, delivery of HDPE/PVC products for the landfill methane gas management and ground water systems as per Specifications.	200	Per Hour	\$200.00* *(Includes crew truck, with hand tools, foreman, 2 skilled labor, fusion technician and fusion machine)	\$40,000
2.	Overtime services performed after normal business hours as per specifications.	1	Per Hour	\$277.50*	\$277.50
3.	Travel charges for Contractor on-site trips (Flat fee per call)	10	Per Call	\$0	\$0

HDPE AND PVC PRICING

Item No.	Description	Estimated Quantities (A)	Unit of Measure	Unit Price (B)	Extended Amount (A X B)
4.	HDPE (FRIATEC), 6 inch fusion coupling	60	Each	\$119.25	\$7,155.00
5.	HDPE (FRIATEC), 4 inch fusion coupling	50	Each	\$48.75	\$2,437.00
6.	HDPE (FRIATEC), 2 inch fusion coupling	50	Each	\$17.25	\$862.50
7.	HDPE, 18 inch pipe - 20 foot section	50	Each	\$490.00	\$24,500.00
8.	HDPE, 12 inch pipe - 20 foot section	50	Each	\$250.00	\$12,500.00
9.	HDPE, 6 inch pipe - 20 foot section	100	Each	\$66.00	\$6,600.00
10.	HDPE, 2 inch pipe - 50 foot section	10	Each	\$33.00	\$330.00
11.	HDPE, 6 inch 90° elbow	10	Each	\$40.00	\$400.00
12.	HDPE, 6 inch 45° elbow	10	Each	\$40.00	\$400.00
13.	HDPE, 6 inch "T"	5	Each	\$51.50	\$257.50
14.	HDPE, 4 inch to 2 inch reducers	25	Each	\$10.50	\$262.50
SCHEDULE 80 PVC					
15.	PVC, 18 inch pipe - 20 foot section	10	Each	\$1,567.00	\$15,670.00
16.	PVC, 12 inch pipe - 20 foot section	10	Each	\$653.00	\$6,530.00
17.	PVC, 6 inch pipe - 20 foot section	10	Each	\$196.00	\$1,960.00
18.	PVC, 6 inch 90° elbow	5	Each	\$29.25	\$146.25
19.	PVC, 6 inch 45° elbow	5	Each	\$35.00	\$175.00
20.	PVC, 6 inch "T"	5	Each	\$49.00	\$245.00
21.	PVC, **2 inch spiral flex hose, 100 foot section - See note below.	10	Each	\$350.00	\$3,500.00

****Note:** The City of Glendale's system uses 2 inch spiral flex hoses to connect the wells to the laterals. This 2 inch spiral flex hose is an off size. Contractor must ensure that the spiral flex hose will fit over a 2 inch PVC or HDPE pipe.

The 2019 Standard T&M Rates are valued-added services and are duly accepted by the City. These rates will only be applicable to services beyond the Standard Services as per the Scope of Work.



City of Glendale
2019 STANDARD T&M RATES
 Equipment rates DO NOT include operator

RESOURCE	HOURLY RATE
MOTOR GRADERS	
CAT 140	\$ 90.00
CAT 14	\$ 105.00
CAT 16	\$ 125.00
WHEEL LOADERS	
CAT 950	\$ 80.00
CAT 966	\$ 100.00
CAT 980	\$ 125.00
CAT 988	\$ 200.00
SCRAPERS	
CAT 613 ELEVATING SCRAPER	\$ 85.00
CAT 623 ELEVATING SCRAPER	\$ 145.00
CAT 627 PUSH PULL SCRAPER	\$ 185.00
CAT 631 SCRAPER	\$ 185.00
CAT 637 PUSH PULL SCRAPER	\$ 235.00
CAT 657 PUSH PULL SCRAPER	\$ 310.00
DOZERS	
D8 CRAWLER TRACTOR	\$ 105.00
D8 CRAWLER TRACTOR	\$ 160.00
D9 CRAWLER TRACTOR	\$ 210.00
D10 CRAWLER TRACTOR	\$ 260.00
SKIP LOADERS / BACKHOES	
DEERE 210LJ GANNON TRACTOR	\$ 35.00
CAT 420F/DEERE 310SL BACKHOE	\$ 40.00
CAT 420F/DEERE 310SL BACKHOE W/ 1,500# HAMMER	\$ 78.00
EXCAVATORS	
CAT 314/DEERE 135G EXCAVATOR	\$ 80.00
CAT 314/DEERE 135G EXCAVATOR W/ 1,500# HAMMER	\$ 98.00
CAT 320E LLR EXCAVATOR	\$ 75.00
CAT 336EL EXCAVATOR	\$ 95.00
CAT 336EL EXCAVATOR W/ 6,000# HAMMER	\$ 220.00
CAT 336EL EXCAVATOR W/ LEADING EDGE RIPPER BUCKET	\$ 165.00
CAT 345CL/349 EXCAVATOR	\$ 150.00
CAT 345CL/349 EXCAVATOR W/ 12,000# HAMMER	\$ 325.00
TRUCKS	
10 WHEEL DUMP TRUCK	\$ 49.00
ROCK TRUCKS	
25-30 TON ARTICULATED ROCK TRUCKS	\$ 104.00
35-40 TON ARTICULATED ROCK TRUCKS	\$ 144.00
60 TON RIGID FRAME ROCK TRUCKS	\$ 169.00
COMPACTION / PROCESSING	
CAT CP563E VIBRATORY COMPACTOR	\$ 60.00
CAT PS380C 7 WHEEL PNEUMATIC ROLLER	\$ 60.00
CAT 815F SHEEPSFOOT COMPACTOR	\$ 110.00
AG TRACTOR & DISK OR BEEGEE	\$ 105.00
WATER SUPPORT	
10,000 GALLON WATER PULL	\$ 144.00
8,000 GALLON WATER PULL (SINGLE ENGINE)	\$ 114.00
8,000 GALLON WATER PULL (TWIN ENGINE)	\$ 139.00
5,000 GALLON WATER PULL	\$ 84.00
4,000 GALLON WATER TRUCK (8X6)	\$ 79.00
4,000 GALLON WATER TRUCK	\$ 54.00
2,000 GALLON WATER TRUCK	\$ 44.00
MISC. EQUIPMENT	
REACH FORK (10K)	\$ 30.00
VACUUM SWEEPER	\$ 110.00
GPS MACHINE CONTROL/ROVER ADD	\$ 20.00
LTV	\$ 6.00
PICKUP	\$ 15.00
MECHANIC TRUCK	\$ 40.00
HDPE FUSION MACHINE < 18"	\$ 55.00
ELECTROFUSION PROCESSOR	\$ 40.00
FOUR GAS MONITOR	\$ 15.00
LABOR	
SUPERVISOR	\$ 65.00
OPERATOR	\$ 40.00
GRADE CHECKER	\$ 39.00
WATER/TRUCK DRIVER	\$ 38.00
LABORER	\$ 30.00
MECHANIC/WELDER	\$ 50.00

NOTES

- 1) Rates do not apply to Davis Bacon Wage Projects, Weekend, or Holiday work.
- 2) On the ground, the rate is provided by the City. Water will be provided by the City.
- 3) Trucking rates are subject to current market rates and do not include any applicable travel time.
- 4) Additional charges may apply for Rock or Severe Application Jobs.
- 5) Mobilization and Demobilization to be charged separately.
- 6) Rates based on \$3.00 per gallon fuel cost. Any increase above 5% subject to increase/surcharge.
- 7) Rates are per hour based on eight hour shift and forty hour week, overtime charges apply anything above the