

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSULTANT SERVICES
RELATED TO
PROJECT NO. 0000-10038
CITY OF TOMBALL
GAS MONITORING CITY OF TOMBALL CLOSED LANDFILL**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Raba Kistner ("Consultant").

WITNESSETH:

WHEREAS, Consultant represents that it is capable of providing and qualified to provide professional services to the City and desires to perform the same;

NOW, THEREFORE, the City and Consultant in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I.
SCOPE OF AGREEMENT**

Consultant agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Consultant compensation as stated in the sections to follow.

**SECTION II.
CHARACTER AND EXTENT OF SERVICES**

Consultant shall do all things necessary to render the services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

**SECTION III.
OWNERSHIP OF WORK PRODUCT**

Consultant agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Consultant pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Consultant's completion of the services which will result in the production of such instruments and Consultant's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Consultant from continuing to use those processes, analyses and data.

**SECTION IV.
TIME FOR PERFORMANCE**

The time for performance is as estimated in Exhibit A attached hereto. Upon written request of Consultant, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Consultant has no control.

**SECTION V.
COMPLIANCE AND STANDARDS**

Consultant agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Consultant's performance.

**SECTION VI.
INDEMNIFICATION**

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

**SECTION VII.
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Consultant only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$20,500, including reimbursable expenses.

**SECTION VIII.
INSURANCE**

Consultant shall procure and maintain insurance in accordance with the terms and conditions set forth in Exhibit "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

**SECTION IX.
TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Consultant. Upon receipt of such notice, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Consultant that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

**SECTION X.
ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Consultant at the following address:

Raba Kistner
Attn: Richard V. Klar, P.G.
12821 W. Golden Lane
San Antonio, Texas 78249

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball
Attn: Project Manager
501 James Street
Tomball, Texas 77375

**SECTION XI.
LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Consultant has been advised by the City and Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Consultant may become entitled to hereunder and the total sum that the City shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.
SUCCESSORS AND ASSIGNS**

The City and Consultant bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor Consultant shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.
DISCLOSURE OF INFORMATION**

Consultant shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.
MODIFICATIONS**

This instrument, including Exhibits A and B, contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

**SECTION XV.
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Consultant shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the Scope of Work, as defined in Exhibit "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**SECTION XVII.
PAYMENT TO ENGINEER FOR SERVICES AND
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**SECTION XVIII.
PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Consultant's standard invoicing practices and will be submitted to the City by Consultant at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**SECTION XIX.
MISCELLANEOUS PROVISIONS**

A. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

B. This Agreement is for sole benefit of the City and Consultant, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

C. Consultant further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

D. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Consultant, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this ___ day of _____, 2023.

Company Name: Raba Kistner



Name: Richard V. Klar, P.G.

Title: Vice President

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracy Garcia, City Secretary

EXHIBIT A

Proposal No. PSF23-067-00
March 2, 2023



12821 W. Golden Lane
San Antonio, TX 78249

Mr. Drew Huffman
Director of Public Works
City of Tomball
501 James Street
Tomball, Texas 77375

PO Box 690287
San Antonio, TX 78269

P 210.699.9090
F 210.699.6426
TBPE Firm F-3257

WWW.RKCI.COM

**RE: Proposal for 2023 Landfill Gas Monitoring
Closed City of Tomball Landfill
Tomball, Harris County, Texas
MSW Permit No. 1140A
RN102120755/CN600667190**

Dear Mr. Huffman:

Raba Kistner, Inc. (RKI) is pleased to submit this proposal to the City of Tomball (CLIENT) to conduct annual post-closure landfill gas monitoring and reporting for the closed City of Tomball (CoT) landfill, Municipal Solid Waste (MSW) Permit No. 1140A, which is located east of Rudolph Road and north of East Hufsmith Road within the City of Tomball, Harris County, Texas (hereinafter referred to as the FACILITY). As directed by the Texas Commission on Environmental Quality (TCEQ) in correspondence dated March 29, 2018, the FACILITY is officially designated to be in landfill gas (LFG) “detection” monitoring status. Monitoring activities are required on a quarterly basis at seven existing landfill gas detection probes (LGDPs) and 13 ambient air monitoring stations installed/established along and beyond the FACILITY perimeter.

This proposal defines the scope of services, total project cost, and terms and conditions for the performance of quarterly LFG monitoring and annual reporting for both landfill gas monitoring to be conducted throughout the 2023 post-closure period.

SCOPE OF WORK

RKI proposes to conduct quarterly LFG monitoring activities to maintain compliance with the applicable regulatory requirements. In the absence of any non-compliance conditions throughout the program (e.g., methane exceedance at perimeter LGDP, which serve as regulatory points of compliance for the FACILITY), **RKI** will prepare and submit to the TCEQ MSW Permits Section on behalf of the City of Tomball an annual monitoring report presenting collective LFG data, monitoring findings, and recommendations pertaining to LFG management during execution of and following the completion of the 2023 LFG monitoring program.

The following scope of work was developed based upon our understanding of 2021 LFG monitoring requirements for the FACILITY pursuant to the TCEQ-approved Landfill Gas Management Plan (i.e., **RKI Project No. ASF06-456-35, dated January 18, 2017**), our past performance on this project, and applicable regulatory requirements (i.e., *Title 30 of the Texas Administrative Code, Chapter 330 § 330.371(k)*)/directives administered by the TCEQ.

TASK 1 – 2023 Landfill Gas Monitoring

The proposed 2023 LFG monitoring program will include the performance of field activities associated with four comprehensive quarterly LFG monitoring events. During each LFG monitoring event, LFG constituents (i.e., methane, hydrogen sulfide, carbon dioxide and oxygen) concentrations in air will be measured with pre-calibrated instruments at the tops of casings at the 43 landfill gas vents (LGVs), seven landfill gas detection probes (LGDPs) and 12 passive soil vapor extraction vents (SVEs), as well as at the 13 ambient air monitoring stations located within, at, and beyond the FACILITY permit boundaries. Landfill gas measurements will also be obtained at existing groundwater monitoring wells in a manner consistent with past monitoring programs for informational purposes only. LFG monitoring activities will be conducted in accordance with previously established procedures pursuant to above-referenced §330.371 (k) requirements and procedures called out in Section 6 of the Landfill Gas Management Plan.

For budgetary purposes, costs associated with the scope of services described herein were developed with the assumption that a total of four quarterly LFG monitoring events will be conducted at the FACILITY throughout 2023. In the event that methane gas concentrations exceeding 5% volume in air are measured at any of the seven perimeter LGDPs in conjunction with quarterly LFG monitoring efforts, RKI will prepare a scope of work and estimated costs under a separate cover for TCEQ, local authority and adjacent landowner notification, in addition to an increased (i.e., monthly) perimeter LFG monitoring frequency, as required by 30 TAC, §330.371 (k)(1).

TASK 2 – 2023 Landfill Gas Reporting

After completion of the 2023 LFG monitoring program, **RKI** will prepare and submit to the TCEQ on behalf of CLIENT an annual report documenting the LFG monitoring activities and findings. In a manner similar to previous LFG reporting, this annual report will additionally provide a summary of automated LGV leachate recovery and disposal activities. On the basis of collective LFG monitoring data and TCEQ directives, **RKI** will offer recommendations to the CoT for continued FACILITY perimeter methane gas management/control and/or remediation strategies, as applicable.

Unless otherwise directed, **RKI** will prepare and submit one original report hardcopy and one copy to the TCEQ MSW Permits Section. Additionally, one copy of each report will be submitted to the TCEQ Region 12 office located in Houston, Texas. Original hardcopies and electronic versions of the reports will be provided to the City of Tomball Director of Public Works for consideration and inclusion in the FACILITY operating record.

For budgetary purposes, costs associated with the scope of services described herein were developed with the assumption that quarterly perimeter LFG monitoring results will be provided in the annual 2023 landfill gas monitoring and leachate recovery report. In the event that methane gas concentrations exceeding 5% volume in air are measured at any of the seven perimeter LGDPs in conjunction with quarterly LFG monitoring efforts, RKI will prepare a scope of work and estimated costs under a separate cover for quarterly LFG monitoring reporting, if directed by the TCEQ.

COST AND SCHEDULE

RKI will provide the scope of services described above for a **LUMP SUM fee of \$20,500.00**. Authorized additional costs, if requested by CLIENT and/or directed by the TCEQ, will be billed in accordance with our standard fees for professional services and at the unit rates for equipment shown on the attached Schedules of Fees for Professional Services. *To minimize project costs, to the extent practicable quarterly LFG monitoring activities in 2023 will be scheduled to coincide with other **RKI** post-closure field activities (e.g., semiannual groundwater monitoring).*

Pending CLIENT approval, the field activities described above will be performed quarterly throughout 2023, with annual monitoring report delivery to CLIENT and submittal to the TCEQ in early 2024.

ASSUMPTIONS

The following assumptions were made with regard to the scope of work and services described herein:

- Upon scheduling notification provided to the CoT by **RKI**, CLIENT will provide access to the FACILITY and its surroundings as necessary to perform the monthly LFG monitoring activities described above. It is assumed that weather conditions and/or other health and safety or FACILITY considerations during the scheduled monitoring events will not preclude or inhibit the effective execution of the proposed scope of services.
- Additional TCEQ MSW Permits Section directives pertaining to the proposed 2023 LFG monitoring program are not addressed as part of the scope of services described herein. **RKI** will provide appropriate proposal(s) at CLIENT's request following receipt of TCEQ directives following their review of the 2022 Annual Landfill Gas Monitoring and Leachate Recovery Report.
- Costs provided assume a quarterly frequency of LFG monitoring events and that the number of LFG monitoring points proposed above will remain roughly constant throughout 2023.

ACCEPTANCE

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. This proposal and the attachments listed below constitute the contract between us. Please sign below as your acceptance of this contract and to authorize **RKI** to proceed with the project scope.

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions
II	Schedule of Fees for Professional Services

Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037. All parties hereby agree that this contract, upon its acceptance, will be performable in Harris County, Texas.



SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

PERSONNEL:

Principal.....	\$135 to \$250/hour
Professional.....	\$70 to \$200/hour
Auto Cad Operator.....	\$65 to \$110/hour
Technical/Clerical/Administrative	\$40 to \$80/hour

The specific hourly rate within each classification listed above depends on the experience, special training, and qualifications of the personnel needed for the project. For projects requiring work at any hazardous waste site, there will be a \$10 per hour surcharge added to the normal billing rate for all personnel. Consultants to Raba Kistner (RK) will be charged according to their professional classification.

EXPENSES: Use of company automobiles will be charged at \$1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at \$70.00 per day, plus \$1.00 per mile over 50 miles per day. Copies will be charged at \$0.25 per page.

Other project specific charges for use of RK equipment or for RK testing will be in accordance with established fee schedules. All other project specific, third-party costs will be charged at cost plus 15 percent.

Invoices will be submitted monthly for work in progress in our standard format. They are due and payable upon receipt and become past due 30 days after the billing date. Past due invoices may be subject to late charges at the rate of 1-1/2 percent per month (18 percent per annum). In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax will be PAYMENT added to the appropriate service rate charged. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

CONDITIONS: Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.