

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
CONSULTANT SERVICES  
RELATED TO  
PROJECT NO. 0000-10039  
CITY OF TOMBALL  
GROUNDWATER 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 \$40,300, 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. PSF23-066-00  
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](http://WWW.RKCI.COM)

**RE: Proposal for 2023 Groundwater 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 semiannual post-closure groundwater monitoring at the City of Tomball Landfill, Municipal Solid Waste (MSW) Permit No. 1140A, located east of Rudolph Road and north of East Huffsmith Road within the City of Tomball, Harris County, Texas (hereinafter referred to as FACILITY). As described herein, following from recommendations developed in conjunction with the 2022 Annual Groundwater Monitoring Program, it is proposed that monitoring efforts be continued at 10 existing (permitted) monitoring wells (i.e., MW-2A, MW-3, MW-4, MW-5, MW-6 and MW-12 through MW-16) and four existing (assessment) wells (i.e., MW-7, MW-9, MW-10 and MW-11) in accordance with established post-closure monitoring requirements.

This proposal defines the scope of services, total project cost, and terms and conditions pertaining to the performance of continued semiannual groundwater monitoring and annual report preparation pursuant to Texas Commission on Environmental Quality (TCEQ) requirements for the 2023 post-closure monitoring program.

## PROJECT DESCRIPTION

The closed City of Tomball (CoT) landfill is currently subject to TCEQ MSW Permits Section requirements for post-closure monitoring of the uppermost groundwater-bearing unit (GBU) beneath the FACILITY. Groundwater monitoring at the FACILITY is typically performed at a total of 14 monitoring wells on a semiannual basis, with findings reported to the TCEQ on behalf of CLIENT on an annual basis.

In a manner similar to the recently-completed 2022 program, **RKI** proposes to conduct semiannual groundwater monitoring and sampling activities at the FACILITY and coordinate the requisite analytical testing and results reporting as necessary to prepare an annual report of findings. Additionally, we will conduct and report on an annual inspection of the FACILITY in March or April 2023 by a Professional Engineer (P.E.) licensed in the State of Texas, as required by the TCEQ MSW Permits Section. The scope of work described herein was developed based upon our understanding of current FACILITY post-closure

closure groundwater monitoring requirements, our past performance on this project, and applicable regulatory requirements administered by the TCEQ Municipal Solid Waste Division (i.e., *Title 30 of the Texas Administrative Code [30 TAC], Chapter 330*).

### **TASK 1 – Groundwater Sampling Activities**

**RKI** will conduct two semiannual groundwater monitoring events, which will be tentatively scheduled for June and December 2023. Field activities will include monitoring well inspection and water level gauging, groundwater purging, in addition to the collection of representative groundwater and quality assurance/quality control samples at a total of 14 existing monitoring wells in accordance with the FACILITY's TCEQ-approved *Groundwater Sampling Standard Operating Procedures, dated 1992*.

As approved by the TCEQ on January 25, 2007, **RKI** will submit properly preserved groundwater samples for laboratory analysis of VOCs (including chlorinated solvents and petroleum hydrocarbons), in addition to the following groundwater quality parameters: pH, specific conductance, total dissolved solids, sulfate, nitrate, chloride and total organic carbon. Purged groundwater generated during well sampling will be disposed at the adjacent CoT wastewater treatment plant.

### **TASK 2 – Annual Groundwater Monitoring Reporting**

Following receipt of laboratory-reported semiannual groundwater analytical results, **RKI** will prepare and submit to the TCEQ on behalf of CLIENT an annual report in the required format documenting 2023 groundwater monitoring activities, results, findings and recommendations. The 2023 annual groundwater monitoring report will include, at a minimum, the following primary elements:

- Site Plan indicating the existing FACILITY groundwater monitoring well network;
- Summary of historical and 2023 uppermost GBU groundwater elevation (gauging) data;
- Interpretive potentiometric surface maps for both semiannual groundwater monitoring events;
- Summary of historical and 2023 groundwater testing results;
- TCEQ MSW Permits Section Groundwater Sampling Reports for both semiannual events;
- Reports of laboratory analyses/chain-of-custody documentation for both monitoring events; and
- Recommendations for the FACILITY 2024 post-closure groundwater monitoring program.

Unless otherwise directed, **RKI** will prepare and submit one original report hardcopy and one report copy to the TCEQ MSW Permits Section. Additionally, one report hardcopy will be submitted to the TCEQ Region 12 office located in Houston, Texas. Original hardcopies and an electronic (PDF) version of the report will also be prepared and provided to the CoT Director of Public Works.

### **TASK 3 – Annual Inspection and Reporting**

In accordance with MSW Permit No. 1140A requirements set forth in *Section 3.3.11*, a **RKI** P.E. currently licensed with the State of Texas will conduct an annual inspection of the FACILITY utilizing an inspection report form specific to the FACILITY that was previously adapted from applicable U.S. Environmental Protection Agency (EPA) templates. The comprehensive inspection, which will be performed on foot and documented with photographs, will address all major categories of potential post-closure concern (i.e.,



cap maintenance, erosion control, condition of FACILITY infrastructure [landfill gas vents and probes, groundwater monitoring well network, etc.], site access, etc.). Primary categories of potential post-closure concern will be recorded on the inspection report form to document inspection findings and provide a basis for associated engineering recommendations to the CoT.

The brief letter report signed and sealed by the P.E., describing inspection methods and findings and offering associated recommendations (and with supporting documentation attached), will be prepared and submitted to the CoT for placement in the FACILITY operating files. The report will include a description of the FACILITY and inspection methods; inspection findings documented on (i) the inspection report form, (ii) a FACILITY map, and (ii) photographs provided as attachments; in addition to associated engineering recommendations.

It is possible that the TCEQ may elect to independently inspect the FACILITY at some point during the 2023 post-closure care period. If requested by the CoT or TCEQ in conjunction with a FACILITY inspection, copies of the 2023 inspection report will also be submitted to the TCEQ Municipal Solid Waste Permits Section and/or Region 12 offices.

#### **COST AND SCHEDULE**

**RKI** will provide the above scope of services for a **LUMP SUM FEE of \$40,300.00**. In the event that additional services are requested by CLIENT and/or necessary to comply with TCEQ directives, **RKI** will provide a cost estimate under separate cover and solicit authorization from CLIENT before proceeding with additional work. Authorized additional costs 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.

Pending CLIENT approval, semiannual groundwater monitoring activities described above will be conducted in June and December 2023, with annual report delivery to CLIENT and submittal to the TCEQ during the first quarter of 2024. In a manner similar to the 2022 post-closure care program, the annual landfill inspection will be conducted in March or April 2023.

#### **ASSUMPTIONS**

The following assumptions were made regarding the proposed scope of services and associated costs:

- Upon scheduling notification provided by **RKI**, CLIENT will provide access to the FACILITY, its surroundings and the CoT wastewater treatment plant as necessary to perform the groundwater 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.
- Costs for analytical testing are predicated a standard (10 business day) turnaround time.



### **SCHEDULE OF FEES FOR PROFESSIONAL SERVICES**

<b><u>PERSONNEL:</u></b>	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.