

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT is dated as of the 15 day of June in the year 2007 by and between City of Jonesboro (hereinafter called OWNER) and SCS Engineers, dba SCS Field Services (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of Landfill Gas Collection and Control System at the City of Jonesboro Strawfloor Road landfill including site preparation and grading, installation of landfill gas collection wells and transmission piping, installation of landfill gas blower and flare system, and landfill gas condensate transportation and storage system.

**ARTICLE 2. ENGINEER**

The Project has been designed by FTN Associates, Ltd., Little Rock, Arkansas, who is hereinafter called ENGINEER, and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIME**

3.1 The Work will be substantially completed within 120 days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 within 150 days after the date when the Contract Time commences to run.

3.2 Liquidated Damages.

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer direct financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time, since time is of the essence. Accordingly, instead of requiring any such proof, CONTRACTOR agrees to

compensate Owner, as liquidated damages for delay (but not as a penalty), the amount of five hundred dollars (\$500) for each calendar day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. If after Substantial Completion, CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for Final Completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER five hundred dollars (\$500) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment until the Work is completed.

#### **ARTICLE 4. CONTRACT PRICE**

4.1 Upon execution of the Agreement, the TOTAL BID PRICE, as indicated on the Bid Schedule shall become the CONTRACT PRICE. The CONTRACT PRICE may only be changed in accordance with the provisions of the General Conditions and Supplementary Conditions. OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the estimated percentage completed for each separately identified item as presented in the Bid Schedule, which is part of the Bid Form attached to this Agreement and incorporated herein by reference.

4.2 As provided in paragraph 11.9 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.10 of the General Conditions.

#### **ARTICLE 5. PAYMENT PROCEDURES**

CONTRACTOR shall submit an Application for Payment each month in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, within 45 days of receipt by OWNER of Application for Payment recommended by Engineer. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements (Division 1 of the Specifications).

5.1.1 Prior to final completion and acceptance of the Work, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

- 90% of the value of the Work completed (with the balance being retainage).
- 90% (with the balance being retainage) of the value of materials and

equipment not incorporated in the Work, but delivered and suitably stored (and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions). Payment for such material and equipment will be accounted for on the Applications for Payment as equivalent quantities or percentages of applicable work completed based on Contract unit prices or Contract lump sum prices, as appropriate. CONTRACTOR shall provide all necessary backup to support such estimates.

5.1.2 If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the retainage shall continue as 10% of 50% of the value of the Work.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price including the retainage amount defined in paragraph 5.1.1 of this Agreement. The CONTRACTOR shall obtain a maintenance bond for the amount of \$101,100 (10% of the Contract Price) for the one-year correction period after Substantial Completion, as provided in paragraph 13.12 of the General Conditions, as long as the required corrections are accomplished.

## **ARTICLE 6. INTEREST**

Delete Article in its entirety.

## **ARTICLE 7. CONTRACTOR'S REPRESENTATIONS**

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may effect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities)

which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

7.5 CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.6 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.7 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site and reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.8 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 8. CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages 1 to 6, inclusive).
- 8.2 General Conditions.
- 8.3 Supplementary Conditions.
- 8.4 Performance, Payment and other Bonds, identified as Exhibits A and B.
- 8.5 Notice of Award and Notice to Proceed.
- 8.6 Specifications, as listed in the Table of Contents of the Project Manual.

8.7 Drawings (not attached to this Agreement), as identified in Exhibit C to this Agreement, "List of Drawings", bearing the following general title:

General Information  
Site Plan  
Proposed Landfill Gas Extraction System  
Landfill Gas Extraction Well Details and Schedule  
Landfill Gas Extraction System Details  
Condensate Sump Details  
Blower/Flare Station Grading Plan  
Condensate Storage Tank Details

8.8 Addenda numbers 1 to 5, inclusive.

8.9 CONTRACTOR's Bid (pages 00300-1 to 00300-7, inclusive) marked Exhibit D.

8.10 Documentation submitted by CONTRACTOR prior to Notice of Award.

8.11 Other Exhibits to this Agreement.

8.12 The following which may be delivered or issued after the Effective Date of the Agreement are not attached hereto: All documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

## **ARTICLE 9. MISCELLANEOUS**

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in

respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 Other provisions.

No other provisions.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in three counterparts, each of which shall be deemed an original.

This agreement will be effective on June 15th (which is the Effective Date of the Agreement).  
2007

CONTRACTOR Stearns, Conrad and  
Schmidt, Consulting Engineers, Inc.  
dba SCS Field Services

OWNER City of Jonesboro

By: [Signature]  
Thomas W. A. Barham  
Title: Senior Vice President

[SEAL]

Attest [Signature]

Address for Giving Notices:

11260 Roger Bacon Drive, Suite 300  
Reston, Virginia 20190

Agent for service of process: The Corporation Company  
425 West Capitol Avenue, Suite 1700, Little Rock, AR 72201  
(If CONTRACTOR is a corporation, attach evidence of  
authority to sign.)

END AGREEMENT