

## AGREEMENT

This Agreement is dated as of the <sup>th</sup> 19 day of July, 2004, by and between the City of Jonesboro hereinafter called "Owner" and Gateway Engineering Company hereinafter called "Contractor".

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Contractor shall furnish labor, materials and equipment to decommission sixteen (16) monitoring wells for the City of Jonesboro.

### **ARTICLE 1. WORK:**

Contractor shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows: To decommission Sixteen Monitoring Wells (16) at the City of Jonesboro's class IV landfill.

### **ARTICLE 2: CONTRACT TIME:**

1 The Work included in this contract shall be completed within six weeks.

### **ARTICLE 3. CONTRACT PRICE.**

1 The Owner shall pay Contractor for completion of the work in accordance with the contract documents in current funds as follows:

A lump sum contract price of \$ 7300.00 dollars.

### **ARTICLE 4.CONTRACTOR'S REPRESENTATIONS.**

In order to induce owner to enter into this agreement, contractor makes the following representations:

1. Contractor has familiarized itself with the nature and extent of the contract documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work. Contractor covenants and agrees to comply with all applicable laws, statutes, regulations, ordinances and permits relating to the performance of this contract.
2. Contractor has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions, and accepts the determination of the extent of the technical data contained in such reports and drawings upon which contractor is entitled to rely.

3. Contractor has obtained and carefully studied, or assumes responsibility for obtaining and carefully studying, all such examinations, investigations, explorations, tests, reports and studies, in addition to or to supplement those referred to in paragraph 6.2 above, which pertain to the subsurface or physical conditions may or contiguous to the site or otherwise that may affect the cost, progress, performance or furnishing of the work as contractor considers necessary for the performance or furnishing of the work at the contract price within the contract documents. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by contractor for such purposes.

4. Contractor has reviewed and checked all information and data shown or indicated on the contract documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examination, investigations, explorations, tests, reports, studies or similar information or data with respect to said underground facilities are or will be required by contractor in order to perform and furnish the work at the contract price, within the contract time and in accordance with the other terms and conditions of the contract documents.

5. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the contract documents.

6. Contractor has given owner written notice of all conflicts, errors or discrepancies that he has discovered in the contract documents and the written resolution thereof by owner is acceptable to contractor.

#### **ARTICLE 5. CONTRACT DOCUMENTS.**

1. The invitation to bid, instructions to bidders, bid form and contractor's bid are included in this contract and made a part hereof.

2. The following which may be delivered or issued after the effective date of the agreement and are not attached hereto. All written amendments and other documents amending, modifying or supplementing the contract documents pursuant to the provisions of this agreement and the general conditions, including any written change orders and written field orders.

3. There are no contract documents other than those listed above in no. 1. The contract documents may only be amended, modified or supplemented as provided in the general conditions and the provisions of this agreement.

#### **ARTICLE 6. MISCELLANEOUS**

1. Terms used in this agreement which are defined in the general conditions will have the meanings indicated in the general conditions.

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 monies that may become due and monies 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. 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.

3. Owner and contractor each binds themselves, their partners, successors and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the contract documents.

4. Nondiscrimination: Contractor agrees to comply with all applicable federal and state laws and regulations regarding nondiscrimination, and specifically agrees not to discriminate against any individual because of race, religion, sex, national origin or disability, and to require such compliance in contractual agreements with subcontractors and subcontractors.

5. Contractor agrees to comply with the Americans with Disabilities Act and the Equal Employment Opportunity Act, as well as regulations promulgated pursuant thereto, and to require such compliance in contractual agreements with subcontractors and subcontractors.

6. Modification. Any modification to this contract shall be in writing, signed by all parties to the contract.

7. All change orders and field orders shall be executed by the owner, individuals authorized to execute such change orders and field orders are the owner's project coordinator, city manager, or their appointee.

8. This contract is governed by the laws of the State of Arkansas.

9. Nothing contained in the contract documents shall create a contractual relationship with, or cause of action in favor of, a third party against the owner or contractor.

10. Independent contractor: It is expressly agreed that contractor is acting as an independent contractor in performing the services specified herein. The owner shall carry no workers' compensation insurance, health or accident insurance to cover the contractor or contractors employees for any type of loss which might result to the contractor or the contractors employees in connection with the performance of the work set forth in this agreement. The owner shall not pay any contribution to social security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might otherwise be expected in an employer-employee relationship, it being specifically agreed that the contractor is not acting herein as an employee of owner, but shall, at all times, and in all respects, have the rights and liabilities of an independent contractor.

11. Severability: In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of the contract documents is declared or adjudged to be

invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of the contract documents, as if such invalid or unconstitutional provision was not originally a part of the contract documents.

12. The statute of limitation period shall be tolled for any fraudulent act committed by the contractor that the owner cannot discover upon due diligence,

13. The officials who have executed this contract hereby represent and warrant that they have full and complete authority to act on behalf of the owner and contractor, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

14. This agreement shall be executed in the original, and any number of copies. Any copy of this agreement so executed shall be deemed an original, and shall be deemed authentic for any other use.

15. Nothing stated within the contract documents shall be construed as limiting the owners immunity from liability in tort.

16. The owner does not agree with or consent to arbitration or mediation of disputes relating to this agreement or project.

17. The contractor agrees that it shall indemnify and save harmless the owner, its officers, agents, and employees from any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this agreement.

18. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, disability or national origin. The contractor will take appropriate action to insure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and agrees to post in conspicuous places, available to employees, such notices as may be provided by the owner setting forth provisions of this nondiscrimination clause. Contractor agrees to comply with the Americans with Disabilities Act, and regulations promulgated pursuant thereto, as relates to the performance of this contract.

19. No waiver of enforcement of contract provisions. Failure of the owner to enforce at any time any of the provisions of this agreement, or to require at any time performance by the contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this agreement, or any part thereof, or the right of the owner to thereafter enforce each and every such provision.

20. Entire Agreement: The contract documents contain the complete and entire agreement of the

parties respecting the transactions contemplated herein, and supersede all prior negotiations, agreements, representations, and understanding, if any, among the parties regarding such matters. All prior or contemporaneous agreements, understandings and statements, oral or written, are merged in the contract of documents.

21. Captions. All captions contained in the contract documents are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of the contract documents.

#### **ARTICLE 7. INSURANCE AND BONDING**

1. The contractor shall provide a performance bond according to Arkansas law, insuring the owner of the performance of all of the terms, provisions and stipulations of this Agreement. The contractor shall also provide a payment bond, according to Arkansas law. Said bonds shall be issued by a company duly authorized to transact such business within the State of Arkansas. Said performance and payment bonds shall be acquired and delivered to the owner prior to the issuance of the notice to proceed.

2. The Contractor shall furnish the Owner with a certificate of insurance naming the city as an insured on a policy of insurance indemnifying and insuring the city. Such insurance shall be acquired and the certificate delivered to the owner prior to the issuance of the Notice to Proceed. **The contractor shall give the owner thirty days advance written notice of any cancellation reduction or modification for such issuance.**

**IN WITNESS WHEREOF**, owner and contractor have signed this Agreement in duplicate. One counterpart each has been delivered to owner and contractor. All portions of the contract documents have been signed or identified by owner and contractor.

**THIS AGREEMENT** will be effective on the 19<sup>th</sup> day of July, 2004.

**CONTRACTOR**

**GATEWAY ENGINEERING COMPANY**

BY Quynh Shung