

AGREEMENT FOR
PROFESSIONAL SERVICES FOR
MISCELLANEOUS ENGINEERING SERVICES - SOLID WASTE

NASSAU COUNTY, FLORIDA

THIS AGREEMENT entered into this 26th day of January, 2004, by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **KESSLER CONSULTING, INC.**, a Florida corporation, hereinafter referred to as the "Consultant", whose address is 14620 North Nebraska Avenue, Building D, Tampa, FL 33613.

In consideration of the mutual promises contained herein, the County and the Consultant agree as follows:

ARTICLE 1 - SERVICES

The Consultant's responsibility under this Contract is to provide professional/consultation services for Solid Waste Operations Services, and to perform and complete the work specifically set forth in the attached Scope of Work.

Phase II may be negotiated by the parties upon completion of Phase I.

Services of the Consultant shall be under the general direction of a County representative, as determined by the Board of County Commissioners, who shall act as the

County's representative during the performance of this Contract.

ARTICLE 2 - SCHEDULE

The County and the Consultant shall approve in writing schedules, which will become a part of this Agreement.

ARTICLE 3 - PAYMENTS TO CONSULTANT

A. The County shall pay to the consultant for services satisfactorily performed for Phase I the amount of ~~\$38,500~~ 45,000. The Consultant will bill the County on a monthly basis or as otherwise agreed. The amounts billed shall represent the approximate completion of services outlined in the Scope of Work contained in various phases. The amount of compensation for Phase II shall be negotiated by the parties and agreed to in writing.

B. Invoices shall be sent to the Clerk with copies to the County's representative and will be reviewed by the County's representative, indicating that services have been rendered in conformity with the contract. Invoices must reference this Contract and the task order against which the Consultant is billing.

C. Final Invoice per Phase: In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the County, this

indicates that all services have been performed and all charges and costs have been invoiced to the County and that there is no further work to be performed on the specific task order.

D. Contract Phase: Value of this Contract is based on contract Phases, each Phase shall have its own specific value on a "stand alone" basis.

E. Labor Unit rates shall be established at the beginning of this Contract and may be adjusted annually.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

The signing of this Contract by the consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of the Contract.

ARTICLE 5 - TERMINATION

It may be terminated by the County, with or without cause, immediately upon written notice to the Consultant.

Unless the Consultant is in breach of this Contract, the Consultant shall be paid for services rendered to the County's satisfaction through the date of termination. After receipt of a Termination Notice and, except as otherwise directed by the County, the Consultant shall:

- A. Stop work on the date to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the County.

ARTICLE 6 - PERSONNEL

The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the County.

All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under State and local law to perform such services.

Any changes or substitutions in the consultant's key personnel, as may be listed in Exhibit "B", must be made known to the County's representative and written approval granted by the County before said change or substitution can become effective.

The Consultant warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 7 - SUBCONTRACTING

The Consultant warrants that any subcontractor shall be fully qualified and licensed, if required, in the particular field.

ARTICLE 8 - AVAILABILITY OF FUNDS

The obligations of the county under this Contract are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Nassau County.

ARTICLE 9 - INSURANCE

A. The Consultant shall not commence work under this Agreement until it has obtained all insurance required under this Paragraph, and such insurance has been approved by the County.

B. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Consultant shall furnish Certificates of Insurance to the County prior to the commencement of operations. The Certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount, and classification as required for strict

compliance with this Paragraph, and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the County. Compliance with the foregoing requirements shall not relieve the consultant of its liability and obligations under this Contract.

C. The Consultant shall maintain, during the term of this Contract, standard Professional Liability Insurance in the Amount of \$1,000,000.00 per occurrence.

D. The Consultant shall maintain, during the term of this Contract, Comprehensive General Liability Insurance in the amount of \$1,000,000.00 per occurrence to protect the Consultant from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages, which may arise from any operations under this Contract, whether such operations be by the Consultant or by anyone directly employed by or contracting with the Consultant.

E. The Consultant shall maintain, during the term of this Contract, Comprehensive Automobile Liability Insurance in the amount of \$100,000.00 combined single limit for bodily injury and property damage liability to protect the Consultant from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and

non-owned automobiles, including rented automobiles whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant.

F. The Consultant shall maintain, during the term of this Contract, adequate Workers' Compensation Insurance and Employers' Liability Insurance in at least such amounts as are required by law for all of its employees pursuant to Florida Statutes, Section 440.02.

G. All insurance, other than Professional Liability and Workers' Compensation, maintained by the Consultant, shall specifically include the county as an "Additional Insured".

ARTICLE 10 - INDEMNIFICATION

The Consultant shall indemnify and hold harmless the County, and its Officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and/or any persons employed or utilized by the Consultant in the performance of the Contract.

ARTICLE 11 - SUCCESSORS AND ASSIGNS

The County and the Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party, in respect to all covenants of

this Contract. Except as set forth herein, neither the County nor the consultant shall assign, sublet, convey, or transfer its interest in this Contract 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 the county, which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Consultant.

ARTICLE 12 - CONFLICT OF INTEREST

The consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the County in writing by certified mail of any potential conflicts of interest for any prospective business association, interest, or other circumstance, which may influence or appear to influence the consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work

that the Consultant may undertake and request an opinion of the County, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by the Consultant.

The County agrees to notify the Consultant of its opinion by certified mail within thirty (30) days of receipt of notification by the Consultant. If, in the opinion of the County, the prospective business association, interest, or circumstance would not constitute a conflict of interest by the Consultant, the County shall so state in the notification, and the Consultant shall, at his/her option enter into said association, interest, or circumstance, and it shall be deemed not in conflict of interest with respect to services provided to the County by the Consultant under the terms of this Contract.

ARTICLE 13 - TIME

Time is of the essence, and the County and the consultant shall negotiate a time frame for completion of the Phases, and said time frame shall be attached as Exhibit A.

ARTICLE 14 - FINANCIALS

The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 15 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The Consultant shall deliver to the County for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the County under this Contract.

All drawings, maps, sketches, and other data developed or purchased under this Contract or at the County's expense shall be and shall remain the County's property and may be reproduced and reused at the discretion of the County.

The Consultant shall comply with the provisions of Florida Statutes, Chapter 119 (Public Records Law).

ARTICLE 16 - INDEPENDENT CONTRACTOR RELATIONSHIP

The Consultant is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times and in all places be subject to the Consultant's sole direction, supervision, and control.

The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and, in all respects the Consultant's relationship and the relationship of its employees to the County, shall be that

of an Independent Contractor and not as employees or agents of the County. The Consultant does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Contract.

ARTICLE 17 - CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the consultant to solicit or secure this Contract, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 18 - ACCESS AND AUDITS

The Consultant shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the Work for at least three (3) years after completion of this Contract. The County and the Clerk shall have access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the County's or the Clerk's cost, upon five (5) days' written notice.

ARTICLE 19 - NONDISCRIMINATION

The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age, or national origin.

ARTICLE 20 - ENTIRETY OF CONTRACTUAL AGREEMENT

The County and the Consultant agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Contract shall be in effect for one (1) year from the day of acceptance by the County, and may be extended after negotiations with the Consultant, if approved by the Board of County Commissioners for two (2) additional one (1) year increments. None of the provisions, terms, and conditions contained in this Contract may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 21 - AUTHORITY TO PRACTICE

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 22 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such item(s) or provision(s), to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other item and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 23 - AMENDMENTS AND MODIFICATIONS

No task orders and/or modifications of this Contract shall be valid unless in writing and signed by each of the parties. All amendments and modifications shall be in the form of a change order or task order.

The County reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the County's notification of a contemplated change, the Consultant shall: (1) if requested by the County, provide an estimate for the increase or decrease in costs due to the contemplated change; (2) notify the county of any estimated change in the completion date; and (3) advise the County in writing if the contemplated change shall effect

the Consultant's ability to meet the completion dates or schedules of this Contract.

If the County so instructs in writing, the Consultant shall suspend work on that portion of the work affected by a contemplated change, pending the County's decision to proceed with the change.

If the County elects to make the change, the County shall issue a task order for changes to a task in progress or a contract change order if the original contract is being changed or amended, and the Consultant shall not commence work on any such change until such written task order or change order has been issued and signed by each of the parties.

ARTICLE 24 - ENUMERATION OF CONTRACT DOCUMENTS

The Contract Documents, except for modifications issued after the execution of this Contract, shall be enumerated in each task order.

ARTICLE 25 - FLORIDA LAW

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Contract shall be held in Nassau County.

ARTICLE 26 - DISPUTES

Any dispute arising under this Contract shall be addressed by the representatives of the County and the

Consultant as set forth herein. Disputes shall be set forth in writing and provided by overnight mail, UPS, FedEx, or certified mail, with a response provided in the same manner prior to any meetings of representatives. The initial meeting shall be with the County Representative and any additional representative(s) he/she deems necessary and the Consultant's representative(s). If the dispute is not settled at that level, the Board of County Commissioners shall be notified in writing by the County Representative, and the Board of County Commissioners shall designate representatives to meet with the Consultant's representative(s). Said meeting shall occur within sixty (60) days of the Board of County Commissioners' designating its representatives. Claims disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, if not disposed of by agreement as set forth herein, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County from the Supreme Court approved list of mediators in the Fourth Judicial Circuit and the Cost of mediation shall be borne by the Consultant. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of

mediation shall be borne by the Consultant. Consultant shall not stop work during the pendency of mediation or dispute resolution.

ARTICLE 27 - NOTICE

All notices required in this Contract shall be sent via certified mail, return receipt requested, and, if sent to the County shall be mailed to:

J. M. "Chip" Oxley, Jr.
Post Office Box 456
Fernandina Beach, FL 32035-0456

For invoices:

J. M. "Chip" Oxley, Jr.
Post Office Box 4000
Fernandina Beach, FL 32035-4000

And, if sent to the Consultant, shall be mailed to:

Mr. Mitch Kessler
President
Kessler Consulting, Inc.
14620 North Nebraska Ave., Bldg. D.
Tampa, FL 33613

ARTICLE 28 - HEADINGS

The heading preceding the several Articles and Sections hereof are solely for convenience of referenced and shall not constitute a part of this Contract or affect

its meaning, construction, or effect.

ARTICLE 29

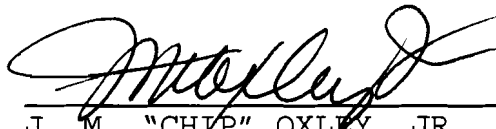
Time is of the essence.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



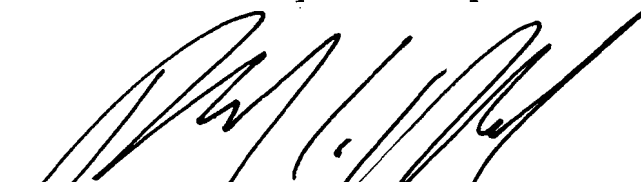
FLOYD L. VANZANT
Its: Chairman

ATTEST:




J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney



MICHAEL S. MULLIN

CONSULTANT:
KESSLER CONSULTING, INC.



MITCH KESSLER
Its: President

h/anne/agreements/Kessler-solid-waste

**Scope of Work
for
Nassau County, Florida**

SOLID WASTE DISPOSAL OPTIONS EVALUATION

I. Background and Purpose

Nassau County owns and operates a solid waste landfill, and owes nearly \$16 million on a \$20 million landfill bond. The County disposes of approximately 200 tons of solid waste per day, and also receives a variable amount of out-of-county waste for disposal. It has been estimated that the landfill has four to six years of capacity remaining, with the longer projection achieved only if the County makes certain operational changes, such as reducing the amount of daily cover material, increasing waste compaction, and limiting the amount of out-of-county waste accepted. Given this situation, Nassau County will soon need to make a long-term policy decision regarding future management and disposal of its solid waste.

Kessler Consulting, Inc. (KCI) proposes to assist Nassau County in evaluating its disposal options in order to make this policy decision. This scope of work is divided into two phases, with the work to be conducted in Phase II determined by the results and decisions reached in Phase I. KCI will coordinate with County management and staff throughout the project to ensure that the scope properly reflects the County's needs and objectives.

II. Scope of Work

Phase I Evaluation of Current Landfill Operations and Future Disposal Options

Task 1 – Project Initiation and Planning

KCI will kick off the project with a project initiation and planning meeting with appropriate County representatives. The purpose of this meeting will be to clarify the County's objectives and identify principal players in the County and their roles in this project. In particular, KCI needs to clearly understand the work previously conducted by the County's contracted engineer and the role this firm and its subcontractors will play in the assessment of current landfill operations and development of short-term operational and engineering improvement. KCI also will request information regarding the County's project administrator and the primary points of contact within the County solid waste and legal departments.

This meeting will be very important in that the focus of the project will be established and the KCI/County partnership team, which will work together to develop short-term and long-term solid waste disposal solutions for Nassau County, will be defined.

Task 2 – Landfill Operational Assessment

The purpose of this task will be to develop a clear summary of current landfill operations and develop short-term engineering and operational modifications to improve the facility's efficiency and cost-effectiveness. Given the fact that the County has a landfill engineer under contract, this assessment will include a limited amount of new engineering analysis. Rather, it will entail a general review of previous engineering work and a broader look at overall operations, financial arrangements, and waste flow, in order to identify the key issues and barriers impacting the efficient and cost-effective operation of the landfill. Information that will be requested of the County for review may include, but would not be limited to, tonnage records, disposal agreements with private haulers or other government jurisdictions, traffic counts, permit information, compliance records, and operations records.

At the completion of this review, KCI will provide the County with a preliminary assessment of its findings. This will include a summary of the flow of waste to the facility, the current status of landfill operations, the potential ramifications of continuing these operations, and modifications for consideration.

Task 3 – Analysis of Disposal Options

Subtask 3.1 – Identify Options. KCI will identify options that may be applicable in Nassau County for future disposal of its solid waste. Examples of options to be considered include expanding the County's existing landfill, constructing a new County-owned and operated landfill, disposing of waste in a non-County owned disposal site, or transferring waste out of the County through either a County or privately owned transfer station. Emphasis will be placed on management of solid waste generated within the County, acknowledging that certain options also may include handling out-of-county waste. KCI will provide the County with a final list of options that will be evaluated.

Subtask 3.2 – Evaluate Options. KCI will evaluate the applicability and potential impacts of the options identified in Subtask 3.1. The evaluation of options will be primarily qualitative, and will include a discussion of advantages and disadvantages. To the extent feasible, the assessment will also include potential costs and benefits to the County of each option. As appropriate, meetings with companies or governmental entities that might be interested in managing or disposing of the County's solid waste will be conducted to assess the entity's interests and capabilities. Activities to be conducted during this subtask include, but are not limited to, the following:

- Researching solid waste disposal operations or agreements in other appropriate Florida jurisdictions for comparison purposes and to identify successful approaches.
- As appropriate, meetings with representatives from other governmental entities or private companies to determine their interest and capability to manage Nassau County's solid waste.
- Analysis of the disposal options identified in Subtask 3.1, and any additional options identified while conducting research as part of this subtask.

- Meetings or conference calls with County management and staff to discuss project progress and findings to date.

Subtask 3.3 – Develop Recommendations. Based on the results of the evaluations in Subtask 3.2, KCI will provide recommendations to the County regarding the strategy that it deems most beneficial to the County for securing long-term disposal of solid waste. Activities to be conducted during this subtask include, but are not limited to, the following:

- Preparation of a draft report summarizing the analysis of options and providing recommendations.
- Review of the draft report and recommendations with County management and staff.
- Preparation of a final report and planning for next steps.
- Presentation of the final report and recommendations to County management and staff.

Phase II Implementation of Selected Strategy

Performance of this phase will be contingent on the strategy selected by the County as a result of Phase I. Given the variability of the options available, it is impossible to develop a detailed scope of work for this phase at this time. Phase II tasks could range from implementation of a landfill optimization program to conducting a procurement process for transfer or disposal services to developing a detailed plan for a transfer station.

III. Deliverables

A list of deliverables for Phase I of the project is provided below. Anticipated deliverables for Phase II will be provided with a detailed scope of work for that phase following completion of Phase I.

- Assessment of current landfill operations and recommendations for short-term engineering or operational improvements.
- List of disposal options available to Nassau County.
- Coordination of and participation in any meetings with other governmental entities or private sector companies to obtain information relevant to the analysis of options.
- Draft and final report of the evaluation of the identified disposal options and providing recommendations regarding the strategy that KCI believes is in the best interest of the County.
- Presentation and discussion of disposal options, recommended strategy and next steps.
- Up to five meetings with appropriate County management or staff.

IV. Estimated Budget and Schedule

Because of the nature of this project, the level of effort required to complete the various tasks will depend upon decisions made by the County during the course of the project. Therefore, KCI proposes to conduct Phase I on a time-and-materials basis for an amount not to exceed \$45,000 without prior approval by the County. This estimate assumes that limited engineering analysis will be conducted as part of Phase I. The estimated budget includes labor and expenses. A copy of our rates is attached; all expenses will be billed at cost without markup

Provided below is a project schedule. KCI anticipates that Phase I of the project can be completed within five of authorization to proceed, depending upon the availability of the County and other entities relevant to this project to meet or provide needed information.

Proposed Project Timeline

	Month 1	Month 2	Month 3	Month 4	Month 5
Task 1 – Project Initiation	■				
Task 2 – Landfill Operational Assessment	■	■			
Task 3.1 – Identify Disposal Options	■	■	■		
Task 3.2 – Evaluate Options		■	■	■	
Task 3.3 – Develop Recommendations				■	■

Phase II is contingent upon the results of Phase I, and the exact services to be provided may vary depending upon the decisions made by the County. Therefore, KCI will provide a detailed scope of work, including a budget and schedule, once such a decision is reached.

Attachment

Kessler Consulting, Inc.

2004 RATES

Labor: Professional services will be provided at the billing rates set out below. These rates include all overhead and direct and indirect costs. KCI shall provide additional personnel as needed and approved by the Client to perform the services specified by the contract. KCI invoices monthly for work completed, and payment is due upon receipt of the invoice.

POSITION	RATE
Project Director	\$110 - \$135/hour
Project Manager	\$90 - \$110/hour
Senior Consultant	\$75 - \$90/hour
Consultant	\$60 - \$75/hour
Research Analyst	\$45 - \$60/hour
Technical Support	\$30 - \$45/hour

Expenses: All expenses (travel, copies, postage, telephone, etc.) will be billed to the client at cost without markup as per Sections 112.061 (7) and (8), of Florida Statutes.