

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made this 4th day of January, 1978, by and between

The City of Grand Junction and Mesa County

hereinafter called the Client, and NELSON, HALEY, PATTERSON and QUIRK, INC., hereinafter called the Consultant, collectively referred to as the Parties.

The services to be performed hereunder are incidental to the following PROJECT:

The Orchard Mesa Landfill Site Development and Operation Plan (Part One) and Solid Waste Management Planning at Fruita and Bookcliff Landfills (Part Two).

WITNESSETH: That for and in consideration of the mutual covenants and agreements hereinafter contained, the Parties hereto have mutually agreed and do agree as follows:

ARTICLE I. SERVICES BY THE CONSULTANT — The Consultant agrees to perform all services, hereunder, using reasonable skill and judgment in accordance with sound business and professional standards. He agrees to keep the Client thoroughly informed of his progress through periodic reports, and to maintain accurate records relating to his services in connection with this project.

The Consultant agrees to provide, directly or by association with such other Consultants or Contractors as it may deem necessary to further the interest of the Client, the following basic services:

- 1.1 Develop data and prepare in report form suitable for submittal to the Bureau of Land Management, Environmental Protection Agency and State Department of Health required environmental and base line data needed to obtain leases for a new sanitary fill at Orchard Mesa. Items shall include detailed topographic mapping of the site, groundwater evaluation, storm drainage, geologic characteristics, climate characteristics, plant and animal life, and resource recovery considerations.
- 1.2 Prepare a Site Development and Operation Plan for submittal to the above mentioned Federal and State agencies for the new Orchard Mesa Sanitary Landfill. This will include drawings which show trenching locations and patterns, equipment and manpower needs, safety and hazard considerations, access roads, fencing, and other details for the best operation of the landfill.
- 1.3 Conduct a study of the Fruita and Bookcliff Landfill operations to determine if these landfills should be continued and expanded, combined at either site or at Orchard Mesa in order to best serve future needs. This will entail investigation of centralized collection points and to a lesser extent possible alternatives such as resource recovery. Costs of future operation to meet future landfill requirements will be developed by this study based on current cost records and existing population projections.
- 1.4 It is understood that City and County existing records will be fully utilized for this work. It is also expected that to reduce Consultant costs that City and County Staff will gather some of the required information and provide survey

field work. The Consultant expects to coordinate this work and to include the results of this work in the completed study and reports. A description of work to be performed by the Client is defined in Article 3.

- 1.5 It is also understood that in order to gain economies in travel and personnel that both Parts One and Two will be performed and scheduled by the Consultant to minimize the costs of personnel from other CE Tec locations.

ARTICLE 2. ADDITIONAL OR SPECIAL SERVICES –The following additional or special services, which are outside the scope of basic services as above described, shall be performed by the Consultant upon authorization from the Client and paid for as hereinafter provided:

2.1 None

ARTICLE 3. RESPONSIBILITIES OF THE CLIENT

- 3.1 The Client shall provide and make available to the Consultant, for his use, all maps, property descriptions, surveys, previous reports, historical data, and other information within its knowledge and possession relative to the services to be furnished hereunder, and shall provide full programming requirements. Data so furnished to the Consultant shall remain the property of the Client and will be returned upon completion of its services.
- 3.2 The Client shall designate a representative who shall be fully acquainted with the Project and who has authority to render decisions relative to the Consultant's services as necessary for the orderly progress of the work. The representative shall be responsible for receiving and processing all information and documentation relative to the project in behalf of the Client.
- 3.3 The Client shall establish and maintain procedures for receiving, reviewing, recording, and acting on all information, documentation, payments, and acceptances of work and services relative to this project in an expeditious and proper manner.
- 3.4 The Client shall guarantee access and make provisions for the Consultant to enter upon public and private properties as required for the Consultant to perform its services hereunder.
- 3.5 In order to reduce costs of this work the Client has agreed to perform certain tasks which are identified as follows:
 - A. Target and survey horizontal and vertical control for air photo control points at locations designated by the Consultant on a 7-1/2 minute quad sheet.
 - B. Provide an engineering technician to gather, mark, and preserve soils samples and to log test holes during subsurface soils drilling, the Consultant will provide supervision and direction of this work and will locate all the test hole sites.
 - C. Gather information on the location, depth, use, water quality and size of existing wells within two miles of the landfill site.
 - D. Gather climate data from existing records applicable to the site in terms of temperature, precipitation and evaporation by month and annual average.
 - E. Provide plant and animal inventories and results of previous historic and archaeological site surveys.
 - F. Provide an engineering technician to measure and record the amounts of solid waste deposited at the Orchard Mesa, Fruita and Bookcliff Landfills. This work will need to be done on weekends as well as week days. The organization of this work will be the responsibility of the Consultant.

ARTICLE 4. TIME OF PERFORMANCE - The services to be provided under this Agreement shall, unless otherwise provided, be commenced upon execution of this Agreement and be performed in general accordance with the following schedule:

The services will be completed and submitted to the Owner within four months of the date work is authorized to proceed. Part One work will receive priority for completion unless directed differently by the Client.

ARTICLE 5. REMUNERATION FOR SERVICES – The Client agrees to compensate the Consultant in accordance with the following schedule, and the Terms and Conditions of this Agreement:

5.1 For Basic Services as described in Article 1, remuneration shall be made on the following basis:

The cost of these services shall be based on the actual number of hours required to perform the work and the hourly charges listed below. In no event will the cost exceed \$30,000.00 for Part One and \$14,575.00 for Part Two. Travel, per diem, lodging, soils boring equipment rentals, printing and reproduction costs shall be charged at cost.

HOURLY CHARGES CLASSIFICATION	RATE	CLASSIFICATION	RATE
Senior Engineer	\$30.00	Geologist	\$30.00
Project Engineer	25.00	Survey Crew 3 man	40.00
Design Engineer	20.00	Draftsman	15.00
Soils Laboratory Technician	25.00	Secretary	10.00

5.2 For additional or Special Services as described in Article 2, remuneration shall be made on the following basis:

5.3 In addition to the remuneration above provided, the Client shall reimburse the Consultant for the following expenses which may be incurred in connection with related services:

ARTICLE 8. INSURANCE - The Consultant shall purchase and maintain insurance to protect himself from claims under workmen's compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of his employees or of any person other than his employees; and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

ARTICLE 9. TERMINATION

- 9.1 Either party may terminate this Agreement upon seven days' written notice should the project be unreasonably delayed or should the other party be unable or fail substantially to perform in accordance with its terms through no fault of the party initiating termination. In the event of such termination, the Consultant shall be paid for services performed prior to receipt of said Notice of Termination including reimbursable expenses then incurred.
- 9.2 If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the Consultant. Otherwise, remuneration shall be based upon the applicable unit charges or costs as specified herein or, if not so specified, then upon the Consultant's direct personnel expenses times a multiple of 3.0 plus Reimbursable Expenses.
- 9.3 If termination is not due to the fault of the Consultant, the Consultant shall, in addition to remuneration for services performed hereunder prior to such termination, and Reimbursable Expenses, be entitled to an additional amount computed as ten percent of the total remuneration then due, for scheduling and assignment readjustments and related costs incurred due to termination.

ARTICLE 10. DISPUTES - As a condition precedent to the right to bring any action in court pertaining to any claim, dispute or other matter in question between the parties to this Agreement, arising out of, or relating to this Agreement or the breach thereof, the party having such claim or dispute shall first make a written offer to the other party to arbitrate the question(s) in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. If within ten days after receipt of said offer, the party to whom the offer is made does not affirmatively agree in writing to such arbitration, then the claiming party shall have no obligation to arbitrate and may pursue other remedies for relief.

ARTICLE 11. GOVERNING LAW - Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the law in effect at the location of the offices of the Consultant as hereinafter designated.

ARTICLE 12. SUCCESSORS AND ASSIGNS - The Client and the Consultant each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither party shall assign or transfer his interest in this Agreement without the written consent of the other.

ARTICLE 13. EXTENT OF AGREEMENT - This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations and representations. Nothing herein shall be deemed to create any contractual relationship between the Consultant and any other Consultant or contractor or material supplier on the project, nor to furnish any notices required under other such contracts, nor shall anything herein be deemed to give anyone not a party to this Agreement any right of action against a party which does not otherwise exist without regard to this Agreement.

5.4 An initial payment of **None**

DOLLARS (\$ 0.00)

shall be made upon execution of this Agreement and credited to the Client's account.

5.5 Unless otherwise provided herein, all payments for Basic, Additional or Special Services and for Reimbursable Expenses shall be made monthly in proportion to services performed and shall be due and payable at the Consultant's office at the address hereinafter designated upon presentation by the Consultant in accordance with this Agreement. Payments not made within 30 days of the billing date shall bear interest at the rate of 1-1/2 % per month which is an annual interest rate of 18%.

5.6 No deductions shall be made, nor any amounts retained from the Consultant's compensation on account of delays, penalties, liquidated damages, or other sums withheld from payment to Contractors.

5.7 If Direct Personnel Expense times a Multiplier is to be used as the basis for determining remuneration hereunder, the following definitions shall apply, unless otherwise provided herein:

1. Direct Personnel Expense shall include the wages or salaries of the employees of the Consultant who perform direct services as required hereunder in connection with the Project, based upon regular hourly rates charged at the actual number of hours for which time is expended.
2. The Multiplier will include payroll additives to the above hourly rates, general and administrative expense and profit of the Consultant.

5.8 If the Construction Cost is to be used as the Basis for determining remuneration hereunder, it shall be defined as the total value to the Owner of all construction designed or specified by the Consultant, whether furnished directly by the Client, its contractors, or others, at fair market rates including the cost of management of construction and a reasonable allowance for overhead and profit. Construction cost shall be determined as follows with precedence in the order listed:

1. For completed construction, the value to the Owner of all work performed.
2. For work designed or specified but not constructed, the lowest bona fide bid received from a qualified bidder.
3. Otherwise, the Consultant's latest cost estimate.

ARTICLE 6. DELAYS — If the Consultant is delayed at any time in the progress of work by any act or neglect of the Client or its agents, employees or contractors, or by changes in the work, or by labor disputes, unavoidable material delivery delays, fire, unavoidable casualties, or by any causes beyond the Consultant's control, the time schedule shall be extended for a reasonable length of time, and the remuneration schedule shall be subject to renegotiation for increased expenses due to escalation of prices, extended services, relocation or other expenses incidental to such delays.

ARTICLE 7. OWNERSHIP OF DOCUMENTS — All drawings, specifications, reports, records, and other work product developed by the Consultant in connection with this project are instruments of service for this project only and shall remain the intellectual property of the Consultant whether the project is completed or not. The Consultant shall furnish originals or copies of such work product to the Client in accordance with the services required hereunder. Reuse of any of the work product of the Consultant by the Client on extension of this project or on any other project without the written permission of the Consultant shall be at the Client's risk and the Client agrees to defend, indemnify and hold harmless the Consultant from all claims, damages, and expenses including attorneys fees arising out of such unauthorized reuse by the Client or by others acting through the Client. Any reuse or adaptation of the Consultant's work product shall entitle the Consultant to further equitable compensation.

ARTICLE 14. NOTICES - All notices and instructions given by either party to the other shall be in writing, and shall be deemed to be properly served if delivered to the address of record shown below, or if deposited in the United States Mail properly stamped with the required postage and addressed to such party at the address shown below. The date of service of a notice sent by mail shall be deemed to be the day following the date on which said notice is so deposited. Either party hereto shall have the right to change its address by giving the other party written notice thereof.

ARTICLE 15. ACCURACY OF SERVICES AND LIMITATION OF LIABILITY

15.1 The Consultant shall use reasonable professional skill and judgment in connection with services hereunder, but does not warrant that such services are without error and/or omissions. If, as a result of the authorized use and prudent interpretation of documents or advice erroneously furnished by the Consultant, an error or omission is discovered within a reasonable time, the Consultant shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided that the Consultant is given a reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself. The Consultant will not be liable for the cost of procurement of work or services performed in correcting errors and/or omissions where such work or services result in a value to the Project over and above that which the original work or services provided.

15.2 Notwithstanding the above, the Client agrees to limit the Consultant's liability to the Client and to its agents and assigns, due to the Consultant's professional negligent acts, errors or omissions, such that the total aggregate liability of the Consultant to those named shall not exceed Fifty Thousand Dollars (\$50,000) or the Consultant's total fee for services hereunder, whichever is greater.

ARTICLE 16. SPECIAL PROVISIONS -

ACKNOWLEDGEMENT OF COMPLETE AGREEMENT: This Agreement includes this and the preceding pages consecutively numbered 1 through 8 and the attachments thereto, identified as:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

CLIENT:	CONSULTANT:
By: <u>Howard Roland</u>	NELSON, HALEY, PATTERSON & QUIRK, INC.
Title: <u>Chairman, Mesa County Commissioners</u>	
<u>[REDACTED]</u>	
By: <u>Audence Lopez</u>	By: <u>M. K. [Signature]</u>
Title: <u>President of City Council</u>	Title: <u>Principal</u>
City of Grand Junction	
Address: <u>250 No. 5th St.,</u>	Address: <u>2021 Clubhouse Drive</u>
<u>Grand Junction, Colorado</u>	<u>Greeley, Colorado 80631</u>