



WASHOE COUNTY

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CM/ACM	<u>KS</u>
Finance	<u>DN</u>
DA	<u>✓</u>
Risk Mgt.	<u>DE</u>
HR	<u>N/A</u>
Comptroller	<u>MS</u>

STAFF REPORT

BOARD MEETING DATE: August 11, 2015

DATE: July 14, 2015

TO: Board of County Commissioners

FROM: Alan Jones, Project Manager, Engineering and Capital Projects
Community Services Department, 954-4651, ajones@washoecounty.us

THROUGH: Dwayne Smith, P.E., Division Director, Engineering and Capital Projects,
Community Services Department, 328-2043, desmith@washoecounty.us

SUBJECT: Recommendation to approve an Agreement for Professional Consulting Services between Washoe County and NewFields Companies, LLC, for a six month term, to provide inspection and material testing services during construction of the Huffaker Hills Effluent Storage Reservoir – Phase 2 Liner Expansion Project [\$183,199.00]. (Commission District 2.)

SUMMARY

Washoe County's Huffaker Hills Effluent Storage Reservoir is used to store treated effluent from the South Truckee Meadows Water Reclamation Facility (STMWRF). Construction of the reservoir was completed in 1991, which included a soil liner system. Historically, this liner has proved ineffective resulting in water loss. Consequently, it was decided that the facility should be rehabilitated with a liner system.

The rehabilitation of the reservoir lining system has been divided into phases. The first phase included lining the bottom 25% of the reservoir with a HDPE liner (approximately 1 million square feet) and was completed in 2007. The second phase will require the additional installation of lining to an elevation of 4525, approximately 43 ft. above the elevation of the existing Phase 1 lining. This phase represents 1.3 million square feet of HDPE liner and will result in approximately 68% of the reservoir being lined.

NewFields was contracted to design Phase 2 of the project and it is in the best interest of Washoe County to continue with NewFields to provide the inspection and material testing for the project. The scope of work includes providing construction quality assurance testing and construction oversight for the project. Quality assurance testing will include field and lab testing for the soils and the geosynthetic liner placement. Their negotiated fee is \$183,199.00.

Washoe County Strategic Objective supported by this item: Safe, secure and healthy communities.

PREVIOUS ACTION

On August 20, 2002, the Board of County Commissioners (Board) adopted the *South Truckee Meadows Water and Wastewater Facility Plan*.

On May 3, 2003, the Board accepted receipt of a status report on a request that Washoe County received from the Cities of Reno and Sparks to begin a dialogue relative to storing Truckee Meadows Water Reclamation Facility effluent at Washoe County's Huffaker Hills Reservoir.

On January 23, 2007, the Board approved a professional services contract in the amount of \$387,519 for improvements to the Huffaker Hills Treated Effluent Reservoir.

On October 16, 2007, the Board awarded a bid and approved the Contract to the lowest responsive, responsible bidder for the Huffaker Hills Effluent Storage Reservoir – Phase 1 Liner Improvements Project, A&K Earth Movers, Inc. in the amount of \$1,988,316.

On July 22, 2014, the Director of the Community Services Department approved a consulting services contract with NewFields Companies, LCC for the amount of \$49,500.

On January 30, 2015, the Purchasing and Contracts Manager approved a consulting services contract with NewFields Companies, LCC for the amount of \$80,900 for the Phase 2 design of the project.

On July 14, 2015, the Board awarded a bid and approved the Agreement to the lowest responsive, responsible bidder for the Huffaker Hills Effluent Storage Reservoir – Phase 2 Liner Expansion Project, A&K Earth Movers, Inc. in the amount of \$4,060,000.

BACKGROUND

The need to rehabilitate the reservoir's lining system has been identified for many years. The reservoir was completed in 1991, which included a partial soil-amended liner system to reduce water loss by absorption. Historically, this liner has proved ineffective resulting in water loss. It is estimated that the reservoir loses 920 to 1820 acre feet of treated effluent per year.

Due to extremely low water levels within the reservoir, there was an opportunity to line the lower portions of the reservoir in 2007. The first phase of improvements included lining the bottom twenty-five percent of the reservoir with a HDPE liner, installing a 6-foot tall chain link security fence around the full perimeter of the reservoir, constructing an access road, constructing an under-liner drainage system and associated soil grading required for the Phase I Lining improvements.

The first phase of lining the reservoir was completed in 2007. Subsequently, Staff has been obtaining water level data from the reservoir and additional seepage is occurring when the water level is above the liner. NewFields was contracted to investigate the possible locations of the leakage and provide recommendation on additional lining. Their investigation identified a wide range of leakage locations and recommended lining the entire reservoir. Based on funding and staff analysis the project bid was to line the

reservoir to an elevation of 4525, approximately 43 ft. above the elevation of the existing Phase 1 lining.

The scope of work for this professional services contract includes providing construction quality assurance testing and construction inspection and oversight. Quality assurance testing will include field and lab testing for the soils and the geosynthetic liner placement. This will include inspection of the preparation of the subgrade and placement of bedding material within the liner construction area. Testing of the new liner material will also be performed and will begin with the review and acceptance of each material shipment, obtaining field samples for laboratory destructive testing and will include inspection and non-destructive testing during liner placement.

FISCAL IMPACT

This project was identified and recommended for approval by the Board in the 2015-2016 Capital Improvement Program using funds and budget authority from the reclaimed water utility. It was subsequently determined that it would be more appropriate for the sanitary sewer utility to fund the project. Sufficient funds and budget authority exist in project number WR495119, account 781080. Revenues in support of this project are provided from monthly sewer rate charges.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve an Agreement for Professional Consulting Services between Washoe County and NewFields Companies, LLC, for a six month term, to provide inspection and material testing services during construction of the Huffaker Hills Effluent Storage Reservoir – Phase 2 Liner Expansion Project.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be. "Move to approve an Agreement for Professional Consulting Services between Washoe County and NewFields Companies, LLC, for a six month term, to provide inspection and material testing services during construction of the Huffaker Hills Effluent Storage Reservoir – Phase 2 Liner Expansion Project]."

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is entered into between Washoe County, a political subdivision of the State of Nevada ("County") and NewFields Companies, LLC ("Consultant"), collectively (the "Parties").

WITNESSETH:

WHEREAS, County desires to engage Consultant to render certain consulting services in Support of the "Huffaker Hills Effluent Storage Reservoir – Phase 2 Lining Expansion Project" (the "Project"); and

WHEREAS, County requires certain professional services in connection with the Project, as described in **Exhibit "A", Scope of Work** (the "Services"); and

WHEREAS, Consultant represents that it is duly qualified, ready, willing and able to provide the Services by virtue of its education, training and experience; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be August 11, 2015.

CONSULTANT shall begin performance of services as provided herein upon notice to proceed and shall complete all Services identified in Exhibit A, Scope of Work in accordance with the Standard of Care as set forth in Article 5 herein no later than February 11, 2016 unless this Agreement is terminated sooner in accordance with its terms.

ARTICLE 2 - SERVICES TO BE PERFORMED BY CONSULTANT

Consultant agrees to perform and complete all Services identified in Exhibit A, Scope of Work under this Agreement, and any amendment thereto in accordance with the Standard of Care as set forth in Article 5 herein. Consultant shall be responsible for the quality, technical accuracy, completeness and coordination of all reports, information, specifications and other items and services furnished under this Agreement and any amendments hereto. County reserves the right to inspect, comment on, and request revision of, all Services identified in Exhibit A and any amendments thereto performed by Consultant prior to acceptance, and Consultant warrants that such Services shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Agreement and any amendments hereto.

Failure to provide major deliverables, including, but not limited to, Services identified in Exhibit A, Scope of Work, shall constitute a material breach of this Agreement, unless waived in writing by the County.

ARTICLE 3 - COMPENSATION

3.1 Compensation for Services

For Services defined in Section 1 above, Consultant's compensation shall be determined on a time and material basis, in accordance with the **Fee Schedule described in Exhibit "B"**, which is attached hereto and incorporated by reference as part of the Agreement, and shall not exceed the

sum of **\$183,199.00**. Consultant shall satisfy its obligations hereunder without additional cost or expense to County during the term of this Agreement other than the heretofore stated compensation and the fee schedule described in Exhibit B. The Fee Schedule may be renegotiated at the end of one (1) year upon request by either the County or the Consultant. Renegotiated fees are subject to approval by County's Board of County Commissioners. The actual costs charged for the work by Consultant in accordance with this provision shall be full compensation to Consultant for all Services and duties required by the Scope of Work, including, but not limited to: costs of supplies, facilities and equipment; costs of labor and services of employees, consultants and sub-consultants engaged by Consultant; travel expenses, telephone charges, typing, duplicating, costs of insurance, and all items of general overhead. Consultant shall submit billings on a monthly basis.

3.2 Compensation for Additional Services

If County requests Consultant to perform additional services, other than those required to be performed under Services identified in Exhibit A, Scope of Work, the cost of such additional services shall be determined prior to commencing additional work. All additional services and amount of payment must be authorized in writing by County prior to commencing any work for such services.

3.3 Methods and Times of Payment

Consultant shall submit to County monthly progress invoices indicating the number of hours each employee provided services and other allowed direct expenses. Payment to Consultant for work on the Project shall be made within forty-five (45) days after receipt and approval of Consultant's invoice, said approval not to be unreasonably withheld. Payment by County of invoices or requests for payment shall not constitute acceptance by County of work performed on the Project by Consultant. No penalty shall be imposed upon the County for payment(s) received by Consultant after forty-five days.

3.4 Dispute of Work

County shall notify Consultant in writing within thirty (30) days of receipt of the work, or portion of work, which is not approved. For work, or portions of the work, which are unapproved, the County and Consultant shall develop a mutually acceptable method to resolve the dispute within thirty (30) days of receipt by the Consultant of notice from the County. If the County and Consultant cannot reasonably agree to remedy the dispute of unapproved work within the thirty-day period, the work shall be terminated or suspended per Article 12.

ARTICLE 4 - TIME SCHEDULE FOR COMPLETION

The Services identified in Exhibit A, Scope of Work on the Project shall be diligently performed and be completed no later than February 11, 2016. Consultant shall be granted time extensions for items within the phases of the Project in writing by County if the time schedules cannot be met because of delays beyond Consultant's reasonable control, including, but not limited to, County's failure to furnish information, or to approve or disapprove Consultant's work promptly. Consultant will provide to County a monthly report including a schedule identifying progress or work completed, problems or difficulties being encountered, work to be initiated during the following month and other useful information. This report will be submitted on the first day of each month and will be in a format suitable for submittal to other interested agencies.

Consultant's failure to submit promptly the monthly progress report may cause delay in payment from the County.

ARTICLE 5 - STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided under similar circumstances and Consultant shall, at no cost to County, re-perform services which fail to satisfy the foregoing standard of care provided that Consultant is notified in writing by County of the deficiency within six (6) months of performance of the deficient Services. Such re-performed Services may include, but not be limited to, correcting errors and omissions, or any other deficiencies in designs, drawings, specifications and reports. County reserves the right to inspect, comment on, and request revision of, all Services performed by Consultant prior to acceptance, and Consultant warrants that Services shall be fit and sufficient for the purposes expressed in and intended by this Agreement and any amendments thereto. Failure to provide Services or re-performed Services in accordance with the foregoing standard of care shall constitute a material breach of this Agreement unless waived by the County. Review and approvals by County do not relieve Consultant of its responsibilities under this Article. Except as is otherwise provided for in this Article, the re-performance of Services is the Consultant's entire responsibility and the County's exclusive remedy for Services rendered or to be rendered hereunder, and no additional warranties, guarantees or obligations are to be implied.

ARTICLE 6 - LIMITATIONS OF RESPONSIBILITY

Consultant shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project. In addition, Consultant shall not be responsible for the failure of any Consultant, subcontractor, vendor, or other project participant to fulfill contractual or other responsibilities to County or to comply with federal, state, or local laws, ordinances, regulations, rules, codes, orders, criteria, or standards. Consultant shall notify County of any apparent unsafe conditions, methods or procedures that the Consultant may observe at the project site.

ARTICLE 7 - OPINIONS OF COST AND SCHEDULE

Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over Consultants', subcontractors', or vendors' methods of determining prices, or over competitive bidding or market conditions, Consultant's cost estimates shall be made on the basis of qualification and experience.

Since Consultant has no control over the resources provided by others to meet contract schedules, Consultant's forecast schedules for completion of Services shall be established based on generally acceptable schedules for and performance standards of similarly situated professionals qualified and experienced to perform the Services. Consultant cannot and does not guarantee that proposals, bids or actual project costs will not vary from its cost estimates or that actual schedules will not vary from its forecast schedules.

ARTICLE 8 - INDEPENDENT CONTRACTOR

Consultant undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. County shall have no right to supervise the

methods used by Consultant. County shall have the right to observe such performance. Consultant shall work closely with County in performing Services under this Agreement.

ARTICLE 9 - PERMITS AND LICENSES

Consultant shall procure the permits, certificates, and licenses necessary to allow Consultant to perform the Services. Consultant shall not be responsible for procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Consultant in Exhibit A, Scope of Services.

ARTICLE 10 - COUNTY'S RESPONSIBILITY

County shall provide any information authorized by law in its possession that is requested by Consultant and is necessary to complete the Project. County shall assist Consultant in obtaining access to public and private lands so Consultant can perform the Services. County shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by Consultant and shall render decisions pertaining thereto within a reasonable time so as not to delay the work of Consultant.

ARTICLE 11 - REUSE OF DOCUMENTS

All documents, including computer files, drawings, specifications, and computer software, prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by County or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at County's sole risk and without liability or legal exposure to Consultant; and County shall indemnify and hold harmless Consultant against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from such reuse. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by County and Consultant.

Copies of all documents, including reports, computer files, drawings, specifications, and computer software, prepared by Consultant pursuant to this agreement will be provided to the County in electronic format accompanied by the appropriate documentation necessary to catalog them in the context of this project.

When transferring data in electronic media format, Consultant makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of the Project.

Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Consultant shall not be responsible to maintain documents stored in electronic media format after acceptance by County.

ARTICLE 12 - TERMINATION OR EXTENSION OF CONTRACT

Either Party may terminate this Agreement by written notice to the other Party if the other Party is in material breach or default of any provision of this Agreement and does not remedy such breach or default, or provide satisfactory evidence that such default will be expeditiously remedied, within thirty (30) days after being given such notice. In the event of such termination, County shall pay Consultant for all Services satisfactorily performed to the date of termination.

County, in its sole discretion, shall have the right to terminate this Agreement or suspend performance thereof for County's convenience upon written notice to Consultant, and Consultant shall terminate or suspend performance of services within thirty (30) days on a schedule acceptable to County. In the event of termination or suspension for County's convenience, County shall pay Consultant for all Services performed in accordance with the terms of this Agreement.

If the governing body apportioning funds under this Agreement fails, in any fiscal year, to obligate the funds necessary to make payments due under this Agreement, this Agreement shall be terminated without penalty, charge, or sanction.

ARTICLE 13 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Consultant shall consider all information provided by County to be proprietary unless such information is available from public sources, was known to Consultant prior to the execution of this Agreement, was received by Consultant from a third-party source not under any obligation of confidentiality to the County, or is required by law or ordered to be disclosed in a regulatory or judicial proceeding. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of County or in response to legal process or as required by the regulations of public entities.

ARTICLE 14 - NOTICE

Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below:

To County:

David Solaro, Director
Washoe County Community Services
1001 East 9th Street
Reno, NV 89512

To Consultant:

Paul Kaplan, President
NewFields Mining Design & Technical Services
1301 N. McCarran Blvd, Suite 101
Sparks, NV 89431

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

ARTICLE 15 - UNCONTROLLABLE FORCES

Neither County nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid and is not reasonably foreseeable at the time of entering into this Agreement. The term "uncontrollable forces" shall

mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the control of the non-performing party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses, or services required to be provided by either County or Consultant under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint. Consultant shall be paid for services performed prior to the delay plus related costs incurred attributable to the delay.

Neither Party shall, however, be excused from performance if nonperformance is due to uncontrollable forces which are removable or remediable nor which the non-performing Party could have, with reasonable dispatch removed or remedied. The provisions of this Article shall not be interpreted or construed to require Consultant or County to prevent, settle, or otherwise avoid a strike, work slowdown, or other labor action. The non-performing Party shall upon being prevented or delayed from performance by an uncontrollable force, immediately give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 16 - GOVERNING LAW-VENUE

This Agreement shall be governed by the laws of the State of Nevada, and venue for any action shall be solely in state district court for Washoe County, Nevada.

ARTICLE 17 - MISCELLANEOUS

17.1 Nonwaiver

A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

17.2 Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

ARTICLE 18 - INTEGRATION AND MODIFICATION

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by each of the Parties. Unless otherwise specified in writing, if there is any inconsistency between the terms of this Agreement and any other agreement between the Parties, the terms of this Agreement shall control.

ARTICLE 19 - SUCCESSORS AND ASSIGNS

County and Consultant each binds itself and its directors, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

ARTICLE 20 - ASSIGNMENT

Neither County nor Consultant shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that the effect of this limitation may be restricted 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 this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subcontractors, as he may deem appropriate to assist him in the performance of the Services hereunder.

ARTICLE 21 - THIRD PARTY RIGHTS

Nothing herein shall be construed to give any rights or benefits to anyone other than County and Consultant.

ARTICLE 22 - INDEMNIFICATION, INSURANCE, AND ARBITRATION

Washoe County has established specific indemnification and insurance requirements for agreements/contracts with consultants, engineers, and architects to help assure that reasonable insurance coverage is maintained. Indemnification and hold harmless clauses are intended to assure that consultants accept and are able to pay for the loss or liability related to their activities. **Exhibit "C" Insurance Specifications** is included by reference. All conditions and requirements identified in this exhibit shall be completed prior to the commencement of any work under this Agreement.

ARTICLE 23 – LIMITED LIABILITY

County will not waive and intends to assert available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages. Actual damages for the County's breach of this Agreement shall never exceed the amount of funds that have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

Consultant agrees to indemnify, hold harmless and defend County and the employees, officers and agents of County from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees and costs, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of Consultant or the employees or agents of the Consultant (1) in the performance of the contract, or (2) which are, or are not, based upon or arising out of the professional services of Consultant, to the full extent allowed by law.

More specifically and without limitation to the foregoing, in recognition of the limitations provided in NRS 338.155, Consultant is not required to defend County and the employees, officers and agents of the County with respect to the liabilities, damages, losses, claims, actions or