



HAYWOOD COUNTY BOARD OF COMMISSIONERS

AGENDA REQUEST

***Must be presented to the County Manager's Office
NO LATER THAN 5 P.M. FRIDAY THE WEEK BEFORE THE MEETING***

DATE OF REQUEST: December 23, 2015

FROM: DBF

MEETING DATE REQUESTED: January 4, 2016

SUBJECT: McGill Engineering Proposal Assessment of Corrective Measures (ACM) for Francis Farm Landfill (FFLF)

REQUEST: Approval by the BOCC for engineering services for the ACM

BACKGROUND: McGill Associates has been working with the County at the FFLF since 2009 through various projects. With the ACM, the County will submit to NC Department of Environmental (NCDEQ) for their comments and approval of the appropriate method(s) needed to address the groundwater contamination issue. Several highlights of the Agreement are as follows:

Develop cost estimates and financial analysis for the construction and annual operation and maintenance costs for each proposed remedy.

Provide narratives of our evaluation of each remedy to Haywood County and BLE for inclusion in the final ACM Report.

Prepare draft public notice for the County to use in the advertisement of the public meeting.

Attend public meeting to assist Solid Waste Department staff in presenting the results of the ACM report.

Provide documentation to include in the final report to be submitted to North Carolina Department of Environmental Quality.

IMPLEMENTATION PLAN: Solid Waste Administrator the work.

FINANCIAL IMPACT STATEMENT: The County has budgeted funds for the proposal.

SUPPORTING ATTACHMENTS: YES NO HOW MANY 1

PowerPoint Presentation: YES NO

PERSON MAKING PRESENTATION AT MEETING: David B Francis

TITLE: SWAT

PHONE NUMBER: 356-2602

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the _____ day of _____ 2016, by and between Haywood County (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled, Assessment of Corrective Measures, Francis Farm Landfill, and

WHEREAS, the ENGINEER desires to provide professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

- 1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2 The ENGINEER shall provide all personnel required in performing all phases of the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.
- 1.3 The ENGINEER shall assist the Owner with the pursuit of approvals and permits from governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.
- 1.5 The ENGINEER shall comply with appropriate federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include requirements hereunder in any subcontract written by him in association with this Agreement.

SECTION 2 - BASIC SERVICES

2.1 ASSESSMENT OF CORRECTIVE MEASURES

- 2.1.1 Meet with County staff to discuss overall Assessment of Corrective Measures (ACM) Report to identify report requirements, role of team members, develop report strategies, and define schedule for completion of the Report.
- 2.1.2 Based on the details of the most recent Groundwater Assessment Report, work with County staff and Bunnell-Lammons Engineering (BLE) to identify several potential remedies to address the contamination issue.
- 2.1.3 Evaluate each proposed remedy for performance, reliability, ease of implementation and potential impacts, including safety impacts, cross-media impacts, and control of exposure to residual contamination. In addition, each remedy must be evaluated as to the impact of the on-going requirements of the County's Closure Permit and Post Closure Care requirements at the landfill, existing Landfill Gas to Energy System, and on-going Haywood County School Garage activity.
- 2.1.4 Develop cost estimates and financial analysis for the construction and annual operation and maintenance costs for each proposed remedy.
- 2.1.5 Provide narratives of our evaluation of each remedy to Haywood County and BLE for inclusion in the final ACM Report.
- 2.1.6 Meet with County to discuss draft ACM Report.
- 2.1.7 Prepare draft public notice for the County to use in the advertisement of the public meeting.
- 2.1.8 Attend public meeting to assist Solid Waste Department staff in presenting the results of the ACM report.
- 2.1.10 Provide documentation to include in the final report to be submitted to North Carolina Department of Environmental Quality.

2.2 ENGINEER'S CONTRACT ASSUMPTIONS

- 2.2.1 Does not include any additional geotechnical investigation of the landfill site.
- 2.2.2 All permit, application, and advertisement fees will be paid for directly by the Owner.
- 2.2.3 Fees associated with the design/ implementation of the selected ACM remedy are not included in the below contract fee.

SECTION 3 - ADDITIONAL SERVICES

If Authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work other than agreed upon conceptual Plan.
- 3.4 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.5 Providing field surveys and legal descriptions to assist the OWNER in obtaining any right-of-way easements or real property from private bodies, entities or persons necessary for satisfactory construction of the project.
- 3.6 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to his requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Pay for all costs incident to obtaining bids or proposals from Contractors.

- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.10 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.
- 4.11 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incident to compliance with the requirements of this Section 4.

SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined.
- 5.2 This Agreement is ongoing until the following: the Assesemnet of Corrective Measures is submitted to the NC Department of Environmetal Quality (NCDEQ) and a remedy is selected by the Owner and once all comments are responded to and final approval by NCDEQ.
- 5.3 If the design or construction of the Project is delayed significantly for reasons, including costs of construction, beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation. It is expressly understood by all parties to the Agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

- 6.1.1 The OWNER will pay the ENGINEER for Basic Services as outlined in Section 2. Payment shall be made on a monthly basis, based on a percentage of the fee provided in Paragraph 6.1.2. Percentage to be paid shall reflect the percentage of work completed.
- 6.1.2 The OWNER will pay the ENGINEER as outlined above in Paragraph 6.1.1 on a hourly basis with a maximum not exceed fee of \$40,000.00.

6.2 PAYMENT FOR ADDITIONAL SERVICES

- 6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project, should any of these services be requested by the OWNER.

6.3 TIMES OF PAYMENT

- 6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly detailed statements for all services rendered under this Agreement.

6.4 GENERAL

- 6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty (60) days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.
- 6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.
- 6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three (3) months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

- 7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing ten (10) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

7.2 OWNERSHIP OF DOCUMENTS

- 7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements hereto and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

7.3 ARBITRATION

- 7.3.1 Should any dispute arise between the parties hereto concerning this Agreement or the rights and duties of either in relation thereto, such dispute may be settled by arbitration upon agreement of the parties. Either party may request arbitration by giving written notice to the other party setting forth the dispute which the party seeks to arbitrate. Each party shall have ten (10) days from delivery of the notice to the other party within which to appoint an engineer, licensed in the State of North Carolina, to act as an arbitrator and to notify the other party in writing of the name and address of the engineer so appointed, or to notify the other party in writing of his refusal to arbitrate. In the event a party fails to notify the other party in writing of his refusal to arbitrate or fails to appoint an arbitrator as provided herein, then the dispute shall be

submitted and decided by the arbitrator who has been duly appointed. Once each party has duly appointed an arbitrator, then the arbitrator shall have thirty (30) days within which to investigate the dispute, agree on a resolution of the dispute, and provide each of the parties with a written decision signed by each of the arbitrators. The thirty (30) day period may be shortened or lengthened by agreement of the parties. In the event the arbitrators cannot agree on a resolution to the dispute within the time provided, then the arbitrators shall have an additional seven (7) days within which to appoint a third arbitrator, who shall also be an engineer duly licensed to practice in the State of North Carolina. Within twenty (20) days from the date of appointment of a third arbitrator, the arbitrators shall render a written decision to each of the parties setting forth a resolution of the dispute which has been agreed to by two of the three arbitrators. The written decision of the arbitrators shall be binding on the parties. The costs of arbitration shall be borne equally by the parties.

7.4 ESTIMATES

- 7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his estimates for cost for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from cost estimates prepared by him.
- 7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, or (2) authorize negotiating or rebidding the project within a reasonable time, or (3) direct the Engineer to modify the drawings and specifications as necessary to bring the Project construction cost within the cost limits. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

7.5 INSURANCE AND CLAIMS

- 7.5.1 The ENGINEER will secure and maintain such insurance as will protect him 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. Said insurance policy or policies shall be written by a company or companies and in a form and substance approved by the OWNER prior to the policies being put into effect, and shall be in an amount not less than one million dollars (\$1,000,000).

7.6 SUCCESSORS AND ASSIGNS

The OWNER and the ENGINEER 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, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement 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 any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

7.7 ENTIRE AGREEMENT

7.7.1 This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

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

McGILL ASSOCIATES, P.A.

ATTEST:

By: _____

Mark D. Cathey
Senior Project Manager

Nancy B. Whitman
Secretary

ATTEST:

HAYWOOD COUNTY COMMISSION

By: _____

Mark S. Swanger
Chairman