

#4



HAYWOOD COUNTY  
BOARD OF COMMISSIONERS

80546

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 7, 2017

FROM: DBF

MEETING DATE REQUESTED: December 18, 2017,

*Regular meetings: First (1<sup>st</sup>) Monday of the month at 9:00 am  
Third (3<sup>rd</sup>) Monday of the month at 5:30 pm*

SUBJECT: BLE Testing Services for Jonathan Creek Soil

REQUEST: Approval of Contract for BLE to test and inspect soil at the Jonathan Creek in the amount of \$14,799.00

BACKGROUND: Haywood County is to receive 25,000cy of soil from the Publix site. The soil needs to be spread and compacted to certain specifications as outlined in bid documents as prepared by McGill Associates. BLE will provide testing and to ensure soil compaction meets specifications as outlined.

IMPLEMENTATION PLAN: BLE will coordinate with the County and McGill for scheduling.

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FINANCIAL IMPACT STATEMENT: Funds will come from Capital Project Fund

SUPPORTING ATTACHMENTS: YES

LIST: Agreement

PowerPoint Presentation: NO

PERSON MAKING PRESENTATION AT MEETING: David Francis

TITLE: Program Administrator

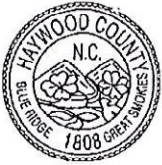
PHONE NUMBER: 828/452-6644

E-MAIL: david.francis@haywoodcountync.gov

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THIS SECTION FOR OFFICE USE ONLY

Received (Date/Time): \_\_\_\_\_



# Purchase Order

Fiscal Year 2018

Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.

Purchase Order # **00180546-001**

**BILL TO**

ADMIN  
 HAYWOOD COUNTY ADMINISTRATION  
 215 N MAIN STREET -THIRD FLOOR  
 COURTHOUSE  
 WAYNESVILLE, NC 28786

**VENDOR**

0  
 BUNNELL-LAMMONS ENGINEERING, INC.  
 6004 PONDERS COURT  
 GREENVILLE, SC 29615

**SHIP TO**

ADMIN  
 HAYWOOD COUNTY ADMINISTRATION  
 215 N MAIN STREET -THIRD FLOOR  
 COURTHOUSE  
 WAYNESVILLE, NC 28786

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
864-288-1265		864-288-4430				SOIL COMPACTION TESTING	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location		
01/08/2018	7321				ECONOMIC DEVELOPMENT		
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
1	JONATHAN CREEK SOIL RECLAMATION PROJECT - SOIL COMPACTION TESTING, CONTRACT #P17-1060			1.0	EA	\$14,799.00000	\$14,799.00
	ADMIN SOIL COMPACTION TE HAYWOOD COUNTY ADMINISTRATION 215 N MAIN STREET -THIRD FLOOR COURTHOUSE WAYNESVILLE, NC 28786 Phone: 828-452-6625 FAX: 828-452-6715						
	48 -4920-519920-18JCK						\$14,799.00
	48 -4920-519920-18JCK						14,799.00

**Purchase Order Total**

**\$14,799.00**



HAYWOOD COUNTY

PURCHASE REQUISITION

DATE REQUESTED: 1/8/2018 DATE WANTED:

Table with columns: QUANTITY, DESCRIPTION, ITEM #, ACCOUNT, UNIT PRICE, EXTENSION. Includes 'Jonathan Creek Soil Reclamation Project' and 'Soil compaction testing'.

SUGGESTED BIDDERS: Bunnell-Lammons Engineering, Inc. 130 Oval Road, Ste. 200 Arden, NC 28704. Vendor # 7302, P.O. # 805416.

I HEREBY CERTIFY THAT THE ARTICLES NAMED IN THIS WITHDRAWAL ARE NECESSARY FOR THE OPERATIONS OF THIS DEPARTMENT.

Handwritten notes: 'on p. 144', '\*see attached', 'signed & approved by SOCC chair', 'Kirkpatrick'. Includes signature of Department Head or Designee.

Handwritten signature of Purchasing Manager.

1/8/18 DATE

1/8/18 DATE



**BUNNELL-LAMMONS ENGINEERING, INC.**  
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

December 1, 2017

Office of the County Manager  
215 N. Main Street  
Waynesville, NC 28786

Attention: Mr. David B. Francis  
Program Administrator

Subject: **Contract for Construction Materials Testing Services**  
**Jonathan Creek Soil Reclamation Project**  
Haywood County, North Carolina  
BLE Contract Number P17-1060

Dear Mr. Francis:

Bunnell-Lammons Engineering, Inc. (BLE) is pleased to submit this contract to Haywood County to provide construction material testing services for the subject project. The following sections describe the construction materials testing services that we are able to perform at your request; as well as compensation, scheduling, and authorization information. Project information is based on a correspondence with McGill Associates personnel and a review of the provided project plans.

#### **PROJECT INFORMATION**

We understand that Haywood County will obtain excess soil from the proposed Publix retail store site located in Waynesville, North Carolina. Based on our correspondence, 25,000 to 35,000 cubic yards of excess soil will be removed from the site. The excess soil will be hauled to the subject site and a grading contractor hired by Haywood County will be responsible for spreading and compacting the imported soil to the proposed subgrade elevation.

We understand that you would like BLE to perform engineering observations and testing during the proposed grading activities. We also understand that the project has a 60-day duration.

#### **SCOPE OF SERVICES**

We understand the general scope of work will include construction materials testing and inspection services, including site preparation, proofrolling observations, soil density testing and, geotechnical engineering consulting during the project. Our scope of services is based on periodic, on-call testing and observation. The following reporting and testing services are expected to be needed on this project during their phase of construction:

# **IBLE**

*Contract for Construction Materials Testing Services  
Jonathan Creek Soil Reclamation Project, Haywood County, North Carolina*

*December 1, 2017  
BLE Contract Number P17-1060*

## **Site Reconnaissance / Soil Compaction**

- Perform an initial site reconnaissance to evaluate and collect potential borrow soils prior to the commencement of grading activities.
- Provide geotechnical engineering consulting services for various geotechnical related issues as they arise during the project.
- Observe the exposed subgrade soils once the existing topsoil/root mat is removed to locate any areas which may be soft and require additional excavation and/or rework.
- Conduct laboratory compaction tests on representative fill soils in accordance with ASTM D 698 and the project specifications.
- Conduct field density tests to measure the percent compaction.
- Report daily soils testing and observations activities to your representative.

Our team is committed to meeting our client's requirements and assisting in successful project completion. An integral aspect of successful project completion is timely and accurate communication. It is our policy to keep both the owners' representative and contractor apprised of all test results. To accomplish this scope of services, we will assign Mr. Sam C. Interlicchia to direct BLE's work on the project. He will provide properly trained personnel as requested by your representative, and will review the daily observations, test results and reports prepared by our engineering technicians.

## **COMPENSATION AND SCHEDULING**

Based on our correspondence, we understand that the duration of the grading activities is scheduled to last 60 days. However, based on our experience with similar projects, the grading activities that would involve BLE's proposed scope of services is anticipated to last approximately 40 days. Based on this anticipated time, BLE estimates the fees to provide the scope of services outlined above to be approximately \$14,799 as indicated on the attached **Budget Estimate** worksheet. Costs associated with construction materials testing are dependent on, among other things, the contractor's schedule, the quantity of materials, the weather and the owner's intentions. As such, our total fees may vary from the estimate depending on the actual working schedule. Itemized fees for services are shown on the attached fee schedule. Items not reported on this estimate can be quoted separately upon request.

Please keep in mind that we only intend to bill for the actual time and equipment used on the project based on the attached fee schedule.

We will provide BLE personnel for this project at the request of your representative. We request 24 hours' notice prior to providing on-call personnel to enable us to schedule the work efficiently. We also request a full set of the project plans and specifications so that we can provide services that are responsive to the project requirements and so that we will have reference for reporting the locations and elevations of our field-testing.



Contract for Construction Materials Testing Services  
Jonathan Creek Soil Reclamation Project, Haywood County, North Carolina

December 1, 2017  
BLE Contract Number P17-1060

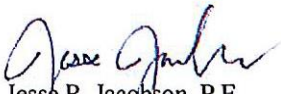
### AUTHORIZATION

As our written authorization for the above scope of services, please execute the attached acceptance sheet and return the acceptance copy of this contract to BLE.

Any exceptions to this contract or special requirements not covered in the contract should be attached to the returned acceptance copy for the mutual consideration of both parties. Please note that the Terms and Conditions are a part of this contract. Any Purchase Order issued to authorize this project should reference this document (P17-1060).

We appreciate the opportunity to serve as your geotechnical consultant at this site. If you have any questions, please do not hesitate contacting us at (828) 277-0100.

Sincerely,  
**BUNNELL-LAMMONS ENGINEERING, INC.**

  
Jesse R. Jacobson, P.E.  
Asheville Branch Manager

  
Sam C. Interlicchia  
Project Manager

CC: Mr. Mark Cathey, P.E. -- McGill Associates, PA

Attachments: Budget Estimate  
Fee Schedule  
Contract Terms and Conditions

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**FEE SCHEDULE**

**2017 Schedule of Fees**  
**Bunnell-Lammons Engineering, Inc.**

<u>Personnel</u>	<u>Hourly Rate</u>
Engineering/Environmental Technician I.....	\$57.00
Engineering/Environmental Technician II.....	\$63.00
Engineering/Environmental Technician III.....	\$69.00
Staff Engineer/Geologist/Scientist/Manager.....	\$103.00
Project Engineer/Geologist/Scientist/Manager.....	\$127.00
Senior Engineer/Geologist/Scientist/Manager.....	\$139.00
Chief Engineer/Geologist/Scientist.....	\$162.00
Principal Engineer/Geologist/Scientist.....	\$175.00
Administrative Support.....	\$53.00
Drafting.....	\$66.00

<u>Expense and Subcontract</u>	<u>Rate</u>
Mileage.....	\$0.68 per mile*
Truck/Equipment charge, per visit.....	\$10.00
Miscellaneous Expenses (shipping, printing, consumable supplies, etc.).....	Cost plus 15%
Standard Proctor Compaction Test (ASTM D-698), each.....	\$100.00
Modified Proctor Compaction Test (ASTM D-1557), each.....	\$115.00
Compressive Strength of Cylinders (ASTM C-39), each.....	\$9.00
Compressive Strength of Masonry Mortar Cubes, each.....	\$10.00
Compressive Strength of Masonry Grout Prisms, each.....	\$15.00
Nuclear Gauge, per day.....	\$20.00
Water Level Meter, per day.....	\$25.00
Turbidity Meter, per day.....	\$35.00
pH Test Equipment / Supplies, per day.....	\$25.00
Conductivity / Temperature Probe, per day.....	\$25.00
Product Interface Probe, per day.....	\$50.00
Organic Meter (PID or FID), per day.....	\$100.00

\*Subcontracts (drilling, laboratory and analysis, etc.).....Cost plus 15%

\*Unit rates for items not listed will be billed on a per project basis.

\*Mileage charges may be adjusted based on fuel costs.

The hourly rates for technicians and engineers apply for all time for testing and observations as well as all travel, loadup, and report time. Charges will be based on the position level of the individual performing the services and apply to BLE Employees and subcontract personnel.

Overtime is defined as all time over 8 hours per day and time on Saturdays, Sundays, holidays, or night work.



**ACCEPTANCE SHEET WITH  
TERMS AND CONDITIONS**



**BUNNELL-LAMMONS ENGINEERING, INC.**  
 6004 Ponders Court  
 Greenville, South Carolina 29615

Phone (864) 288-1265  
 Fax (864) 288-4430

**ACCEPTANCE SHEET**

The purpose of this sheet is to obtain your written authorization for our services and confirm the terms and conditions under which these services are provided as shown below.

Compensation for services rendered will be based on the attached schedule of fees (or as otherwise indicated below) which are part of this work authorization. If we are requested to modify the scope of work at your request or determine during the execution of the work that a modification of scope is required, we will promptly seek and confirm in writing a mutually agreeable revision of the scope of work and associated charges. All testing will be performed in accordance with the applicable specifications unless otherwise noted and test results apply only to the materials actually tested.

Project Name and Proposal Number: Contract for Construction Materials Testing Services  
BLE Contract No. P17-1060

Project Location: Jonathan Creek Soil Reclamation Project  
Haywood County, North Carolina

**FOR PAYMENT OF CHARGES: (to the account of)**

Firm: \_\_\_\_\_ Attention: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**WORK AUTHORIZED BY:**

[Signature] 12/18/17  
 Signature Date  
J.W. Kirkpatrick, III Chairman, Board of Commissioners  
 Print Name and Title - Signatory warrants his/her authority to bind the entity represented here.  
Haywood County  
 Company Name  
215 N. Main St.  
 Address  
Waynesville NC 28786  
 City State Zip Code

**SPECIAL INSTRUCTIONS:** \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

This agreement has been pre-audited  
 in the manner required by The Local Government  
 Budget and Fiscal Control Act.

[Signature]  
 Finance Officer



## TERMS AND CONDITIONS

WHEREAS, CLIENT is seeking engineering and/or environmental or other consulting services in regards to services associated with a property or properties ("Subject Property") and/or services associated with a specific activity or activities; and Bunnell-Lanumons Engineering, Inc., (hereinafter "BLE") is an independent consultant. Therefore, CLIENT and BLE (collectively, the "Parties") agree as follows (the "Agreement").

1. **SERVICES TO BE PROVIDED.** BLE through and by its officers, employees and subcontractors, is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in BLE's proposal. No third party beneficiaries are intended by this agreement.
2. **PAYMENT TERMS.** Client agrees to pay BLE's invoice upon receipt. If payment is not received within 30 days from the Client's receipt of invoice, Client agrees to pay a service charge on the past due amount at the greater of 1.5% per month or the allowable legal rate, including attorney's fees and expenses if BLE's fee is collected through an attorney. No deduction shall be made from invoice on account of liquidated damages unless expressly included in the Agreement. BLE may suspend services until paid on any project where payment of invoiced amounts not reasonably in dispute is not received by BLE within 60 days of Client's receipt of BLE's invoice. Invoices will be sent approximately monthly for the services performed.
3. **STANDARD OF CARE.** BLE will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of BLE's profession practicing in the same or similar locality at the time of service. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY BLE'S PROPOSAL OR BY BLE'S ORAL OR WRITTEN REPORTS. Nothing in this agreement or in the services provided by BLE is intended to create, nor shall it be construed to create a fiduciary relationship owed by either party to one another.
4. **INSURANCE.** BLE maintains insurance coverage as follows:
  - a. Worker's Compensation Insurance.
  - b. Employers Liability Insurance.
  - c. Commercial General Liability Insurance.
  - d. Professional Errors and Omission.

Certificates of Insurance can be provided upon acceptance of this agreement and upon request.

5. **PROFESSIONAL LIABILITY.** FOR ADDITIONAL CONSIDERATION FROM BLE OF \$10.00, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, CLIENT AGREES THAT BLE'S LIABILITY, AND THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONTRACTORS, TO CLIENT OR ANY THIRD PARTY DUE TO ANY NEGLIGENT PROFESSIONAL ACTS, ERRORS OR OMISSIONS OR BREACH OF CONTRACT BY BLE WILL BE LIMITED TO AN AGGREGATE OF \$50,000 OR BLE'S TOTAL CHARGES, WHICHEVER IS GREATER. IF CLIENT PREFERS TO HAVE HIGHER LIMITS OF PROFESSIONAL LIABILITY, BLE AGREES TO INCREASE THE AGGREGATE LIMIT, UP TO A MAXIMUM OF \$100,000, UPON CLIENT'S WRITTEN REQUEST AT THE TIME OF ACCEPTING BLE'S PROPOSAL, PROVIDED CLIENT AGREES TO PAY AN ADDITIONAL CONSIDERATION OF 5% OF TOTAL CHARGES, OR \$500, WHICHEVER IS GREATER. THE ADDITIONAL CHARGE FOR THE HIGHER LIABILITY LIMIT IS BECAUSE OF THE GREATER RISK ASSUMED BY BLE AND IS NOT A CHARGE FOR ADDITIONAL PROFESSIONAL LIABILITY INSURANCE. IN ADDITION, CLIENT FURTHER AGREES THAT NEITHER BLE NOR ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND/OR SUBCONTRACTORS SHALL BE LIABLE TO CLIENT FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OTHERWISE. THE LIMITATIONS SET OUT HEREIN SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

6. **SITE OPERATIONS.** Client will arrange for right-of-entry to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

BLE's field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated location. BLE's field personnel will avoid hazards or utilities which are visible to them at the site. If BLE is advised in writing of the presence or potential presence of underground or above ground obstructions, such as utilities, BLE will give special instructions to BLE's field personnel. BLE is not responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions owned by Client or third parties, except to the extent such damage or loss is a result of BLE's negligence. Otherwise, Client agrees for the additional consideration of \$1.00, to indemnify and hold BLE, its directors, officers, employees, agents and subcontractors harmless, from any such claims, suits or losses, including related reasonable attorney's fees.

BLE will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in BLE's proposal, BLE's charges do not include cost

of restoration due to any related damage which may result. If Client requests BLE to repair such damage, BLE will do so at an appropriate additional cost.

Field tests or boring locations described in BLE's report or shown on sketches are based on specific information furnished by others or estimates made in the field by BLE personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in BLE's proposal or report.

7. **FIELD REPRESENTATIVE.** The presence of BLE or its subcontractor's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation and/or field testing of specific aspects of the project as authorized by Client. Should a contractor(s) not retained by BLE be involved in the project, Client will advise such contractor(s) that BLE's services do not include supervision or direction of the means, methods or actual work of the contractor(s), its employees or agents. Client will also inform contractor that the presence of BLE's field representative for project administration, assessment, observation or testing will not relieve the contractor of its responsibilities for performing the work in accordance with the plans and specifications.

If a contractor (not a subcontractor of BLE) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for working conditions on the job site, including security and safety of all persons and property during performance of the work, and compliance with all Client safety requirements and OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that BLE will not be responsible for job or site safety or security on the project, other than for BLE's employees and subcontractors, and that BLE does not have the duty or right to stop the work of the contractor or other third parties.

8. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing BLE's services. If this occurs, BLE will promptly notify and consult with Client, but will act based on BLE's sole judgment where risk to BLE personnel is involved. Possible actions could include:

- a. Complete the original Scope of Services in accordance with the procedures originally intended in BLE's proposal, if practicable in BLE's judgment;

- b. Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;

- c. Terminate the services effective on the date specified by BLE in writing.

9. **SAMPLE DISPOSAL.** Test specimens or samples generally are consumed or substantially altered during testing and any remnants are disposed of immediately upon completion of tests. Remaining drilling samples and other specimens are disposed of 30 days after submission of BLE's report. In the event that test samples contain toxic or hazardous constituents as defined by applicable law, upon completion of any testing and temporary storage by BLE and per Client's stated preference, BLE will return such samples to Client for proper disposal.

10. **WASTE DISPOSAL.** If Client requests BLE to containerize drilling wastes and/or fluids produced by BLE's activity ("Wastes"), Client will provide a secure temporary storage location at or near the project site to prevent tampering with such containerized Wastes. Non-hazardous Wastes will be disposed of by BLE for an additional charge at an appropriately licensed facility. Any hazardous Wastes will be disposed of under manifest executed by Client at any properly licensed facility selected by Client with BLE's assistance. At no time will BLE take title to such hazardous Wastes.

11. **\*CLIENT DISCLOSURE.** Client agrees to advise BLE upon execution of this Agreement of any hazardous substance or any condition, known or that reasonably should be known by Client, existing in, on, or near the site that presents a potential danger to human health, the environment, or BLE's equipment. Client agrees to provide BLE continuing related information as it becomes available to the Client. By virtue of entering into this Agreement or providing services hereunder, BLE does not assume control of or responsibility as an operator or otherwise for the site or the person(s) in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment. Client agrees under advice of its counsel to notify the appropriate federal, state or local public agencies as required by law; or otherwise to disclose, in a timely manner, any information that may be necessary to prevent damage to human health, safety, or the environment.

12. **\*ENVIRONMENTAL INDEMNITY.** In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by law, for separate and valuable consideration of \$1.00, Client agrees to defend, hold harmless and indemnify BLE from and against any and all claims, liabilities, or judgments, except to the extent finally determined as being caused by BLE's negligence or willful misconduct, resulting from:



- a. Client's violation of any federal, state, or local statute, regulation or ordinance relating to the management or disposal of toxic or hazardous substances or constituents;
- b. Client's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at the site;
- c. Toxic or hazardous substances or constituents introduced at the site by Client or third persons before, during or after the completion of BLE's services;
- d. Allegations that BLE is a handler, generator, operator, treater, storer, transporter, or disposer unless expressly retained by Client for such services under the Resource Conservation and Recovery Act of 1976 as amended or any other similar federal, state or local regulation or law due to the BLE's services; or,
- e. Any third party suit or claim for damages against BLE alleging strict liability, personal injury (including death) or property damage from exposure to or release of toxic or hazardous substances or constituents at or from the project site before, during or after completion of BLE's services under this Agreement.

~~13. \*EQUIPMENT CONTAMINATION. BLE will endeavor to clean its laboratory and field equipment which may become contaminated in the conduct of BLE's services. Occasionally, such equipment cannot be completely decontaminated because of the type of hazards encountered. If this occurs, it will be necessary to dispose of the equipment in a manner similar to that indicated for hazardous samples or waste and to charge Client for the loss. Client agrees to pay the fair market value of any such equipment and reasonable disposal costs.~~

14. DOCUMENTS. BLE will furnish Client the agreed upon number of written reports and supporting documents. These instruments of services are furnished for Client's exclusive internal use and reliance, use of Client's counsel, use of Client's qualified bidders (design services only) and for regulatory submittal in connection with the project or services provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

- a. All documents generated by BLE under this Agreement shall remain the sole property of BLE. Any unauthorized use or distribution of BLE's work shall be at Client's and recipient's sole risk and without liability to BLE. BLE may retain a confidential file copy of its work product and related documents.

- b. If Client desires to release, or for BLE to provide, BLE's report(s) to a third party not described above for that party's reliance, BLE will agree to such release provided we receive written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement (e.g. Secondary Client Agreement). Reports provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that BLE's report(s) reflects conditions only at the time of the study and may not reflect conditions at a later time. Client further acknowledges that such request for release creates a potential conflict of interest for BLE and by this request Client waives any such claim if BLE complies with the request.

- c. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by BLE pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without BLE's prior written approval.

- d. Client shall furnish documents or information reasonably within Client's control and deemed necessary by BLE for proper performance of BLE's services. BLE may rely upon Client-provided documents in performing the services required under this Agreement; however, BLE assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client, but BLE may retain one confidential file copy as needed to support its report.

- e. Upon Client's request, BLE's work product may be provided on magnetic media. By such request, Client agrees that the written copy retained by BLE in its files, with at least one written copy provided to Client, shall be the official base document. BLE makes no warranty or representation to Client that the magnetic copy is accurate or complete, but will correct in good faith any omissions or errors brought to BLE's attention by Client. Any modifications of such magnetic copy by Client shall be at Client's risk and without liability to BLE. Such magnetic copy is subject to all other conditions of this Agreement.

15. CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit, including use of mediation, prior to filing of any suit. However, in the event that a claim results in litigation, then the prevailing party shall be entitled to recover from the non-prevailing party the prevailing party's reasonable legal fees and expenses associated with such litigation. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL

RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. OPINIONS OF COST. If requested, BLE will use its best efforts and experience on similar projects to provide realistic opinions or estimates of costs for remediation or construction as appropriate based on reasonably available data, BLE's designs or BLE's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise, in writing with BLE. Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond BLE's control.

17. TESTIMONY. Should BLE or any BLE employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing, or trial, in relation to services provided under this Agreement, and BLE is not a party in the dispute, then BLE shall be compensated by Client for the associated reasonable expenses and labor for BLE's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides BLE such compensation, Client will receive a credit or refund on any related double payments to BLE.

18. CONFIDENTIALITY. BLE will maintain as confidential any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Client.

19. GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of North Carolina.

20. PRIORITY OVER FORM AGREEMENT/PURCHASE ORDERS. The Parties agree that the provisions of these terms and conditions shall control over and not be superseded by any provisions of any other documents or writings and may be amended only by written instrument signed by both Client and BLE. Client may issue purchase orders to BLE to satisfy Client's purchasing requirements. It is agreed that the terms and conditions included in such purchase orders shall be considered deleted in their entirety and such terms and conditions shall be void.

21. SURVIVAL. All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and BLE shall survive the completion of the services and the termination of this Agreement.

22. SEVERABILITY. In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.

23. ASSIGNMENT. This Agreement may not be assigned by either party without the prior permission of the other.

24. CONSIDERATION. The parties agree that the charges for BLE's services are sufficiently adjusted to include any specific consideration payable to Client under these terms and conditions.

25. INTEGRATION. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

26. FORCE MAJEURE. Any failure of performance under this Agreement shall not constitute breach if said failure of performance is due to an event or events beyond the reasonable control of the Parties or either of them; such events of force majeure shall include, but not be limited to, acts of God, natural disasters, war and strikes.

If an event of force majeure occurs, BLE shall notify CLIENT, identify the event of force majeure and specify the anticipated time when the Work can be continued. Timely notification of an event of force majeure shall extend the completion date of this Agreement for a time equal to the continuation of the force majeure plus any reasonable time necessary to resume Work. CLIENT agrees to pay BLE for all reasonable costs incurred associated with labor and equipment, including subcontractor services, necessary to resume Work.

27. CONFIDENTIALITY. BLE and CLIENT recognize that each of them may encounter written or unwritten confidential information regarding the other Party during the course of the services set forth in the Proposal. Confidential information means all technical, economic, financial, pricing, marketing or other information that has not been published and/or is not otherwise available to members of the public and includes, without limitation, trade secrets, proprietary information, customer lists, scientific, technical and business studies, analyses, processes, methods, procedures, policies and information. The Party receiving such confidential information agrees to hold as confidential and not to disclose such information. Each Party shall make its employees having access to said



information aware of this obligation of confidentiality and bind said employees under similar obligations of confidence.

All drawings, specifications, technical documents of any nature, and copies thereof, prepared pursuant to this Agreement shall be the property of BLE and are to be treated as confidential. They are not to be disclosed to others without BLE prior written approval. BLE shall treat as confidential all documents and records (the "Documents") belonging to CLIENT or a third party that BLE reviews during the performance of services set forth in the Proposal. BLE shall not disclose the Documents to any third party without the prior written consent of the Documents' owner or owners. No articles, papers or treatises related to or in any way associated with the services set forth in the Proposal shall be submitted for publication without BLE's prior written consent. BLE may retain copies of all such documents for archival purposes and to support or defend its work.

The confidentiality restrictions herein shall not apply to information that: (1) the Parties had in their possession prior to disclosure; (2) becomes public knowledge through no act or fault of the receiving Party; (3) the receiving Party lawfully acquires from a third party which does not have a confidentiality obligation to the Party to which the information pertains; (4) is independently developed by the receiving Party; or (5) is required to be disclosed by law. Without the express written consent of BLE, this Agreement creates no duties or liabilities of BLE to third parties who may rely on the Work provided or the documents delivered hereunder. The Parties agree that although CLIENT may provide copies of BLE's reports to prospective property purchasers and their agents, no party other than CLIENT, its counsel or appropriate regulatory bodies may rely on the contents of BLE's reports.

28. **INDEMNITY.** If CLIENT or any of its directors, officers, shareholders, employees, agents, attorneys, successors, assigns and affiliates (collectively, the "CLIENT Affiliates") become subject to any liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs and expenses (including, without limitation, fees and disbursements of attorneys and consultants) (collectively, "Claims"), arising from, related to or in connection with:

- a. the negligence, gross negligence or willful misconduct of BLE or its directors, officers, employees, subcontractors, agents and affiliates (collectively, the "Representatives");
- b. a violation of a statute or regulation by BLE or its Representatives; and/or
- c. a breach of this Agreement by BLE or its Representatives;

BLE shall indemnify and hold harmless CLIENT and its Affiliates from and against any and all Claims. For purposes of the preceding sentence, "negligence" shall be deemed to include both negligent acts and omissions, but this indemnification shall only extend to the proportional extent of BLE's negligent, wrongful or willful acts or omissions.

If BLE or any of its directors, officers, employees, agents, attorneys, successors, assigns and affiliates (collectively, the "BLE Affiliates") become subject to any liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs and expenses (including, without limitation, fees and disbursements of attorneys and consultants) (collectively, "Claims"), arising from, related to or in connection with:

- a. the negligence, gross negligence or willful misconduct of CLIENT or its directors, officers, shareholders, employees, subcontractors, agents and affiliates (collectively, the "Representatives");
- b. a violation of a statute or regulation by CLIENT or its Representatives; and/or
- c. a breach of this Agreement by CLIENT or its Representatives;

CLIENT shall indemnify and hold harmless BLE and its Affiliates from and against any and all Claims. For purposes of the preceding sentence, "negligence" shall be deemed to include both negligent acts and omissions, but this indemnification shall only extend to the proportional extent of CLIENT's negligent, wrongful or willful acts or omissions.

29. **NON-EXCLUSIVITY.** BLE recognizes and agrees that its services hereunder are to be provided on a non-exclusive basis.

30. **WAIVER.** Waiver by either Party of any term, provision or condition of this Agreement shall not constitute a precedent or bind either party to a waiver of any succeeding breach of the same or any other term, provision or condition of this Agreement.

31. **TERMINATION.** This Agreement terminates automatically when BLE completes the services set forth in the Proposal. Either Party may terminate this Agreement without cause upon 30 days written notice to the other Party. In the event CLIENT requests termination prior to completion, CLIENT agrees to pay BLE for all reasonable costs incurred to date and reasonable charges associated with termination of its services.

NOTES:

\*Applies only if toxic or hazardous substances or constituents are anticipated or encountered.

For work in the State of Georgia, delete the words "or any third party" as such words appear in Paragraph 5

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END OF DOCUMENT

PAS revision 7.0 - 10/20/15