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HAYWOOD COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST

**Must be presented to the County Manager's Office
no later than noon on Friday, 10 days before the meeting**

DATE OF REQUEST: 07/10/2020

FROM: David Francis

MEETING REQUEST DATE: 7/20/2020

REQUEST: Approval of Solid Waste Contracts for Budget year 2020-2021.

BACKGROUND AND PLAN:

McGill Associates provides annual support for solid waste from convenience centers, landfills, methane gas and groundwater monitoring.

County has been completing the reporting and monitoring from the testing groundwater and surface water from the monitoring wells at Francis Farm Landfill for ten-years through Bunnell Lammons Engineering.

FINANCIAL:

McGill Associates - Technical Guidance and Operational Assistance for Solid Waste Operations \$25,000

BLE - Statistical Analysis of Groundwater Quality Data Report \$7,200

To be paid from FY 2020-2021 budgeted funds.

SUPPORTING ATTACHMENT: YES NO

POWERPOINT PRESENTATION: YES NO

PERSON MAKING PRESENTATION: DBF

TITLE: Program Administrator

PHONE NUMBER: 8283562602

EMAIL: david.francis@haywoodcountync.gov



**BUNNELL
LAMMONS
ENGINEERING**

March 12, 2020

Haywood County
215 N. Main Street
Waynesville, NC 28786

Attention: Mr. David B. Francis
Program Administrator

Subject: **Contract for Statistical Analysis of Groundwater Quality Data & Sampling Report Preparation (Fiscal Year 2021)**
Closed Francis Farm Landfill
Haywood County, North Carolina
BLE Project No. J20-1957-79 [September 2020 Event]
BLE Project No. J20-1957-80 [March 2021 Event]
BLE Contract Number J20-1957-79/80

Dear Mr. Francis:

Bunnell-Lammons Engineering, Inc. (BLE) is pleased to submit this contract to Haywood County to provide hydrogeological consulting services associated with the closed Francis Farm Landfill. This proposal addresses the statistical analysis of groundwater quality data and reporting of groundwater and surface water quality data, as set forth by the North Carolina Department of Environmental Quality, Division of Waste Management (DWM). Included herein is a brief description of the background project information, a general description of our contract scope of services with related fee estimate, and authorization information.

BACKGROUND INFORMATION

The closed Francis Farm Landfill in Haywood County requires semi-annual groundwater and surface water monitoring and reporting. The Francis Farm Landfill has 23 groundwater monitoring wells (MW-5 through MW-12, MW-15 through MW-25, MW-16D, MW-19D, MW-20D, & MW-23D) and 4 surface water monitoring points (US-1, DS-1, DS-2, & DS-3) which are currently scheduled to be sampled every March and September. We understand that sampling and laboratory analytical services are provided by a laboratory under direct contract with Haywood County. The statistical analysis of the water quality data and reporting was performed by others prior to 2007 and has been performed by BLE from 2007 to the present.



SCOPE OF SERVICES

The objective of this project is to perform statistical analysis of groundwater quality data and to prepare concise reports of the results obtained for each semi-annual sampling event over the contract period. We understand that the laboratory will provide the necessary field and laboratory data to BLE. The statistical analysis and the groundwater flow rate/direction calculations will be performed in accordance with Section .1632 of North Carolina's Solid Waste Management Rules (T15A NCAC 13B). Rule .1632(j) states that a report must be prepared after each sampling event which includes the following:

- field observations related to the condition of the monitoring wells;
- field data;
- laboratory data;
- statistical analysis;
- sampling methodologies;
- quality assurance and quality control data;
- information on the groundwater flow direction;
- calculations of the groundwater flow rate;
- a notice of constituents that exceed groundwater standards or show a statistically significant increase over the background levels for each well; and
- any other pertinent information related to the sampling event.

The analysis and reporting will be performed in accordance with North Carolina's currently promulgated Solid Waste Management Rules, Section .1632(g), (h), & (i) and Section .1632(d)(2), as discussed below in the following five tasks:

Task 1: We will collect digital and analog copies of the water quality data from the laboratory and update our existing digital database for analysis. We have assumed that, at a minimum, a hard copy and digital copy (in DWM ED format) of the semi-annual lab reports for each event will be provided by the laboratory.

Task 2: For each event, we will select one of the following statistical methods to evaluate the groundwater quality data from the site as described in Rule .1632(g):

- a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination;
- a parametric ANOVA based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination;
- a tolerance or prediction interval procedure;
- a control chart approach that gives control limits for each constituent; or
- another statistical method that meets the performance standards of Rule .1632(g).



Any statistical method chosen to evaluate the groundwater quality data will comply with the performance standards outlined in Rule .1632(h). Techniques for performing these types of statistical analyses have been described in EPA documents¹.

Data management will be performed using a computer-based interactive database management system or similar computer based system. The database management system will facilitate the storage and retrieval of information according to pre-defined relationships thus promoting expeditious analysis of the data. Using this type system, the existing database can easily be amended with new data after each sampling event and new statistical results calculated.

Task 3: We will determine if a statistically significant increase over background concentrations exists for each constituent. Our analysis will only consider parameters that apply to the landfill unit in accordance with Rule .1632(i).

Task 4: We will provide information regarding the groundwater flow directions at the site in accordance with Rule .1632(d)(2). A map will be prepared which includes groundwater equipotential lines and flow direction arrows.

Task 5: We will prepare a report in accordance with Rule .1632(i) for each sampling event including the statistical analysis of the groundwater data, a potentiometric surface map, the groundwater flow directions, along with the sampling information provided by the field sampling contractor.

QUALITY ASSURANCE/QUALITY CONTROL MEASURES

As part of BLE's quality assurance/quality control (QA/QC) measures, documents are reviewed prior to submittal to a client. Our QA/QC review is designed to provide accurate and concise reports, which are in compliance with DWM regulations. A Senior Hydrogeologist will perform the above scope of services. The review process will include: 1) a second Hydrogeologist checking each statistical analysis and potentiometric map for accuracy; and 2) a Senior or Principal Hydrogeologist reviewing the text of the report, and spot checking the statistical analysis and potentiometric surface map. Signatures of two professional geologists and/or engineers on submittals from BLE will indicate that appropriate QA/QC has been performed for data reduction, analysis, and reporting.

¹ *Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance*, Office of Resource Conservation and Recovery, Program Implementation and Information Division, US EPA, EPA 530-R-09-007, dated March 2009.



FEE ESTIMATE

We understand that Haywood County has requested that we prepare this contract for their 2021 fiscal year. This proposal covers the second semi-annual event of the 2020 calendar year through the first semi-annual event of the 2021 calendar year.

Statistical analysis and reporting of a **lump sum per sampling event as specified in the table below**. This budget includes the statistical analysis data reduction, groundwater flow velocity calculations, and report preparation for each semi-annual sampling event.

Contract Year (2021 Fiscal Year)	Francis Farm Landfill (Sampled September & March)	Term Totals
Event 1	September 2020 - \$3,600	2021 Fiscal Year Total: \$7,200
Event 2	March 2021 - \$3,600	

SCHEDULE

The written reports can be prepared and submitted to the Haywood County within 4-6 weeks after receipt of the groundwater quality and other necessary data.

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 (J20-1957-79/80).



Contract for Statistical Analysis of Groundwater Quality Data & Reporting
Francis Farm Landfill, Haywood County, North Carolina

March 12, 2020
BLE Contract Number J20-1957-79/80

We appreciate the opportunity to serve as your hydrogeological consultant at this site. If you have any questions, please do not hesitate contacting us at (864) 288-1265.

Sincerely,
BUNNELL-LAMMONS ENGINEERING, INC.

Andrew W. Alexander, P.G.
Senior Hydrogeologist

Mark S. Preddy, P.G.
Senior Hydrogeologist

Attachments: Contract Terms and Conditions

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**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 Groundwater Statistical Analysis and Reporting
BLE Contract No. J20-1957-79/80

Project Location: Francis Farm Landfill
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 Date

Print Name and Title - *Signatory warrants his/her authority to bind the entity represented here.*

Company Name

Address

City State Zip Code

SPECIAL INSTRUCTIONS: _____



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-Lammons 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 \$10,000, 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 \$1,000, 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 \$1,000, 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

END OF DOCUMENT

PAS revision 7.0 – 10/20/15