

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: May 15, 2019

SUBJECT: McGill Associates, PA (McGill) Engineering Agreement
FY2019 Solid Waste Master Plan Update

PRESENTER: Marcus A. Jones, P.E.

ATTACHMENTS: Yes
1. Proposed McGill Engineering Agreement

SUMMARY OF REQUEST:

As directed by the Board with the selection of McGill during the October 1, 2018 Board meeting and in accordance with NC General Statute 143-64.31 (Procurement of Architectural, Engineering, and Surveying Services), staff presents the attached engineering agreement for Board approval.

The proposed agreement with McGill is for \$67,500 with the scope as described within the attachment.

BOARD ACTION REQUESTED:

Approve the engineering agreement with McGill Associates, PA for the FY2019 Solid Waste Master Plan Update for \$67,500.

Suggested Motion:

I move that the Board approve the engineering agreement with McGill Associates, PA for the FY2019 solid Waste Master Plan Update for \$67,500.

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT made and entered into this the ____ day of _____ 2019, by and between **Henderson County** (OWNER) and **McGill Associates, PA** (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **Solid Waste Master Plan Update (Project)** as generally described in Section 2, and

WHEREAS, the OWNER desires to prepare a Solid Waste Master Plan Update.

WHEREAS, the ENGINEER desires to render 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 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. The ENGINEER shall designate a representative to be the central point of contact with the OWNER during execution of the work included herein.
- 1.2 The ENGINEER shall provide all personnel required in performing 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.
- 1.3 The ENGINEER shall obtain and furnish, or cause to be obtained and furnished, approvals and permits from all 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 all existing federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

SECTION 2 - BASIC SERVICES

The ENGINEER shall:

2.1 Solid Waste Master Plan Update

- 2.1.1 Review permit and construction submittals for the Stoney Mountain Road Solid Waste Facility for information on the existing regulatory and operations status.
- 2.1.2 Evaluate existing operational procedures, including the transfer station and drop-off facilities.
- 2.1.3 Development of projected waste disposal trends for Henderson County for the 10-year planning period based on the population trends for Henderson County provided by the Owner.
- 2.1.4 Utilizing data for existing solid waste collection systems within the Henderson County (convenience center, municipal haulers, and private haulers) already prepared by Henderson County staff, review data and assess the capacity and the system's ability to handle the projected waste disposal.
- 2.1.5 Evaluate the capacity of the existing operations at the Stoney Mountain Road Solid Waste Facility to handle the projected solid waste disposal during the 10-year planning period. If the facility cannot handle projected waste, evaluate options for expanding the existing facility or locating a new facility at an off-site location.
- 2.1.6 Review existing financial information provided by the County for the current solid waste program including current budget and past audits, collection of related user and user fee information, evaluation of current debt service and provide recommendations to the County.
- 2.1.7 Review existing and modify if/as needed a Capital Improvements Plan and Equipment Replacement Plan to address the County's ability to meet the projected wasted disposal during the 10-year planning period.
- 2.1.8 Prepare conceptual site plan for the solid waste activities at the Stoney Mountain Road Facility to fully utilize available property.
- 2.1.9 Develop an implementation timeline for the proposed facility upgrades and policy recommendations.
- 2.1.10 Meet with Director of Engineering to present and discuss preliminary evaluations and conceptual plans.
- 2.1.11 Present preliminary plan in a joint meeting of the Environmental Advisory Committee and Mountain True.

- 2.1.12 Prepare a written report to summarize the above information and present to the Henderson County Manager, Director of Engineering, Manager of Solid Waste Division, and the Board of Commissioners.

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. The ENGINEER and OWNER agree that time is of the essence in order to meet coordination deadlines. As such, the OWNER may initiate minor changes in the project scope to be incorporated by the ENGINEER, subsequent to the permit submittals, as not to impede progress toward the coordination deadlines. No work on any such changes shall occur by the ENGINEER unless preapproved by the OWNER.
- 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 Providing geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the project other than outlined in Section 2 of this agreement and approved during the project planning phase.
- 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 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.
- 3.6 Preparation of an Environmental Assessment should one become necessary.

SECTION 4 – OWNER’S RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to the requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal in a timely manner all available information under the control of the OWNER pertinent to the Project including previous documents and any other data relative to the evaluation, design, and construction of the Project, including but not limited to:
 - a. Henderson County population trends and projections.

- b. Evaluation data concerning the current solid waste collection systems within the Henderson County their capacity to handle solid waste within County.
 - c. Current solid waste program financial evaluation and planning prepared by the Owner.
- 4.3 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement.
- 4.4 Assist the ENGINEER to gain access to and make provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement, provided the same does not unreasonably interfere with the operation of the existing facilities.
- 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 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.7 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.8 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, beginning with the date first written above and continuing for a reasonable period required to complete the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various review phases as outlined.
- 5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

6.1.1 The OWNER agrees to 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 6.1.3. The percentage to be paid shall reflect the percentage of work completed.

6.1.2 Total Project Fees shall not be exceeded without prior authorization by OWNER as outlined in Section 3.

6.1.3 The OWNER will pay the ENGINEER as outlined above in Paragraph 6.1.1 the following lump sum fee:

Solid Waste Master Plan Update	<u>\$67,500.00</u> (Lump Sum)
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6.2 PAYMENT FOR ADDITIONAL SERVICES

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 in accordance with the ENGINEER's most recent Basic Fee Schedule (Attachment A), should any of these services be requested by the OWNER.

6.3 TIMES OF PAYMENT

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

6.4 GENERAL

6.4.1 If the OWNER fails to make any uncontested payment due the ENGINEER on account of his services and expenses within sixty days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven 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 a 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 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

All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the OWNER as instruments of services rendered by the ENGINEER. The OWNER shall be provided all files in electronic format including AutoCad files of all drawings, a set of reproducible prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER, which permission shall not be unreasonably withheld, and shall entitle him to further reasonable compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use. Any use or reuse, or any modification of the documents prepared and furnished by the ENGINEER, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at the OWNER'S sole risk and without liability or legal exposure to ENGINEER or to its officers, directors, members, partners, agents, employees, and consultants.

7.3 ESTIMATES

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 judgment 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 (related to materials furnished or services rendered by third parties) will not vary from cost estimates prepared by him.

7.4 INSURANCE AND CLAIMS

7.4.1 The ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement, automobile liability, commercial general liability, professional liability, and workers' compensation insurance covering its operations. Such insurance shall be provided by Insurer(s) satisfactory to the OWNER, and evidence of such insurance in the form of an industry-standard ACORD Certificate of Insurance satisfactory to the OWNER shall be delivered to the OWNER on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall require that the OWNER be given written notice at least thirty (30) days in advance of any modification or termination of any insurance coverage.

7.5 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.

7.6 ENTIRE AGREEMENT

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, PA

By: 
Ben T. Cathey, PE
Senior Project Manager

HENDERSON COUNTY

By: _____
Marcus Jones
Director of Engineering, Henderson County