

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: October 15, 2008

SUBJECT: Engineer Agreement with McGill & Associates
FY09 Facility Feasibility Study
Henderson County Solid Waste

ATTACHMENTS: Yes
1. Proposed Engineer Agreement with McGill & Associates

SUMMARY OF REQUEST:

As directed by the Board during the September 17, 2008 Board of Commissioners meeting, Engineering staff has negotiated the attached, proposed agreement with McGill & Associates to perform the FY09 Solid Waste Feasibility Study. Also during the September 17th Meeting, McGill & Associates was selected as the most qualified firm to perform the study. The study will review the existing Stoney Mountain Facility and develop a plan to address existing problems with traffic, access and to analyze and incorporate an expanded recycling operation. Additionally, the scope was expanded to review, analyze and propose improvements to the County's collection operations and incorporate the expansion into the proposed onsite operations and facilities.

The proposed agreement with McGill & Associates to perform the above scope of services is \$78,500. The schedule of the study will allow staff to incorporate proposed improvements and findings into the FY10 budget process. The funds for the study are available in the FY09 Solid Waste Enterprise Fund budget.

BOARD ACTION REQUESTED:

Authorize the County Engineer to execute the proposed agreement for \$78,500 with McGill & Associates to conduct the FY09 Solid Waste Feasibility Study.

Suggested Motion:

I move that the Board authorize the County Engineer to execute the proposed agreement for \$78,500 with McGill & Associates to conduct the FY09 Solid Waste Feasibility Study.

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the _____ day of _____ 2008, by and between Henderson County (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled Solid Waste Master Plan, and

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

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

SECTION 1 - GENERAL SERVICES

- 1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2 The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.
- 1.3 The ENGINEER shall assist the OWNER in pursuing 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

2.1 ENGINEER'S DUTIES

2.1.1 Project Management Group

1. Conduct a series of monthly meetings, comprised of the ENGINEER's Project Team and the OWNER's key management and operational personnel, to evaluate Project progress and review findings and recommendations.
2. Periodic progress reports will be provided to the OWNER summarizing the outcomes of meetings, overall Project status and key Project milestones.

2.1.2 Review Existing Permits, Plans and Operational Procedures

1. Collect and review for general conformance, the status of County provided current and pending permits, permit drawings and submittals for the existing municipal solid waste landfill, the construction/demolition debris landfill and the transfer station.
2. Collect and review for general conformance, the status of County provided facility wide operational permits, plans and procedures required by State regulatory requirements.
3. Based on the review, provide a brief summary of the status of the facility's existing permits.

2.1.3 Evaluate Current Facility Operations and Procedures

1. Evaluate the current field operation and procedures associated with the existing services provided at the Stoney Mountain Road Solid Waste Facility. Emphasis will be placed on staffing, operations and the capability of service to meet present needs of the citizens.
2. Evaluate the present ingress and egress traffic patterns associated with the various services provided at the Stoney Mountain Road Solid Waste Facility.
3. Review the volume and method of processing of recyclable products presently collected at the Stoney Mountain Road Solid Waste Facility.

4. Conduct a brief review of the school bus maintenance shop and Recreation/Day Camp facilities located within the facility's property boundary.
5. Based on the review, provide a brief summary of the field operations and procedures and other existing County solid waste services.

2.1.4 Project Population Growth and Future Disposal Requirements

1. Evaluate population trends and project Henderson County population for the 20-year planning period based on the current North Carolina Office of State Planning demographics in conjunction with data provided by the Henderson County Planning Department.
2. Calculate current and project future per capita disposal rates.
3. Utilize projected populations and projected per capita disposal rates to project waste volumes for MSW, C/D waste and other presently collected waste products (i.e., scrap tires, bulk metals, white goods and brush) in Henderson County.
4. Utilize projected populations to project future recycling volumes for recyclables presently collected in conjunction with the need for future recycling services.
5. Based on the review, provide a written report summarizing the above information and present the report to the Project Management Group and the Solid Waste Advisory Committee.

2.1.5 Evaluation of Current and Proposed Facilities

1. Review the transfer station's current capability with respect to projected future disposal needs. Evaluate options associated with possible future expansion of the existing transfer station and/or siting a new transfer facility within Henderson County.
2. Evaluate the feasibility of locating a new Citizen's Convenience Center for the disposal of household waste and recyclable materials that does not interfere with access to the transfer station.

3. Evaluate the location and operation of the additional existing facilities and services with respect to projected needs, requirements and traffic patterns.
4. Evaluate the feasibility of upgrading and/or relocating the existing scale house operations to enhance access to and exit from the site.
5. Review options associated with the future use of Henderson County owned/operated facilities located within the Facility's boundary.
6. Review options associated with the future use of Henderson County owned property located within close proximity of the Stoney Mountain Road Solid Waste Facility for proposed solid waste operations.
7. Based on the review, provide a written report summarizing the above information and present the report to the Project Management Group and the Solid Waste Advisory Committee.

2.1.6 Recycling Services

1. Review future recyclable product collection methods (convenience center vs. curbside) and project the volume of recyclable materials collected by each method.
2. Review recyclable material processing technology.
3. Evaluate the feasibility of locating a Recycling Processing Center in conjunction with or in close proximity to the Citizen's Convenience Center.
4. Estimate revenues and costs associated with convenience center versus curbside collection in conjunction with processing through a materials recycling facility or single stream baling.
5. Based on the review, provide recommendations relative to future recycle material collections and processing and present to the Project Management Group and the Solid Waste Advisory Committee.

2.1.7 Conceptual Site Plans and Cost Estimates

1. Develop an overall conceptual site plan outlining the proposed service relocations and/or facility upgrades recommended as a part of the overall site evaluation. The plan will be developed to show how the various facilities/services will interrelate.

2. Prepare a Facility Development Timeline based on Henderson County's projected needs.
3. Prepare an "Engineer's Opinion of Probable Cost" for the various phases of development proposed as a part of the Facility Development Timeline.
4. Based on the review, provide a written report and conceptual site plan summarizing the above information and present the findings to the Project Management Group and the Solid Waste Advisory Committee

2.1.8 County Wide Waste Collection

1. Review present Henderson County residential waste collection practices and policies.
2. Review collection options (i.e. franchising) available for collection of residential waste throughout Henderson County.
3. Based on the review, provide recommendations for revisions/updates to Henderson County's present residential waste collection practices and policies and present to the Project Management Group.

2.1.9 Financial Assessment

1. Review of Current Solid Waste Program
 - Review and update current program financial information
 - Review current budget and past financial audits
 - Collect related user and user fee information
 - Evaluate current debt status
 - Review existing solid waste plans and permits
2. Capital Improvements Plan
 - From recommendations in the draft Master Plan, compile projects and schedule within a 10-15 year time period
 - Recognize the necessary sequencing of projects related to pre-construction investments (i.e., surveying, design, permitting costs)
 - Project future debt service requirements associated with capital projects
 - Conduct review meeting with Solid Waste Advisory Committee
3. Capital Projects Financing Strategy
 - Formulate capital financing assumptions for each proposed project

- Classify capital improvements by financing method
- Formulate assumptions relative to interest rates and sources of funds

4. Financial Analysis Model Update

- Update financial information for current Solid Waste Management Program
- Incorporate recommended scheduled capital improvements as outlined in the Solid Waste Master Plan
- Address capital project financing assumptions and project future debt service requirements
- Address maintenance and operating costs associated with the proposed Capital Improvements Program
- Incorporate financial assumptions for new and/or programmatic or environmental initiatives
- Project annual net income and estimate future revenues and expenditures
- Assess future revenue options for achieving and maintaining self-sufficiency in the Solid Waste Management Program
- Project user fees or other charges associated with existing and/or new services or programmatic initiatives
- Review meeting with the Project Management Group
- Review meeting with the Solid Waste Advisory Committee

2.1.10 Findings and Conclusions

1. Review overall draft Solid Waste Master Plan and Financial Analysis with Project Management Group and Solid Waste Advisory Committee.
2. Present draft Solid Waste Master Plan to Henderson County for review.
3. Collect and review comments for inclusion in final report.
4. Present final copy of Solid Waste Master Plan to Henderson County for use in implementing proposed recommendations.

2.2 SCHEDULE

The following schedule includes tasks required to prepare the proposed Solid Waste Master Plan for Henderson County.

<u>Task</u>	<u>Estimated Completion Date</u>
• Notice-to-Proceed	October 15, 2008
• Data Collection – Landfill Facility and Financial Data	November 7, 2008
• Review Existing Permits, Plans and Operational Procedures	November 21, 2008
• Evaluate Current Facility Operations and Procedures	December 12, 2008
• Project Population Growth and Future Disposal Requirements	December 12, 2008
• Evaluation of Current and Proposed Facilities	December 31, 2008
• Recycling Services	January 9, 2009
• Conceptual Site Plans and Cost Estimates	January 30, 2009
• County Wide Waste Collection	February 13, 2009
• Financial Assessment	February 20, 2009
• Prepare Draft Solid Waste Master Plan	March 27, 2009
• Presentation to Henderson County	April 17, 2009
• Prepare Final Solid Waste Master Plan Report	May 15, 2009

SECTION 3 - ADDITIONAL SERVICES

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

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Services in connection with change orders to reflect changes requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.4 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.5 Providing field surveys, easement plats, plans or specifications to assist the OWNER in obtaining any easements or real property from public or private bodies, entities or persons necessary for satisfactory construction of the project.
- 3.6 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.
- 3.7 Providing geotechnical investigations, evaluations or other related services relative to existing operational permits, plans or procedures or the location, relocation and/or expansion of existing or proposed facilities or services.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to his requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Pay for all costs incident to obtaining bids or proposals from Contractors.
- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.10 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others

as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.

- 4.11 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bare all costs incident to compliance with the requirements of this Section 4.

SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined.
- 5.2 If the design or construction of the Project is delayed significantly for reasons, including costs of construction, beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation. It is expressly understood by all parties to the Agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

6.1.1 The OWNER will pay the ENGINEER for Basic Services as outlined in Section 2. Payment shall be made on a monthly basis, based on a percentage of the fee provided in Paragraph 6.1.2. Percentage to be paid shall reflect the percentage of work completed.

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

Solid Waste Master Plan	\$59,500.00
Financial Assessment	\$19,000.00

6.2 PAYMENT FOR ADDITIONAL SERVICES

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

6.3 TIMES OF PAYMENT

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

6.4 GENERAL

6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty 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 his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

- 6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

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

7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

7.2 OWNERSHIP OF DOCUMENTS

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

7.3 ARBITRATION

7.3.1 Should any dispute arise between the parties hereto concerning this Agreement or the rights and duties of either in relation thereto, such dispute may be settled by arbitration upon agreement of the parties. Either party may request arbitration by giving written notice to the other party

setting forth the dispute which the party seeks to arbitrate. Each party shall have ten (10) days from delivery of the notice to the other party within which to appoint an engineer, licensed in the State of North Carolina, to act as an arbitrator and to notify the other party in writing of the name and address of the engineer so appointed, or to notify the other party in writing of his refusal to arbitrate. In the event a party fails to notify the other party in writing of his refusal to arbitrate or fails to appoint an arbitrator as provided herein, then the dispute shall be submitted and decided by the arbitrator who has been duly appointed. Once each party has duly appointed an arbitrator, then the arbitrator shall have thirty (30) days within which to investigate the dispute, agree on a resolution of the dispute, and provide each of the parties with a written decision signed by each of the arbitrators. The thirty (30) day period may be shortened or lengthened by agreement of the parties. In the event the arbitrators cannot agree on a resolution to the dispute within the time provided, then the arbitrators shall have an additional seven (7) days within which to appoint a third arbitrator, who shall also be an engineer duly licensed to practice in the State of North Carolina. Within twenty (20) days from the date of appointment of a third arbitrator, the arbitrators shall render a written decision to each of the parties setting forth a resolution of the dispute which has been agreed to by two of the three arbitrators. The written decision of the arbitrators shall be binding on the parties. The costs of arbitration shall be borne equally by the parties.

7.4 **ESTIMATES**

- 7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his estimates for cost for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from cost estimates prepared by him.
- 7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the project within a reasonable time, or (3) the ENGINEER will, without additional charge, modify the drawings and specifications as necessary to bring the Project construction cost within the cost limit. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

7.5 INSURANCE AND CLAIMS

7.5.1 The ENGINEER will secure and maintain such insurance as will protect him from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness, or disease, or death of any of his employees or of any person other than his employees, and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. Said insurance policy or policies shall be written by a company or companies and in a form and substance approved by the OWNER prior to the policies being put into effect, and shall be in an amount not less than one million dollars (\$1,000,000).

7.6 SUCCESSORS AND ASSIGNS

The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

7.7 ENTIRE AGREEMENT


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

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

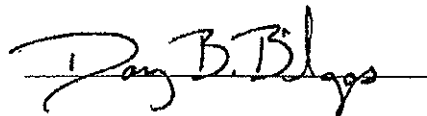
McGILL ASSOCIATES, P.A.

(SEAL)

ATTEST:


Secretary

By:



DANNY B. BRIDGES
Principal - Asheville

(SEAL)

HENDERSON COUNTY COMMISSION

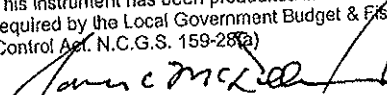
ATTEST:

By: _____

Name: WILLIAM MOYER

Title: Chairman

PREAUDIT CERTIFICATE
This instrument has been preaudited in the manner
required by the Local Government Budget & Fiscal
Control Act, N.C.G.S. 159-28(a)


Henderson County Finance Director