

Monroe A. Miller Jr.
2200 Camp Branch Road
Waynesville, NC 28786
January 30, 2018

Joel Mashburn
Haywood County Interim County Manager
215 N. Main Street
Waynesville, NC 28786

Subject: Request for Public Information.

For the purpose of this request and to keep confusion at a minimum, I will use interchangeably the following two terms: **David Francis Dirt Spreading Project** and **Jonathan Creek Soil Reclamation Project**.

Per your demand in your e-mail dated Tue, 30 Jan 2018 16:31:09 +0000, where you said:

“Mr. Miller, evidently we still are not communicating clearly. I do not plan to go back and read all of your email and try to decipher what records you still want. If you will list what records you still need and send the list to me either in writing or by email, then I will assure they are made available to you for you to review and will make you copies of any record you desire in accordance with state laws and county policies. I do not plan, nor is it incumbent on me to do so, to have anyone else present to respond to your questions. My understanding of the North Carolina Public Records Act is that the county must (1) allow inspection by any person or corporation of those government records not specifically exempted from disclosure; and (2) allow the public to copy promptly upon request and at minimal expense records of government. Let it be clearly understood that I am not denying you your right to view any public record, but I am just trying to clarify which records you still need since we have already made so many available to you. When I have received your request clearly stating which records you want to view, then I will assemble them for you. If I have that list by 5 PM today, then I will have them ready for you to review Thursday morning at 9 o'clock.”

I am presenting a summary of all of the Requests for Public Information that have gone unanswered. The order of presentation will be chronological, not by subject matter, to insure that all who view this request will verify that responses have not been provided within the ten (10) day period.

Here we go...

- 1/12/2018. Signing authority - limit for David Francis. From the e-mail on 1/12:

If you look at my website, www.haywoodtp.net,

[McGill Documents for David Francis' Dirt Spreading Project for the James Weaver 'Kirk' Kirkpatrick III Super Duper Sports Complex in Jonathan Creek. Purchase Order. 1/11/2018...](#)

or

<http://haywoodtp.net/pubII/180111-PurchaseOrderDOC011018-01102018152214.pdf>

On page three (3) of the pdf file, it shows David Francis signing off on this PO. The Interim County Manager only has discretionary limit of \$20K. What amount can David Francis sign off on?

I want to inspect, or receive a copy of the document which states David Francis limitation as to how high a value he can sign for on a PO. No document. HC Office/Department Fiscal Procedures were followed by submitting a purchase requisition to Finance and a PO was issued.

- 1/16/2018. Where are the bids for McGill Study for the David Francis Dirt Spreading Project?

On 1/16/2018, I was looking for evidence that McGill was not the only company that Haywood County, i.e. David Francis, notified of the McGill Study, presented as Attachment 12, 11/20/2017 county commission meeting.

I wrote:

Thank you for sending me the DBF e-mails. I was unable to locate where DBF sent any e-mails to any or all other people that were invited to provide a proposal to David Francis prior to the 11/20/2017 county commission meeting. I take it that there were no other companies that were asked to participate when McGill thanked DBF for requesting McGill Associates provide this proposal (re: McGill letter dated 11/15/2017, Attachment 12, 11/20/2017 county commission meeting).

I want to inspect, or receive a copy of the document which states that Haywood County notified someone else other than McGill for this project. #1 No document. BOCC approved contract with McGill on November 20, 2017.

- 1/16/2018. Contact Information for Bidders of Dirt Spreading Project.

On 1/16/2016, I wrote:

On page 30 of the DBF emails.pdf file, there is an e-mail from Christy Brown at McGill sent on December 8. There are six e-mail addresses that this bid was sent to, but it is cryptic. Please provide the Name, Company and Contact Information for all of these companies. They should be on the Vendor Registration Forms.

I want to inspect, or receive a copy of the document which provides the Name, Company and Contact Information set forth in Christy Browns e-mail sent on December 8, 2017. #2

- 1/16/2018. Verification of Bid Opening.

On 1/16/2018, I wrote:

Christy Brown, in that e-mail (sent on December 8th), indicated that the Bid Opening had been moved from Dec 8 to Dec 11. The BidTab, on my website: McGill Documents for David Francis' Dirt Spreading Project for the James Weaver 'Kirk' Kirkpatrick III Super Duper Sports Complex in Jonathan Creek. Bid Tabulation. 1/11/2018... a certified document from McGill on McGill letterhead, indicates that the bids were opened on December 8. What is right? Dec. 8 or Dec. 11?

I want to inspect, or receive a copy of the document which provides the actual, certified date of the Bid Opening for the David Francis Dirt Spreading Project. #3 The bid opening was moved to December 11th due to weather, the opening date was not changed on the bid tab. Correction was made to the bid tab.

- 1/19/2017. Request for name of Independent Soil Testing Company.

On 1/19/2018, I wrote:

Please provide the new Request for Public Information, regarding the David Francis Dirt Spreading Project. Please refer to the 249 page document (the one I received from Donna Corpening, not you) -

CONTRACT DOCUMENTS
JONATHAN CREEK
SOIL RECLAMATION PROJECT
HAYWOOD COUNTY, NORTH CAROLINA

[Page 242 of 249]

3.08 FIELD QUALITY CONTROL

A. Soil Testing and Inspection Service: Compaction tests of all fill areas will be made by an independent testing laboratory. Such tests will be provided and paid for by the Owner, except that tests that reveal nonconformance with the specifications and all succeeding tests for the same area shall be at the expense of the Contractor until conformance with the PROJECT #17.00158 312010 - Page 16 specifications is established. The Owner will be responsible for paying for only the successful tests.

Who is the Independent Testing Laboratory?

I want to inspect, or receive a copy of the document which provides the name of the Independent Testing Laboratory. #4 BLE

- 1/21/2018. Repeated request for Information, specifying e-mail addresses of bidders.

On 1/21/2018, I reiterated my request for outstanding information, this time specifying the Custodians of that information specifically for that information. To date, none of these people have responded, with the exception of Kathi McClure. I wrote:

- **Mr. Boyd, please respond to the following request:**

Please provide the new Request for Public Information, regarding the David Francis Dirt Spreading Project. Please refer to the 249 page document (the one I received from Donna Corpening, not you) -

CONTRACT DOCUMENTS
JONATHAN CREEK
SOIL RECLAMATION PROJECT
HAYWOOD COUNTY, NORTH CAROLINA

[Page 242 of 249]

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- **Ms. Corpening, please respond to the following two requests:**

On page 30 of the DBF emails.pdf file [re: <http://haywoodtp.net/pubII/180118DBF-emails.pdf>], there is an e-mail

from Christy Brown at McGill sent on December 8. There are six e-mail addresses that this bid was sent to, but it is cryptic.

Please provide the Name, Company and Contact Information for all of these companies. They should be on the Vendor Registration Forms. By the way, Donna Corpening was not included on any of this correspondence from Christy Brown - I wonder why?

They are:

- tommy@jlscompanyllc.com
- bensageinc@gmail.com
- tshuler@maggievalleyclub.com
- rabbitskinexcav@bellsouth.net
- cameronspressley@yahoo.com
- rbestexcavating1@bellsouth.net

Christy Brown, in that e-mail [re: Page 30], indicated that the Bid Opening had been moved from Dec 8 to Dec 11.

The BidTab, on my website: McGill Documents for David Francis' Dirt Spreading Project for the James Weaver 'Kirk' Kirkpatrick III Super Duper Sports Complex in Jonathan Creek. Bid Tabulation. 1/11/2018...

a certified document from McGill on McGill letterhead, indicates that the bids were opened on December 8. What is right? Dec. 8 or Dec. 11?

- **Ms. Davis, please respond to the following two requests:**

I have a question regarding the signing limit David Francis has. If you look at my website, www.haywoodtp.net,

McGill Documents for David Francis' Dirt Spreading Project for the James Weaver 'Kirk' Kirkpatrick III Super Duper Sports Complex in Jonathan Creek. Purchase Order. 1/11/2018...

or

<http://haywoodtp.net/pubII/180111-PurchaseOrderDOC011018-01102018152214.pdf>

On page three (3) of the pdf file, it shows David Francis signing off on this PO. The Interim County Manager only has discretionary limit of \$20K. What amount can David Francis sign off on?

and

All other PO's over and above PO 180545, that have been signed for the David Francis Dirt Spreading Project by David Francis or anyone else.

I want to inspect, or receive a copy of the documents previously requested, but now by the Custodians of that information, and the Name, Company and Contact Information set forth in Christy Browns e-mail sent on December 8, 2017, and more specifically, who is at the other end of those e-mail addresses. Documents provided are by the custodians.

- 1/25/2018. PO# 108843.

On 1/25/2018, I wrote:

Mr. Mashburn or Mr. Chip, a.k.a. Leon, Killian III,

I'm not quite sure who to direct this question to, i.e., who is the custodian of this public record, so I am including the both of you. Follow me through on this...

- The David Francis dirt spreading contract was awarded to Avcon at the December 18, 2018 county commission meeting.
- Avcon was never included on the original e-mail bidding list sent out by Christy Brown (re: from the David Francis e-mail dump, sent December 8, 2018 at least on one occasion, but sent instead to rabbitskinexcav@bellsouth.net as one of the bidders.
- I have requested but not received contact information for the six bidders on this dirt spreading project.
- There is no company listed with the NC Secretary of State called Rabbitskin Excavating, as far as I can determine.
- There is a company listed with the NC Secretary of State called Rabbitskin Enterprises, LLC, with the single Member being listed as Steve L Miller, residing at 236 Earl Lane, Waynesville, NC 28786.
- The Mailing, Principle Office and Reg Office of Rabbitskin Enterprises, LLC is located at 4842 Jonathan Creek Road, Waynesville, NC 28785.
- Referencing the Haywood County voter registration list - [re:<http://haywoodtp.net/pubII/171113VotersAsOf11-13-2017.pdf>], there is an individual, Steven Lee Miller, located at the same address.
- A Haywood County Purchase Order #180483 was issued on 11/30/2017 to Steven J. Miller for \$8,125.00.
- WTF?
- Who the [Expletive Deleted] is Steven J. Miller, not Steven L. Miller?
- Information provided to Haywood County indicates Avcon, sosid: 1155004, lists Steve Miller (no middle initial) as the Job Foreman, (828) 421-0424.

So my questions are:

- Why is Haywood County issuing a PO to Seven J. Miller, Rabbitskin Enterprises, LLC, and not Avcon for this portion of the David Francis Dirt Spreading Project?
- Does Steven J. Miller have a Construction License?
- Does Steven J. Miller have a CDL? Does the middle initial J. stand for Jonathan?

I would like to have the vendor profiles for everyone who was considered a bidder on this project, and in particular, Sara McCoy, Jim McCoy, Steve Lee Miller and Steven J. Miller. I want the complete vendor profile (SSN redacted).

I want to know why a Haywood County PO #180483 was issued to Steven J. Miller.

I want to inspect, or receive a copy of the documents -

- **Who approved PO # 180483 to Rabbit Skin Enterprises, LLC, (not who signed for it), #5 County Manager**
- **A copy of Steven J. Miller's Construction License,**
- **A copy of Steven J. Miller's CDL (Commercial Drivers License - redacted of vital information).**

North Carolina does not require a license for work \$30,000 and under.

- 1/26/2018. Additional Vendor Profile Information.

On 1/26/2018, I wrote:

Ms. Davis, Ms. Corpening, Mr. Boyd, Mr. Mashburn and Mr. Chip, a.k.a. Leon, Killian, III,

We are getting a little backed up here, so for convenience, I am summarizing all of my outstanding Requests for Public Information in a handy form...

- Boyd: Compaction Question - 1/19/2018
- Corpening: Contact Information and Bid Tab question - 1/16/2018
- Davis: Francis sign off authority limit - 1/12/2018.
- Mashburn/Killian: Complete Vendor Profile info (redact SSN's) on -
 - Sara McCoy
 - Jim McCoy
 - Steve Lee Miller
 - Steven J. Miller
 - Why is Haywood County issuing a PO to Seven J. Miller, Rabbitskin Enterprises, LLC, and not Avcon for this portion of the David Francis Dirt Spreading Project?
 - Does Steven J. Miller have a Construction License?
 - Does Steven J. Miller have a CDL?
 - Does the middle initial J. stand for Jonathan?
 - I want to know why a Haywood County PO #180483 was issued to Steven J. Miller and not Avcon.

I want to inspect, or receive a copy of the documents (i.e., Vendor Profiles) for the following people:

- **Sara McCoy**
- **Jim McCoy**
- **Steve Lee Miller**
- **Steven J. Miller**

#6 for all

- 1/26/2018. Information on Invoices and Payments for five Haywood County PO's.

On 1/26/2018, I wrote:

So, Ms. Davis, Please provide copies (in a pdf format) of all invoices received by the county and payments by the county for each of the five (5) PO's that have been issued to date for the David Francis Dirt Spreading Project, for PO's -

- PO # 108475 **#8**
- PO # 108483 **#7**
- PO # 108546 - **none**
- PO # 108547 - **none**
- PO # 108545 - **none**

I want to inspect, or receive a copies of all Invoices received by the county and Payments by the county for each of the five (5) PO's that have been issued to date for the David Francis Dirt Spreading Project, as listed above. **listed above**

- 1/29/2018. Authorization to change 25,000 CY to 35,000 CY.

On 1/29/2018, I wrote:

Say, I found out some more stuff on this David Francis Dirt Spreading Project over the weekend

FIRST,

- Do you remember back at the November 20th County commission meeting when David Francis first pulled the wool over Haywood County Taxpayers when he was masquerading as a Program Administrator? Agenda Item 6.

6. Request approval of contract for McGill Associates to provide engineering and services at the Jonathan Creek property needed to move 25,000 cubic yards to be paid from Economic Development budgeted funds – David Francis, Program Administrator -ATTACHMENT 12

What was the amount of dirt we were going to get from Publix? That's right - 25,000 CY (Cubic Yards). Francis explained we were going to get it for \$1.00 a Cubic Yard.

Now, do you remember the Bidding Documents that Candy Way sent me? (It's on my website, www.haywoodtp.net)

<http://haywoodtp.net/pubII/180105-2BiddingDocuments-JonathanCreekSoilReclamationProject.pdf>

On Page 29 of that document, bidders are asked to bid on 35,000 CY of earthwork.

WTF?

Both bid submitted were for 35,000 CY of moving dirt.

Do you also remember the Bidding Drawings Candy also supplied to me?

<http://haywoodtp.net/pubII/180105-4-17.00158BiddingDrawings.pdf>

There are a couple of contour drawings, pages 3-5:

1. Existing Conditions
2. Control Plan - Minimum Fill (22,5000 CY)
3. Control Plan - Maximum Fill (35,000 CY)

There is no drawing for the bill of goods Francis was proposing of 25,000 CY.

It appears all along that 35,000 CY was planned all along. Where is this extra money going to come from?

I want to inspect, or receive a copy of the document that authorized McGill to change it's Bidding Specifications from 25,000 CY to 35,000 CY. The County received bids for 35,000 CY to spread and compact soil. The agreement between the County and MAB is for 25,000 CY. MAB informed the County that there was not likely 35,000 CY, therefore an MOU with Avcon was for 25,000 CY.

- 1/29/2018. Pre-approval for Rabbit Skin Enterprises LLC to begin work.

On 1/29/2018, I wrote:

- SECOND,
- PO 180483 to Rabbit Skin Enterprises, LLC, specifically to a Steve J. Miller, was signed on 11/30/2017. This was almost three weeks prior to county commissioners approving the Avcon project. WTF? Who authorized Rabbit Skin to start working on this project before it was approved?

I want to inspect, or receive a copy of the document that authorized Rabbit Skin Enterprises, LLC to begin work prior to the David Francis Dirt Spreading Project before it was approved by the County Commissioners at the December 18, 2017 County Commission meeting. No document. Project was approved on Nov.20th, certain necessary steps were approved by County Manager to accept soil.

- 1/29/2018. Detailed inspection of documents associated with Five Purchase Orders.

On 1/29/2018, I wrote:

FINALLY,
In your e-mail to me on 1/24/2018,

Attached are the purchase orders for the Jonathan Creek Project. I have not attached all the backup material because there is a lot of it, however, you may have received most of it already. If you want to come in and review it, I will make it available to you and will make copies in accordance with North Carolina Public Records Act.

I would like to take you up on that offer. When can I come in and inspect these documents.

I want to inspect, or receive a copy of the documents described as all the backup material to the following PO's -

- **PO # 108475 - #9**
- **PO # 108483 -(item #5)**
- **PO # 108546 - (item #4)**
- **PO # 108547 #10**
- **PO # 108545 this #11**

I hope this is clear as to what I am requesting.

Monroe A. Miller, Jr.
Haywood County Taxpayer.



BOCC Excerpt November 20, 2017

Request approval of contract for McGill Associates for the Jonathan Creek property

Chairman Kirkpatrick recognized Program Administrator David Francis. Mr. Francis stated that after the Board gave approval to repurpose this property from recreation to economic use, the County has entered into a contract with Publix to receive soil from the Russ Avenue job site for the County owned Jonathan Creek site for one dollar a cubic yard. There is a possibility that the County will receive an additional 10,000 cubic yards for total of 35,000. There are two plans, one for the 25,000 cubic yards and the second is for the additional soil. Due to it being a public land and moving dirt, the project has to be permitted by the Department of Environmental Quality (DEQ). There is a \$2,650 fee associated with that as well. McGill Associates has provided a topographic survey to make sure the property is elevated out of the flood plain. The intention is to make it shovel ready for economic development. Once it is raised three feet and then raised another foot, it will take it out of flood elevation and may provide the opportunity to apply to FEMA to take it out of the flood plain. There will be 8 acres out of the plain, with another 8 acres that is the floodway that cannot be taken out. The Publix agreement will have the site ready and running by mid-December.

Commissioner Sorrells commented that this will take a site that has some drawbacks and turn it into something usable. He noted that water and sewer are there and this will become a shovel ready site.

Mr. Francis said that if approved, there will be a DEQ meeting on Wednesday to review the permitting. It will then be put out for bidders. Haywood Advancement Foundation may absorb the cost for the spreading and compacting of the soil.

Commissioner Ensley motioned to approve the contract for McGill Associates to provide engineering and surveying services at the Jonathan Creek property needed to move 25,000 cubic yard to be paid from Economic Development budgeted funds. Commissioner Rogers seconded, and the motion passed unanimously by members present.

#2

David Francis

From: Scott Burwell <Scott.Burwell@Mcgillengineers.Com>
Sent: Wednesday, January 31, 2018 11:55 AM
To: David Francis
Subject: Bid Tab and Bid Opening Document
Attachments: RE: Jonathan Creek Soil Reclamation Project - Addendum No 3; 1700158CertBidTab.pdf

JLS Company - tommy@jlscompanyllc.com
Southern Appalachian Grading and Exavating (SAGE), Inc. - bensageinc@gmail.com
Best Excavating - rbestexcavating1@bellsouth.net
Rabbit Skin Excavating - RabbitSkinexcav@bellsouth.net
Pressley Construction - cameronspressley@yahoo.com
Custom Paving Inc. - tshuler@maggievalleyclub.com

I also attached the email from Christy stating that the County offices were closing due to inclement weather and the bid was moved to Dec 11 at 2:00 pm. Let me know if you need anything else.

Thanks!

Scott Burwell, PE

Project Manager



55 Broad Street | Asheville, NC 28801

Phone: 828.252.0575 | Mobile: 828.707.6749 | Fax: 828.252.2518

Email: scott.burwell@mcgillengineers.com | Website: www.mcgillengineers.com

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it, may be considered public record and as such are subject to request and review by anyone at any time.

CERTIFIED BID TABULATION
JOHNATHAN CREEK SOIL RECLAMATION PROJECT
HAYWOOD COUNTY

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Mobilization/General Requirements	1	LS	\$630.00	\$630.00	\$14,500.00	\$14,500.00
1a	Clearing and Grubbing	1	LS	\$16,800.00	\$16,800.00	\$61,671.00	\$61,671.00
2	Skimmer Sediment Basin	1	LS	\$18,900.00	\$18,900.00	\$24,000.00	\$24,000.00
3	Permanent Diversion Ditch	1,050	LF	\$31.50	\$33,075.00	\$5.00	\$5,250.00
4	Slope/Ditch Matting	1,200	SY	\$7.50	\$9,000.00	\$4.00	\$4,800.00
5	Erosion Control Maintenance for County Installed Measures	1	LS	\$840.00	\$840.00	\$18,000.00	\$18,000.00
6	Earthwork	35,000	CY	\$3.15	\$110,250.00	\$6.00	\$210,000.00
7	Undercut Excavation, Remain Onsite	1,500	CY	\$3.15	\$4,725.00	\$50.00	\$75,000.00
8	Select Backfill	750	CY	\$5.25	\$3,937.50	\$20.00	\$15,000.00
9	Washed Stone for Base Stabilization	1,215	TON	\$28.35	\$34,445.25	\$35.00	\$42,525.00
10	Geogrid for Base Stabilization	2,250	SY	\$2.00	\$4,500.00	\$5.00	\$11,250.00
11	Seeding	1	LS	\$26,880.00	\$26,880.00	\$18,000.00	\$18,000.00
TOTAL					\$263,982.75		\$499,996.00

#3

Avcon USA LLC
 120 Miller Street
 Waynesville, NC 28786

Custom Paving, Inc.
 814 Hyatt Creek Road
 Waynesville, NC 28786



This is to certify that the bids tabulated herein were publicly opened and read aloud at 2:00 p.m. on the 11th day of December 2017, in the Haywood County Historic Courtroom, Town of Waynesville, North Carolina and that said bids were accompanied by acceptable certified checks or bidder's bonds in the amount of 5% of the bid.

#4



HAYWOOD COUNTY
BOARD OF COMMISSIONERS

180546

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 (1st) Monday of the month at 9:00 am
Third (3rd) 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.

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

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 PONDRERS 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 entry for Jonathan Creek Soil Reclamation Project with a total of \$14,799.00.

SUGGESTED BIDDERS: Bunnell-Lammons Engineering, Inc. 130 Oval Road, Ste. 200 Arden, NC 28704 SHIP TO: Haywood County Administration 215 N. Main Street Waynesville, NC 28786

FOR PURCHASING USE ONLY VENDOR # 700/ P.O. # 80576 ATTACHMENTS

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, Kink Kinkpatrick

DEPARTMENT HEAD OR DESIGNEE [Signature] 1/8/18 DATE

PURCHASING MANAGER [Signature] 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:



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

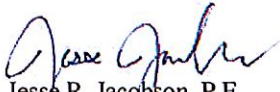
AUTHORIZATION

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

s:\02_ava_projects\mcgill\project green grocery\jonathan creek soil reclamation project\contract for jonathan creek soil reclamation project p17-1060 december 2017.docx

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)

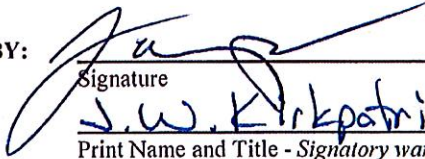
Firm: _____ Attention: _____

Address: _____

City, State: _____ Zip Code: _____ Phone Number: _____

Fax Number: _____

WORK AUTHORIZED BY:


Signature

12/18/17
Date

J.W. Kirkpatrick, III Chairman Board of Commissioners
Print Name and Title - Signatory warrants his/her authority to bind the entity represented here.

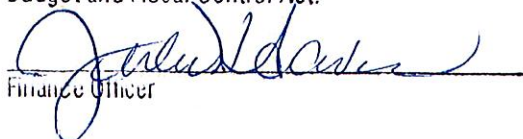
Haywood County
Company Name

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.


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-Lammings 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

END OF DOCUMENT

PAS revision 7.0 - 10/20/15



ORIGINAL

Purchase Order

Fiscal Year 2018

Page 1 of 1

Revisions 000

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS
 Purchase Order # **00180483-000**

Expiration Date 06/30/2018

Delivery must be made within doors of specified destination.

BILL TO

GB
 HAYWOOD COUNTY GOVERNING BODY
 215 N MAIN STREET
 COURTHOUSE-THIRD FLOOR
 WAYNESVILLE, NC 28786

VENDOR

0
 RABBITSKIN ENTERPRISE LLC
 STEVE J MILLER
 4842 JONATHAN CREEK RD
 WAYNESVILLE, NC 28785

SHIP TO

GB
 HAYWOOD COUNTY GOVERNING BODY
 215 N MAIN STREET
 COURTHOUSE-THIRD FLOOR
 WAYNESVILLE, NC 28786

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
						J CRK PROP ENTRNCE CONSTR	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location		
11/30/2017	29497				GOVERNING BODY		
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
1	JONATHAN CREEK PROPERTY - CONSTRUCTION AT ENTRANCE WITH STONE, CULVERT & SILT FENCE PER QUOTE (BEST OF 2 QUOTES) - PART OF SOIL RECLAMATION PROJECT GB J CRK PROP ENTRNCE HAYWOOD COUNTY GOVERNING BODY 215 N MAIN STREET COURTHOUSE-THIRD FLOOR WAYNESVILLE, NC 28786 Phone: 828-452-6625 FAX: 828-452-6715 11 -4920-569900-Ecd2			1.0	EA	\$8,125.00000	\$8,125.00
Purchase Order Total						\$8,125.00	

This agreement has been preaudited in the manner required by the local government budget and fiscal control act.

Terms and Conditions are attached. APPROVED FOR ISSUE.

Finance Officer Signature

VENDOR COPY

Purchasing Agent Signature



ORIGINAL

Purchase Order

Fiscal Year 2018

Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.
 Purchase Order # **00180483-000**

B I L L T O

GB
 HAYWOOD COUNTY GOVERNING BODY
 215 N MAIN STREET
 COURTHOUSE-THIRD FLOOR
 WAYNESVILLE, NC 28786

V E N D O R

0
 RABBITSKIN ENTERPRISE LLC
 STEVE J MILLER
 4842 JONATHAN CREEK RD
 WAYNESVILLE, NC 28785

S H I P T O

GB
 HAYWOOD COUNTY GOVERNING BODY
 215 N MAIN STREET
 COURTHOUSE-THIRD FLOOR
 WAYNESVILLE, NC 28786

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
						J CRK PROP ENTRNCE CONSTRC	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location		
11/30/2017	29497				GOVERNING BODY		
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
1	JONATHAN CREEK PROPERTY - CONSTRUCTION AT ENTRANCE WITH STONE, CULVERT & SILT FENCE PER QUOTE (BEST OF 2 QUOTES) - PART OF SOIL RECLAMATION PROJECT			1.0	EA	\$8,125.00000	\$8,125.00
	GB J CRK PROP ENTRNCE HAYWOOD COUNTY GOVERNING BODY 215 N MAIN STREET COURTHOUSE-THIRD FLOOR WAYNESVILLE, NC 28786 Phone: 828-452-6625 FAX: 828-452-6715						
	11	-4920-569900-EcD2					\$8,125.00
	11	-4920-569900-EcD2					8,125.00

Purchase Order Total
\$8,125.00

PURCHASING COPY

RabbitSkin Enterprises L.L.C.

4842 Jonathan Creek Rd. / Waynesville, NC 28785
Office/Fax (828) 926-6546 • Cell (828) 421-0424

Best of 2 quotes

Proposal

Page No. _____ of _____ Pages

PROPOSAL SUBMITTED TO <u>Haywood County</u>		PHONE	DATE <u>11-28-17</u>
STREET		JOB NAME <u>Jonathan Creek Soil Reclamation project</u>	
CITY, STATE AND ZIP CODE		JOB LOCATION <u>Jonathan Creek Rd</u>	
ARCHITECT	DATE OF PLANS	<u>Kris Boyd</u>	JOB PHONE

We hereby propose to furnish materials and labor necessary for the completion of:

* Construction Entrance
3" Stone 6" deep w/ matting underneath
Minimum 20' wide, 50' long
40' double wall culvert

\$2725

* Install approximately 2000' Silt fence
buried 6" deep w/ 6" hogwire
5' T-post every 6' \$270 per foot

\$5400

WE PROPOSE hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

dollars (\$

8125.00)

Payment to be made as follows:

Due @ completion of job.

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized
Signature

Stav Miller

Note: This proposal may be withdrawn by us if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature

[Signature]

Date of Acceptance

11/30/2017

Signature



General Vendor Information

Vendor 35146 Entity 1
 Alpha AVCON USA, LLC Type Reason
 Status ACTIVE Change Set Current

Audits
 Entered 01/08/2018
 Modified 01/11/2018
 By 855dcor

Main General Miscellaneous Contacts Certifications Insurances Withholding

Contact Information

Company Name AVCON USA, LLC Addresses (0) Comments (0)

DBA
 Address 120 MILLER ST
 Zip code 28786
 City WAYNESVILLE
 State NC North Carolina
 Country Foreign entity
 Email
 Fax
 WWW

Identification
 SSN
 FID
 DUNS
 Vendor Alerts

Additional
 Performance
 Commodity

- Sort
- 1099 Data
- Invoice Inquiry
- Check Inquiry
- PO Inquiry
- Recurring Invoices
- GL Summary
- History
- Awarded Commodities



Vendor Addresses | My | File | Edit | Tools | Help

| |

Remit Address
 Address number: |
Type: |
Alpha: RABBITSKIN ENTERPRIS
 Company Name: RABBITSKIN ENTERPRISE LLC
 DBA: _____
 Address: STEVE L MILLER
 236 EARL LN

Zip code: |
 City/State: WAYNESVILLE | | | North Carolina
 County: |
 Country: _____
 Fax: _____
 Email: _____
 DUNS: _____

Active

Purchasing Delivery Method
 Print
 Fax
 E-Mail

Payment Information
 Printed Check
 Electronic fund transfer
 Active Card Integration
 Direct Disbursement

Payment rec't method
 |

Prenote
 |

| | | | |

OVR



General Vendor Information

Vendor 29497 Entity 1
 Alpha RABBITSKIN ENTERPRIS Type
 Status ACTIVE Reason
 Audits Entered 09/08/2011
 Modified 01/17/2017
 By 855pcop
 Change Set Current

- Sort
- 1099 Data
- Invoice Inquiry
- Check Inquiry
- PO Inquiry
- Recurring Invoices
- GL Summary
- History
- Awarded Commodities

Main General Miscellaneous Contacts Certifications Insurances Withholding

Contact Information
 Company Name RABBITSKIN ENTERPRISE LLC
 Addresses (2) Comments (0)

DBA
 Address STEVE J MILLER
 4842 JONATHAN CREEK RD
 Zip code 28785
 City WAYNESVILLE
 State NC North Carolina
 Country Foreign entity
 Email
 Fax
 WWW

Identification
 SSN
 FID
 DUNS
 Vendor Alerts
 Additional Performance Commodity

#7

Rabbitskin Enterprises, LLC

236 Earl Lane / Waynesville, NC 28785

(828) 926-6545 • Fax (828) 926-6546

(828) 421-0424 - Cell

Haywood County
Soil Reclamation Project

PO 180483
V# 29497
OK 8C 12-6-17
Complete
114920-569900-
EDA

INVOICE

Your order no.	Invoice no.	Date
	12417	12-4-17

Quantity	Description	Unit Price	Amount
*	Construction Entrance 3" stone 6" deep w/ matting minimum 20' wide 50' long 40' double wall culvert		42725 ⁰⁰
*	Installed approximately 1970' of silt fence buried 6" deep w/ 6" hog wire 5' T-post every 6' @ \$2.70 per foot		5319 ⁰⁰

[Signature]

DUE UPON RECEIPT

SUB TOTAL	
TAX	
TOTAL	80411 ⁰⁰

#8

Invoice

McGill Associates, P.A.
Post Office Box 2259
Asheville, NC 28802



December 15, 2017
Invoice No: 17.00158 - 749

Mr. David Francis
Administrator
Haywood County
215 N. Main St., Courthouse Annex
Waynesville, NC 28786

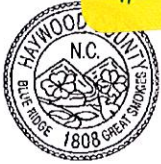
Billing Manager	Scott Burwell		
Project	17.00158	Jonathan Creek Fill Site/LOMR-F	
Phase	003	Topographic Survey	
Fee			
Total Fee		2,410.00	
Percent Complete	100.00	Total Earned	2,410.00
		Previous Fee Billing	0.00
		Current Fee Billing	2,410.00
		Total Fee	2,410.00
		Total this Phase	\$2,410.00

Phase	013	Design and Permitting	
Fee			
Total Fee		6,700.00	
Percent Complete	100.00	Total Earned	6,700.00
		Previous Fee Billing	0.00
		Current Fee Billing	6,700.00
		Total Fee	6,700.00
		Total this Phase	\$6,700.00

Phase	023	Bidding and Award	
Fee			
Total Fee		2,100.00	
Percent Complete	100.00	Total Earned	2,100.00
		Previous Fee Billing	0.00
		Current Fee Billing	2,100.00
		Total Fee	2,100.00
		Total this Phase	\$2,100.00
		Total Invoice - Net 30 Days	\$11,210.00

4-12-18 PO # 180475

#9



ORIGINAL

Purchase Order

Fiscal Year 2018

Page 1 of 1

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

Purchase Order # **00180475-000**

BILL TO

GB
 HAYWOOD COUNTY GOVERNING BODY
 215 N MAIN STREET
 COURTHOUSE-THIRD FLOOR
 WAYNESVILLE, NC 28786

VENDOR

0
 MCGILL ASSOCIATES PA
 P.O. BOX 2259
 ASHEVILLE, NC 28802

SHIP TO

GB
 HAYWOOD COUNTY GOVERNING BODY
 215 N MAIN STREET
 COURTHOUSE-THIRD FLOOR
 WAYNESVILLE, NC 28786

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
828-231-6845 CELL		828-252-2518				ENGINEERING SVCS-JCRK SOIL P	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location		
11/29/2017	2224				GOVERNING BODY		
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
1	ENGINEERING SERVICES FOR JONATHAN CREEK SOIL RECLAMATION PROJECT 2017 AS APPROVED BY BOCC 11/20/17 - TO ASSIST WITH SURVEY, CIVIL ENGINEERING DESIGN, PERMITTING & CONSTRUCTION OBSERVATION FOR PROPOSED FILL SITE LOCATED @ CORNER OF US 276 & POTTS DR - PIN #8607-27-9452, TO REMOVE 9.29 ACRES FROM FLOODPLAIN, EXCESS SOIL FROM PUBLIX SITE TO BE PLACED & COMPACTED AT SITE TO AVOID IMPACTS TO EXISTING FLOODWAY			1.0	EA	\$19,660.00000	\$19,660.00
	GB ENGINEERING SVCS-J HAYWOOD COUNTY GOVERNING BODY 215 N MAIN STREET COURTHOUSE-THIRD FLOOR WAYNESVILLE, NC 28786 Phone: 828-452-6625 FAX: 828-452-6715						
	11 -4920-569900-EcD2						\$19,660.00
	11 -4920-569900-EcD2						19,660.00

Purchase Order Total

\$19,660.00

PURCHASING COPY

Donna Corpening

From: Julie Davis
Sent: Wednesday, November 29, 2017 12:39 PM
To: Donna Corpening
Subject: Re: Line item for \$19,660 for McGill Services for J Crk Soil Reclamation Prj 2017

It's under economic development. I think it starts with 114920. There is a line item in the economic development department that has \$60,000 budgeted.

Sent from my iPad

114920-562900-EDZ
OK [unclear] EDU

On Nov 29, 2017, at 12:08 PM, Donna Corpening <dcorpening@haywoodnc.net> wrote:

Julie,

Do you have the Line item for \$19,660 for McGill Services for J Crk Soil Reclamation Prj 2017? David is going to send me the signed contract when he returns so I can do the PO.

Thanks

Donna

<image001.jpg>

Determination: Great goals require great effort. Keep going!

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it, may be considered public record and as such are subject to request and review by anyone at any time.

BOARD OF COMMISSIONERS

J. W. "KIRK" KIRKPATRICK, III, CHAIRMAN
BILL L. UPTON, VICE CHAIRMAN
L. KEVIN ENSLEY
MICHAEL T. SORRELLS
BRANDON C. ROGERS



INTERIM COUNTY MANAGER
JOEL MASHBURN

COUNTY ATTORNEY
LEON M. KILLIAN, III

HAYWOOD COUNTY BOARD OF COMMISSIONERS AGENDA REQUEST

**Must be presented to the County Manager's Office
no later than 5:00 p.m. Friday 10 days before the meeting**

DATE OF REQUEST: 11-16-17

FROM: David Francis

MEETING REQUEST DATE: 11-20-17

*Regular meetings: First (1st) Monday of the month at 9:00 a.m.
Third (3rd) Monday of the month at 5:30 p.m.*

REQUEST: Approval of contract for McGill Associates to provide engineering and surveying services at the Jonathan Creek property needed to move 25,000 cubic yards of soil.

BACKGROUND AND PLAN: Haywood County has agreed to take 25,000 cubic yards or more of soil from the Publix site to the County owned property at Jonathan Creek. Moving and placing the soil in the floodplain will remove between 8 to 10 acres from the floodplain. This will give the County the ability market for economic development or other County purposes.

FINANCIAL: There are budgeted funds in from the economic develop line item.

SUPPORTING ATTACHMENT: YES

POWERPOINT PRESENTATION: NO

PERSON MAKING PRESENTATION: David Francis

TITLE: Program Administrator

PHONE NUMBER: 828-452-6625

EMAIL: david.francis@haywoodcountync.gov



November 15, 2017

Mr. David Francis, County Administrator
Haywood County
215 North Main Street
Waynesville, North Carolina 28746

RE: Proposal for Engineering Services
Jonathan Creek Soil Reclamation Project 2017
Haywood County, North Carolina

Dear Mr. Francis:

Thank you for requesting McGill Associates to provide this proposal to assist Haywood County with survey, civil engineering design, permitting, and construction observation for the proposed fill site located at the corner of US 276 and Potts Drive, PIN 8607-27-9452. Based on our previous discussions, it is anticipated that approximately 25,000 cubic yards of excess soil from another project will be placed and compacted at the site to avoid impacts to the existing floodway. The following is a breakdown of our proposed scope of services for this project:

TOPOGRAPHIC SURVEY

1. Establish geodetic survey control in the project area tied to NAD83(2011) and NAVD88 (GEOID12B) for field surveying and mapping efforts.
2. Provide topographic mapping of the project area, as defined on the attached Survey Scope Map, to include above ground, visible planimetric features, accessible piping networks, roads, buildings, utility markings, and structures to produce a digital terrain model suitable for producing a one-foot contour interval. Mapping to be provided at 1" = 50' scale in digital and paper formats.
3. Contact NC One Call and request utility locations for areas at the project site. Due to the schedule for obtaining topographic survey, utility markings will not be included in the survey work. If it is determined that utilities need to be included with the base survey information, this will be billed as an additional service in accordance with the attached Basic Fee Schedule.

DESIGN AND PERMITTING

1. Complete an initial site investigation with the design team to review base survey information, existing utilities, and feasibility of the proposed improvements.

2. Develop an existing conditions and demolition plan.
3. Coordinate with the North Carolina Department of Transportation (NCDOT) on driveway location and submit driveway permit application if necessary.
4. Create a final grading, stormwater, and erosion control plan with supporting calculations, narratives, and completed forms for permit submittals. Grading plan will be based on the assumed 25,000 cubic yards of import and fill depths to achieve a proposed elevation of one foot above base flood elevation within the project area.
5. Schedule and attend an Express Review Permit meeting with the North Carolina Department of Environmental Quality (NCDEQ) Land Quality Section.
6. Revise plans, calculations, and narratives as necessary from DEQ feedback received at the Express Review Permit meeting. Re-submit for final approval.
7. Prepare Flood Development Permit and Submit to Haywood County.
8. Revise plans to address comments received from the various permitting authorities listed above and re-submit as necessary for final approval.
9. Prepare final project plans and specifications, and bid documents.

BIDDING AND AWARD

1. Distribute bid documents to prospective bidders. Bidders list will be provided by Haywood County.
2. Address questions during the bid process and coordinate issuance of addenda as necessary.
3. Review bid packages for completeness and provide a recommendation of award for the lowest responsive and responsible bidder.
4. Assist Haywood County in the final preparation and execution of the construction contract documents and with verification of Performance Bonds, Payment Bonds, and Insurance Certificates for compliance.

CONSTRUCTION STAKING/LOMR-F CERTIFICATION

1. Provide construction staking survey services to locate the limits of the floodway, grade stakes for proposed grading, and location/elevation information for proposed erosion control or stormwater for the project. Staking damaged by the Contractor that will need

2. Develop an existing conditions and demolition plan.
3. Coordinate with the North Carolina Department of Transportation (NCDOT) on driveway location and submit driveway permit application if necessary.
4. Create a final grading, stormwater, and erosion control plan with supporting calculations, narratives, and completed forms for permit submittals. Grading plan will be based on the assumed 25,000 cubic yards of import and fill depths to achieve a proposed elevation of one foot above base flood elevation within the project area.
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6. Revise plans, calculations, and narratives as necessary from DEQ feedback received at the Express Review Permit meeting. Re-submit for final approval.
7. Prepare Flood Development Permit and Submit to Haywood County.
8. Revise plans to address comments received from the various permitting authorities listed above and re-submit as necessary for final approval.
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BIDDING AND AWARD

1. Distribute bid documents to prospective bidders. Bidders list will be provided by Haywood County.
2. Address questions during the bid process and coordinate issuance of addenda as necessary.
3. Review bid packages for completeness and provide a recommendation of award for the lowest responsive and responsible bidder.
4. Assist Haywood County in the final preparation and execution of the construction contract documents and with verification of Performance Bonds, Payment Bonds, and Insurance Certificates for compliance.

CONSTRUCTION STAKING/LOMR-F CERTIFICATION

1. Provide construction staking survey services to locate the limits of the floodway, grade stakes for proposed grading, and location/elevation information for proposed erosion control or stormwater for the project. Staking damaged by the Contractor that will need

to be reset will be billed as additional services in accordance with the attached Basic Fee Schedule.

2. Provide as-built topographic survey of the project area to confirm fill elevations relative to base flood elevation.
3. Prepare LOMR-F Certification documentation and submit for approval.

CONSTRUCTION ADMINISTRATION AND OBSERVATION

1. Attend the pre-construction conference.
2. Review shop drawings submittals as required for erosion control materials.
3. Make visits to the site to observe the progress and quality of the executed work to determine if the work is proceeding in general accordance with the plans and specifications, and notify the Owner and Contractor in writing of observed work that is failing to conform. An estimated four (2) trips are included for this task.
4. Provide contract administration services including assisting Haywood County with review of applications for payment, requests for change order or claims received from the Contractor, and general enforcement of the contract documents.
5. Make final site visit of the completed construction and determine if the work has been completed in general accordance with the permitted documents and establish one year warranty period.
6. Assist Haywood County with one warranty site visit as requested.

PROPOSED FEE

We anticipate providing the above services at the following lump sum fees:

Topographic Survey	\$ 2,410.00
Design and Permitting	\$ 6,700.00
Bidding and Award	\$ 2,100.00
Construction Staking/LOMR-F Certification	\$ 3,500.00
<u>Construction Administration and Observation</u>	<u>\$ 4,950.00</u>
Total Lump Sum Fee	\$19,660.00

Our fees for Construction Administration are based on the scope provided above and the assumed construction period for the site portion of the project of approximately two (2) months. If a different schedule is desirable, we can revise this fee accordingly.

The above fees do not include geotechnical services before or during construction, structural design, easement documents, application or approval fees (which should be paid directly by Owner).

ASSUMPTIONS

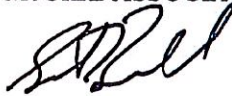
This proposal assumes the following:

1. Existing easements, as required to be identified and provided by regulatory and approving agencies, should be provided by Owner.
2. Drawings will be prepared in 24-inches by 36-inches size on McGill Associates title block, unless otherwise requested.
3. Existing stormwater facilities are immediately adjacent to the site, are available for connection, and are sufficient size and capacity to accept the stormwater runoff from this site, and are of sufficient condition that will not require upgrading downstream piping.
4. Relocation of existing utilities and coordination with applicable service providers is not included in the above scope of services.
5. Revisions to the plans that are required due to unknown subsurface conditions encountered during construction (i.e. utilities, storage tanks, etc.) will be considered additional services.
6. Drawing sets will be provided as necessary for agency approval and permitting. Final approved drawings will be provided to your office in .pdf format for inclusion in bidding and construction documents. Hard copies for printing will be billed as a separate reimbursable expense upon request.
7. Our attendance at public meetings, or additional meetings not listed in the above scope, is not included in the above fees and will be billed on an hourly basis in accordance with the attached Basic Fee Schedule.
8. Construction materials testing services are not included in the above scope of services.
9. No variance requests are included in this scope of services.
10. As-built surveying for the LOMR-F Certification assumes one trip for field work. If it is determined that the proposed fill has not been installed at the proper elevation, additional field work to obtain final as-built topographic will be billed as additional services in accordance with the attached Basic Fee Schedule.

11. Changes required due to contractor error will be considered additional cost services.
12. Private utility locate services are not included in the above scope of services.
13. Jurisdictional determinations for wetlands or streams located on the property are not included in the above scope of services.
14. Services for tasks other than those specifically detailed above are not included in the above fees.

Thank you for the opportunity to work with you on this project. If you have any questions concerning this proposal or any element of our work, please do not hesitate to contact me. If the above is acceptable to you, please sign and return the attached Consulting Services Agreement along with this letter to our office as your notice to proceed.

Sincerely,
McGILL ASSOCIATES, P.A.



SCOTT BURWELL, PE
Project Manager

Attachments: Survey Scope Map
Consulting Services Agreement
Basic Fee Schedule

cc: Mark Cathey, PE, McGill Associates, PA (via email)

ACCEPTED:

Name: 

Title: J.W. Kirkpatrick, III, Chairman, Board of Commissioners

Date: 11/20/17

CONSULTING SERVICES AGREEMENT

This contract entered into this 20 day of November, 2017 by and between Haywood County, NC hereinafter called the Client, and McGill Associates, P.A.;

Witnesseth that:

Whereas, the Client desires to engage McGill Associates to provide consulting services; and,

Whereas, the Client finds that the attached Scope of Services and terms of this agreement are acceptable; and,

Whereas, McGill Associates desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

Now, therefore, the parties hereto do mutually agree as follows:

1. Scope of Services: McGill Associates shall provide the services attached hereto in the Proposal for Services letter dated November 15, 2017, to this Agreement, hereinafter called services. Additional services will be provided at the Client's request.

2. Standard of Care: McGill Associates will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time these services are rendered. McGill Associates will reperform any services not meeting this standard without additional compensation.

3. Authorization to Proceed: Execution of this Consulting Services Agreement will be considered authorization for McGill Associates to proceed unless otherwise provided for in this Agreement.

4. Changes in Scope: The Client may request changes in the Scope of Services provided in this Agreement. If such changes affect McGill Associates cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement, including Task Orders executed by both parties.

5. Compensation: The Client shall pay the compensation to McGill Associates set forth in the Proposal for Engineering Services letter dated November 15, 2017, attached hereto. Unless otherwise provided in the Basis for Compensation, McGill Associates shall submit Invoices to the Client monthly for work accomplished under this agreement and the Client agrees to make payment to McGill Associates within thirty (30) days of receipt of the Invoices. Client further agrees to pay interest on all accounts Invoiced and not paid or objected to for a valid cause in writing within said thirty (30) days at a rate of 1-1/2 percent per month (18 percent per annum), until paid. Client agrees to pay McGill Associates' cost of collection of the amounts due and unpaid after sixty (60) days, including but not limited to, court costs and attorney's fees. McGill Associates shall not be bound by any provision such as contained in a purchase order or wherein McGill Associates waives any rights to a mechanic's lien or any provision conditioning McGill Associates' right to receive payment for its work upon payment to the Client by any third party. These general conditions are notice, where required, that McGill Associates shall file a lien whenever necessary to collect past due amounts. The Client agrees that failure to make payment in full within thirty (30) days of receipt of the Invoice shall constitute a release of McGill Associates from any and all claims of negligence which Client may have. It is also mutually agreed that should the Client fail to make prompt payments as described herein, McGill Associates reserves the right to immediately stop all work under this agreement until disputed amounts are resolved.

6. Personnel: McGill Associates represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted services, McGill Associates may do so at their discretion.

7. Opinions or Estimates of Cost: Any costs estimates provided by McGill Associates shall be considered opinions of probable costs. These along with project economic evaluations provided by McGill Associates will be on a basis of experience and judgment, but, since McGill Associates has no control over market conditions or bidding procedures, McGill Associates cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

8. Termination: This Agreement may be terminated for convenience by either the Client or McGill Associates with 15 days written notice or if either party fails substantially to perform through no fault of the other and does not commence correction of such non performance within 5 days of written notice and diligently complete the correction thereafter. On termination, under the

North Carolina Constitution, the client is not permitted to make payment for services not performed. McGill Associates will be paid for all authorized work performed up to the termination date plus reasonable project closeout costs.

9. Limitation of Liability: McGill Associates liability for Client's damages will, in aggregate, not exceed the total fees paid by the Client for full performance of the Scope of Services referenced herein or \$50,000, whichever is greater. This provision takes precedence over any conflicting provision of this Agreement or any documents incorporated into it or referenced by it. This limitation of liability will apply whether McGill Associates liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, and shall include McGill Associates' directors, officers, employees and subcontractors. At additional cost, Client may obtain a higher limit prior to commencement of services.

10. Assignability: This agreement shall not be assigned or otherwise transferred by either McGill Associates or the Client without the prior written consent of the other.

11. Severability: The provisions of this Consulting Services Agreement shall be deemed severable, and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this consulting services agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited, and given effect to the extent that it may be enforceable.

12. Ownership of Documents: All documents, calculations, drawings, maps and other items generated during the performance of services shall be considered intellectual property and remain the property of McGill Associates and the Client. Client agrees that the deliverables are intended for the exclusive use and benefit of, and may be relied upon for this project only by the Client and will not be used otherwise.

13. Excusable Delay: If performance of service is affected by causes beyond McGill Associates control, project schedule and compensation shall be equitably adjusted.

14. Indemnification: Client agrees to indemnify, defend and hold harmless McGill Associates, its agents, employees, officers, directors and subcontractors, to the fullest extent permitted by North Carolina law and subject to all defenses allowable under North Carolina law, from any and all claims, and costs brought against McGill Associates which arise in whole or in part out of the failure by the Client to promptly and completely perform its obligations under this agreement, and as assigned in the Proposal for Engineering Services or from the inaccuracy or incompleteness of information supplied by the Client and reasonably relied upon by McGill Associates in performing its duties or for unauthorized use of the deliverables generated by McGill Associates.

15. Choice of Law: This Agreement shall be construed, governed, and enforced by and in accordance with the laws of the State of North Carolina. Each party expressly consents to the jurisdiction of the Haywood County Superior Court of the State of North Carolina should litigation arise between the parties.

16. Entire Agreement: This Agreement contains all of the agreements, representations and understandings of the parties hereto and supersedes any previous understandings, commitments, proposals, or agreements, whether oral or written, and may only be modified or amended as herein provided; and as mutually agreed.


17. Attachments to this document:

1. Proposal for Engineering Services Letter dated November 15, 2017.
2. Basic Fee Schedule
3. Survey Scope Map

Haywood County, NC
Authorized Signature:


J.W. Kirkpatrick
Chairman, Haywood County Board of Commissioners
215 North Main Street
Waynesville, North Carolina 28746

McGill Associates, P.A.


Scott Burvell, PE
Project Manager
55 Broad Street
Asheville, North Carolina 28801



BASIC FEE SCHEDULE

September 2017

<u>PROFESSIONAL FEES</u>	<u>Hourly Rate</u>
Firm Principal	\$190.00
Program Services Manager I	\$150.00
Program Services Manager II	\$160.00
Senior Project Manager I	\$160.00
Senior Project Manager II	\$170.00
Senior Project Manager III	\$175.00
Project Manager I	\$140.00
Project Manager II	\$150.00
Project Engineer I	\$105.00
Project Engineer II	\$115.00
Project Engineer III	\$125.00
Engineering Associate I	\$ 85.00
Engineering Associate II	\$ 90.00
Engineering Technician I	\$ 80.00
Engineering Technician II	\$ 90.00
Engineering Technician III	\$100.00
Environmental Specialist I	\$ 80.00
Environmental Specialist II	\$ 90.00
Electrical Engineer I	\$105.00
Electrical Engineer II	\$115.00
Electrical Engineer III	\$125.00
Electrical Engineering Associate I	\$ 85.00
Electrical Engineering Associate II	\$ 90.00
Electrical Engineering Technician I	\$ 80.00
Electrical Engineering Technician II	\$ 90.00
Electrical Engineering Technician III	\$100.00
Mechanical Engineer I	\$105.00
Mechanical Engineer II	\$115.00
Mechanical Engineer III	\$125.00
Mechanical Engineering Associate I	\$ 85.00
Mechanical Engineering Associate II	\$ 90.00
Mechanical Engineering Technician I	\$ 80.00
Mechanical Engineering Technician II	\$ 90.00

Mechanical Engineering Technician III	\$100.00
CADD Operator I	\$ 75.00
CADD Operator II	\$ 80.00
CADD Operator III	\$ 85.00
Construction Services Manager I	\$120.00
Construction Services Manager II	\$135.00
Construction Administrator I	\$ 90.00
Construction Administrator II	\$100.00
Construction Administrator III	\$110.00
Construction Field Representative I	\$ 75.00
Construction Field Representative II	\$ 80.00
Construction Field Representative III	\$ 85.00
Construction Project Coordinator	\$ 75.00
Planner I	\$ 95.00
Planner II	\$110.00
Planner III	\$125.00
Planner IV	\$135.00
Surveyor I	\$ 80.00
Surveyor II	\$ 90.00
Surveying Associate I	\$ 70.00
Surveying Associate II	\$ 75.00
Survey Technician I	\$ 70.00
Survey Technician II	\$ 75.00
Survey Field Technician I	\$ 55.00
Survey Field Technician II	\$ 60.00
Survey Field Technician III	\$ 65.00
Administrative Assistant (I-II)	\$ 70.00
Administrative Assistant III	\$ 75.00
Accounting Assistant (I-II)	\$ 80.00

1. **EXPENSES**

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

2. **ASSOCIATED SERVICES -**

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

**FINANCIAL RESPONSIBILITY/OWNERSHIP FORM
SEDIMENTATION POLLUTION CONTROL ACT**

No person may initiate any land-disturbing activity on one or more acres as covered by the Act before this form and an acceptable erosion and sedimentation control plan have been completed and approved by the Land Quality Section, N.C. Department of Environment and Natural Resources. (Please type or print and, if the question is not applicable or the e-mail and/or fax information unavailable, place N/A in the blank.)

Part A.

Jonathan Creek Soil Reclamation Project

1. Project Name _____
2. Location of land-disturbing activity: County **Haywood** City or Township _____
Highway/Street **US- 276** Latitude **35d 32'40"° N** Longitude **83d 01'32"° W**
3. Approximate date land-disturbing activity will commence: **December 2017**
4. Purpose of development (residential, commercial, industrial, institutional, etc.): **Commercial**
5. Total acreage disturbed or uncovered (including off-site borrow and waste areas): **9.29**
6. Amount of fee enclosed: **\$2,650.00**. The application fee of \$65.00 per acre (rounded up to the next acre) is assessed without a ceiling amount (Example: a 9-acre application fee is \$585).
7. Has an erosion and sediment control plan been filed? Yes _____ No _____ Enclosed **XX**
8. Person to contact should erosion and sediment control issues arise during land-disturbing activity:
Name **David B Francis** E-mail Address **david.francis@haywoodcountync.gov**
Telephone **828/452-6625** Cell # **828/400-0212** Fax # **828/452-6715**
9. Landowner(s) of Record (attach accompanied page to list additional owners):
Haywood County **828/452-6625** **828/452-6715**
Name _____ Telephone _____ Fax Number _____
215 N Main Street
Current Mailing Address _____ Current Street Address _____
Waynesville NC 28786
City _____ State _____ Zip _____ City _____ State _____ Zip _____
10. Deed Book No. **715** Page No. **657** Provide a copy of the most current deed.

Part B.

1. Person(s) or firm(s) who are financially responsible for the land-disturbing activity (Provide a comprehensive list of all responsible parties on an attached sheet):
Joel Mashburn **joel.mashburn@haywoodcountync.gov**
Name _____ E-mail Address _____
215 N Main Street
Current Mailing Address _____ Current Street Address _____
Waynesville NC 28786
City _____ State _____ Zip _____ City _____ State _____ Zip _____
Telephone **828/452-6625** Fax Number **828/452-6712**

2. (a) If the Financially Responsible Party is not a resident of North Carolina, give name and street address of the designated North Carolina Agent:

Name _____ E-mail Address _____
 Current Mailing Address _____ Current Street Address _____
 City _____ State _____ Zip _____ City _____ State _____ Zip _____
 Telephone _____ Fax Number _____

- (b) If the Financially Responsible Party is a Partnership or other person engaging in business under an assumed name, **attach a copy of the Certificate of Assumed Name**. If the Financially Responsible Party is a Corporation, give name and street address of the Registered Agent:

Name of Registered Agent _____ E-mail Address _____
 Current Mailing Address _____ Current Street Address _____
 City _____ State _____ Zip _____ City _____ State _____ Zip _____
 Telephone _____ Fax Number _____

The above information is true and correct to the best of my knowledge and belief and was provided by me under oath (This form must be signed by the Financially Responsible Person if an individual or his attorney-in-fact, or if not an individual, by an officer, director, partner, or registered agent with the authority to execute instruments for the Financially Responsible Person). I agree to provide corrected information should there be any change in the information provided herein.

Joel Mashburn

Interim County Manager

Type or print name _____

Title or Authority _____

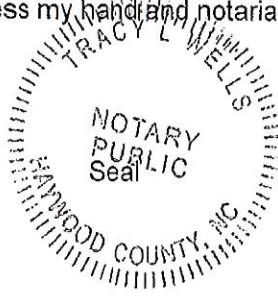
Joel Mashburn
 Signature

11-21-17
 Date

I, Tracy L. Wells, a Notary Public of the County of Haywood

State of North Carolina, hereby certify that Joel Mashburn appeared personally before me this day and being duly sworn acknowledged that the above form was executed by him.

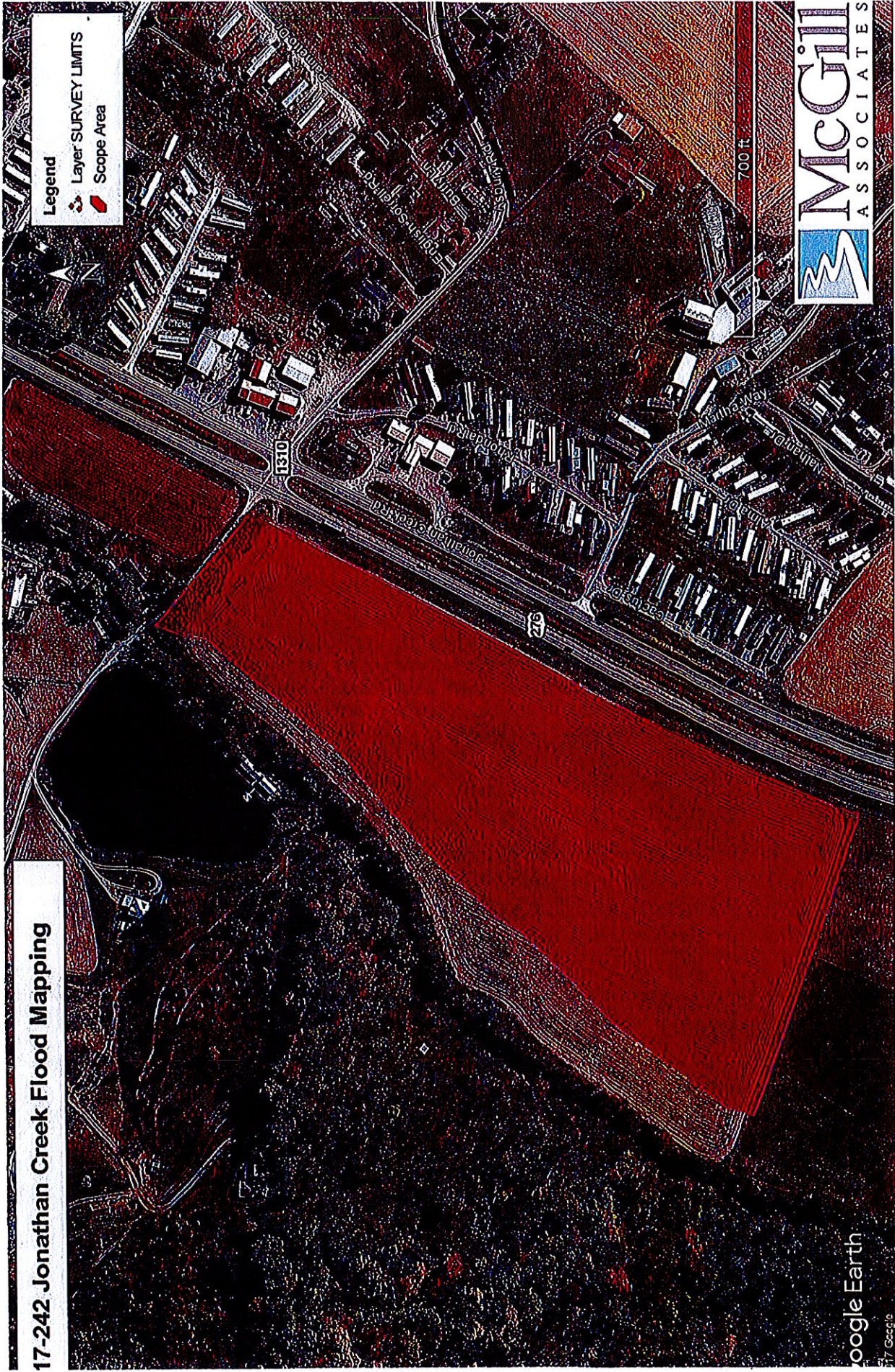
Witness my hand and notarial seal, this 21st day of November, 20 17



Tracy L. Wells
 Notary

My commission expires 11-14-2021

17-242 Jonathan Creek Flood Mapping



Legend
Layer SURVEY LIMITS
Scope Area

McGill
ASSOCIATES

Google Earth
© 2007 Google, Inc.

