

May 10, 2024

Ms. Tistrya Houghtling
Town of New Lebanon Supervisor
14755 Route 22 North
P.O. Box 328
New Lebanon, New York 12125

Re: Town of New Lebanon

File: S701.2333

Dear Ms. Houghtling:

Barton & Loguidice, D.P.C., (B&L), is pleased to present this proposal for professional and specialized engineering services related to the closure of the Town's former landfill located on the south side of Old Post Road. The next step of the project is developing construction level documents based on the New York State Department of Environmental Conservation (NYSDEC) approved closure plan, solicitation of construction bids from qualified contractors for the construction of the closure system, construction administration, construction observation and certification of construction activities. Services to be provided under this proposal are discussed in detail and are based on typical construction durations that will be incorporated into the construction bid documents.

Project Understanding

The project includes approximately 5.0 acres of capping system at the Town's former landfill. It is understood that the Town is currently working with the NYSDEC on funding for the project and that the design will be completed by early Fall of 2024 to allow for the solicitation of bids prior to the end of the 2024 calendar year. Construction is expected to commence in late spring of 2025, once favorable weather is present and be complete by September 12, 2025. The construction oversight and administration component of this project is estimated at a construction duration of 20 weeks, which is typical for this scale of project.

Scope of Services

Task 1: Closure System Design

Similar to other successful projects completed by B&L, we will prepare detailed design documents for the closure of the five acre landfill. The design is expected to include the following components:



- Final Closure Grading Plan;
- Waste Excavation and Relocation Plan;
- Final Cover System Details, including specific geosynthetic construction details;
- Stormwater Management Details;
- Construction Stormwater Pollution Prevention Plan; and
- Construction Contract documents including material Technical Specifications.

Prior to the start of design activities, B&L will subcontract to a NYS licensed land surveyor to perform an update to the topographic survey that was last performed in November 2008. The new survey area is expected to encompass approximately 12 acres of the property and surrounding areas. The updated survey will allow for accurate site conditions to be incorporated into the final design documents and the calculation of accurate contract quantities.

B&L will assemble the engineering drawings and material specifications into a set of Contract documents to be used for public bidding and construction of the project utilizing B&L's standard contract format for municipal landfill projects within New York State. We will prepare a set of draft documents for the Town's review when the design is approximately seventy-five (75) percent complete. At that time, we will attend a meeting with the Town to discuss the project with the Town representatives and review the proposed design elements and construction phasing activities. Comments provided by the Town will be incorporated into the final documents. Upon receipt of final comments from the Town, the documents will be finalized and submitted to the NYSDEC Region 4 for their review and approval. B&L will provide responses to the Department's comments, if any, to obtain approval of the construction documents from the Department.

Task 2: Bidding Assistance

B&L will provide and distribute electronic copies of the bidding documents (plans and specifications) to potential bidders. We will also provide an advertisement to the Town for publication in the required local newspaper and other applicable entities. During the bidding period, we will receive and address questions from potential bidders, attend a pre-bid meeting at the site with potential contractors, and prepare any addenda that may be required. B&L will attend the bid opening at the Town office and review the bids received. Following receipt of bids, we will make a recommendation of award to the Town.

Task 3: Construction Observation

B&L staff will perform full-time construction observation of the Contractor's QA/QC activities, as required by the NYSDEC, document construction activities in accordance with regulatory requirements, perform twice weekly stormwater infrastructure inspections for the closure work area, attend every other week project meetings at the site in-person, review contractor payment and change order applications, and serve as a liaison between the Town and the Contractor.



Refer to the Assumption and Clarifications section below for a detailed description for estimated durations and hours.

Task 4: Office Administration and Construction Progress Meetings

B&L staff will prepare meeting agendas, attend a preconstruction meeting and bi-weekly construction progress meetings and provide meeting minutes to all attending parties. Office administration will include the review of Contractor submittals relating to the construction contract such as shop drawings, samples of materials, factory test methods and results, and all field testing procedures and results. Digital copies of all approved submittals will be provided to the Town. All required testing data will be included in the final certification report for submittal to the NYSDEC. Other tasks include the review and processing of Contractor payment requisitions, review of change order applications, if any, and addressing Contractor's questions/clarification requests on the design documents.

Task 5: Construction Certification Report

A Construction Certification Report will be prepared and submitted to the NYSDEC and Town in accordance with 6 NYCRR Part 360 series regulations for the closure construction projects. The Certification Report will include a summary of applicable construction processes and materials, pertinent QA/QC testing data from the construction as well as completed construction drawings and construction progress photographs.

Assumptions and Clarifications

The following are our assumptions and clarifications for this Proposal:

- The proposal is based on a construction duration 20 weeks. We have assumed 55 hours per week for the closure construction. These durations are based on typical construction hours historically worked by Contractors on past similar scale projects.
- An additional geosynthetic inspector will be provided for three weeks during select geosynthetic installation periods at 55 hours per week to assist with the oversight of geosynthetic installation and testing.

Fee Estimate

B&L proposes to provide the services described herein on a time and expense basis not to exceed \$345,100 without prior approval of the Town. This fee includes all project expenses. Monthly updates will be prepared to provide a status of the remaining fees based on the construction progress. If less time is required than estimated, we will only bill the effort that is required.



A breakdown of the fee based on the tasks described above is as follows:

Task 1:	Closure System Design:	\$ 49,100.00
Task 2:	Biding Assistance:	\$ 8,000.00
Task 3:	Construction Observation:	\$198,000.00
Task 4:	Office Administration and Construction Progress Meetings	\$ 76,000.00
Task 5:	Construction Certification Report	\$ 14,000.00

Total: \$345,100.00

B&L proposed to invoice the Town monthly on a time and expense basis not to exceed the amount herein without prior written approval. If additional services are required and authorized by the Town, B&L will provide these services based on our current Schedule A Billing rates in effect at the time the services are rendered.

Please contact our office if you have any questions. If you approve of this proposal, please sign the authorization below and return a signed copy to our office for our records. As always, we look forward to working with the Town on this project.

Sincerely,

BARTON & LOGUIDICE, D.P.C.

Chad W. Hutton, P.E.
Sr. Vice President

Cory J. McDowell, P.E.
Vice President

CJM/jms

Authorization

Barton & Loguidice, D.P.C. is hereby authorized by the Town of New Lebanon (Owner”) to proceed with the services described herein in accordance with the attached Terms and Conditions.

Signature

Date

STANDARD TERMS AND CONDITIONS
for
PROFESSIONAL CONSULTANT SERVICES
provided by
BARTON & LOGUIDICE, D.P.C. ("Consultant")

The OWNER and the CONSULTANT, for themselves, their successors and assigns, have mutually agreed and do agree with each other as follows:

1.0 Basic Agreement

Consultant shall provide, or cause to be provided, the Services set forth in the proposal (PROPOSAL) to which these terms and conditions are attached, and Owner shall pay Consultant for such Services as set forth in PROPOSAL. The PROPOSAL, in conjunction with these terms and conditions is referred to herein as "Agreement".

2.0 General Considerations

A. The standard of care for all professional or related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

B. Consultant shall commence to provide its services upon the full execution of this Agreement and shall provide those services within a reasonable time. In no event shall Consultant be obligated to perform services on a schedule which, in the Consultant's professional judgement, does not provide Consultant sufficient time to perform in accordance with the aforesaid standard of care.

C. All design documents prepared or furnished by Consultant are instruments of service, and Consultant retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Consultant grants Owner a limited license to use the instruments of service exclusively (1) performance of design or operation, (2) for Project construction as is the intended purpose of the documents, and (3) for the purpose of maintenance and repair of the Project, or (4) other documents, reports, details and plans as defined in the project Scope of Work.

D. Consultant shall not at any time supervise, direct, or have control over any contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

E. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

F. Consultant shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Consultant's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decisions regarding, or interpretations or clarifications of, the construction contract or Instruments of Service made by Owner or any third party without the advice and consultation of Consultant.

G. If the Construction Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Consultant shall specify the appropriate performance and design criteria that such services must satisfy. The Consultant shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Consultant. The Consultant's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

H. Unless otherwise included under this Agreement, the parties acknowledge that Consultant's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). Owner represents to Consultant that, to the best of its knowledge, a Hazardous Environmental Condition does not exist at the Site, except as expressly disclosed to the Consultant in writing. If Consultant or any other party encounters a Hazardous Environmental Condition, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. The services to be provided by Consultant under this Agreement DO NOT INCLUDE advice or recommendations with respect to the issuance, structure, timing, terms or any other aspect of municipal securities, municipal derivatives, guaranteed investment contracts or investment strategies. Any opinions, advice, information or recommendations provided by Consultant are understood by the parties to this Agreement to be strictly engineering or other technical opinions, advice, information or recommendations. Consultant is not a "municipal advisor" as defined by 15 U.S.C. 78o-4 or the related rules of the Securities and Exchange Commission. The other parties to this Agreement should determine independently whether they require the services of a municipal advisor.

J. The Consultant shall not be required to execute certificates, guarantees, warranties or make representations that would, in its professional judgment, require knowledge, services or responsibilities beyond the scope of this Agreement.

K. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

L. To the fullest extent permitted by law, Owner and Consultant (1) waive against each other, and the other's employee's, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Consultant's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Consultant pursuant to the PROPOSAL, whichever is greater, (the "Limitation Amount"), and further, in no event shall the Limitation Amount exceed the amount of liability insurance proceeds actually available to the Consultant for the claim at issue at the time of settlement or final judgment net of any and all expenses paid or incurred on the claim at issue, payments made or incurred in connection with other claims made against the Consultant, or any other circumstances which may reduce, impair, or eliminate the overall availability of such insurance to the Consultant. It is intended that these limitations apply to any and all liability or cause of action.

3.0 Payment for Services

Consultant will prepare a monthly invoice in accordance with Consultant's standard invoicing practice and submit the invoice to Owner. Invoices are due and payable within 30 days of the date of the invoice. Consultant may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses, and other related charges.

4.0 Additional Services

Additional services may be required in Consultant's professional judgement because of changes in the Project, or unforeseen circumstances. The Consultant shall furnish services in addition to those set forth in the PROPOSAL if mutually agreed by Owner and Consultant. Owner shall pay Consultant for any Additional Services provided as follows: (1) as may be mutually agreed to in writing, or (2) in the absence of a mutual agreement an amount equal to the cumulative hours charged to the Project by each member or each class of Consultant's employees engaged in providing the Additional Services times the Consultant's hourly billing rates for each applicable billing class in effect at the time the Additional Services are performed; plus reimbursable expenses and charges for Consultant's Subconsultants, if any.

5.0 Dispute Resolution

Owner and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice by either party of the existence of the dispute. If a dispute involves matters other than a claim by Consultant for payment of fees and the parties fail to resolve the dispute through negotiation then Owner and Consultant agree that they shall first submit any and all such unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually acceptable mediator. Owner and Consultant agree to participate in the mediation process in good faith and to share the cost of the mediation equally. The process shall be conducted on a confidential basis, and shall be completed within 150 days of the date of notice by either party of the existence of the dispute. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to an alternative dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

6.0 Accrual of Claims

All causes of action between the parties to this Agreement including those pertaining to acts, failures to act, or failures to perform in accordance with the obligations of the Agreement or failures to perform in accordance with the standard of care shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts, failures to act or failures to perform occurring prior to Substantial Completion, or the date of issuance of the Notice of Acceptability of Work (or similar notice of the final completion of the Project) for acts, failures to act or failures to perform occurring after Substantial Completion.

7.0 Controlling Law

This Agreement is to be governed by the law of the state in which the project is located.

8.0 Successors, Assigns, and Beneficiaries

Owner and Consultant each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted herein the assigns of Owner and Consultant) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither Owner nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. This provision shall not preclude Consultant from retaining Subconsultants as it deems reasonably necessary for the completion of the services rendered hereunder.

9.0 Termination

If Consultant's services related to the project are terminated for any reason, Consultant shall be compensated for time plus reasonable expenses associated with demobilizing personnel and equipment, and, if requested in writing by the Owner, for completion of tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

10.0 Total Agreement/Severability

This Agreement, including any expressly incorporated Exhibits, constitutes the entire Agreement between Owner and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. If any term or condition of this Agreement shall, to any extent, be found invalid, void or unenforceable, the remaining provisions shall remain in full force and effect to the extent allowed by applicable law.