

**The AGREEMENT BETWEEN
CITY OF SARATOGA SPRINGS, NY
AND
BARTON & LOGUIDICE, P.C.**

This Agreement ("Agreement") is made by and between the **City of Saratoga Springs, NY** (the "City") with a place of business at 474 Broadway, Saratoga Springs, NY 12866, and **Barton & Loguidice, P.C.** (the "Consultant") with a place of business at 10 Airline Drive, Suite 200, Albany, NY 12205.

WITNESSETH THAT:

WHEREAS, the City has requested a quotation for the City's request for the provision of wetlands monitoring services for Spring Run Trail as required by the U.S. Army Corp of Engineers for Wetland Mitigation Sites Wetland Mitigation Sites WEA-1 and WEA-2; and

WHEREAS, the Consultant has submitted a proposal in response to the City's request for the provision of wetlands monitoring services for Spring Run Trail as required by the U.S. Army Corp of Engineers for Wetland Mitigation Sites Wetland Mitigation Sites WEA-1 and WEA-2; and

WHEREAS, the Consultant is trained and proficient in the field of wetlands monitoring services;

NOW, THEREFORE, in consideration of the mutual promises, responsibilities and covenants set forth herein, the City and the Consultant hereby agree as follows:

1. SCOPE OF AGREEMENT

In response to a request for a pricing proposal requested by the City for wetlands monitoring services for Spring Run Trail as required by the U.S. Army Corp of Engineers for Wetland Mitigation Sites Wetland Mitigation Sites WEA-1 and WEA-2, the City has received a response resulting in this contract. The Consultant submitted a proposal dated October 12, 2011 (the "Proposal"), which are attached hereto as Exhibit A. The Consultant shall provide to the City the products and services set forth therein. The Consultant assumes full responsibility for the provision of the products and services made available in this Agreement. The Consultant shall be so liable even when the Consultant subcontracts the provision of a portion of the products and services. Subcontracting shall be permitted only with the prior written approval of the City.

2. CONSULTANT RESPONSIBILITIES

The Consultant shall provide services as outlined in the proposal dated October 12, 2011 as marked.

3. CONSULTANT DISCLOSURE

The requirements of New York State Finance Law Sections 8 and 163 regarding Consultant Disclosure are hereby incorporated into this Agreement.

4. FEES

The costs, fees and disbursements associated with the provision of products and services by the Consultant shall be determined in accordance with the terms and provisions of Exhibit A, a copy of which is annexed hereto and made a part hereof. The total cost of the services detailed in the October 12, 2011 proposal hereto attached for wetlands monitoring services for Spring Run Trail as required by the U.S. Army Corp of Engineers for Wetland Mitigation Sites Wetland Mitigation Sites WEA-1 and WEA-2 shall not exceed Thirteen Thousand Eight Hundred Fifty Dollars (\$13,850) for calendar year 2012 beginning

January 1, 2012 and ending December 31, 2012, with the City's option to continue for each subsequent year through 2016. Monitoring for five years is required by the US Army Corp's of Engineers. No City employee, including the Project Manager named in Section 8 has the authority to request that the Consultant perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Exhibit A of this Agreement.

5. TERM

The term of this Agreement shall commence per the date of approval of this Agreement by the City Council of the City of Saratoga Springs for calendar year 2012 beginning January 1, 2012 and ending December 31, 2012 , with the City's option to continue for each subsequent year through 2016. Monitoring for five years is required by the US Army Corp's of Engineers. The Consultant and the City may mutually agree, in writing, to terminate this Agreement at any time. The City may also terminate this Agreement at any time and for any reason by mailing written notice to the Consultant at least ten (10) days prior to such termination date.

The City reserves the right to terminate this Agreement in the event it is found that either of the certifications filed by the Consultant in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the City may exercise its termination right by providing written notification to the Consultant in accordance with the provisions of Section 8 herein.

The City shall not incur any costs if it terminates this Agreement, other than those otherwise due to the Consultant for products delivered and services rendered by the Consultant pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, the Consultant shall only be entitled to compensation for products delivered and services rendered up to the date of termination.

In addition, in the event of any violation by the Consultant of any of the terms of this Agreement, the City may terminate the Agreement without notice and with compensation to the Consultant for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by the Consultant will result in immediate and irreparable injury to the City and will authorize recourse to injunction and/or other specific performance as well as to all other legal or equitable remedies to which the City may be entitled.

6. EFFECTIVE DATE

This Agreement shall have no force and effect until approved by the City Council of the City of Saratoga Springs, NY.

7. BILLING

The Consultant shall provide itemized statements monthly to be reviewed and approved by the City. Invoices must be submitted to: City of Saratoga Springs, NY, Attn. Purchasing Agent, 474 Broadway, Saratoga Springs, NY 12866. Payment by the City will be made in accordance with the State Finance Law, upon receipt of such statements and upon approval by the City. No City employee, including the Project Manager named in Section 8 has the authority to request that the Consultant perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Exhibit A of this Agreement.

8. NOTICE

The City Engineer is the project manager and shall represent the City in all matters affecting the delivery of products and services. The project manager for the Consultant is Steve LeFevre P.G. C.P.G., Managing Hydrogeologist.

Any notice, request, demand, or other communication required or provided for in this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed in a sealed envelope, postage prepaid, addressed as follows:

To the City: Commissioner of Public Works
City of Saratoga Springs
474 Broadway, Saratoga Springs, NY 12866

With a copy to: Secretary to the City Council
City of Saratoga Springs
474 Broadway, Saratoga Springs, NY 12866

To Consultant: Scott Nostrand, P.E., Senior Vice President
Barton & Loguidice, P.C.
290 Elwood Davis Road, Box 3107, Syracuse, NY 13220

Either party may designate another or further address by notice given in accordance herewith.

9. CONFIDENTIAL INFORMATION

In connection with the provision of products and/or services to the City by Consultant, the City may disclose to Consultant information that is proprietary or confidential information. Any and all City communications, records, documents, written, oral or electronic communication or other information of any kind shall be deemed and treated as confidential by the Consultant. The Consultant shall not copy, transmit, deliver or communicate in any way to any other person or entity any such communications and/or information without the prior written consent of the City. The Consultant agrees to use such confidential information solely for the purpose of performing services hereunder for the City.

The term "confidential information" does not include information that (i) is or becomes generally available to the public other than as a result of disclosure by the Consultant, (ii) is or becomes available to the Consultant on a non-confidential basis from sources other than the City, provided that such source is not bound by a written confidentiality agreement with the City, or (iii) was lawfully within the Consultant's possession prior to its being furnished to the Consultant by the City, provided that the source of such information was not bound by a written confidentiality agreement with the City, or (iv) is required under applicable law or by deposition, interrogatory, request or demand for information or documents, subpoena, investigative demand, court order or other similar legal process. In such cases the Consultant shall provide the City with written notice that such information is not deemed confidential. Such notice shall provide the City sufficient time to seek a protective order or other legal remedy.

All written confidential information (and all copies, extracts or other reproductions in whole or in part thereof) obtained by the Consultant from the City shall be returned to the City and have the status of City work papers (or, with the City's written permission, shall be destroyed and such destruction certified in writing to the City by an authorized Consultant representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by the Consultant. The Consultant shall be permitted to retain one copy of internal memoranda and other documents, developed by the Consultant during the term of this Agreement, which contain or refer to confidential information, subject to the confidentiality provisions of this paragraph.

Nothing in this section shall be construed to alter the Consultant's responsibilities under any applicable State Law. Since monetary damages may not be a sufficient remedy with respect to any violation of this section, the City shall be entitled to specific performance and injunctive relief, in addition to any other remedy.

10. CITY PROPERTY

All information and materials received hereunder by the Consultant from the City are and shall remain the sole and exclusive property of the City and the Consultant shall have no right, title, or interest

in or to any such information or materials by virtue of their use or possession hereunder by the Consultant.

All intellectual property, created by the Consultant hereunder as a product or as a service to the City shall be the sole and exclusive property of the City. The Consultant hereby transfers and assigns to the City all proprietary and intellectual property rights in such property.

Effective upon their creation pursuant to Section 2 of this Agreement, the Consultant conveys, assigns and transfers to the City the sole and exclusive rights, title and interest in all documents, electronic databases, and custom programs, whether preliminary, final or otherwise, including all trademarks and copyrights. The Consultant hereby agrees to take all necessary and appropriate steps to ensure that the custom products are protected against unauthorized copying, reproduction and marketing by or through the Consultant, its agents, employees, or subcontractors. Nothing herein shall preclude the Consultant from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Consultant's business.

The Consultant grants to the City a perpetual, nonexclusive, royalty-free, unlimited use license to use, execute, reproduce, display, modify and distribute any pre-existing software, tools or techniques delivered by the Consultant under this Agreement. Any written reports, opinions and advice rendered by the Consultant shall become the sole and exclusive property of the City, and the Consultant shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Consultant.

11. RETENTION OF RECORDS

The Consultant shall make available to the City all information pertinent to the project, including reports, studies, drawings, and any other data. All original records generated as a result of the project shall be maintained by the Consultant for a period of six (6) years after expiration of the Agreement. Upon request, copies of those records shall be provided to the City at no cost.

12. CONFLICTS OF INTEREST

The Consultant represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement.

13. PUBLICITY

The Consultant shall not prepare or release, or cause to be prepared or released, any public notice or announcement concerning this Agreement or performance hereunder. Public notice or announcement includes, but is not limited to, notices published on or in connection with the Consultant's website. The Consultant shall not plan, conduct, or cause to be planned or conducted, or take part in, any news or other conference concerning this Agreement, or work performed pursuant to it, without the City's prior written approval. The Consultant shall not make public or publicize its relation with the City, nor use the City's name, without the City's prior written approval.

14. RELATIONSHIP

No staff member, officer, director or person employed by the Consultant in connection with this Agreement shall be considered or deemed to be an employee of the City of Saratoga Springs, NY or represent him or herself as an employee of the City of Saratoga Springs, NY.

15. INSURANCE

All insurance policies required under this Agreement shall be issued by insurance companies authorized to conduct business under the laws of the State of New York. They shall be written for the benefit of the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents, employees and for the Consultant. Said policies shall be effective until all work required or contemplated

by the Agreement has been completed. Policies expiring on a fixed date before completion of the Consultant's duties under this Agreement must be renewed not less than 30 days before such expiration date. No policy shall be changed by endorsement without the knowledge and the written consent of the City and, in particular, any notice of cancellation by the insurer shall not be effective until 30 days after the said notice is actually received by the City. Any notice addressed to the City shall be mailed via certified or registered mail to the address set forth herein. The Consultant acknowledges that failure to obtain such insurance on behalf of the City constitutes a material breach of contract and subjects it to liability for damages indemnification and all other legal remedies available to the City.

In the event the Consultant utilizes a Subcontractor for any portion of the services outlined within the scope of its activities, the Subcontractor shall provide insurance of the same type or types and to the same extent of coverage as that provided by the Consultant. All insurance required of the Subcontractor shall name the City of Saratoga Springs as an **Additional Insured on a primary and non-contributory basis** for all those activities performed within its contracted activities for the contact as executed.

Before commencing work under this Agreement, the Consultant shall furnish to the City a certificate of insurance naming: the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents and employees as an **Additional Insured on a primary and non-contributory basis**. Failure to object to the contents of the certificate of insurance or the absence of same shall not be deemed a waiver of any and all rights held by the City. Such certificate shall be on forms acceptable to the City's Office of Risk and Safety Management showing that the Consultant has complied with these requirements. In addition, for policies expiring on a fixed date before completion of the Project, certificates showing renewal must be filed not less than 30 days before such expiration date.

It shall be an affirmative obligation of the Consultant to advise the City's Office of Risk and Safety at Fax No. 518.693.4070, e-mail Marilyn.Rivers@Saratoga-Springs.org or mail via Office of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866, within two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement.

- a. The Consultant shall procure and maintain during the term of this contract, at the Consultant's expense, the insurance policies listed in Part II with limits equal to or greater than the enumerated limits.
- b. The Consultant shall be solely responsible for any self-insured retention or deductible losses under each of the required policies.
- c. Every required policy, including any required endorsements and any umbrella / excess policy, shall be primary insurance. Insurance carried by the City of Saratoga Springs, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Consultant.
- d. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage.
- e. The Consultant may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form).
- f. The Office of Risk & Safety Management must approve all insurance certificates.
- g. The City of Saratoga Springs reserves its right to request certified copies of any policy or endorsement thereto.
- h. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated "A-:VII" or better by A.M. Best (Current Rate Guide).
- i. If the Consultant fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the City of Saratoga Springs may exercise any rights it has in law or equity, including but not limited to the following: immediate termination of the contract;

(1.) withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR

(2.) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by the City of Saratoga Springs shall be repaid upon demand, or at the City's option, may be offset against any monies due to the Consultant.

Required Property and Casualty Insurance - Minimum coverage types and amounts:

- Commercial General Liability Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence/ Two Million Dollars Aggregate
- Commercial Automobile Insurance: One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles
- Excess Insurance: One Million Dollars per Occurrence Aggregate
- Professional Errors and Omissions: One Million Dollars per Claims Aggregate

Required Workers Compensation Insurance – Minimum coverage types and amounts:

- NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance

16. LIABILITY

The Consultant assumes all risks in the performance of all its activities authorized by this Agreement to the extent caused by the Consultant's negligence. The Consultant hereby covenants and agrees to indemnify and hold harmless the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damage or injury, arising out of this agreement, of whatsoever kind and nature including death or injury to person, damage or loss of property, all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences to the extent caused by the Consultant's negligence. The Consultant shall be responsible for such liabilities that arise at any time prior to termination of this Agreement, whether direct or indirect, and whether caused or contributed to by the Consultant, its Consultants, Subconsultants, agents, or employees. The Consultant's responsibility under this section shall not be limited to the required or available insurance coverage.

17. FORCE MAJEURE

Neither party shall be held liable for failure to perform its part of this Agreement when such failure is due to fire, flood, or similar disaster; strikes or similar labor disturbances; industrial disturbances, war, riot, insurrection, and/or other causes beyond the control of the parties.

18. WAIVER

No failure or delay on the part of the City in exercising any right, power or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise.

19. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein except as to those matters or agreements expressly incorporated herein by reference. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement. This Agreement supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained herein. This Agreement shall not be amended, changed or otherwise modified except in writing, signed by both parties.

20. BINDING AGREEMENT

The covenants and agreements contained in this Agreement shall be binding upon the parties hereto and upon their respective executors, administrators, legal representatives, heirs, successors, distributees and assigns. The rights or obligations granted or allocated to the Consultant herein may not be assigned without the prior written consent of the City.

21. ASSIGNMENT

The Consultant shall not, without the prior written consent of the City, assign, transfer, convey, or otherwise dispose of this Agreement, or any part thereof, or of its right, title, or interest therein or its power to execute this Agreement or any amendment or modifications hereto to any other person, company, or corporation.

22. SEVERABILITY

In the event any provision of this Agreement is determined to be contrary to law or unenforceable for any reason whatsoever, such determination shall not in any way affect the validity or enforceability of the balance of this Agreement or any other term or condition hereof.

23. APPENDICES

The Consultant, its subcontractors, vendors and agents shall comply with the terms of the following Appendices which are attached to this Agreement are incorporated by reference herein and which shall be made a part of this Agreement:

Appendix A: Waiver of Immunity/Non-Collusive Bidding Certification

Appendix B: Vendor/Supplier Code of Conduct

Exhibit A: Proposals dated October 12, 2011

24. EXECUTION

This Agreement may be executed in separate counterparts, which together shall constitute the Agreement of the parties, provided that all of the parties to this Agreement have executed their respective copy of this Agreement.

City Certification: In addition to the acceptance of this Agreement, I certify that original copies of this signature page will be attached to all other exact copies of this Agreement.

Consultant Certification: In addition to the acceptance of this Agreement, I certify that all information provided to the City with respect to New York State Finance Law Section 139-k is complete, true and accurate.

CITY
BY: [Signature]
Signature
DECEMBER 24 2011
Dated
SCOTT T. JOHNSON
Printed Name
MAYOR
Title

CONSULTANT
BY: [Signature]
Signature
12/19/11
Dated
Richard A. Straut
Printed Name
Sr. Vice President
Title

City Council Approval Date: 12/30/11

CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF Albany) SS:

ON THIS 19th DAY OF December 2011 BEFORE ME PERSONALLY
CAME Richard A. Straut TO ME KNOWN, WHO BEING DULY SWORN, DID
DEPOSE AND SAY THAT HE/SHE RESIDES IN Voorheesville, THAT HE/SHE IS THE
Senior Vice President OF THE

Barton & Loguidice, P.C., THE CORPORATION DESCRIBED IN AND
WHICH EXECUTED THE FOREGOING INSTRUMENT; THAT HE/SHE KNEW THE SEAL OF SAID
CORPORATION; THAT THE SEAL AFFIXED TO SAID INSTRUMENT WAS SUCH CORPORATE SEAL;
THAT IT WAS SO AFFIXED BY THE ORDER OF THE BOARD OF DIRECTORS OF SAID
CORPORATION, AND THAT HE/SHE SIGNED HIS NAME THERETO BY LIKE ORDER.

Tammy M. Savino
NOTARY PUBLIC

TAMMY M. SAVINO
Notary Public, State of New York
No. 01SA6228863
Qualified in Saratoga Co.
Commission Expires Sept. 27, 2014

City of Saratoga Springs
Purchasing Department
474 Broadway, Saratoga Springs, NY 12866
Tel: (518) 587-3550 ext. 560
Fax: (518) 587-6512



WAIVER OF IMMUNITY CLAUSE

Upon refusal of a representative of our firm, when called before a grand jury, to testify concerning any transaction or contract with the City of Saratoga Springs, NY or to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transactions or contracts:

1. Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that;
2. Any and all contracts made with any municipal corporation or any public department, agency or official thereof, with any fire district or any agency or official thereof, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the City without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the City for goods delivered or work done prior to the cancellation or termination shall be paid.

NON-COLLUSIVE BIDDING CERTIFICATION: Section 103-d of General Municipal Law

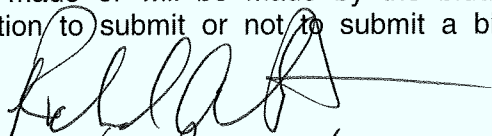
“By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and, in case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and

Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.”

Signature:
Title:
Date:



 Sr. Vice President

 12/19/11



**CITY OF SARATOGA SPRINGS, NEW YORK
VENDOR/SUPPLIER CODE OF CONDUCT**

The City of Saratoga Springs is committed to conduct business in a lawful, ethical and moral manner. The City requires that all vendors/suppliers abide by this Code of Conduct. Failure to comply with this Code may be sufficient cause for the City to exercise its rights to terminate its business relationship with vendors/suppliers. Vendors/suppliers agree to provide all information requested which is necessary to demonstrate compliance with this Code.

At a minimum, the City requires that all vendors/suppliers meet the following standards:

- Legal: Vendors/suppliers and their subcontractors agree to comply with all applicable local, state and federal laws, regulations and statutes.
- The City expects vendors/suppliers to respect the City's rules and procedures.
- Wages & Benefits: Vendors/suppliers will set working hours, wages, NYS statutory benefits and overtime pay in compliance with all applicable laws and regulations. Where applicable, as defined by NYS Labor Law, the vendor/supplier must comply with prevailing wage rates.
- Health & Safety: Vendors/suppliers and their subcontractors shall provide workers with a safe and healthy work environment that complies with local, state and federal health and safety laws.
- Discrimination: No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, party affiliation or social ethnic origin.
- Working conditions: Vendors/suppliers must treat all workers with respect and dignity and provide them with a safe and healthy environment.
- Right to organize: Employees of the vendor/supplier should have the right to decide whether they want collective bargaining.
- Subcontractors: Vendors/suppliers shall ensure that subcontractors shall operate in a manner consistent with this Code.
- Protection of the Environment: Vendors/suppliers shall comply with all applicable environmental laws and regulations. Vendors/suppliers shall ensure that the resources and material they use are sustainable, are capable of being recycled and are used effectively and a minimum of waste. Where practicable, vendors/suppliers are to utilize technologies that do not adversely affect the environment and when such impact is unavoidable, to ensure that it is minimized.

Vendor Acknowledgment

The undersigned vendor/supplier hereby acknowledges that it has received the city of Saratoga Springs Vendor/Supplier Code of Conduct and agrees that any and all of its facilities and subcontractors doing business with the City will receive the Code and will abide by each and every term therein.

Vendor/supplier acknowledges that its failure to comply with any condition, requirement, policy or procedure may result in the termination of the business relationship. Vendor/supplier reserves the right to terminate its agreement to abide by the Code of Conduct at any time for any reason upon ninety (90) days prior written notice to the City.

Officer: _____
 Signature: Richard A. Straut
 Printed Name: Richard A. Straut
 Title: Sr. Vice President
 Date: 12/19/11

October 12, 2011

Mr. Timothy Wales, P.E.
City Engineer – Saratoga Springs
City Hall, 474 Broadway
Saratoga Springs, New York 12866

Re: Wetland Mitigation Monitoring Proposal
City of Saratoga Springs' Spring Run Trail Project
Wetland Mitigation Sites WEA-1 and WEA-2

File: 708.2171

Dear Mr. Wales:

Barton & Loguidice, P.C. (B&L) is pleased to provide you with this proposal for the first year of monitoring of wetland mitigation sites WEA-1 and WEA-2, at the City of Saratoga Springs' Spring Run Trail Project, located between East Avenue and the Adirondack Northway (I-87) in the City of Saratoga Springs, Saratoga County, New York. This proposal is specifically related to project-specific conditions of the Section 404 Nationwide Permit (#23) issued by the U.S. Army Corps of Engineers (USACE – permit ID: NAN-2000-01540) for the project. We appreciate the opportunity to provide you with a scope of services and cost estimate for this project. The following sections outline the services we propose.

Project Understanding

B&L understands the following about the City of Saratoga Springs' Spring Run Trail Project Wetland Mitigation Sites WEA-1 and WEA-2:

- The City of Saratoga Springs constructed two (2) mitigation wetlands, identified as mitigation sites WEA-1 and WEA-2, to offset unavoidable impacts to wetlands from the City's Springs' Run Trail Project.
- Project specific conditions in the project authorization under Clean Water Act Section 404, Nationwide Permit #23 (NWP#23), identified as Authorization #NAN-2000-01540, specify that the mitigation wetlands are to be monitored for a period of 5 years after completion to determine the success of the mitigation and to correct problems, if any arise.
- The City can provide a copy of the as-built site plans in electronic (AutoCAD) format, and a hard copy of the USACE permit authorization and monitoring plan to B&L for reference.
- The City requires qualified wetland scientists to conduct the monitoring of the mitigation wetlands in compliance with NWP#23 Authorization # NAN-2000-01540.





Mr. Timothy Wales, P.E.
City Engineer – Saratoga Springs
October 12, 2011
Page 2

- The City is capable of surveying the elevations and locations of piezometers and staff gauges, assuming that previously established benchmarks can be located.
- Mitigation monitoring was supposed to be initiated in the spring or summer of 2011, but due to unanticipated complications, has not yet been started.

Task 1 – Install Monitoring Devices, Collect Baseline Data, Letter to USACE

B&L proposes to install seven (7) piezometers in the two (2) wetland mitigation sites: two (2) in WEA-1 and five (5) in WEA-2, at locations indicated on the as-built drawings completed by AECOM (dated August 2011). In addition, a total of three (3) staff gauges will be installed in open water sections, preferably, of WEA-1 and WEA-2. The exact locations of these gauges will be determined in the field based on site observations. The piezometers will consist of capped, perforated PVC pipe, and the staff gauges will be assembled using a style C stream gauge (marked from 0-3.33 feet) attached to a wooden post. Three (3) photo documentation reference points will also be established and marked with lath stakes in each of the mitigation wetlands at this time. Monitoring instruments are proposed to be installed in fall 2011 by two B&L staff members. If monitoring instruments can be installed prior to the end of October, water level readings for October 2011 will be recorded for the 2011 annual monitoring report. Reference photographs will be taken with a digital camera at each photo reference point to establish baseline conditions.

The location and elevation of each piezometer and staff gauge and the location of the photo reference points will be surveyed in the field by the City. If the piezometer and staff gauge elevations cannot be determined in the field due to the prior use of a local coordinate system for site survey work, the elevations of all staff gauges and piezometers may be estimated based on the measure of exposed material (above ground surface) and the closest spot elevation shown on the as-built drawings for each wetland mitigation site. If the City is not able to survey the locations and elevations of the monitoring devices, B&L may provide that service as additional services at additional cost.

B&L biologists will then make a quantitative assessment of vegetation area coverage and survival at each monitoring point, also noting presence and extent of invasive species. They will also delineate the boundaries of the wetland mitigation areas, in accordance with the USACE 1987 Environmental Laboratory Wetland Delineation Manual and the USACE 2009 Northcentral and Northeast Regional Supplement. This will include documenting dominant vegetation, hydrologic conditions, and hydric soil indicators on standard federal wetland delineation data sheets. The wetland boundary will be flagged with surveyors' flagging tape, and the location of the flags will be measured with a handheld global positioning system (GPS) unit for plotting on the as-built site plan (to be provided by the City).

B&L will summarize the initial baseline data in a brief letter report to the USACE. The letter report will have the following as attachments:



Mr. Timothy Wales, P.E.
City Engineer – Saratoga Springs
October 12, 2011
Page 3

- A current delineated boundary on the as-built survey (to be provided by the City)
- Wetland Delineation Data Sheets
- Figures showing the monitoring locations for sites WEA-1 and WEA-2
- Vegetative field data
- Water level monitoring results (initial reading)
- Photographs of the mitigation sites from the photo reference points

A draft of this letter report will be submitted to the City for review and comment and one round of edits will be provided prior to submitting the letter report to the USACOE.

Estimated Fee: \$4,875

Task 2 – 2012 Site Monitoring

B&L proposes to implement the first full year of the proposed five-year post-construction monitoring program for sites WEA-1 and WEA-2 starting in spring 2012.

B&L staff will visit the site once per month for six (6) months (April through September) to read and record water levels at piezometers and staff gauges, take photographs at each of the photo reference sites, and document occurrences and locations of erosion and introduction of invasive plant species.

During the June site visit, a B&L ecologist will quantitatively assess vegetation cover types and survival of plantings at the two (2) mitigation sites. Vegetative species present at each sampling location, percent areal cover, and total percent cover will be documented at all seven (7) surface water monitoring locations. Photographs of each monitoring location will be taken in conjunction with each vegetation sampling event. Invasive species observations within the wetland mitigation sites will also be noted. Recommendations will be made to the City if control or removal of invasive species becomes necessary to remain in compliance with the project's federal permit conditions.

In addition, B&L will reassess the wetland delineation to determine whether the wetland boundary requires adjustment. The wetland boundary will be reflagged and relocated with GPS equipment, following the protocol outlined under Task 1, if needed.

B&L will mark and note dead nursery stock in planted areas that will require replacement. B&L will coordinate with the City, the project nursery and planting contractor to select appropriate tree and shrub stock to replace dead nursery stock that is under warranty. Planting of replacement stock will be done by others, and is not included as a service under this scope of services.

Estimated Fee: \$5,300.



Mr. Timothy Wales, P.E.
City Engineer – Saratoga Springs
October 12, 2011
Page 4

Task 3 – 2012 Annual Monitoring Report

B&L will prepare and submit an annual monitoring report to the USACE in fall 2012 to document the characteristics and conditions of WEA-1 and WEA-2 during that monitoring year, as documentation of compliance with the project's mitigation goals and objectives. This report will describe the development and progress of the wetland mitigation sites and will be used to determine whether or not contingency measures (i.e., additional plantings, re-seeding, etc.) may be required. This report will also include:

- An as-built site plan (provided in electronic (AutoCAD) format by the City) showing the current delineated wetland boundary
- Updated wetland delineation data sheets
- Figures showing the monitoring locations for sites WEA-1 and WEA-2
- Vegetation field data
- Water level monitoring results, April-September
- Photographs of the mitigation sites from the photo reference points

A draft copy of this report will be submitted to the City for review and comment, and one round of edits will be provided prior to submittal to the USACE. Two (2) hard copies and one electronic copy of the report will be provided to the City for their files. Two (2) hard copies of the report will be submitted to the USACE for their review.

Estimated Fee: \$3,675

Task 4 – Continue Annual Monitoring Through 2016

B&L will continue to conduct annual monitoring of the wetland mitigation site, repeating Tasks 2 and 3 as outlined above, each year through 2016. Estimated costs for conducting annual monitoring through 2016 is as follows:

<u>Year</u>	<u>Estimated Cost</u>
2013	\$8,975
2014	\$8,975
2015	\$8,975
2016	\$8,975

B&L proposes to provide the Scope of Services outlined above in accordance with our actual time and expense applied to the project based on our Schedule A Billing Rates in effect at the time that the work is performed. The budget estimate for the first year of post-construction wetland mitigation



Mr. Timothy Wales, P.E.
City Engineer – Saratoga Springs
October 12, 2011
Page 5

monitoring, to be completed between fall 2011 and fall 2012, is **\$13,850**. Please note that our fee estimate is based on the following assumptions:

- 1) No piezometers or staff gauges have been installed in WEA-1 or WEA-2.
- 2) No 2011 monitoring of WEA-1 or WEA-2, including monthly water level readings, has been conducted to-date.
- 3) A complete set of design plans for the project, including the wetland mitigation sites, will be provided to B&L by the City of Saratoga Springs.
- 4) WEA-1 and WEA-2 have been seeded with a wetland seed mixture, the details of which will be provided to B&L by the City of Saratoga Springs.

Per letter to George Casey of the USACE, dated July 15, 2011:

- 5) Fill placed in wetlands that required removal has been or will be removed by others.
- 6) A completed Compliance Certification Form has been or will be prepared and submitted by others.
- 7) The coordination of replacement trees and shrubs under warranty will be completed by others.
- 8) The removal of identified invasive species near the outfall of the City storm culverts, located approximately between stations 0+180 and 0+250, will be completed by others.
- 9) The re-establishment of mounds in WEA-1 and other associated hydrologic adjustments will be completed by others.

If our attendance at additional site visits and/or meetings is required or additional services are requested beyond the Scope of Services described herein, those services will be based on a time and expense basis in accordance with our scheduled rates, and shall be billed in addition to the costs outlined herein.

Additional Services

B&L is available to provide additional services associated with this project. Any and all services or deliverables provided by B&L under this agreement that are not expressly outlined in the Scope of Services above, that are requested and authorized by the City of Saratoga Springs shall be provided on a time and reimbursable expenses basis at B&L's then current hourly rates, in addition to any costs outlined herein. Cost estimates for such additional services may be provided in advance to the City of Saratoga Springs by B&L upon request.



Mr. Timothy Wales, P.E.
City Engineer – Saratoga Springs
October 12, 2011
Page 6

Schedule

We are available to begin this work upon your authorization to proceed. Optimally, depending on the date of authorization and seasonal weather conditions, we would propose to install all water level instruments this fall. If instruments are installed before the end of October 2011, then we will conduct one (1) round of post-construction monitoring, as detailed in Task 1 and summarize findings in a 2011 monitoring report would be completed based on these field data. If instruments cannot be installed prior to the end of October 2011, then monitoring will commence in Spring 2012, and the first annual report will be produced in Fall 2012.

If this proposal for wetland mitigation monitoring services meets with your approval, please authorize below and return one original agreement to us for our records. We look forward to being of continued service to the City of Saratoga Springs. If you have any questions regarding this proposal, please contact Steve Le Fevre at (518) 218-1801, or Michael Fishman, our Senior Managing Environmental Scientist, at (315) 457-5200. We look forward to working with you to make this project a success.

Very truly yours,

BARTON & LOGUIDICE, P.C.

Scott D. Nostrand, P.E.
Senior Vice President

Stephen B. LeFevre, P.G., C.P.G.
Managing Hydrogeologist

MSF/SDN/SBL/akg
Attachment

Authorization to Proceed

Barton & Loguidice, P.C., is hereby authorized by the City of Saratoga Springs to proceed with the tasks described above in accordance with the Terms and Conditions described herein.

Signature

Date