

RESOLUTION NO. 61 - 2018

Moved by: Ward R. D. Williams

A Resolution to enter into a Master Services Agreement with Barton & Loguidice, D.P.C. for engineering, technical assistance, and consulting services for various projects supporting the Department of Public Works.

WHEREAS, the Department of Public Works (DPW) has a need for engineering, technical assistance, and consulting services to help improve the efficiency and effectiveness of DPW's operations, management, and budgeting; and

WHEREAS, DPW has worked with Barton & Loguidice, D.P.C. in connection with a composting project and has been satisfied with their work; and

WHEREAS, Barton & Loguidice, D.P.C. has submitted a scope of services and fees to the City to address DPW's operations, management, and budgeting needs; and

WHEREAS, the City wishes to enter into a Master Services Agreement with Barton & Loguidice, D.P.C. to address DPW's needs; and

WHEREAS, a copy of the Master Service Agreement is attached as "Exhibit A."

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the City of Harrisburg is authorized to enter into a Master Services Agreement for engineering, technical assistance, and consulting services with Barton & Loguidice, D.P.C.

BE IT FURTHER RESOLVED that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

Seconded by: Ben J. Atwell

Passed by City Council June 26, 2018

Wanda R. J. Williams

President of City Council

Attest [Signature]

City Clerk

- Approved
- Returned to City Council with objections

YEAS		NAYS
	MR. ALLATT	
	MS. DANIELS	
	MS. GREEN	
	MR. JOHNSON	
	MR. MADSEN	
	MR. MAJORS	
	MS. WILLIAMS	
Yeas	<u>7</u>	
Nays	<u>0</u>	

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2018 RESOLUTION NO. -2018

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:


Deputy City Solicitor

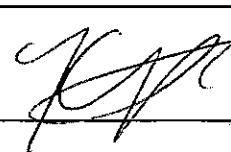
5/25/2018
Date

Requested by Department/Bureau: Public Works

Department/Bureau Contact Person: Public Works/Aaron Johnson

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: 

5-25-18
Date:

Exhibit “A”

MASTER SERVICES AGREEMENT
BETWEEN
CITY of HARRISBURG, PA
AND
BARTON & LOGUIDICE, D.P.C.
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ day of _____, 2018 ("Effective Date") between the City of Harrisburg, PA, ("Owner") and Barton & Loguidice, D.P.C. ("Engineer").

Engineer agrees to provide engineering, technical assistance, and consulting services to Owner in accordance with separate written scope and fee authorizations ("Task Authorizations", also sometimes referred to herein as "Project") that will be agreed upon with Owner on an as requested basis, with the understanding that each Task Authorization will be mutually agreed upon in writing between Owner and Engineer.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

Engineer shall provide, or cause to be provided, the services set forth in each Task Authorization, and Owner shall pay Engineer for such services as set forth in Paragraph 2.01. Once duly signed by Owner and Engineer, each current Task Authorization will be deemed a part of and incorporated in this Agreement by reference. Task Authorization #2 is attached herein as Exhibit A.

2.01 Payment for Services

Payment. Owner shall pay Engineer in the amount and in the manner set forth in each signed Task Authorization. Unless indicated otherwise in a particular Task Authorization, Owner's payments to Engineer shall be on a time and expense basis in accordance with Engineer's hourly billing rates referenced in Table 1 of Exhibit A, plus reimbursable expenses and any subcontracted services, subject to any fee limit referenced in each Task Authorization. Unless specifically indicated otherwise in a particular Task Authorization, Engineer's charges for any subcontracted services shall be invoiced at cost plus ten percent.

Preparation of Invoices. Engineer will prepare invoices no more frequently than monthly for submittal to Owner for review. Unless otherwise directed by Owner, separate invoices shall be submitted for each Task Authorization, based on payment methods and amounts set forth in each Task Authorization. Supporting information will be provided with each invoice, to the extent requested by Owner in a Task Authorization.

Payment of Invoices. Invoices are due and payable within 45 days of the date of the invoice. If Owner fails to make a timely payment due Engineer, then Engineer

may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges.

3.01 Additional Services

If mutually agreed by Owner and Engineer, or if required because of changes in a Project, Engineer shall furnish services in addition to those set forth in an executed Task Authorization via a written amendment thereto. All amendments must be in writing and properly executed by the Owner, by the Mayor, City Controller and Office of Solicitor.

Owner shall pay Engineer for such additional services as follows: (1) as may be mutually agreed to in writing, or (2) for additional services of Engineer's employees engaged directly on the Project in an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times hourly billing rates for each applicable billing class; plus reimbursable expenses and charges for Engineer's subconsultants, if any. Notwithstanding, this provision, the Owner shall not be responsible for any monies in excess of the not-to-exceed term of this Agreement or any Task Authorization unless a pre-approved Change Order or equivalent has been properly executed by the parties.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated.

1. For cause:

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

(1) (i) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

(ii) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

(iii) In the event Engineer terminates this Agreement for either of the above-specified reasons, Engineer shall have no liability to Owner on account of such termination.

(2) Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 4.01 A.1.a. if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case be more than, 60 days after the date of receipt of the notice.

- c. For convenience, by Owner, effective seven days after the receipt of written notice by Engineer.
2. The terminating party under Paragraphs 4.01 A.1. or 4.01 A.2. may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete 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.
 3. In the event of any termination under Paragraph 4.01 A.1., Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk.
 4. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to payment for those items identified in Paragraph 2.01, to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, including, but not limited to, reassignment of personnel, costs of terminating contracts with Engineer's subconsultants, and other related close-out costs, using Engineer's hourly billing rates referenced in Table 1 of Exhibit A and consistent with the do-not-exceed provision of the Agreement or any related Task Authorization.

5.01 Controlling Law

This Agreement is to be governed by the laws of the Commonwealth of Pennsylvania.

6.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.01 B. the assigns of Owner and Engineer) 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.

- B. Neither Owner nor Engineer 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 Engineer from retaining subconsultants as it deems reasonably necessary for the completion of the services rendered hereunder.

7.01 General Considerations

The standard of care for all professional engineering and related services performed or furnished by Engineer 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. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its subconsultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer 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.

Engineer 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.

Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work, or for any decision made based on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

The Contract Documents for construction contracts prepared as a service under this Agreement are to be the Barton & Loguidice, D.P.C. template Contract Documents, including but not limited to General Conditions, General Requirements, Information for Bidders and bidding documents, as may be amended by the Owner.

All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not Project is completed. Engineer grants Owner a license to use the instruments of service for Project construction as is the intended purpose of the documents, and for the purpose of maintenance and repair of the Project.

To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, 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 Engineer's total liability to Owner under this Agreement shall be limited to the total amount of compensation received by Engineer pursuant to this Agreement.

The parties acknowledge that Engineer'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). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer 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.

The services to be provided by Engineer 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 Engineer are understood by the parties to this Agreement to be strictly **engineering** opinions, advice, information or recommendations. Engineer is not a "municipal advisor" as defined by 15 U.S.C. 78o-4 or the related rules of the Securities and Exchange Commission. Owner and any other parties with an interest in the Project or this Agreement should determine independently whether they require the services of a municipal advisor.

8.01 Dispute Resolution

Owner and Engineer 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 Engineer for payment of fees and the parties fail to resolve the dispute through negotiation then Owner and Engineer 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 Engineer 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 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction, which for purposes of this Agreement shall be the Court of Common Pleas for Dauphin County.

If a dispute involves a claim by Engineer for payment of fees and the parties fail to resolve the dispute through negotiation then Engineer may seek to have its claim for fees resolved by the Court of Common Pleas for Dauphin County without first participating in mediation.

9.01 Accrual of Claims

All causes of action between the parties to this Agreement including those pertaining to acts, failures to act, 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 of construction of the Project 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 for acts, failures to act or failures to perform occurring after Substantial Completion.

10.01 Indemnification

The Engineer and the Owner mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are legally liable, and arising from the Project that is the subject of this Agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's own negligence. The parties acknowledge that the City of Harrisburg is a Third Class City, vested with enumerated powers and the authority to provide indemnification is not expressly listed among those enumerated powers.

11.01 Insurance

Engineer shall procure and maintain insurance as set forth in Exhibit B, "Insurance". Engineer shall cause Owner to be listed as an additional insured on applicable general liability insurance policies carried by Engineer.

Owner shall require all Project construction Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and any of its subconsultants to be listed as additional insured's with respect to such liability and other insurance purchased and maintained by Contractor for the Project, and shall require Contractor to deliver to Engineer certificates of insurance for the required coverages.

Engineer shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit C. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

12.01 Disadvantaged Business Enterprise (DBE) Involvement

During each calendar year in which a Task Authorization is executed in accordance with this Agreement, Engineer will make a good faith effort to engage duly certified (by the Pennsylvania DBE United Certification Program) Disadvantaged Business Enterprises as a subcontractor and/or subconsultant to achieve a goal of four percent (4%) of the total amount invoiced to Owner during each calendar year for such Task Authorizations. Engineer will maintain records of its efforts to secure the services of DBE subconsultants and/or subcontractors, the means of communication used to solicit the involvement of DBE firms, the type of work and/or services performed on Task Authorizations by DBE firms, and the dollar amounts paid to DBE firms on the Task Authorizations. If no DBE is qualified, available, or willing to participate in Task Authorizations during any given calendar year then upon request Engineer will provide Owner with detailed, verifiable information describing the good faith effort made during that year to locate a DBE for such Task Authorizations.

13.01 Total Agreement

This Agreement, including any expressly incorporated Task Authorizations and Exhibits, constitutes the entire Agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1 hereof.

OWNER: City of Harrisburg, PA

ENGINEER: Barton & Loguidice, D.P.C.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO
FORM AND LEGALITY

Law Bureau

Address for giving notices:

City of Harrisburg, Attn: City Engineer

123 Walnut Street, Suite 212

Harrisburg, PA 17101-1695

Address for giving notices:

Barton & Loguidice, Attn: President

443 Electronics Parkway

Liverpool, New York 13088

Exhibit A - Task Authorization #2

City of Harrisburg ("Owner") entered in to a Master Services Agreement with Barton & Loguidice, D.P.C. ("Engineer" or "B&L") with an effective date of July 21, 2017. In accordance with that Master Services Agreement, the following Task Authorization is hereby approved and Engineer is authorized by Owner to proceed with the services as delineated below. This is Engineer's 2nd Task Authorization.

The City of Harrisburg has received professional services from B&L over the past four years under a DCED contract to assist the City in its fiscal recovery program called the "Strong Plan". The DCED services have come to an end and DPW desires to continue having B&L provide professional services related to upgrading the quality and reliability of services provided by DPW to the citizens of Harrisburg.

As discussed at the DPW – Mayor staff meeting on March 27, 2018, DPW has valued the services provided by B&L to date and desire to continue the B&L professional relationship. This Task Authorization authorizes B&L to continue to provide professional services to DPW related to improving the DPW fleet equipment, fleet operations, evaluation and employment of various public works management tools, and other related DPW efficiency improvements and initiatives that have been discussed during B&L's tenure working with DPW. This Task Authorization is intended to cover 2018 and 2019 calendar years.

Effective Date of this Subconsultant Authorization: March 27, 2018

B&L Project Name: City of Harrisburg DPW and Bureau of Neighborhood Services assistance

B&L Project Number: 1993.002.001

B&L Project Manager: Robert F. Hasemeier, P.E.

Owner's Project Manager: Wayne Martin, P.E.
Aaron Johnson - alternate

Fee Limit for this Subconsultant Authorization: \$37,000

Fee & Billing: Time & Expense per MSA and hourly billing rates set forth herein. The estimated project budget for the services described in this Task Authorization are to be provided on a time and expense basis in accordance with the billing rates identified in Table 1. Billings for the services defined below shall not exceed Thirty Seven Thousand Zero Hundred Dollars (\$37,000) without first requesting and receiving additional authorization from the City of Harrisburg. Estimated fees are included in Table 2.

Table 1: 2018 Billing Rates

Classification	Individual	Hourly billing rate
Senior Managing Engineer	Robert Hasemeier	\$182
Senior Consultant	Christopher Campman	\$175
Senior Engineer	Ashley Duncan	\$142
Engineer 1	Zane Geist	\$116
Field Technician	Alison D'Airo	\$88
Project Environmental Scientist	staff	\$126
CAD Technician	staff	\$92
Construction Inspector	Dylan Peters	\$88
Group Technical Assistant	Sharon Thompson	\$68

Other individuals maybe added by B&L at the above classification rates without prior approval of Client. Additional rate classifications require approval by Client.

Table 2: Budget

Task	Estimated Range of Cost
Task 1: Fleet	\$10,000
Task 2: Operations	\$8,000
Task 3: Budget	\$5,000
Task 4: Meetings	\$14,000
Task 5: Other	Not estimated
	Budget Estimate \$37,000
	Task Authorization #2 Value \$37,000

SCOPE of SERVICES

Task 1 – Fleet: Provide technical assistance to upgrade fleet operations. Services may include evaluation of equipment needs versus equipment options, preparing and reviewing equipment specifications combine with equipment options, and review of cost versus benefits of proposed equipment. Other fleet services may include review and evaluation of fleet management tools and software and preparation of bidding specifications if the equipment is not available through Costars.

Task 2 – Operations: B&L has provided past assistance to DPW to improve its waste and recycling services. Continued improvements to all of DPW services are requested where B&L has become familiar with Harrisburg resources and limitations and B&L can provide City with evaluation of new techniques and tools for performing the mission of DPW. B&L will be a sounding board to DPW staff in review of changes to operations and B&L may from time to time make suggestions to increase efficiency of the

methods of performing the DPW services. One item of work left over from the DCED historic work is to review and implement route management software for the waste and recycling collection.

Task 3 – Budget: B&L has provided past assistance to DPW to prepare details required for the capital and equipment budgets and this service will be continued. B&L will also assist City in filling in details for the 902 grant application to PADEP.

Task 4 – Meetings: It is assumed that B&L will attend one (1) meeting per month to present ideas and discuss operations related to DPW. B&L will not routinely attend the Mayor/ DPW staff meeting unless requested to address a specific meeting agenda issue.

Task 5 – Other: B&L may be called upon to assist the City from time to time on other matters related to the management and operations of the DPW while under contract with City that are reasonably included in the intent of this Task Authorization.

Approved for Owner by: _____
[authorized signature and date of signature]

Type Name and Title of Owner's Approver:

Approved by B&L by: *S.C. Sweeney* **Date:** April 4, 2018

Type Name and Title of B&L Approver: Sean C. Sweeney, Associate

Exhibit B – Insurance

The kinds and amounts of insurance required of the ENGINEER are as follows:

A policy or policies providing protection for employees of the ENGINEER in the event of job-related injuries generally referred to as "Worker's Compensation Insurance".

Automobile Liability policies with a combined single limit of not less than \$1,000,000 for each person, or each accident because of bodily injury, sickness, or disease including death at any time resulting therefrom, sustained by any person, and for damages because of injury or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of owned, non-owned or hired automobiles.

Commercial General Liability Insurance shall be furnished with the limits of not less than

General Aggregate \$2,000,000

Products-Comp/Op Agg. \$2,000,000 Personal/Adv. Injury \$1,000,000

Each Occurrence \$1,000,000

Damage to Rented Premises \$100,000

Medical Expense \$5,000

Excess Liability Insurance Umbrella Form, bodily injury and property damage combined:

Each Occurrence \$1,000,000

Aggregate \$1,000,000

Professional Liability Insurance, including errors and omissions, shall be maintained with minimum limits of not less than One Million Dollars (\$1,000,000).