

January 15, 2019

George Borrello, County Executive  
Chautauqua County  
Gerace Office Building  
3 North Erie Street  
Mayville, New York 14757

Re: Peek'n Peak Sewer Feasibility Assessment

Subj: Proposal for Engineering Services

File: P702.3981

Dear Mr. Borrello:

At the request of William Boria, Barton & Loguidice, D.P.C. (B&L) is pleased to present this proposal to assist the County with preparing an Engineering Feasibility Study for summarizing the preliminary evaluation of a public sanitary sewer project that would serve the Peek'n Peak Resort and Findley Lake area in the Town of Mina.

## Project Understanding

B&L has recently finalized a Preliminary Engineering Report (PER) that evaluated the feasibility and costs for constructing a "regional" sanitary sewer system that would benefit the Village of Sherman and parcels in the Town of Mina surrounding Findley Lake. During this study, County representatives had discussions with the nearby Peek'n Peak Ski resort, located in the Town of French Creek, and believe Peek'n Peak may be interested in becoming a part of a municipal sewer system. Currently Peek'n Peak owns and operates a private sanitary sewer system and wastewater treatment plant that is not only approaching the end of its useful service life, but does not have additional capacity for future development in the area.

## Scope of Service

Based on the above, B&L proposes the following Scope of Service for preparing an Engineering Feasibility Study that would evaluate incorporating Peek'n Peak Resort properties into a municipal sewer system with Findley Lake. A feasibility assessment is a high level, low cost means of bringing a higher resolution to the area's sanitary sewer needs, refining the infrastructure needs, and "ball-parking" user costs based on reasonably assumed funding scenarios. It is noted that this feasibility

assessment would not constitute a full, agency compliant Preliminary Engineering Report (PER) that would be required to apply for project funding, but would instead serve as the foundation of the PER and the basis on which a decision could be made to develop a more detailed PER for this potential project.

The following alternatives will be reviewed during this Feasibility Study:

- Alternative 1: A Town of French Creek (Peek'n Peak) and Findley Lake Sewer District with Treatment provided by the Village of Sherman
- Alternative 2: A Town of French Creek (Peek'n Peak) and Findley Lake Sewer District with Treatment provided by upgrading the existing Peek'n Peak WWTP, or locating a new WWTP along French Creek
- Alternative 3: A Town of French Creek (Peek'n Peak) with Treatment provided by upgrading the existing Peek'n Peak WWTP, or locating a new WWTP along French Creek

The following is included in our Scope of Service:

- a. Review available information such as prior studies, existing drawings, existing flow and load data, existing infrastructure condition assessment data, future development plans (if available for public viewing), soils information, tax maps, aerial/GIS images, proposed zoning maps, agricultural district maps, and wetlands maps.
  - o Assumptions:
    - i. Record drawings, design data, and flow/load data for the existing Peek'n Peak sewage treatment and collection infrastructure will be provided at or preferably in advance of the Project Kick-off Workshop.
    - ii. Peek'n Peak will provide a condition assessment to the best of their ability on existing infrastructure that is anticipated to remain in service. A detailed condition assessment of existing infrastructure will not be included under this study.
    - iii. Peek'n Peak will provide projected flow, load, and location information on any future development plans that should be accounted for during this assessment at, or preferably in advance of the Project Kick-off Workshop. It is understood that Peek'n Peak may want to keep certain development plans private. This will not be an issue if flow, load, and general location information is provided.
- b. Attend a Project Kick-off Workshop with Chautauqua County, Town of French Creek, Town of Mina, and/or Village of Sherman representatives to discuss the study. At the Kick-off meeting it is envisioned the following will be completed:
  - o Review the project scope and prior PERs prepared for Sherman and Mina;
  - o Review existing mapping and discuss condition of existing infrastructure;
  - o Finalize a potential Town of French Creek service area;

- o Finalize projected flow, load, and location information of future development plans that should be accounted for in this study.
- c. Attend a Site Visit to the existing Peek'n Peak WWTP:
  - o Assumption: Site Visit will occur on the same day as the Project Kick-off Workshop
- d. Conduct a windshield survey and review GIS-based mapping of the potential French Creek sewer service area to identify general routing and constructability issues.
- e. Prepare a preliminary layout and provide preliminary sizing information for sewage collection and conveyance infrastructure for each of the three (3) alternatives.
- f. Identify a potential location of a WWTP along French Creek (for Alternative No. 2 and No. 3) if it is determined that the existing Peek'n Peak WWTP will not be upgraded. Provide a brief narrative discussing typical WWTP improvements for each alternative.
- g. Prepare preliminary project capital, operation and maintenance (O&M) cost estimates for each alternative.
- h. Identify estimated user costs based on potential grant funding (i.e., point scoring and grant eligibility), estimated project/O&M costs, and assumed potential equivalent dwelling units (EDUs) for each alternative.
- i. Outline suggested steps to proceed towards implementing each potential alternative, and identify a preferred alternative.
- j. Prepare a draft report containing narrative, figures, and tables summarizing the above tasks.
- k. Attend Workshop No. 2 with Chautauqua County, Town of French Creek, Town of Mina, and Village of Sherman representatives and other interested parties (such as the NYSDEC) to review the draft Feasibility Study report. Finalize the feasibility study based on comments received.

#### Services not included

- Meetings/workshops beyond those outlined in the Scope of Service
- Environmental Review (SEQR)
- Preparation or Revision of a Funding Agency compliant Preliminary Engineering Report or Map, Plan, and Report
- District Formation Assistance
- Public Informational Meeting Attendance
- Analysis of alternatives outside what is detailed above



Fee for Services

B&L proposes to complete the Scope of Service outlined herein for a lump sum fee of Ten Thousand Dollars (\$10,000). Invoices would be monthly based upon the services completed as of the invoice date. Services beyond those outlined above would be considered an additional service and would not be completed without prior County authorization.

If this proposal is satisfactory to the County, please return one (1) copy with your signature where indicated below. We look forward to working with you on this important project and appreciate this opportunity to be of service to Chautauqua County.

Sincerely,

BARTON & LOGUIDICE, D.P.C.

A handwritten signature in blue ink, which appears to read "Kenneth M. Knutsen".

Kenneth M. Knutsen, P.E.  
Senior Vice President

MJZ/tlh

Attachment

Authorization

Barton & Loguidice, D.P.C. is hereby authorized by the County of Chautauqua to proceed with the services described herein in accordance with the attached Terms and Conditions.

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George Borrello, County Executive  
Chautauqua County

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Date

**STANDARD TERMS AND CONDITIONS**  
**for**  
**PROFESSIONAL ENGINEERING SERVICES**  
**provided by**  
**BARTON & LOGUIDICE, D.P.C. (“ENGINEER”)**

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

**1.0 Basic Agreement**

Engineer shall provide, or cause to be provided, the services set forth in the proposal to which these terms and conditions are attached (PROPOSAL), and Owner shall pay Engineer 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 Payment Procedures**

Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner. Invoices are due and payable within 30 days of the date of the invoice. If Owner fails to make any payment due Engineer for services and expenses within 30 days after the date of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, 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.

**3.0 Additional Services**

If mutually agreed by Owner and Engineer, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth in the PROPOSAL if requested by the Owner. Owner shall pay Engineer for such additional services as follows: (1) as mutually agreed by Owner and Engineer, or (2) an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

**4.0 Termination**

If Engineer’s services related to the project are terminated for any reason, Engineer 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.

**5.0 Controlling Law**

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

**6.0 Successors, Assigns, and Beneficiaries**

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 herein 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. 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.

**7.0 General Considerations**

A. 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 consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. 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.

C. 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.

D. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer’s own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

E. 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 the Project is completed.

F. 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 \$50,000 or the total amount of compensation received by Engineer pursuant to the PROPOSAL, whichever is greater.

G. 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) except as may be specifically defined in the Scope of Services. 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.

H. The services to be provided by Barton & Loguidice 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 Barton & Loguidice are understood by the parties to this Agreement to be strictly *engineering* opinions, advice, information or recommendations. Barton & Loguidice 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.

**8.0 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 the parties fail to resolve a dispute through negotiation then Owner and Engineer agree that they shall first submit any and all 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.

**9.0 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 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.

**10.0 Total Agreement**

This Agreement constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. In the event of a conflict with contractual provisions in a Purchase Order authorization related to this Agreement, the provisions of this Agreement shall control. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.