

Lot item E-5



**TOWN AND VILLAGE OF HARRISON
ENGINEERING DEPARTMENT**



Alfred F. Sulla, Jr. Municipal Building
1 Heineman Place
Harrison, New York 10528

Michael J. Amodeo, P.E., CFM
Town/Village Engineer

Frank Balbi, P.E., CFM
Assistant Engineer

October 15, 2013

Supervisor Ron Belmont and
Members of the Town Board
Town of Harrison
1 Heineman Place
Harrison, New York 10528

Re: Langan Engineering
Inspection Services

Dear Supervisor Belmont and Members of the Town Board:

Town Board authorization is requested for a professional services contract with Langan Engineering for Inspection Services related to the Stormwater Pollution Prevention Plan for Pepsi Project Renew, at a cost not to exceed \$57,600.00. A copy of the proposal is attached for your information and review.

Further, authorization is requested for the Law Department to review the proposal and upon review, the Supervisor to execute same.

Finally, funding for this contract is available in account # 009-0000-763 (Inspection Fee – Escrow Account).

Respectfully submitted,

Michael Amodeo
Michael J. Amodeo, P.E.
Town/Village Engineer

MJA/fmb

Attachment

Cc: Law Department



Technical Excellence
Practical Experience
Client Responsiveness

14 October 2013

Mr. Michael Amodeo, P.E.
Town/Village of Harrison
Alfred F. Sulla Jr. Municipal Building
1 Heineman Place
Harrison, NY 10528

**Re: Construction Inspection Support Services
Pepsi Renew – Phase I
Purchase, New York
Langan Project No.: 190015100 - Revised**

Dear Mr. Amodeo:

As requested, Langan is pleased to submit this proposal to provide construction inspection support services for the above referenced project. We anticipate providing the following services to the Harrison Engineering Department to insure the site improvements associated with this project are constructed in accordance with the approved plans and the Stormwater Pollution Prevention Plan (SWPPP).

Scope of Services

The following is a general description of the services to be provided by Langan:

- Review shop drawings for conformance with the approved plans. Shop drawings should be reviewed by the applicant and their engineer prior to submission to our office;
- Attend project meetings and meeting with the Town's engineering staff as requested.
- Review the SWPPP reports submitted by the project inspector to insure conformance with the approved plans and SWPPP;
- Perform periodic site visits to insure the site work is proceeding in accordance with the approved plans;
- Provide input on field changes and coordinate through the Engineering Department;
- In addition to the services outlined above, Langan will provide additional support services when requested by the Town such as but not limited to: witness testing, develop a punch list and project close out documents, and review asbuilt drawings.

Because it is difficult to determine the exact amount of time that will be required to provide the level of construction inspection support services required for this project, we are recommending a monthly budget of \$4,800.00. This budget is based on a manpower allocation of 30hrs/month for an inspector and 8hrs/month for an engineer. It is anticipated that the actual

numbers of man-hours required to provide the appropriate level of oversight will vary on a weekly and monthly basis depending on multiple factors including weather, level of construction activity and the type of work being performed. Langan will monitor the projected budget on a monthly basis and if it became evident that the project demands vary from what we have anticipated, we will notify the Town. Based on this projection of manpower and assuming a 12 month construction period, we are recommending an overall budget of \$57,600.00.

The above referenced services will be provided on a time and material basis in accordance with the Rate Schedule and General Terms and Conditions attached. The monthly invoices will include the actual man-hours expended during the month billed in accordance with the attached rate schedule.

We appreciate this opportunity to service the Town Engineering Department on this project and look forward to working closely with you on this exciting and beneficial project for the Town. Should you have any questions or concerns regarding the content of this proposal, please feel free to contact our office. Should you find this proposal acceptable please sign where indicated below and either fax or e-mail back to our office.

Sincerely,

**Langan Engineering, Environmental, Surveying
and Landscape Architecture, D.P.C.**



Michael Finan, PE, LEED AP
Senior Project Manager

AUTHORIZATION

Receipt of this Proposal, including the Schedule of Fees and General Terms and Conditions annexed hereto, is hereby acknowledged and all of the terms and conditions contained therein are accepted.

Mr. Michael Amodeo, P.E.
Town/Village of Harrison
1 Heineman Place
Harrison, NY 10528

**Re: Langan Engineering, Environmental Surveying and
Landscape Architecture, D.P.C.
Construction Inspection Support Services
Pepsi Renew – Phase I
Purchase, New York
Langan Project No.: 190015100 - Revised**

Company: _____ ("Client")

By/Title: _____
(Authorized representative)

Signature: _____

Date: _____

SCHEDULE OF FEES AND CONDITIONS

Effective 1 January 2013

BILLING CATEGORY	HOURLY BILLING RATE
Technicians/Word Processors/Technical Typists/Financial Analysts	80
Engineering Technicians/Inspectors, CADD and GIS Technicians	92
Assistant Staff Personnel	100
Staff Personnel - Level I	105
Staff Personnel - Level II/Senior Engineer Technicians/Inspectors	116
Staff Personnel - Level III	126
Senior Staff Personnel - Level I	142
Senior Staff Personnel - Level II	155
Senior Staff Personnel - Level III	170
Project Personnel - Level I	182
Project Personnel - Level II	194
Project Personnel - Level III	200
Senior Project Personnel - Level I	213
Senior Project Personnel - Level II	222
Associate	242
Principal/Senior Associate Level	262

- Managing Principals, Senior Principals and Senior Consultants are billed at \$299/hour.
- At any level, personnel may be engineers, geologists, hydrogeologists, landscape architects, regulatory specialists, scientists, toxicologists, wetland specialists, etc.
- Litigation related services, including expert testimony, court appearance, depositions, etc. are billed at 1.5 times the person's hourly rate.
- Langan reserves the right to make adjustments for individuals within these classifications as may be necessary by reason of promotion, and to increase our hourly billing rates due to annual salary increases.

COMPUTER SERVICES

Our in-house computer usage is billed on a time used basis at the following rates:

CADD, GIS and Terrain Modeling Programs
Engineering Programs/Digitizing

Rate per Hour

\$30

\$25

Our in-house plotting and reproduction usage is billed by media type on an area basis at the following rates:

Bond (Paper)
Mylar (Film)
Color (Paper)
Color (Film)
Color (Scanning)

Cost per SF

\$0.30

\$2.00

\$3.00

\$4.00

\$3.00

SURVEYING SERVICES

See survey-specific Schedule of Fees and Conditions

SUBCONTRACTOR/SUBCONSULTANT COSTS

All subcontracted services including laboratory tests and analyses, borings, test pits, report reproduction, outside computer services, surveying, etc., will be billed at cost plus 15%.

REIMBURSABLE EXPENSES

PROFESSIONAL LIABILITY AND RELATED INSURANCE

A surcharge of 4% will be added to the invoice total to cover the cost of Professional Liability Insurance and related costs of insurance.

IN-HOUSE LABORATORY TESTS

Laboratory testing will be billed at unit rates depending on the type of test. A schedule of unit prices for standard laboratory tests will be furnished upon request. Engineering soil and/or rock samples will be stored for 90 days without charge and will be discarded, or returned to the client, unless otherwise requested by the client. Sample storage past 90 days will be billed at \$105.00 per box per month.

HEALTH AND SAFETY AND OTHER SPECIAL FIELD EQUIPMENT

Special equipment such as nuclear densometers, seismographs, load test equipment, surveying equipment, disposable protective equipment, and respirator cartridges will be billed on a daily rate. OVA's and similar safety and/or monitoring equipment will be billed on daily, weekly or monthly rates. A rate schedule will be provided upon request.

OTHER EXPENSES

All expenses incurred for special supplies, plan reproduction, long distance communications, travel and subsistence and other project related expenses will be billed at cost plus 10%. Car mileage is billed at current IRS rates. Sampling vans are billed at daily rates plus mileage.

TERMS

Invoices are payable within 30 days. Service charge of 1.0% /mo. will be imposed on all bills not paid w/in 30 days. If a bill remains unpaid after 60 days, we will discontinue our work until payments are received to bring your account current. We reserve the right to terminate an account without notice for non-payment.

LANGAN

GENERAL TERMS AND CONDITIONS

A. SCOPE OF SERVICES AND ADDITIONAL SERVICES

All services provided by "Langan Engineering, Environmental, Surveying and Landscape Architecture, D.P.C.", or "Langan Engineering and Environmental Services, Inc.", or "Langan International, LLC", or "Treadwell & Rollo, a Langan Company", or "Langan Engineering and Environmental Services, Inc., PC" (collectively "LANGAN"), regardless of commencement date, will be covered by this Agreement (which includes the LANGAN proposal and these General Terms and Conditions). Unless modified in writing by the parties, the duties of LANGAN shall not be construed to exceed those Services specifically set forth in the proposal. However, if requested by the CLIENT and agreed to by LANGAN in writing, LANGAN will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed in writing, the CLIENT shall pay LANGAN for the performance of any Additional Services an amount based upon LANGAN's then-current hourly rates. For avoidance of doubt, email will constitute written notice.

B. STANDARD OF CARE

LANGAN's services will be performed in accordance with this Agreement and in a manner consistent with the generally accepted standard of care and skill ordinarily exercised by professionals performing similar services under similar circumstances at the place and time the services are being performed (the "Standard of Care"). LANGAN will exercise reasonable professional care in its efforts to comply with codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement. The CLIENT agrees that no other representation, warranty or guarantee, expressed or implied, is provided by LANGAN or is presumed given by LANGAN under this Agreement or in any report, opinion, or any other document prepared by LANGAN or otherwise.

C. CLIENT RESPONSIBILITIES

In addition to other responsibilities described herein, the CLIENT shall: (i) provide all information and criteria as to the CLIENT's requirements, objectives, and expectations for the project, including all numerical criteria that are to be met and all standards of development, design, or construction and all other information reasonably necessary for completion of the Services; (ii) provide prompt, complete disclosure of known or potential hazardous conditions or health and safety risks; (iii) provide to LANGAN all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in LANGAN's opinion, such as site survey and engineering data, environmental impact assessments or statements, zoning or other land-use regulations, upon all of which LANGAN may rely; (iv) review all documents or oral reports presented by LANGAN and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of LANGAN; (v) furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of LANGAN's services; (vi) give prompt written notice to LANGAN whenever the CLIENT becomes aware of any development that affects the scope and timing of LANGAN's services or any defect or noncompliance in any aspect of the project; and (vii) bear all costs incident to the responsibilities of the CLIENT. LANGAN will have the right to reasonable reliance upon the accuracy and completeness of all information furnished by the CLIENT.

D. INVOICING AND SERVICE CHARGES

LANGAN will submit monthly invoices to the CLIENT and a final bill upon completion of Services. The CLIENT shall notify LANGAN within two weeks of receipt of invoice of any dispute with the invoice. The CLIENT and LANGAN will promptly resolve any disputed items. Payment on undisputed invoice amounts is due upon receipt of invoice by the CLIENT and is past-due thirty (30) days from the date of the invoice. Any unpaid balances shall accrue late charges of 1.5% per month, or the highest rate allowed by law, whichever is lower, and the CLIENT agrees to pay all fees and expenses incurred by LANGAN in any collection action. In the event of a suspension of services or termination of the Agreement by LANGAN in accordance with Section P of these General Terms and Conditions, LANGAN will have no liability for any delay or damage of any kind actually or allegedly caused by such suspension of services or termination. CLIENT shall not withhold amounts from LANGAN'S compensation to impose a penalty or damages on LANGAN, or to offset sums requested by or paid to contractors for the cost of changes in their work unless LANGAN agrees or has been found liable for the amounts.

E. RIGHT OF ENTRY

The CLIENT shall provide for right of entry in order for LANGAN to perform its services. While LANGAN will take all reasonable precautions to minimize any damage to the property, the CLIENT acknowledges and agrees that in the normal course of work some damage may occur, the correction of which is not part of this Agreement unless specifically provided in the proposal.

F. JOBSITE SAFETY AND CONTROL OF WORK

LANGAN will take reasonable precautions to safeguard its own employees and those for whom LANGAN is legally responsible. Except as otherwise expressly agreed to in writing by LANGAN, LANGAN will have no responsibility for the safety program at the Project or

the safety of any entity or person other than LANGAN and its employees. Neither the professional activities of LANGAN nor the presence of LANGAN's employees and subcontractors at the Project site will be construed to confer upon LANGAN any responsibility for any activities on site performed by personnel other than LANGAN's employees and subcontractors. The CLIENT agrees that LANGAN will have no power, authority, right or obligation to supervise, direct, stop the work of or control the activities of any other contractors or subcontractors or construction manager, their agents, servants or employees.

G. EXISTING CONDITIONS AND SUBSURFACE RISKS

Special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program implemented in accordance with a professional Standard of Care may fail to detect certain conditions. The environmental, geologic, geotechnical, geochemical, and hydrogeologic conditions that LANGAN interprets to exist between sampling points will differ from those that actually exist. The CLIENT recognizes that actual conditions will vary from those encountered at the locations where borings, sampling, surveys, observations or explorations are made by LANGAN and that the data, interpretation, and recommendations of LANGAN are based solely on the information available to it. Furthermore, the CLIENT recognizes that passage of time, natural occurrences, and/or direct or indirect human intervention at or near the site may substantially alter discovered conditions. LANGAN shall not be responsible for interpretations by others of the information it develops or provides to the CLIENT.

LANGAN will take reasonable precautions to avoid damage or injury to subterranean structures or utilities in the performance of its services. The CLIENT agrees to defend, indemnify, and hold LANGAN harmless for any damage to subterranean structures or utilities and for any impact this damage may cause where the subterranean structures or utilities are not called to LANGAN's attention or are not correctly shown on the plans furnished by CLIENT or third parties.

H. HAZARDOUS MATERIALS

Unless otherwise expressly agreed to in writing, the parties acknowledge that LANGAN'S scope of services does not include any services related to a hazardous environmental condition (such as asbestos, PCBs, petroleum, mold, waste, radioactive materials or any other hazardous substance). The discovery of any such condition shall be considered a changed condition and LANGAN may suspend its services until the CLIENT has resolved the condition.

I. INDEMNIFICATION

Subject to the provisions of Section J of these General Terms and Conditions, LANGAN agrees to indemnify, hold harmless and, except for professional liability claims, defend the CLIENT and CLIENT's parent companies, subsidiaries, affiliates, partners, officers, directors, shareholders, employees and agents for any and all damage obligations, liabilities, judgments, and losses for personal injury and/or property damage including reasonable attorney's fees and other expenses and disbursements, asserted by any third parties to the extent determined to have been caused by the negligent acts, errors or omissions or willful misconduct of LANGAN in the performance of its services under this Agreement. LANGAN will not be responsible for any loss, damage, or liability arising from any acts by the CLIENT or any of its agents, employees, staff, or other consultants, subcontractors, contractors or subcontractors. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations.

To the fullest extent permitted by law, the CLIENT agrees to indemnify and hold harmless LANGAN and LANGAN's parent companies, subsidiaries, affiliates, partners, officers, directors, shareholders, employees and agents for any and all damage obligations, liabilities, judgments and losses, including reasonable attorneys' fees and all other expenses and disbursements, to which LANGAN may be subject, arising from or relating to (i) any unknown site condition or subterranean structures of which LANGAN does not have actual knowledge; (ii) any errors, omissions or inconsistencies in any data documents, records or information provided by the CLIENT on which LANGAN reasonably relied; (iii) any breach of contract, tort, error, omission, wrong, fault, or failure to comply with law by the CLIENT or third party over whom LANGAN has no control; (iv) the transport, treatment, removal or disposal of all Samples; and (v) the CLIENT's unauthorized use or copyright violation of plans, reports, documents and related materials prepared by LANGAN.

In the event any part of this indemnification is determined to be void as a matter of law, then the clause shall automatically be reformed to be consistent with the law and apply the parties' intent to the maximum extent permissible by law.

J. LIMITATION OF LIABILITY

To the fullest extent permitted by law, the total liability, in the aggregate, of LANGAN and its officers, directors, partners, employees, agents, and subcontractors, to CLIENT, and anyone claiming by, through, or under CLIENT, and to any third parties

granted reliance, for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way relating to this Project or Agreement, from any cause or causes, including but not limited to tort (including negligence and professional errors and omissions), strict liability, breach of contract, or breach of warranty, shall not exceed the total compensation received by LANGAN or \$100,000, whichever is greater. The CLIENT may negotiate a higher limitation of liability for an additional fee, which is necessary to compensate for the greater risk assumed by LANGAN.

To the extent damages are covered by property insurance, LANGAN and the CLIENT waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. LANGAN and the CLIENT, as appropriate, shall require of the contractors, subcontractors, consultants, subconsultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

K. WAIVER OF CONSEQUENTIAL DAMAGES

LANGAN and the CLIENT waive all consequential or special damages, including, but not limited to, loss of use, profits, revenue, business opportunity, or production, for claims, disputes, or other matters arising out of or relating to the services provided by LANGAN regardless of whether such claim or dispute is based upon breach of contract, willful misconduct or negligent act or omission of either of them or their employees, agents, subconsultants, or other legal theory. This mutual waiver shall survive termination or completion of this Agreement.

L. INSURANCE

LANGAN agrees to maintain workers' compensation insurance as required by law and general liability, automobile and professional liability insurance with minimum limits of \$1,000,000. Certificates of insurance will be issued to the CLIENT upon written request. The CLIENT agrees that it will require the construction manager, general contractor or, if the CLIENT has not retained a construction manager or general contractor, the contractor(s) responsible for performing the work reflected by or relating to LANGAN's services on the Project, to name LANGAN as an additional insured on its Commercial General Liability Insurance.

M. FORCE MAJEURE

LANGAN will not be responsible or liable for any delays in performance or failure of performance related to any force majeure event, including but not limited to fire, flood, explosion, the elements, or other catastrophe, acts of God, war, riot, civil disturbances, terrorist act, strike, lock-out, refusal of employees to work, labor disputes, inability to obtain materials or services, or delays caused by the CLIENT, its agents, contractors, subcontractors, consultants, subconsultants or employees, or any governmental regulation or agency, or for any other reason beyond the control of LANGAN.

N. OPINION OF COST

Consistent with the Standard of Care in Section B of these General Terms and Conditions, any opinions rendered by LANGAN as to costs, including, but not limited to, opinions as to the costs of construction, remediation and materials, shall be made on the basis of its experience and shall represent its judgment as an experienced and qualified professional familiar with the industry. LANGAN cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost. LANGAN's services required to bring costs within any limitation established by the CLIENT will be paid for as Additional Services.

O. PROJECT DELIVERABLES

All reports, opinions, notes, drawings, specifications, data, calculations, and other documents prepared by LANGAN and all electronic media prepared by LANGAN are considered its project Deliverables to which LANGAN retains all rights. The CLIENT acknowledges that electronic media are susceptible to unauthorized modification, deterioration, and incompatibility; and therefore, the CLIENT cannot rely upon the electronic media version of LANGAN's Deliverables. All Deliverables provided by LANGAN to the CLIENT as part of the Services are provided for the sole and exclusive use of the CLIENT with respect to the Project. Reliance upon or reuse of the Deliverables by third parties without LANGAN's prior written authorization is strictly prohibited. If the CLIENT distributes, reuses, or modifies LANGAN's Deliverables without the prior written authorization of LANGAN, or uses LANGAN's Deliverables to complete the project without LANGAN's participation, the CLIENT agrees, to the fullest extent permitted by law, to release LANGAN, its officers, directors, employees and subconsultants from all claims and causes of action arising from such distribution, modification or use, and shall indemnify and hold LANGAN harmless from all costs and expenses, including the cost of defense, related to claims and causes of action arising therefrom or related thereto.

LANGAN will not sign any documents that certify the existence of conditions whose existence LANGAN cannot ascertain, or execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

P. TERMINATION

Except as otherwise provided in this Agreement, this Agreement may be terminated by either party upon not less than seven (7) calendar days' written notice should the other party fail substantially to perform in accordance with the terms and conditions of this Agreement through no fault of the party initiating the termination. If the defaulting party fails to cure its default within the seven (7) calendar day notice period or fails to commence action to cure its default if the cure cannot reasonably be completed within the seven (7) days, the non-defaulting party may terminate the Agreement. Failure of the CLIENT to make payments to LANGAN in accordance with this Agreement shall be considered substantial non-performance and grounds for termination or suspension of services at LANGAN's option after such seven (7) day notice period or anytime thereafter. In the event of termination, LANGAN will be compensated for all services performed and reimbursable expenses incurred prior to such termination and all termination expenses.

Q. DISPOSAL OF SAMPLES

All samples, contaminated or otherwise ("Samples"), collected by LANGAN while performing services under this agreement remain the property and responsibility of the CLIENT. LANGAN may dispose of Samples in its possession after ninety (90) calendar days unless otherwise required by law or other arrangements are mutually agreed to in writing by the parties. At all times, any and all rights, title and responsibility for Samples shall remain with the CLIENT. Under no circumstances shall these rights, title and responsibility be transferred to LANGAN, and nothing contained in this Agreement shall be construed as requiring LANGAN to assume the status of an owner, operator, generator, storer, transporter or person who arranges for disposal, under any federal or state law or regulation.

R. RIGHT TO REFERENCE PROJECT

The CLIENT agrees that LANGAN has the authority to use its name as the CLIENT and a general description of the Project as a reference for other prospective clients.

S. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties hereto and their respective successors and assigns. The CLIENT may not assign or transfer this Agreement without the prior written consent of LANGAN. The parties agree that this Agreement is not intended to give any benefits, rights, actions or remedies to any person or entity not a party to this Agreement, as a third-party beneficiary or otherwise under any theory of law.

T. DISPUTE RESOLUTION

LANGAN and the CLIENT agree that any disputes arising under this Agreement and the performance thereof shall be subject to non-binding mediation as a prerequisite to further legal proceedings, which proceeding must be brought in a court of competent jurisdiction in the state in which the office of LANGAN that issued the Proposal is located. LANGAN and CLIENT waive any right to a trial by jury.

All actions by CLIENT against LANGAN, and by LANGAN against CLIENT whether for breach of contract, tort or otherwise, shall be brought within the period specified by applicable law, but in no event more than five (5) years following substantial completion of LANGAN's services. CLIENT and LANGAN waive all claims and causes of action not commenced in accordance with this paragraph.

If the CLIENT asserts a claim against LANGAN relating to allegations of professional negligence in performance of LANGAN's services under this Agreement, LANGAN will be entitled to reimbursement of any costs incurred by LANGAN in the defense of the professional negligence claim, including any expenses incurred as part of LANGAN's professional liability insurance deductible, to the extent LANGAN is successful in its negligence defense.

U. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state in which the office of LANGAN that issued the Proposal is located.

V. ENTIRE AGREEMENT

This Agreement (consisting of these General Terms and Conditions, the accompanying Proposal and LANGAN's Fee Schedule, if applicable) constitutes the entire agreement between the parties, supersedes any and all prior agreements or representations of the parties to this agreement and conflicting terms on documents created by the CLIENT, and may not be modified, amended, or varied except by a document in writing signed by the parties hereto.