

AGREEMENT

THIS AGREEMENT, made and executed, on this day of 2020 by and between Remington & Vernick Engineers, a New Jersey corporation, as **CONFLICT TOWNSHIP & WATER/SEWER UTILITY ENGINEER**, with principal offices located at 9 Allen Street, Toms River, NJ 08753, hereinafter referred to as "CONSULTANT," and the **TOWNSHIP OF BARNEGAT**, in the County of Ocean, a municipal corporation of the State of New Jersey, hereinafter referred to as "CLIENT."

WITNESSETH that CONSULTANT and CLIENT in consideration of the promises and covenants contained herein, hereby agree, covenant and promise as follows:

1. Services and Compensation in General.

CONSULTANT shall hold available to CLIENT all officers, employees and facilities of CONSULTANT to perform all engineering services normally provided by the CONSULTANT as requested by CLIENT. CLIENT shall compensate CONSULTANT for any and all engineering services requested by CLIENT and performed by CONSULTANT in accordance with the terms of this Agreement.

2. Costs and Expenses.

All costs and expenses incurred by CONSULTANT shall be borne solely by CONSULTANT unless specifically reimbursable under another provision of this Agreement or specifically authorized in writing by the CLIENT.

3. Scope of Services.

A. CONSULTANT shall, at the request of the CLIENT, provide engineering, planning, surveying services and/or contract operations services as specified in the scope of services as provided in the proposal provided by CONSULTANT. CONSULTANT shall provide a proposal detailing the scope of work for each project requested by CLIENT unless authorized otherwise by CLIENT in

writing. Any proposal submitted and approved by CLIENT during the Term of this Agreement shall be made a part hereof by reference.

- B. CONSULTANT's services are for the sole and exclusive benefit of the CLIENT and no third party beneficiary is intended. The provision of these services by CONSULTANT shall not relieve others of their responsibility to the CLIENT.

4. CLIENT Responsibilities.

The CLIENT shall:

- A. Provide full information as to its requirements for any project which it requests CONSULTANT'S services.
- B. Assist CONSULTANT by placing at CONSULTANT'S disposal all available information pertinent to the site of any project, including prior reports and any other data relative or necessary to the design or the construction of said project.
- C. Guarantee access to and make all provisions for CONSULTANT to enter upon public and private lands as required for CONSULTANT to perform his work.
- D. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents presented and produced by CONSULTANT in furtherance of CONSULTANT'S duties under this Agreement and provide, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.
- E. Advertise for proposals from bidders, open the proposals at the appointed time and place in accordance with the applicable rules and laws, and pay for all costs incidental thereto.
- F. Provide such legal, accounting and insurance counseling support services as may be required for any and all projects for which CONSULTANT'S services are required and/or a proposal is approved.

- G. Designate in writing a person to act as the authorized representative with respect to any and all work to be performed by CONSULTANT. CLIENT'S authorized representative shall have complete authority to transmit instruction, receive information, interpret and define policies and decisions with respect to materials, equipment elements, and systems pertinent to the work.
- H. Give prompt written notice to CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in any project which CONSULTANT is providing services.
- I. Obtain approval of any and all governmental authorities having jurisdiction over any and all projects and any and all approvals and consents from such other individuals or bodies as may be necessary to complete the project. CLIENT is further responsible for any and all fees required by any governmental agency related to any project for which CLIENT is utilizing CONSULTANT'S services.

5. Compensation to CONSULTANT

CONSULTANT will be compensated by CLIENT as detailed in CONSULTANT'S proposal and as approved by CLIENT. CONSULTANT shall be compensated via one of the two options as provided below in subsections A and B.

A. Hourly Rates

All services rendered by CONSULTANT, unless provided through Fixed Fee as set forth below, will be compensated on the basis of the hourly rates for personnel performing the services as set forth in CONSULTANT'S proposal and as set forth in the rate schedule attached hereto as **Exhibit A**.

B. Fixed Fee

When it is possible to define precisely the scope of any project and the services to be performed by CONSULTANT, a fixed fee based on estimated services required and other factors considered relevant by the parties may be determined and agreed upon for total compensation. In the event a fixed fee arrangement is agreed upon by the parties, progress payments will be made by CLIENT on a percentage of completion basis as described within the specific project proposal and as set forth in the proposal attached hereto.

CLIENT will only make direct payment to consultants that it directly engages. CONSULTANT shall be responsible for payment to any and all sub-consultants it retains in connection with services provided to CLIENT provided said sub-consultants are not directly contracted by the CLIENT. CONSULTANT reserves the right to add an administrative fee of ten per cent (10%) to any services provided by a sub-consultant for any work authorized by CLIENT under this Agreement.

6. Payment to CONSULTANT

A. Hourly Billing

- i. Invoices shall be submitted by CONSULTANT to the CLIENT on a monthly basis.
- ii. CONSULTANT shall append to each invoice for payment a detailed breakdown of services and charges in accordance with this Agreement.

B. Fixed Fee

- i. Invoices shall be submitted by CONSULTANT to the CLIENT in accordance with the progress payment schedule outlined in the proposal and accepted by CLIENT.
- ii. CONSULTANT shall NOT be required to submit a detailed breakdown of services and charges for Fixed Fee billing.

- C. CLIENT shall make payment to CONSULTANT within thirty (30) days of receipt of the invoice for payment by CLIENT. Payments not made within thirty (30) days of receipt of voucher for payment shall be assessed an interest rate of 1.5%, unless otherwise prescribed for by State law. No deduction shall be made from CONSULTANT'S compensation on account of penalty, liquidated damages or other sums withheld from payments to others or on account of the cost of changes in the work other than those for which CONSULTANT is directly responsible.
- D. Disputes of invoices for payments, or portions thereof, shall be brought to CONSULTANT'S attention in writing within fifteen (15) days of the receipt of the invoice for payment by CLIENT.

7. Changes in Scope.

At any time either party may give the other party notice that renegotiations of any or all fees payable hereunder is necessary. Such notice shall be in writing and shall specify which fees must necessarily be renegotiated. All fees payable under the terms of the Agreement shall be effective until the approval of the renegotiation of fees. Following such renegotiation, fee changes agreed upon shall be set forth in writing, executed by both parties. In the event the parties are unable to agree on revised fee(s), the existing fees shall remain in effect until the termination of the Agreement or until agreement is reached.

8. CLIENT Requests; Private Request.

The CONSULTANT shall respond to only those requests by the CLIENT'S authorized representative or member of the governing body, but in no case shall respond to, or provide any services or work hereunder upon the request of any private citizen, person, firm, or other entity, except as expressly authorized in writing by CLIENT.

9. Filing of Deliverables with the CLIENT

CONSULTANT will deliver, by way of filing to the CLIENT a true copy of all maps, charts, documents, work sheets and data for which CONSULTANT has been compensated by the CLIENT, hereinafter "Deliverables". CONSULTANT will also deliver an electronic version, in PDF Format (unless another electronic format is requested by CLIENT through RFP or as set forth in CONSULTANT's Proposal), of all Deliverables. Should CLIENT desire additional Reproduction of Deliverables, beyond as set forth herein, either hard copy or electronic format, CLIENT shall bear the cost for reproduction as indicated in the attached schedule of reproduction costs.

10. Limitation of Liability

To the fullest extent permitted by law, the CLIENT agrees to limit CONSULTANT'S liability to the CLIENT, it's agents, officers or employees on any and all projects or related to the professional services CONSULTANT provides for CLIENT, due to CONSULTANT'S professional sole negligent acts, errors or omissions, regardless of the form or type of loss or damages whether direct, indirect, consequential or the result of contract, tort, indemnification or contribution which results in bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than the work itself) such that the total aggregate liability of CONSULTANT shall not exceed \$15,000.00 or CONSULTANT'S total fee for services rendered on any specific project or service, whichever is higher. CONSULTANT's liability for reasonable and necessary defense costs incurred by the indemnified persons shall be limited to the extent caused by the sole negligent acts, errors or omissions herein and recoverable under applicable law on account of CONSULTANT's negligence.

11. No Damage for Delay

CONSULTANT and the CLIENT waive consequential damages for claims, disputes, delays or other matters in question, arising out of or relating to this Agreement including but not limited to any monetary damages that are alleged to be the result of any delay which is not the fault of the CLIENT. The CLIENT further agrees to obtain by contract, to the fullest extent permitted by law, similar waivers from any and all Contractors and subcontractors, if any, to any and all work for which CONSULTANT provides services to CLIENT.

12. Waiver of Construction Phase Services

If CLIENT does not retain CONSULTANT to render construction phase services, CLIENT waives any claim it may have against the CONSULTANT and agrees to indemnify, defend and hold harmless CONSULTANT from any loss or liability, including attorney's fees and other costs of defense, arising out of or related to the interpretation of CONSULTANT'S plans and specifications, the review of shop drawings, the evaluation of contractor's request for change orders, or the failure to detect and correct obvious errors or omissions in CONSULTANT'S plans and specifications.

13. Dispute Resolution

A. The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement without the need for any intervention of third parties. However, should the parties be unable to resolve disputes amicably without intervention, the parties shall attempt to resolve any and all disputes through mediation conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association. The parties further agree that their respective good faith participation in mediation is a condition precedent to

pursuing any other available legal or equitable remedy, including litigation.

- B. Either party may commence the mediation process by providing to the other party written notice, setting forth the subject of the dispute, claim or controversy and the relief requested. Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation session shall be held within thirty (30) days after the initial notice. The parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).
- C. The parties further acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- D. The provisions of this section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered.

14. Insurance

CONSULTANT shall procure, and further require any and all sub-contractors and sub-consultants to procure, prior to the commencement of services, and maintain, at its own expense, until final acceptance by the CLIENT of all services required under this Agreement, insurance for

liability for damages imposed by law and assumed under this Agreement, of the kinds and in the amounts hereinafter provided, with insurance companies approved to do business in the State of New Jersey, which may be provided in a combination of primary and excess policies. The insurance carriers shall have a Best's rating of "A-" or better and a Best's financial size of "VII" or larger. All of the policies of insurance required to be purchased and maintained and the certificates, declaration pages, or other evidence thereof shall contain a provision or endorsement that the coverage afforded is not to be cancelled, materially changed or non-renewed without at least 30 days prior written notice to the CLIENT in accordance with the policy terms and conditions.

A. Commercial General Liability Insurance. The minimum limit of liability shall be \$1,000,000 per occurrence (combined single limit for bodily injury and property damage) /2,000,000 aggregate, including products/completed operations and contractual liability insurance.

B. Automobile Liability Insurance. The policy shall cover owned, non-owned, hired, leased and rented vehicles with minimum limits of liability in the amount of \$1,000,000 per accident as a combined single limit for bodily injury and property damage. The coverage provided shall include automobile contractual liability covering liability assumed under this Agreement.

C. Workers Compensation and Employer's Liability Insurance. Worker's Compensation and Employer's Liability insurance shall be provided in accordance with the requirements of the laws of the State of New Jersey.

D. Professional Liability (Errors & Omissions). Written on a "claims made" basis, with not less than \$2,000,000 for CONSULTANT and not less than \$2,000,000 for any licensed professional retained by CONSULTANT against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of CONSULTANT, its licensed professionals, subconsultants, contractors or subcontractors.

CONSULTANT shall furnish to the CLIENT within ten (10) days of the effective date of this Agreement, Certificates of Insurance representing insurance coverages as set forth above, together with declaration pages, in a form satisfactory to the CLIENT.

15. Waiver of Subrogation

To the extent damages experienced by CLIENT or CONSULTANT are covered by property or casualty insurance, CLIENT and CONSULTANT waive all rights against each other, their agents, consultants and employees for such covered losses and shall obtain waivers from their respective property and casualty insurance carriers against subrogation of such covered losses to the extent permitted by law. CLIENT shall require similar waivers of their contractor and its subs contractors and suppliers and consultants of any tier as to CONSULTANT to the extent permitted by law. The Parties shall advise their property and casualty carriers in writing as to such waivers.

16. Law and Venue

The law which shall be used to interpret this Agreement, including the 'Choice of Law' Rules shall be the law of the jurisdiction where CONSULTANT has its principal office for business.

The parties hereby agree that CONSULTANT may only be sued in the state in which CONSULTANT has its principal office for business and only in the county or local judicial district in which said office is located. The parties also agree that in the event of a suit that a determination as to the outcome of the suit shall be made by a jury.

17. Mandatory Affirmative Action Language for Procurement, Professional and Service Contracts.

During the performance of this contract, the CONSULTANT agrees as follows:

CONSULTANT or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

Except with respect to affectional or sexual orientation and gender identity or expression, CONSULTANT will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

CONSULTANT or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

CONSULTANT or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by