

CONTRACT FOR
PROFESSIONAL LANDSCAPE ARCHITECTURE SERVICES
AS LANDSCAPE ARCHITECT
FOR THE BARNEGAT TOWNSHIP ZONING BOARD

THIS AGREEMENT is made as of this 9th day of January, 2019

BETWEEN:

BARNEGAT TOWNSHIP ZONING BOARD
Township of Barnegat
900 West Bay Avenue
Barnegat, NJ 08005-1298

hereinafter referred to as CLIENT, AND

TAYLOR DESIGN GROUP, INC.
131 Hartford Road
Mt. Laurel, NJ 08054

hereinafter referred to as LANDSCAPE ARCHITECT

WHEREAS, the CLIENT desires to engage the LANDSCAPE ARCHITECT to serve as the Board LANDSCAPE ARCHITECT for the purpose of rendering LANDSCAPE ARCHITECTURE services when the need arises and upon the request of the Board; and

WHEREAS, Taylor Design Group, Inc. shall be designated as the LANDSCAPE ARCHITECT in Responsible Charge of the CLIENT whom the CLIENT shall appoint; and

WHEREAS, by entering into the CONTRACT, the CLIENT acknowledges that the services to be performed by the LANDSCAPE ARCHITECT shall be considered those of a "Professional Service" in accordance with N.J.S.A. 40A-11-1 et seq. ; and

WHEREAS, the LANDSCAPE ARCHITECT has submitted a proposal dated **October 15, 2018**, for the above-described professional services, hereinafter referred to as PROPOSAL, the terms and conditions of which proposal, including fees, are satisfactory to the CLIENT, and are set forth herein.

NOW, THEREFORE, the CLIENT and LANDSCAPE ARCHITECT in consideration of their mutual covenants and promises, agree as follows:

SECTION I – PROFESSIONAL SERVICES OF THE LANDSCAPE ARCHITECT

The LANDSCAPE ARCHITECT, upon the request of the CLIENT shall provide basic professional LANDSCAPE ARCHITECTURE services as required by CLIENT, as described in the PROPOSAL, which is attached hereto as Exhibit A, for the review of land development plans, reports, and applications which shall include, but not be limited to:

1. Serve as a general LANDSCAPE ARCHITECTURE consultant to the CLIENT;
2. Provide technical and LANDSCAPE ARCHITECTURE advice to the CLIENT;
3. Review the applications, reports and plans submitted by others to the CLIENT for review pursuant to the Municipal Land Use Law;
4. Consult with others and the CLIENT with respect to the foregoing matters, and all other LANDSCAPE ARCHITECTURE matters, related to the duties and responsibilities of the CLIENT;
5. Furnish pertinent reports, counseling, and advice to the CLIENT, as required;
6. Perform such other duties and functions as may be requested by the CLIENT; and
7. Attend meetings and hearings of the CLIENT, as directed.

SECTION II – ADDITIONAL SERVICES

The CLIENT may authorize the LANDSCAPE ARCHITECT to undertake additional services related to special projects (“Additional Services”). Such authorizations shall be by resolution of the CLIENT and memorialized in writing between the parties prior to commencement of said services. The LANDSCAPE ARCHITECT shall be compensated for Additional Services in accordance with the negotiated fee agreed to between CLIENT and LANDSCAPE ARCHITECT, which shall be memorialized in the resolution authorizing the Additional Services.

SECTION III – CERTAIN ACTIONS TO BE TAKEN BY THE CLIENT

The CLIENT agrees to:

- A. Make such records and information available to the LANDSCAPE ARCHITECT as may be required to assist in the performance of duties.
- B. Authorize and direct committees, employees, and agents of the CLIENT to consult with the LANDSCAPE ARCHITECT at all reasonable times upon the request of the LANDSCAPE ARCHITECT regarding:
 1. The work and services to be done or rendered by the LANDSCAPE ARCHITECT and/or others in the employ of the CLIENT;
 2. The applications, plans, and reports to be reviewed by the LANDSCAPE ARCHITECT, submitted by others to the CLIENT;
 3. The coordination of LANDSCAPE ARCHITECT’S professional services for any project or application; and
 4. Any and all other matters, as requested by the LANDSCAPE ARCHITECT, relating to the work and services of the LANDSCAPE ARCHITECT.

- C. Submit to the LANDSCAPE ARCHITECT all relevant applications, plans and reports prepared by others within such time to allow LANDSCAPE ARCHITECT ample opportunity to properly review same, consult with respect thereto and to make any necessary reports to the CLIENT, without the LANDSCAPE ARCHITECT causing a delay in the progress of the work.

SECTION IV – COMPENSATION OF THE LANDSCAPE ARCHITECT

- A. For the services rendered by the LANDSCAPE ARCHITECT under the Agreement, the CLIENT shall pay and the LANDSCAPE ARCHITECT shall receive the following described sums:

- 1. Professional Services:

- For all professional services provided pursuant to Section I of this Agreement, the LANDSCAPE ARCHITECT shall be compensated in accordance with the Schedule of Billable Hourly Rate/Expenses, as shown on the PROPOSAL, attached hereto as Exhibit A.

- 2. Additional Services:

- For the Additional Services Performed under Section II of this Agreement, the LANDSCAPE ARCHITECT shall be compensated in accordance with the negotiated fee as set forth in writing between the parties.

- 3. Attendance at Meetings:

- The LANDSCAPE ARCHITECT, or representatives, shall attend scheduled workshop and public meetings of the CLIENT as requested. The LANDSCAPE ARCHITECT shall be compensated for said meetings in accordance with the Schedule of Billable Hourly Rate/Expenses, as shown on the PROPOSAL, attached hereto as Exhibit A.

- 4. Additional Expenses:

- Expenses for mileage and telephone are specifically included in the above hourly rates set forth in the PROPOSAL attached hereto as Exhibit A. All other expenses specifically related to the work performed under this Agreement shall be reimbursed to the LANDSCAPE ARCHITECT.

- B. Vouchers or invoices shall be issued monthly for services performed. Such billings shall be due when rendered.
- C. In the event CLIENT requires LANDSCAPE ARCHITECT'S services beyond the termination date specified in Section V, LANDSCAPE ARCHITECT'S Schedule of Rates shall be subject to an equitable adjustment in January to reflect changes in various elements that comprise the rates. All adjustments will be pursuant to an agreement reached between the CLIENT and the LANDSCAPE ARCHITECT reduced to writing and deemed a modification of this Agreement.

SECTION V – PERIOD OF SERVICE

This Agreement shall be effective **JANUARY 1, 2019**, and shall terminate on **JANUARY 31, 2020**. Should the LANDSCAPE ARCHITECT'S services be required beyond that time, the LANDSCAPE ARCHITECT'S compensation for such work shall be subject to renegotiation, provided however, that compensation shall not be lower than the rates provided in the attached Schedule of Rates.

SECTION VI – STATUS OF LANDSCAPE ARCHITECT

1. To the extent permitted by law, the LANDSCAPE ARCHITECT, when engaged in the performance of LANDSCAPE ARCHITECTURE duties and services set forth herein (including specifically those services described in Section I hereof) shall act as and have the status of an employee of an agent of the Municipality for the purposes of immunity and shall therefore be entitled to immunities normally afforded to a Municipal employee agent under Title 59.
2. The CLIENT, subject to appropriation and availability of funds, authorizes the LANDSCAPE ARCHITECT to secure any and all professional, technical and non-technical staff which may from time to time be necessary in the performance of the service required. It is agreed and understood that services will be provided and certain functions will be performed on behalf of the CLIENT, pursuant to the terms of this proposal, by employees of Taylor Design Group, Inc.
3. The professional, technical and non-technical staff referred to in subpart 2 hereto, when they are engaged on behalf of the CLIENT in the performance of LANDSCAPE ARCHITECTURE duties and services referred to in Section I hereof, shall be afforded Title 59 Immunity, to the extent permitted by law, as set forth in subpart 1 hereof.

SECTION VII – INSURANCE AND INDEMNIFICATION

1. The LANDSCAPE ARCHITECT shall secure and maintain Workman's Compensation Insurance (as required by Law) and General Liability Insurance (as required by contract) to protect the LANDSCAPE ARCHITECT and/or Its Employees and agents from claims for bodily injury, death or property damage which may arise from the performance of services pursuant to this proposal. The limits of said Liability Insurance shall not be less than \$1,000,000 per occurrence; \$2,000,000 aggregate. The LANDSCAPE ARCHITECT will provide Certificates of Insurance to the CLIENT if requested.
2. LANDSCAPE ARCHITECT shall also provide and maintain Professional Liability (Errors and Omissions) Insurance for claims which arise from any negligent performance of the LANDSCAPE ARCHITECT pursuant to this agreement. The limits of LANDSCAPE ARCHITECT'S Professional Liability Insurance is currently \$1,000,000 per claim; \$2,000,000 aggregate.
3. The CLIENT acknowledges that although the LANDSCAPE ARCHITECT is to cooperate with and make recommendations to the CLIENT with respect to LANDSCAPE ARCHITECTURE matters related to the services provided by LANDSCAPE ARCHITECT, the final decisions are within the CLIENT'S discretion and are to be made by the CLIENT.

The LANDSCAPE ARCHITECT shall not be liable in any way for any decision of the CLIENT (or consequences thereof) which (i) are not in accordance with the recommendations of the LANDSCAPE ARCHITECT, or (ii) are based on or related to any failure on the part of the CLIENT to accept or follow any recommendations of the LANDSCAPE ARCHITECT. The CLIENT hereby releases the LANDSCAPE ARCHITECT, including its principals and employees, from any and all liability and waives any and all claims against the LANDSCAPE ARCHITECT, its principals or employees arising out of or relating to any such decisions or the consequences thereof, and agrees to indemnify, defend, and save harmless the LANDSCAPE ARCHITECT, including its principals and employees, against loss, liability, claim, damage, and expense, including reasonable counsel fees, arising out of or relating to any such decisions or the consequences thereof.

4. LANDSCAPE ARCHITECT agrees subject to the provisions herein, to indemnify and hold the CLIENT harmless from any damage, liability or cost (including reasonable attorneys fees and costs of defense) to the extent caused by LANDSCAPE ARCHITECT'S negligent acts, errors or omissions (and those of his or her contractors, subcontractors or consultants or anyone for whom the LANDSCAPE ARCHITECT is legally liable in the performance of professional services under this Agreement.

The CLIENT agrees subject to the provisions herein, to indemnify and hold LANDSCAPE ARCHITECT, its principals and employees, harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the CLIENT'S negligent acts, errors or omissions.

SECTION VIII – LITIGATION AND ADDITIONAL INVESTIGATION

If requested by the client or directed by subpoena or court order, the LANDSCAPE ARCHITECT shall prepare for and appear in litigation matters on behalf of the CLIENT or make investigations or reports in connection therewith in accordance with the LANDSCAPE ARCHITECT'S schedule of billable hourly rates/expenses, or other consideration for such additional compensation as the LANDSCAPE ARCHITECT and CLIENT shall previously agree in writing.

SECTION IX – ENTIRE AGREEMENT

This Agreement represents the entire agreement between the CLIENT and the LANDSCAPE ARCHITECT relating to the subject matter hereof and no representations or agreements made by either party or by any representative of either party in the negotiations leading to the Agreement or otherwise which are not expressed in this Agreement shall be binding on either party.

No change in, addition to, or modifications of any provisions of this Agreement shall be effective unless made by written agreement signed by the party to be charged with such change, addition or modification.

SECTION X – STATUTORILY REQUIRED AFFIRMATIVE ACTION CLAUSES

The LANDSCAPE ARCHITECT and the CLIENT hereby incorporates by reference into this Agreement the mandatory language of Subsection 3.4(a) and the mandatory language of Section 5.3 of the Regulations promulgated by the Treasurer of the State of New Jersey pursuant P.L. 1975, c. 127, as amended and supplemented from time to time; and LANDSCAPE ARCHITECT agrees to comply fully with the terms, provisions and conditions of Subsection 3.4(a) and Section 3.4(a) shall be applied subject to the terms of Subsection 3.4(d) of the Regulations.

SECTION XI – AMERICANS WITH DISABILITIES ACT

The LANDSCAPE ARCHITECT and the CLIENT do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990 ("Act") (U.S.C. Sec. 12101 *et seq.*), which prohibit discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, and made part of this Agreement.

SECTION XII – CONTROLLING LAW

The laws of the State of New Jersey shall govern this Agreement.

SECTION XIII – SUCCESSORS AND ASSIGNS

Each Party to the Agreement is hereby bound to the terms and conditions contained in this Agreement and the legal representatives, successors and assignees of this Agreement, if any, shall also be bound to the terms and conditions contained herein.

SECTION XIV –DISPUTES TO BE NEGOTIATED / MEDIATED

The parties shall attempt, in good faith, to resolve any dispute arising out of or relating to this contract through negotiations between chief executives of the parties. If the matter is not resolved by the parties alone, the parties agree to submit to a formal mediation with a mutually agreed upon mediator. If no mediator can be selected by mutual agreement of the parties, the parties shall seek the assignment of a mediator through the American Arbitration Association and in accord with its rules. Each party shall bear half the costs associated with the mediation.

If the matter is not resolved by good faith negotiation and/or mediation, within 60 days of initial notification of the need to negotiate, or such reasonable extension of time as may be necessary based upon availability of the parties or assignment of the mediator, either party may seek further legal action, including but not limited to the filing of an action in Superior Court, State of New Jersey.

SECTION XV – SEVERABILITY

Any provision of this Agreement held to be void and unenforceable under any law or regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon the parties to this Agreement.

IN WITNESS WHEREOF, the CLIENT and LANDSCAPE ARCHITECT have caused this Instrument to be executed in its respective name and behalf as the day and year herein written.

WITNESS:

TOWNSHIP OF BARNEGAT
ZONING BOARD

BY: Stacey McCae

BY: John Murrow

WITNESS:

TAYLOR DESIGN GROUP, INC.

BY: Holly M. Pasqua
HOLLY M. PASQUA
OFFICE MANAGER

BY: SDT
SCOTT D. TAYLOR, AICP, PP, LLA, LEED AP
VICE-PRESIDENT