

**AGREEMENT
FOR
PROFESSIONAL SERVICES
AS
CONFLICT ZONING BOARD ENGINEER
FOR
BARNEGAT TOWNSHIP**

THIS AGREEMENT is made as of this date, **January 14, 2022** by and between

BARNEGAT TOWNSHIP
Zoning Board of Adjustment
900 West Bay Avenue
Barnegat, NJ 08005

(Hereinafter referred to as the "CLIENT")

AND

T&M ASSOCIATES
1144 Hooper Avenue
Suite 202
Toms River, NJ 08753

(Hereinafter referred to as the "ENGINEER")

WHEREAS, the CLIENT desires to engage the ENGINEER to serve as the **CONFLICT ZONING BOARD ENGINEER** for the purpose of rendering professional services upon the request of the CLIENT; *and*

WHEREAS, ENGINEER has submitted a proposal as part of this Agreement to serve as **CONFLICT ZONING BOARD ENGINEER**, the terms and conditions of said proposal, including fees, are satisfactory to the CLIENT, and are set forth herein; *and*

WHEREAS, **STEPHEN SCHREIBER, PE**, a current employee of T&M Associates, has been appointed as the as **CONFLICT ZONING BOARD ENGINEER** and shall be designated as the Engineer in Responsible Charge on behalf of the CLIENT; *and*

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

SECTION 1 – PERIOD OF SERVICE

This Agreement shall have an effective commencement date of **January 4, 2022** and shall terminate on **December 31, 2022**. If the ENGINEER's services, be required beyond that time, the ENGINEER and CLIENT shall agree on the terms of the extended period of service.

SECTION 2 – PROFESSIONAL SERVICES OF THE ENGINEER

The ENGINEER upon the request of the CLIENT shall provide professional services requested by the CLIENT which shall include, but not be limited to, the following:

- a. Services required of a Conflict Board Engineer by Statute and Ordinance and any other services requested and authorized by the Authority during the term of the ENGINEER's appointment;
- b. Provide professional services for the consulting projects identified by the CLIENT, as directed;
- c. Provide technical and engineering advice to the CLIENT;
- d. Consult with others and the CLIENT with respect to the foregoing matters, and all other engineering matters, related to the duties and responsibilities of the CLIENT;
- e. Furnish pertinent reports, counseling, and advice to the CLIENT, as required;
- f. Provide other professional services requested by the CLIENT which are offered directly by the ENGINEER or through sub-consultant agreements authorized by the CLIENT, including but not limited to: land surveys; preparation of grant applications; additional inspection or observation of projects; environmental evaluation or assessments; review of outside technical consultants; laboratory tests of materials; borings and other soils investigations; LSRP services, detailed layout of construction; or similar services;
- g. Provide Additional Services that may be requested by CLIENT; *and*
- h. Perform such other duties and functions as may be requested by the CLIENT.

SECTION 3 – ENGINEER'S RESPONSIBILITIES

The ENGINEER agrees to the following:

- a. Provide, with the usual thoroughness and competence of the engineering profession, the professional services noted and set forth in [Section 2 – Professional Services of the Engineer](#);
- b. Perform all professional services under this Agreement with the care and skill ordinarily used by members of the engineering profession practicing under similar circumstances at the same time and in the same locality and based on facts and information available at the time services are provided;
- c. Obtain the services of sub-contractors or sub professionals as required and/or ordered by the CLIENT for the compensation provided herein; *and*
- d. In the event **STEPHEN SCHREIBER, PE** is not available to provide services or if the employee's employment with T&M Associates terminates, then the ENGINEER shall designate another employee who is satisfactory to the CLIENT and who shall be in Responsible Charge for the remaining term of this Agreement.

SECTION 4 – CLIENT'S RESPONSIBILITIES

The CLIENT agrees to the following:

- a. Make such records and information available to the ENGINEER as may be required to assist him in the performance of his duties;

- b. Authorize and direct committees, employees, and agents of the CLIENT to consult with the ENGINEER at all reasonable times upon the request of the ENGINEER regarding the services performed as described in this Agreement;
- c. Submit to the ENGINEER all relevant applications, plans, and reports prepared by others within such time to allow the ENGINEER ample opportunity to properly review same, consult with respect thereto and to make any necessary reports to the CLIENT, without the ENGINEER causing a delay in the progress of the work; *and*
- d. Authorize the ENGINEER to undertake additional services related to special projects (“Additional Services”) if deemed necessary. Such authorization shall be memorialized in writing between the parties prior to commencement of said services. The ENGINEER shall be compensated for Additional Services in accordance with the negotiated fee agreed to between the CLIENT and the ENGINEER.

SECTION 5 – PAYMENT TO THE ENGINEER

- 5.1 For the services rendered by the ENGINEER under this Agreement, the CLIENT shall pay, and the ENGINEER shall receive the following described sums:
 - 5.1.1 **PROFESSIONAL SERVICES.** For all professional services provided pursuant to this Agreement, the ENGINEER shall be compensated in accordance with the **2022 SCHEDULE OF HOURLY BILLING RATES / EXPENSES**, attached hereto as [Exhibit II](#).
 - 5.1.2 **ADDITIONAL SERVICES.** For any Additional Services performed under Section 4 of this Agreement, the ENGINEER shall be compensated in accordance with the negotiated fee as set forth in writing between the parties.
 - 5.1.3 **ATTENDANCE AT MEETINGS.** The ENGINEER, or his representative, shall attend scheduled workshop and public meetings of the CLIENT as requested. The ENGINEER shall be compensated for said meetings in accordance with the **2022 SCHEDULE OF HOURLY BILLING RATES / EXPENSES** attached hereto as [Exhibit II](#).
 - 5.1.4 **ADDITIONAL EXPENSES.** Expenses for travel, postage, and telephone are specifically included in the hourly rates set forth in the **2022 SCHEDULE OF HOURLY BILLING RATES / EXPENSES** attached hereto as [Exhibit II](#). All other expenses specifically related to the work performed under this Agreement shall be reimbursed to the ENGINEER.
- 5.2 Vouchers or invoices shall be issued monthly by ENGINEER for services performed. Such billings shall be due when rendered. In the event the CLIENT has a dispute with an invoice (*or any portion of an invoice*), the CLIENT shall nevertheless pay all undisputed invoices, or undisputed portions thereof, no later than sixty (60) days from the date of the invoice. CLIENT and ENGINEER agree to negotiate any and all disputes in good faith with an effort of resolving the dispute within sixty (60) days of the subject invoice date.
- 5.3 In the event the CLIENT requires the ENGINEER’s services beyond the termination date specified in [Section 1 – Period of Service](#), the ENGINEER’s [2022 Schedule of Hourly Billing Rates / Expenses](#) shall be subject to an equitable adjustment to reflect changes in the various elements that comprise the rates. All adjustments will be pursuant to an agreement reached between

the CLIENT and the ENGINEER which such agreement shall be reduced to writing and deemed a modification of this Agreement.

SECTION 6 – STATUS OF ENGINEER

- 6.1** To the extent permitted by law, the ENGINEER, when engaged in the performance of duties and services set forth herein (*including specifically those services provided in Section 2 hereof*), shall, in the event of litigation, act as and have the status of an employee or an agent of the Municipality for the sole and limited purposes of Title 59 Immunity allowing ENGINEER to therefore be entitled to all immunities normally afforded to a municipal employee or agent under Title 59.
- 6.2** The CLIENT, subject to appropriation and availability of funds, authorizes the ENGINEER to secure any and all professional, technical and non-technical staff which may from time to time be necessary in the performance of the services required. It is expressly 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 the ENGINEER's employees.
- 6.3** The professional, technical and non-technical staff referred to in [Subsection 6.2](#) hereof, when they are engaged on behalf of the CLIENT in the performance of Engineering duties and services referred to in [Section 2 – Professional Services of the Engineer](#) hereof, shall be afforded Title 59 Immunity, to the extent permitted by law, as set forth in [Subsection 6.1](#) hereof.

SECTION 7 – INSURANCE AND INDEMNIFICATION

- 7.1** The ENGINEER shall secure and maintain Worker's Compensation Insurance (*as required by Law*) and General Liability Insurance to protect the ENGINEER 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 Agreement. The limits of said Liability Insurance shall not be less than \$1,000,000 with a \$2,000,000 excess liability coverage. If requested, the ENGINEER shall provide Certificates of Insurance to the CLIENT prior to the performance of any services.
- 7.2** The ENGINEER shall also provide and maintain Professional Liability (*Errors and Omissions*) Insurance for claims which arise from any negligent performance of the ENGINEER pursuant to this agreement. The limits of the ENGINEER'S Professional Liability insurance shall not be less than \$2,000,000 per claim.
- 7.3** The CLIENT acknowledges that although the ENGINEER is to cooperate with and make recommendations to the CLIENT with respect to engineering matters related to the services provided by the ENGINEER, the final decisions are within the CLIENT's discretion and are to be made by the CLIENT.

The ENGINEER 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 ENGINEER, or (ii) are based on the acts or omissions of a contractor or other third party that is not a party to a written agreement with ENGINEER by which ENGINEER assumes responsibility for the contractor or third party, or (iii) are based on or related to any failure on the part of the CLIENT to accept or follow any recommendations of the ENGINEER. The CLIENT hereby releases the ENGINEER from any and all liability and waives any and all claims against the ENGINEER arising out of or relating to any such decisions or the consequences thereof, and agrees to indemnify, defend, and save harmless the ENGINEER against loss, liability,

claim, damage, and expense, including any consequential damages or reasonable counsel fees, arising out of or relating to any such decisions or the consequences thereof.

- 7.4 The ENGINEER 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 the ENGINEER's negligent acts, errors or omissions (*and those of his or her contractors, subcontractors or consultants or anyone for whom the ENGINEER is legally liable*) in the performance of professional services under this Agreement.

The CLIENT agrees subject to the provisions herein, to indemnify and hold the ENGINEER 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 8 – OWNERSHIP AND REUSE OF DOCUMENTS

- 8.1 All final plans and specifications ordered by the CLIENT and prepared by the ENGINEER shall become the joint property of the CLIENT and the ENGINEER. At the completion of work or in the event of termination, all work sheets and internal office communications of the ENGINEER, including drawings, sketches, calculations, field notes and memoranda are and shall remain the property of the ENGINEER, as instruments of service. The CLIENT, at its expense, may obtain extra prints of final drawings and specifications.
- 8.2 All documents including drawings and specifications prepared by the ENGINEER pursuant to this Agreement are instruments of service with respect to a specific project. They are not intended or represented to be suitable for reuse of the CLIENT or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by the ENGINEER for the specific purpose intended will be at the CLIENT'S sole risk, with no liability or exposure to the ENGINEER; and the CLIENT shall indemnify and hold harmless the ENGINEER from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from such unauthorized use. Any such verification or adaptation will entitle the ENGINEER to further compensation at rates to be agreed upon by the CLIENT and the ENGINEER.

SECTION 9 – MISCELLANEOUS

- 9.1 **AFFIRMATIVE ACTION.** The ENGINEER and the CLIENT hereby incorporate by reference into this Agreement the mandatory Affirmative Action 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 to *P.L. 1975, c. 127* and *N.J.S.A. 10:5-31*, as amended and supplemented from time to time; and ENGINEER 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. The **AFFIRMATIVE ACTION LANGUAGE** set forth in [Exhibit I](#) is also made a part hereof.
- 9.2 **AMERICANS WITH DISABILITIES ACT.** The ENGINEER and the CLIENT do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990 (*the "Act"*) (*U.S.C. Sec. 12101 et seq.*), which prohibits 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 thereunto, are made a part of this Agreement.
- 9.3 **FORCE MAJEURE.** The ENGINEER is not responsible for delays caused by factors beyond the

ENGINEER's control including, but not limited to, strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the CLIENT to furnish timely information or provide review comments promptly, or delays caused by the faulty performance of others.

- 9.4 MUTUAL WAIVER.** To the fullest extent permitted by law, the CLIENT and the ENGINEER waive against each other, and the other's employees, officers, directors, 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 this Agreement, from any cause or causes including, but not limited to, loss caused by delay, commercial loss, or lost profits or revenues or opportunities from any service provided by either Party.
- 9.5 GOVERNING LAW.** The laws of the State of New Jersey shall govern this Agreement.
- 9.6 SUCCESSORS AND ASSIGNS.** Each Party to this 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.
- 9.7 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.
- 9.8 ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the CLIENT and the ENGINEER 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 this Agreement or otherwise which are not expressed in this Agreement shall be binding on either party. No change in, addition to, or modification of any provision of this Agreement shall be effective unless made by written agreement signed by the party to be charged with such change, addition, or modification.

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

WITNESS

By: Stacey M. Cole
Stacey M. Cole, Planning
Administrator

By: John Murrin
John Murrin, Chairman

Date: 2/22/22

WITNESS

By: Joanne E. Trust
Joanne E. Trust, Admin. Coordinator

By: Jason A. Worth
Jason A. Worth, Vice President

DATE 1/14/2022

EXHIBIT I

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 ET SEQ. (P.L. 1975, C. 127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

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

The contractor 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, gender identity or expression, the contractor 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. The contractor 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.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, 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.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval
- Certificate of Employee Information Report
- Employee Information Report Form AA302
(electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT II

2022 SCHEDULE OF HOURLY BILLING RATES / EXPENSES

2022 Schedule of Hourly Billing Rates	
Billing Title	Billing Rate/Hour
Administrative Support Staff	\$88.00
Intern	\$88.00
Junior Field Staff	\$110.00
Junior Technical Staff	\$121.00
Field Staff	\$136.00
Technical Staff	\$136.00
Junior Professional Staff	\$142.00
Senior Technical + Field Staff	\$147.00
Professional Staff	\$158.00
Supervising Technical Staff	\$160.00
Senior Professional Staff	\$161.00
Manager	\$163.00
Billing Basis: Fixed Rate for Each Billing Title	

2022 BARN-Rates

T&M occasionally uses part-time and temporary staff to meet peak workload demands, and these staff will be billed in accordance with the

SCHEDULE OF MISCELLANEOUS CHARGES

Effective: January 1, 2022

Contracted Services

Including subconsultants, contracted labor, Sub-professionals, and subcontractors Invoice Cost + 15%

Direct Expenses

- Disbursements to agencies, vendors and suppliers includes:
Equipment; interstate transportation; permit, application, review, and similar fees; printing, plotting, reproduction, binding, and other graphic services; outside computer services; title, research, and data services; courier and express services; project field office expenses; and out-of-state telephone costs Invoice Cost
- Other Charges
 - Mileage.....Commensurate with IRS Guidelines
 - Travel and Subsistence..... Invoice Cost
 - Field Vehicles \$105/Day