

CONTRACT FOR ENGINEERING SERVICES

THIS AGREEMENT made this 28th day of July, 2011, by and between the Borough of Bradley Beach, 701 Main Street, Bradley Beach, New Jersey 07720, hereinafter referred to as "Board", and Elissa C. Commins, P.E., or her designee, of Birdsall Services Group, Inc., located at 611 Industrial Way West, Eatontown, NJ 07724, hereinafter referred to as "Engineer",

WHEREAS, the Board desires to employ an engineer to serve as Engineer of Record for a term beginning July 1, 2011 and terminating June 30, 2012, or until a successor is validly appointed, whichever occurs later, to provide such professional engineering services as are required, and

WHEREAS, the Engineer has agreed to perform the engineering work aforesaid in accordance with the terms and conditions, including fees, which are set forth herein.

NOW, THEREFORE, WITNESSETH THIS AGREEMENT: That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed that:

I. EXTENT OF SERVICES

The services to be provided by the Engineer encompass those normally provided by a Planning Board Engineer and specifically include those services required of a Board Engineer by Statute, law and local Ordinance, rule or regulation, as well as any other unspecified services required by the Board throughout the term of the Engineer's appointment.

II. BASIS OF CONTRACT

Portions of this contract are based upon the generally accepted standards for Professional and Civil Engineers. In those circumstances not specifically provided for in this Agreement or in the case of disagreement between the Board and the Engineer regarding any terms of this Agreement, the applicable standards as set forth in publications of the American Society of Civil Engineers shall apply.

III. STATUS OF ENGINEER, HIS ASSOCIATED FIRM AND EMPLOYEES

- 1) The Engineer, or his designee, when engaged in the performance of engineering duties and services as Planning Board Engineer related to any duty of responsibility imposed on the Engineer by any government statute, law, regulation or ordinance (including specifically services described in Part IV hereof), shall be acting as an employee or an agent of the Board and shall be entitled to all rights, privileges and immunities normally accorded to a Board Engineer by virtue of the Engineer's status as an official employee and agent of the Board.
- 2) The Board, subject to appropriation 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 service required. It is agreed and understood that services will be provided and certain functions will be performed on behalf of the Board, pursuant to the terms of this contract, by employees of the Engineer's associated firm, Birdsall Services Group, Inc.

- 3) The professional, technical and non-technical staff referred to in subpart 2 hereof, when they are engaged on behalf of the Board in the performance of engineering duties and services referred to in Part IV hereof, shall be considered as an independent contractor, as agents of the Board, to the extent permitted by law, recognizing Engineer and the employees of his associated firm act under the direct supervision and control of and in furtherance of the specified duties and responsibilities of the Engineer outlined in Part IV, hereof.

IV. ENGINEERING SERVICES TO BE PROVIDED

- 1) Related to duties and responsibilities imposed on a Board Engineer by Government Statute, Law, Rule, Regulations or other Ordinance:

- a. Direct Personal Service and Advice

Professional services of the Engineer, or, in the Engineer's absence, the services of qualified licensed associate, rendered on a part time basis, to attend meetings of the Board, or other governing bodies or agencies, and to provide general engineering advice. Such direct services will not include preparation of any drawings or detailed reports, or the services of any office staff in addition to the Engineer, or any service specifically scheduled hereinafter in this Contract.

- b. Review of Subdivision, Site Plan and Variance Proposals

When directed, the Engineer shall provide services necessary to review and make recommendations concerning various subdivision, site plan and variance proposals regarding their conformance to applicable Board requirements and needs, municipal ordinances, if applicable, and to the general requirements of design practice.

- c. Judicial and Quasi-Judicial Proceedings

When directed by the Board or when subpoenaed in connection with Board business to attend and testify in judicial or quasi judicial hearings, the Engineer shall provide the services necessary to prepare for and shall submit testimony regarding any items in question.

- 2) Additional duties and responsibilities:

- a. Preparation of Reports and Studies

The Engineer shall provide services necessary to prepare and provide detailed reports requested by the Board regarding feasibility investigations, economic comparisons, land use, planning and development proposals, public projects and functions, planning and financing schedules and preparation of reports and recommendations concerning other matters referred to the Engineer by the Board.

- b. Miscellaneous Services

The Engineer shall provide professional engineering services not otherwise classified herein when such services are requested by the Board.

V. ENGINEER'S RESPONSIBILITIES

- 1) To provide, with the usual thoroughness and competence of the engineering profession, engineering services noted set forth in Part IV above. No other warranty or representation, either expressed or implied, is included or intended.
- 2) To stand ready to explain and defend, under the terms and for the compensation hereinafter mentioned, all work completed under the terms of this contract.
- 3) To provide, at the request of the Board, such supplementary proposals as may be requested.
- 4) To arrange for the Board to examine all billing records relating to the services provided.
- 5) To advise the Board of any apparent discrepancies in any plans or documents, or any observed errors in construction or of the Engineer's inability for any reason whatsoever to provide services requested.
- 6) To obtain the services of other contractors or professionals as required and/or ordered by the Board for the compensation provided herein.
- 7) To secure and maintain and to assure that his associated firm will secure and maintain Workmen's Compensation Insurance as required by Law and Liability insurance as required to protect the Board, the Engineer and/or his associated firm and their employees and agents from claims for bodily injury, death or property damage which may arise from the performance of his (their) services pursuant to this proposal. The limits of said Liability Insurance shall not be less than \$1,000,000 with a \$2,000,000 excess liability coverage. Automotive liability coverage shall not be less than \$500,000 per individual or aggregate with \$100,000 property damage. If requested, the Engineer shall provide Certificates.
- 8) To provide and maintain Professional Liability (Errors and Omissions) Insurance to protect the Engineer and/or his associated firm for claims that arise from the negligent performance of the Engineer pursuant to this Proposal. Unless higher limits are requested, the limits of said Insurance shall be at least \$1,000,000 aggregate.

VI. BOARD'S RESPONSIBILITIES

- 1) To provide the Engineer with full information as to the Board's requirements and with full access to the site of the work of any proposed project, including responsibility to provide such legal action as may be required to assure access of the Engineer to the site of the work.
- 2) To designate a person to act as the "Board Representative" with respect to the work to be performed, such individual to have full authority to act for the Board in regard to directing and supervising the work of the Engineer. Unless otherwise designated by action of the Board, such person shall be the Board Secretary.
- 3) To provide the Engineer with forty-eight (48) hours notice when the Board will require the Engineer to be present at a meeting or to specifically initiate any of the services outlined in this Contract.

- 4) To request any supplementary proposals required.
- 5) To secure and provide for the Engineer's use, at the expense of the Board, such property, deed and Map information as may be in the possession of the Board and to secure and provide for the Engineer's use such title information, concerning parcels of property to be acquired in connection with any project, as a search of the property to be conducted by a person designated and paid by the Board, will disclose.
- 6) Insofar as permitted by law, to indemnify the Engineer and/or his associated firm for any liability or expense, including costs of defense resulting from any action at law related to any duty or responsibility imposed on the Engineer pursuant to Part IV hereof, instituted by anyone against the Engineer and/or his associated firm unless and until the court of competent jurisdiction finds that the cause of such action is the negligence of the Engineer in a percentage in excess of the Board and the Engineer or his associated firm has acted outside the scope of his (their) duties and acted contrary to law in which event the Board will be reimbursed for cost of defense, except that such reimbursement may be waived or apportioned in case of settlement, as agreed by the Board and Engineer.

VII. PAYMENT FOR SERVICES

- 1) All services outlined in Part IV, shall be invoiced on an hourly basis in accordance with the attached Hourly Fee Schedule, together with direct charges including disbursements at cost.
- 2) Vouchers or invoices may be rendered monthly for services performed. Such billings shall be due when rendered.
- 3) Direct charges include disbursements which are actual expenses incurred by the Engineer and/or his associated firm in connection with the project, and include, but are not limited to:
 - a. Out-of-state transportation and subsistence for professional and technical staff.
 - b. Furnishing and maintaining field office facilities when same are authorized and approved by the Board.
 - c. Overnight delivery charges.
 - d. Payment of permit fees, application fees, review fees and similar charges.
 - e. Printing, reproduction, binding, collating and other graphic services.
 - f. Messenger service, postage and handling of drawings and specifications, reports, contracts and other bulky items.
- 4) For the purpose of this Agreement, the phrase "personnel employed by the Engineer's associated firm" shall mean all employees of every nature and classification employed directly in providing the services required.
- 5) If the Board fails to make any payment due the Engineer for services or expenses within sixty days after receipt of a properly rendered statement therefore, the Engineer may include a charge at a rate of 1-1/2% percent per month from the sixtieth day.

VIII. PERIOD OF SERVICE AND TERMINATION

- 1) If the Engineer is absent due to vacation or illness, or becomes temporarily or permanently unable to fulfill the terms of this Agreement, the services provided for by this Agreement will become the responsibility of a qualified principal or associate of the Engineer's firm.

It is understood and agreed by the parties hereto that in the event of the unexpected inability of the Engineer to perform under the terms of this Agreement, that a qualified associate or principal of the Engineer's associated firm may, without the specific agreement of the Board, proceed to fulfill the Engineer's responsibility under this Agreement for a period of thirty (30) days after which period the Board may act to: a) continue such temporary arrangement in force, or b) provide for the appointment of the appropriate principal or associate in the Engineer's firm as the Engineer of Record.

- 2) Unless terminated by act of law or God, or as provided above, any agreement entered into pursuant to this Proposal shall remain in force and shall be binding upon the Engineer, the Board and their successors and assigns until the Engineer's term of office expires.

IX. OWNERSHIP & REUSE OF DOCUMENTS

- 1) Ownership of Documents: All plans, specifications, reports and other documents ordered by the Board and submitted to the Board shall remain the property of the Board for use by the Board in current or future programs. Unless the Board directs otherwise, the Engineer shall provide one (1) reproducible record set of all project drawings and one (1) set of signed and sealed prints. All shall be billed as herein provided. 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 remain the property of the Engineer, as instruments of his service. The Board, at its expense, may obtain reproducible record prints of any sketches or drawings and copies of any and all documents. The Engineer will provide the Board, or its representatives, access to his files during normal working hours for the purpose of determining the extent of necessary duplications.

All documents including drawings and specifications prepared by the engineer pursuant to this Agreement are instruments of service in respect of the project. They are not intended or represented to be suitable for reuse of the Board or other 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 Board's sole risk, with no liability or legal exposure to Engineer; and the Board shall indemnify and hold harmless Engineer from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by the Board and Engineer.

X. AFFIRMATIVE ACTION

The Engineer will conform to the State of New Jersey Affirmative Action requirements, Item I through IV inclusive, which are marked as Exhibit "A" and are attached hereto and made a part thereof.

XI. BILLING RATES

A copy of the Engineer's current billing rates for various employee titles and classifications, marked as Exhibit "B" is attached hereto and made a part hereof.

XII. AUTHORIZATION OF CONTRACT

This Contract has been authorized by Resolution of the Borough of Bradley Beach Planning Board adopted at the Board Meeting on the 28 day of July, 2011.

**BOROUGH OF BRADLEY BEACH
PLANNING BOARD**

BY: Mary Ann Solinski
Mary Ann Solinski, RMC, CMC
Municipal Clerk

Attest:

Frances M. Sauta
Frances M. Sauta, Planning Board Secretary

BIRDSALL SERVICES GROUP, INC.

BY: [Signature]
James Johnston, P.E.
President – Environmental Consulting
Division

Attest:

Paul A. Cole