



Contract Agreement for Professional Services as:

Borough Special Projects Engineer

For:

The period commencing January 1, 2020 and ending December 31, 2020

THIS AGREEMENT is made as of January 31, 2020, between the Borough of Oceanport located at 315 East Main Street, Oceanport, NJ 07757, hereinafter referred to as "CLIENT"; and ENGenuity Infrastructure, LLC, 12 Broad Street, Suite 203, Red Bank, NJ 07701, hereinafter referred to as ENGINEER.

WHEREAS, The CLIENT desires to engage the ENGINEER to serve as the Borough Special Projects Engineer for the purpose of rendering professional services upon the request of the CLIENT; and the ENGINEER has submitted a proposal as part of this Agreement to serve as Borough Special Projects Engineer, the terms and conditions of said proposal, including fees, are satisfactory to the CLIENT, and are set forth herein; and Jaclyn Flor, PE, PP, CME the President and CEO of ENGenuity Infrastructure, 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 1, 2020** and shall terminate on **December 31, 2020**. 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 CLIENT which shall include, but not be limited to:

1. Serve as Borough Special Projects Engineer for the CLIENT;
2. Provide professional services for the consulting projects identified by CLIENT, as directed;
3. Provide technical and engineering advice to the CLIENT;
4. 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;
5. Furnish pertinent reports, counseling, and advice to the CLIENT, as required;

6. Provide other professional services requested by the CLIENT which are offered directly by ENGINEER or through sub-consultant agreements authorized by CLIENT, including but not limited to: land surveys; preparation of grant applications; additional inspection or observation of projects; planning; or similar services;
7. Provide Additional Services that may be requested by CLIENT; *and*
8. Perform such other duties and functions as may be requested by the CLIENT.

SECTION 3 -- ENGINEERS RESPONSIBILITIES

The ENGINEER agrees to:

- A. Provide, with the usual thoroughness and competence of the Engineering profession, the professional services noted and set forth in Section 2 above;
- B. Obtain the services of sub-contractors or sub professionals as required and/or ordered by the CLIENT for the compensation provided herein;

SECTION 4 -- CLIENT'S RESPONSIBILITIES

The CLIENT agrees to:

- 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 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*
- E. 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 CLIENT and ENGINEER.

SECTION 5 -- COMPENSATION OF THE ENGINEER

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

1. Professional Services:

For all professional services provided pursuant to this Agreement, the ENGINEER shall be compensated in accordance with the **2020 Schedule of Hourly Billing Rates/Expenses** attached hereto as **EXHIBIT B**.

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.

3. Attendance at Meetings:

The ENGINEER, or her 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 **2020 Schedule of Hourly Billing Rates/Expenses** attached hereto as **EXHIBIT B**.

4. Additional Expenses:

Expenses for postage, and telephone are specifically included in the hourly rates set forth in the **2020 Schedule of Hourly Billing Rates/Expenses** attached hereto as **EXHIBIT B**. All other expenses specifically related to the work performed under this Agreement shall be reimbursed to the ENGINEER.

- B. Vouchers or invoices shall be issued monthly by ENGINEER for services performed. Such billings shall be due when rendered. In the event CLIENT has a dispute with an invoice (or any portion of an invoice), CLIENT shall nevertheless pay all undisputed invoices, or undisputed portions thereof, no later than 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.
- C. In the event CLIENT requires ENGINEER's services beyond the termination date specified in Section 1, ENGINEER's 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

- A. 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), may, in the event of litigation, avail itself of the Title 59 Immunity allowing ENGINEER to - be entitled to all immunities normally afforded to a municipal agent under Title 59.
- B. 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 ENGINEER's employees.

- C. The professional, technical and non-technical staff referred to in Subpart B hereof, when they are engaged on behalf of the CLIENT in the performance of Engineering duties and services referred to in Section 2 hereof, shall be afforded Title 59 Immunity, to the extent permitted by law, as set forth in Subpart A, hereof.

SECTION 7 -- INSURANCE AND INDEMNIFICATION

- A. ENGINEER shall secure and maintain Workman'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. The ENGINEER shall provide Certificates of Insurance to the CLIENT prior to the performance of any services.
- B. 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 ENGINEER'S Professional Liability insurance shall not be less than \$2,000,000 per claim.
- C. 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 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 (iii) are based on or related to any failure on the part of the CLIENT to accept or follow any recommendations of the ENGINEER.

- D. ENGINEER shall 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 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 and from any contractors actions that are following Engineer's plans.

SECTION 8 -- OWNERSHIP AND REUSE OF DOCUMENTS

All final plans and specifications, ordered and paid for by the CLIENT and prepared by the ENGINEER shall become the property of the CLIENT.

- 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.

SECTION 9 – ADDITIONAL TERMS

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 A** is also made a part hereof.
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 ("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 thereunto, are made a part of this Agreement.
3. **Controlling Law.** The laws of the State of New Jersey shall govern this Agreement.
4. **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.
5. **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.
6. **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 ENGINEER have caused this Instrument to be executed in its respective name and behalf as of the day and year herein written.

WITNESS:

BY:

[Municipal Witness]

Jeanne Smith
Borough Clerk

DATE:

1/29/2020

WITNESS:

BY:

[ENGenuity Witness]

DATE:

January 21, 2020

BY:

[Municipal Signature]
[Municipal Title]

Robert C. Coffey, II
Mayor

BY:

Jacklyn J. Flor, PE, PP, CME
President and CEO
ENGenuity Infrastructure

EXHIBIT A

**N.J.S.A. 10:5-31 and N.J.A.C. 17:27
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
Goods, Professional Services and General Service Contracts
(Mandatory Affirmative Action Language)**

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 and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, 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 action 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 for the 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, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act 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 employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2 or a binding determination of the applicable county employment goals determined by the Division, pursuant to 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, labor unions, that it does not discriminate on the basis of age, 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 applicable 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, 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

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be requested by the Division 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 Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

EXHIBIT B

Our services will be provided by billing rate basis. An invoice for professional services completed will be presented with descriptions of hours. Printing and direct expenses will be billed.

BILLING TITLE	BILLING RATE/HR
Junior Technical Staff Administrative Support Staff	\$85.00
Field Staff / Professional Entry Level/ Technical Entry Level	\$105.00
Technical Staff / Professional Staff/ Field Staff Midlevel	\$140.00
Professional Staff Midlevel/ Technical Midlevel / Prof. Field Staff	\$155.00
Licensed Professional Staff/ Supervising Technical	\$165.00
Supervising Professional Staff	\$185.00
Senior Supervising Professional / Group Manager/ Director/ Division Manager/ Corporate Manager	\$195.00
Executive	\$195.00

Billing Basis: Fixed Rate for Each Billing Title