

## AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT made this Feb. 1, 2010, by and between the Zoning Board of the Borough of Eatontown, a municipal corporation of the State of New Jersey, hereinafter "**Board**", and T&M Associates, Eleven Tindall Road, Middletown, New Jersey, 07748, hereinafter "**Engineer**",

WHEREAS the Board desires to employ an engineer to serve as Board Engineer for a term beginning January 1, 2010, and terminating December 31, 2010, and

WHEREAS, the Engineer has submitted a proposal to serve as Board Engineer, the terms and conditions of said proposal, including fees, are satisfactory to the Board, and 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 include those services required of a Board Engineer by Statute and Ordinance and any other services requested and authorized by the Board during the term of the Engineer's appointment.

### II. STATUS OF ENGINEER, EMPLOYEES AND DESIGNATED REPRESENTATIVE

1) The Engineer, when engaged as Board Engineer under the direction and control of the Board, in the performance of engineering duties and services related to any duty or responsibility imposed on the Engineer by the Board or by any government statute, law, regulation or ordinance, excepting only when providing services as an independent contractor to accomplish a defined task for defined compensation, shall be acting as an employee and/or 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/or agent of the Board.

2) The Board authorizes the Engineer to secure any and all professional, technical and nontechnical staff, which may from time to time be necessary in the performance of the services authorized.

3) The professional, technical and non-technical staff referred to in subpart 2) hereof, shall be considered as agents or employees of the Board to the extent permitted by law so long as they act under the direct supervision and control and in furtherance of the specified duties and responsibilities of the Engineer.

4) The Engineer designates Edward G. Broberg, P.E. to serve as individual appointed Board Engineer in responsible charge of professional services. This designation is acceptable to the Board.

### III. ENGINEERING SERVICES TO BE PROVIDED

1) Related to Duties and Responsibilities imposed on a Board Engineer by Statute, Law, Regulations or Ordinance:

a. Professional Service and Advice

Attending meetings of the Board and providing professional advice to the Board and Board officials as requested.

b. Review of Subdivision and Site Plan Proposals

Services necessary to review and make recommendations concerning various subdivisions and site plan proposals regarding their conformance to applicable Board regulations and/or to the general requirements of design practice.

c. Observation of Improvement Installations

Services necessary to observe, assess conformity to requirements and report upon the installation of site and subdivision public improvements in connection with commercial and residential site developments.

d. Review and Direction Concerning Permits and Certificates

Services necessary to review, assess conformity to requirements and take necessary action with respect to issuance of certificates, permits, licenses and similar regulatory documents. When requested, the Engineer shall provide technical advice to other Board employees, officials and agents concerning their review of such documents.

e. 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) Related to Duties and Responsibilities other than those included in subpart

1) above:

a. Design and Construction Services

Provide design and construction services including preliminary conferences with representatives of the Board, preparation of preliminary or design reports when required, preparation of plans, specifications and other contract documents, establishment of baselines and bench marks on the site of the work, and the furnishing of occasional visits during construction. When required, provide additional or special services including surveys in connection with property acquisition; engineering surveys; additional inspection or observation of projects; preparation of grant applications and environmental assessments; provision of services of outside technical consultants; laboratory tests of materials, borings and other soils investigations and detailed layout of construction.

b. Preparation of Reports and Studies

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

c. Miscellaneous Services

Provide professional engineering services not otherwise classified herein when such services are requested by the Board.

3) Services shall only be provided pursuant to the direction and authorization of the Board.

IV. ENGINEER'S RESPONSIBILITIES

1) To provide, with the usual thoroughness and competence of the profession, professional services noted and set forth in Part III above. No warranty or other 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 services provided.

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 payroll and cost 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 sub-contractors or sub-professionals as required and/or ordered by the Board for the compensation provided herein.

7) When performing the services set forth in Part III, observe as a design professional, the progress and quality of the executed work of Contractor(s) to determine in general if such work is proceeding in accordance with the Contract Documents. Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors. Engineer will not be responsible for Contractor's compliance with public safety or traffic control requirements on construction projects. Engineer's efforts will be directed toward providing a greater degree of confidence for the Board

that completed work of contractors will conform to the contract documents, but the Engineer shall not be responsible for the failure of the contractors to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations, the Engineer shall keep the Board informed of the progress of the work, shall endeavor to guard the Board against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.

8) To secure and maintain Workmen's Compensation Insurance as required by Law and Liability Insurance as required to protect the Engineer 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 \$3,000,000 or \$1,000,000 with a \$2,000,000 excess liability coverage. If requested, the Engineer shall provide Certificates of Insurance to the Board. Such certificates shall provide that the Board shall receive (10) days written notice prior to any cancellation or alteration of the policy limits.

9) To provide and maintain Professional Liability (Errors and Omissions) Insurance to protect the Engineer from claims which arise from the negligent performance of the Engineer pursuant to this Proposal. Unless higher limits are requested, the limits of said insurance shall not be less than \$2,000,000 aggregate. Cost of coverage at a higher limit, if requested by the Board, shall be paid by the Board.

#### V. 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 requesting and/or authorizing the services of the Engineer. Unless otherwise designated by action of the Board, such person shall be the Borough Administrator.

3) To confirm that funds are available to pay for the services requested and/or authorized and to provide the Engineer with a certificate of availability of funds when requested.

4) To provide the Engineer with reasonable notice when the Board will require the Engineer to be present at any meeting or to specifically initiate any of the services outlined in this Proposal.

5) To request any supplementary proposals required.

6) To secure and provide for the Engineer's use, at the expense of the Board, such property, deed and Tax 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.

7) To designate a person or entity responsible for monitoring Contractor's compliance with public safety and traffic control requirements on construction projects. Unless otherwise designated in

the documents for a particular project or by action of the Borough Administrator or Board, such person shall be the Borough Administrator (or his or her designee) of the Municipality in which the project is located.

## VI. PAYMENT FOR SERVICES

1) All services outlined in Part III, will be compensated at an amount determined at a fixed hourly billing rate for each job title multiplied by the time expended by the Engineer and the personnel employed by the Engineer's associated firm. Contract services shall be paid at 115% of cost. Direct expenses shall be paid in accordance with the Schedule of Miscellaneous Charges attached (see Part X).

2) Vouchers or invoices may be presented monthly for services performed. Such billings shall be due when rendered.

3) If the Board specifically agrees to compensate the Engineer for overtime effort which requires payment at premium overtime rates or if the Borough directs the provision of any services pursuant to this agreement which require payment at premium overtime rates, on Saturdays, Sundays or legal holidays, or in excess of eight (8) hours per day, the normal billing rates referred to in Part VI, 1), shall be increased by twenty-five percent (25%).

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) Current law does not permit secretarial charges for preparation of correspondence to be charged to Escrow accounts. These charges will be clearly identified and charged against a separate General account provided by the Board.

## VII. PERIOD OF SERVICE AND TERMINATION

1) This Agreement may be terminated by mutual agreement of the parties prior to termination of the Engineer's term. If such termination occurs, the Engineer shall be entitled to compensation for all services rendered prior to the effective date of the termination according to the provisions of Part VI herein.

2) If the individual appointed Board Engineer designated in Part II, 4) is absent due to vacation or illness, or termination of employment, or becomes temporarily or permanently unable to fulfill his or her responsibilities, the Engineer may designate a qualified replacement. As such, any time expended by a qualified principal or associate of the Engineer to become familiar with the Board's business, practices or policies shall not be billed to the Board.

3) Unless terminated by act of law or God, or as provided above, this Agreement shall remain in force and shall be binding upon the Engineer, the Board and their heirs, successors and assigns until the Engineer's term of office expires. Any design type projects underway at the time of the Engineer's termination shall be completed by the Engineer unless the Board specifically directs otherwise; in such case the Engineer shall be compensated as set forth in Part VI, 1) for the work completed only. No additional work shall be performed unless authorized in writing by the Board.

VIII. 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 copies of any and all documents. Copies shall be provided on media selected by the Engineer unless the Board specifies a specific form. 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 duplication. Except for the purpose described above, the Engineer asserts an exclusive copyright concerning all documents submitted to the Board.

2) Reuse of Documents

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 by Board or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at Board's sole risk, with no liability or legal exposure to Engineer; and 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 Board and Engineer.

IX. AFFIRMATIVE ACTION

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

X. BILLING RATES

A copy of the Engineer's current Schedule of Municipal Hourly Billing Rates (Title "M"), marked as Exhibit "B-1" and a copy of the current Schedule of Miscellaneous Charges marked as Exhibit "B-2", is attached hereto and made a part hereof.

XI. SEVERABILITY

If any provision of this Agreement is held unenforceable by a court of law or equity, the Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not render any other provision of this Agreement unenforceable.

XII. AUTHORIZATION OF AGREEMENT

This Agreement has been authorized by Resolution of the Borough of Eatontown Zoning Board adopted on \_\_\_\_\_.

XIII. "PAY-TO-PLAY" COMPLIANCE

[X] (Check if applicable) - This contract has been awarded through a "Fair and Open" process; therefore, the balance of this section does not apply.

[ ] (Check if applicable) - This contract has not been awarded through a "Fair and Open" process; therefore, the following will apply.

This contract has been awarded to the Engineer based on the merits of and the ability of the Engineer to provide the goods or services as described herein. This contract was not awarded through a "fair and open" process pursuant to N.J.S.A. 19:44-20.4 et. seq. As such, the undersigned does hereby attest that the Engineer has neither made a contribution that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16 in the one (1) year period preceding the award of the contract that would, pursuant to P.L. 2004, c.19, affect his eligibility to perform this contract, nor will he make a reportable contribution during the term of the contract to any political party committee in the municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded, or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded. The Engineer has filed the Disclosure Form required by N.J.S.A. 19:44A-20.26.


BOROUGH OF EATONTOWN  
ZONING BOARD:

ATTEST:

  
\_\_\_\_\_  
RAE BRAND, SECRETARY

  
\_\_\_\_\_  
ROBERT CARNEVALE, CHAIRMAN

ATTEST:

  
\_\_\_\_\_  
GARY C. DAHMS  
CORPORATE (ASSISTANT) SECRETARY

ENGINEER:

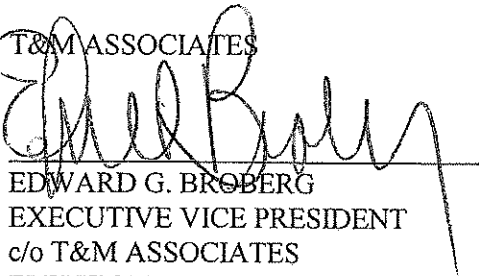
T&M ASSOCIATES  
  
\_\_\_\_\_  
EDWARD G. BROBERG  
EXECUTIVE VICE PRESIDENT  
c/o T&M ASSOCIATES  
ELEVEN TINDALL ROAD  
MIDDLETOWN, NJ 07748

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE  
N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICES 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 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 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, 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 personal 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, on 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 subcontractor shall furnish such reports or other documents to the Division of Contract Compliance & 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.

**2008 Schedule of Hourly Billing Rates**  
(Modified for Eatontown Borough for 2010)

BILLING TITLE	BILLING RATE/HR	TYPICAL FUNCTIONAL TITLES	
TECHNICAL AND FIELD STAFF ENTRY LEVEL	\$46.00	Junior Technician, Jr. Inspector	
FIELD STAFF – GRADE 1	\$55.00	Technician-1 (Survey), Inspector-1	
TECHNICAL STAFF -GRADE 1, ADMINISTRATIVE SUPPORT STAFF	\$56.00	Technician-1, Graphics Operator, All Clerical/Secretarial/ Administrative Support Titles not otherwise classified.	
FIELD STAFF – GRADE 2	\$63.00	Technician-2 (Survey), Inspector-2	
TECHNICAL STAFF - GRADE 2 PROFESSIONAL ENTRY LEVEL	\$77.00	Technician-2, Professional Intern	
FIELD STAFF – GRADE 3	\$81.00	Technician-3 (Survey), Inspector-3	
TECHNICAL STAFF GRADE 3	\$87.00	Technician-3, Senior CADD Technician	
FIELD STAFF – GRADE 4	\$87.00	Senior Technician (Survey), Senior Inspector	
TECHNICAL STAFF - GRADE 4 PROFESSIONAL I	\$100.00	Designer, Senior Engineering Technician, Assistant (Engineer, Staff Designer, Planner, Landscape Architect or Environmental Scientist), Graphics Coordinator	
FIELD STAFF – GRADE 5	\$103.00	Principal Technician (Survey), Principal Inspector, Party Chief	
TECHNICAL STAFF - GRADE 5 PROFESSIONAL II	\$110.00	Senior Designer, Principal Technician, Staff –1 (Designer, Engineer, Planner, Landscape Architect or Environmental Scientist), Information System Support Specialist	New Rate 2010
PROFESSIONAL III SUPERVISING FIELD STAFF	\$122.00	Staff – 2 (Designer, Engineer, Planner, Landscape Architect or Environmental Scientist), Senior Party Chief, Chief Inspector, Supervising Technician	\$120.00
PROFESSIONAL IV SUPERVISING TECHNICAL STAFF	\$132.00	Senior Staff (Engineer, Designer, Planner, Landscape Architect or Environmental Scientist), Principal Designer	\$125.00
PROFESSIONAL V (Field & Support)	\$132.00	Principal Surveyor, Supervising Inspector, Accounting Manager, Information System Manager, Computer Design Supervisor	\$125.00
PROFESSIONAL V	\$143.00	Principal (Engineer, Planner, Landscape Architect, Staff Designer, Environmental Scientist, or Hydrogeologist), Robotic Station Surveyor (Including equipment)	\$127.00
SUPERVISING PROFESSIONAL UNIT SUPERVISOR, PROFESSIONAL VI, VII GROUP MANAGER	\$147.00	Supervising (Engineer, Planner, Surveyor, Landscape Architect or Environmental Scientist), Unit Supervisor, Group Manager, Assistant Division Manager, Regional Office Manager	\$130.00
PRINCIPAL, MANAGER, PROFESSIONAL VIII, IX	\$149.00	Principal, Division Manager, Corporate Level Manager, Regional Client Service Manager, Senior Consultant, Chief Engineer	\$130.00

Effective January 1, 2008  
Billing Basis: Fixed Rate for Each Billing Title

**Exhibit "B-2"**  
**SCHEDULE OF MISCELLANEOUS CHARGES**  
**Effective January 1, 2010**

**CONTRACTED SERVICES** including subconsultants,  
contracted labor, subprofessionals and  
subcontractors..... Cost + 15%

**DIRECT EXPENSES**

- **Disbursements to agencies, vendors & suppliers**  
including interstate transportation; permit, application,  
review & similar fees; printing, plotting, reproduction,  
binding & other graphic services; outside computer  
services; title, research and data services; messenger  
and express services; project field office expense<sup>4</sup>;  
telegrams & out-of-state telephone costs..... Cost

- **Internal charges:**

Concrete Monuments <sup>1</sup> .....	\$75.00/each	Traffic Recorder (ATR) <sup>1</sup> .....	\$575/wk <sup>5</sup>
Iron Pins <sup>1</sup> .....	\$25.00/pin	Environmental Equipment <sup>1</sup> :	
Blueprinting.....	\$0.12/S.F.	Photoionization Detector.....	\$75/day <sup>5</sup>
Vellum/Mylar.....	Job Priced	Product Bailer.....	\$25/day <sup>5</sup>
Collating/Binding.....	\$5.00/set	Interface Probe.....	\$50/day <sup>5</sup>
Photocopies.....	\$0.11/page	Complete Groundwater	
Photocopies (color).....	\$2.00/page	Sampling Package..... <sup>5</sup>	\$350/day <sup>5</sup>
Interstate Fax <sup>2</sup> .....	\$1.00/sheet	Flow Meter/Flume Set-up.....	\$250/wk <sup>5</sup>
Interstate Auto Use <sup>3</sup> .....	\$0.31/mile	Confined Space Entry	
		Package.....	\$150/day <sup>5</sup>

Notes:

1. Not including personnel time charges.
2. When fax delivery is requested/required by client.
3. Intrastate auto use may also be charged at \$0.31/mile when so provided in Agreement or Proposal. Tolls and parking are charged at cost.
4. When so provided in Agreement or Proposal.
5. Or any part thereof.