

CONTRACT FOR ENGINEERING SERVICES

THIS AGREEMENT made this 1st day of January, 2010, by and between the Borough of Eatontown, a Municipality, located at 47 Broad Street, Eatontown NJ 07724, hereinafter referred to as "Borough", and James A. Priolo, P.E., P.P., of Birdsall Engineering, Inc., located at 611 Industrial Way West, Eatontown, New Jersey 07724, hereinafter referred to as "Engineer",

WHEREAS, the Borough desires to employ an engineer to serve as Borough Engineer for a term beginning January 1, 2010 and terminating December 31, 2010 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 Borough Engineer and specifically include those services required of a Borough Engineer by Statute, law and local Ordinance, rule or regulation, as well as any other unspecified services required by the Borough 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 Borough 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.

This Agreement shall be governed and controlled in all respects by the laws of the State of New Jersey, and any legal action arising under this Agreement shall be heard in the Superior Court of New Jersey. The venue for any litigation between the parties arising out of or resulting from this Agreement is Monmouth County, New Jersey, and the Parties irrevocably submit themselves to the jurisdiction of the courts in Monmouth County, New Jersey and waive any right they have or may have to any other jurisdiction.

This Agreement represents the entire agreement between the Parties regarding the issues set forth herein and cannot be changed or modified except in accordance with the provisions of this Agreement.

III. STATUS OF ENGINEER, HIS ASSOCIATED FIRM AND EMPLOYEES

- 1) The Engineer, when engaged in the performance of engineering duties and services as Borough 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 Borough and shall be entitled to all rights, privileges and immunities normally accorded to a Borough Engineer by virtue of the Engineer's status as an official employee and agent of the Borough.
- 2) The Borough, 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 Borough, pursuant to the terms of this contract, by employees of the Engineer's associated firm, Birdsall Engineering, Inc.
- 3) The professional, technical and non-technical staff referred to in subpart 2 hereof, when they are engaged on behalf of the Borough in the performance of engineering duties and services referred to in Part IV hereof, shall be considered as agents or employees of the Borough to the extent permitted by law, recognizing the Engineer and the employees of his associated firm may, in certain circumstances, be independent contractors, so long as they 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 Borough 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 Borough, 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. Observation of Improvement Installations

When directed or required, the Engineer shall provide services necessary to observe, assess conformity to statutory or other Ordinance requirements and report upon the installation of site improvements and subdivision public improvements in connection with Borough or other site developments.

- c. Review and Direction Concerning Permits and Certificates

When directed or required, the Engineer shall provide 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 Borough employees, officials and agents concerning their review of such documents.

d. Judicial and Quasi-Judicial Proceedings

When directed by the Borough or when subpoenaed in connection with Borough 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. Design Type (Contract) Projects - Basic Services

The Engineer shall provide basic services on design type projects including preliminary conferences with representatives of the Borough, preparation of preliminary or design reports when required, preparation of plans, specifications and other contract documents, the establishment of base lines and bench marks on the site of the work, and the furnishing of occasional visits during construction.

b. Special (or Additional) Services Required in Connection with Certain Design Type Projects

The Engineer, when requested, will provide additional or special services including matters in connection with property acquisition, engineering surveys, full time (resident) 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.

c. Preparation of Reports and Studies

The Engineer shall provide services necessary to prepare and provide detailed reports requested by the Borough 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 Borough.

d. Miscellaneous Services

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

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 Borough, such supplementary proposals as may be requested .
- 4) To arrange for the Borough to examine all billing records relating to the services provided.
- 5) To advise the Borough 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 Borough for the compensation provided herein.
- 7) To endeavor, when performing the services set forth in Part IV, to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general such work is proceeding in accordance with the requirements of any Borough approval or of contract documents. The Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. The Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by developers or contractors or the safety precautions and programs incident to the work of the contractors. The Engineer's efforts will be directed toward providing a greater degree of confidence for the Borough that completed work of the contractor 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 site visits on the basis of on-site observations, the Engineer shall keep the Borough informed of the progress of the work and shall endeavor to guard the Borough 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 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 Borough, 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 .
- 9) To provide and maintain Professional Liability (Errors and Omissions) Insurance to protect the Engineer and/or his associated firm for claims,w0 which 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. BOROUGH'S RESPONSIBILITIES

- 1) To provide the Engineer with full information as to the Borough'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 "Borough Representative" with respect to the work to be performed, such individual to have full authority to act for the Borough in regard to directing and supervising the work of the Engineer. Unless otherwise designated by action of the Borough, such person shall be the Borough Administrator.
- 3) To provide the Engineer with forty-eight (48) hours notice when the Borough will require the Engineer to be present at a meeting or to specifically initiate any of the services outlined in this Proposal.
- 4) To request any supplementary proposals required.
- 5) To secure and provide for the Engineer's use, at the expense of the Borough, such property, deed and Map information as may be in the possession of the Borough 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 Borough, 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 Borough and the Engineer or his associated firm has acted outside the scope of his (their) duties and acted contrary to law in which even the Borough will be reimbursed for cost of defense, except that such reimbursement may be waived or apportioned in case of settlement, as agreed by the Borough 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 Borough.
 - c. Telegrams and Federal Express 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 Borough 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 Borough, proceed to fulfill the Engineer's responsibility under this Agreement for a period of thirty (30) days after which period the Borough 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) The term of this Agreement shall be from January 1, 2010 through December 31, 2010, or until a qualified successor is appointed and confirmed.

IX. OWNERSHIP & REUSE OF DOCUMENTS

- 1) Ownership of Documents: All plans, specifications, reports and other documents ordered by the Borough and submitted to the Borough shall remain the property of the Borough for use by the Borough in current or future programs. Unless the Borough 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 Borough, 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 Borough, 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 Borough 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 Borough's sole risk, with no liability or legal exposure to Engineer; and the Borough 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 Borough and Engineer.

X. AFFIRMATIVE ACTION

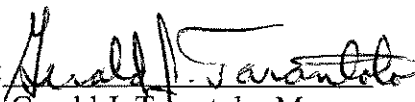
The Engineer will conform to the State of New Jersey Affirmative Action requirements, Item I through IV inclusive, which are marked as Exhibit "A" and are attached hereto and made a part thereof.

XI. BILLING RATES

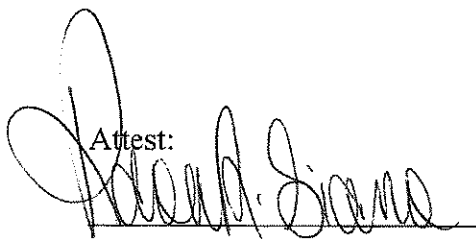
A copy of the Engineer's current billing rates for various employee titles and classifications, marked as Exhibit "B" is attached hereto and made a part hereof.

XII. AUTHORIZATION OF CONTRACT: This Contract has been authorized by Resolution No . of the Borough of Eatontown adopted at the Borough Council Meeting the 1st day of January, 2010.

BOROUGH OF EATONTOWN

BY: 
Gerald J. Tarantolo, Mayor

Attest:




BIRDSALL ENGINEERING, INC.

BY: 

James A. Priolo, P.E.

Attest:



Scott MacFadden, President

BIRDSALL ENGINEERING
SCHEDULE OF BILLABLE HOURLY RATES/EXPENSES

Our personnel provide consulting services in the following disciplines at the hourly rates listed below:

ENGINEERING SERVICES

- Civil
- Construction Administration
- Electrical
- Mechanical
- Structural
- Traffic/Transportation
- Water Resources

OTHER TECHNICAL SERVICES

- Environmental
- Regulatory Compliance
- Grants
- GIS
- Parks & Landscape Design
- Planning
- Surveying

<u>TITLE</u>	<u>RATE</u>
Technical Assistant	\$ 50.00
Senior Technician	\$ 70.00
Technical Professional	\$ 90.00
Project Professional	\$ 95.00
Senior Designer/Technical Manager	\$100.00
Senior Project Professional	\$110.00
Project Manager	\$120.00
Senior Project Manager	\$125.00
Principal	\$130.00

EXPENSES

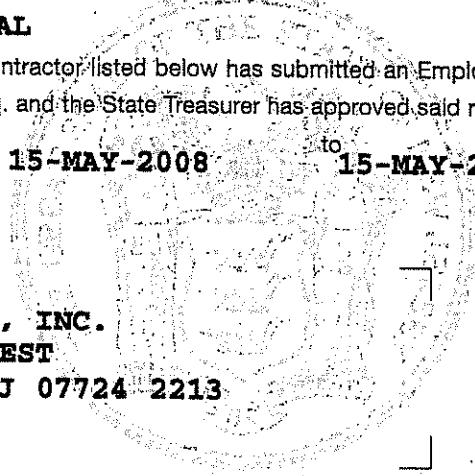
Photocopies	0.20 – 0.80 per copy
Blueprint Reproduction	0.37 per square foot
Other Reproduction	Square foot rate subject to type of material used
Special Mailings/Delivery	Rates subject to priority, weight and distance
Other Direct Costs	Cost plus 15% to include, but not limited to, subcontractors, supplies and other materials

CERTIFICATE OF EMPLOYEE INFORMATION REPORT

RENEWAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of

15-MAY-2008 to 15-MAY-2011



BIRDSALL ENGINEERING, INC.
611 INDUSTRIAL WAY WEST
EATONTOWN NJ 07724-2213

Acting State Treasurer

04/16/04

Taxpayer Identification# 222-577-347/000

Dear Business Representative:

Congratulations! You are now registered with the New Jersey Division of Revenue.

Use the Taxpayer Identification Number listed above on all correspondence with the Divisions of Revenue and Taxation, as well as with the Department of Labor (if the business is subject to unemployment withholdings). Your tax returns and payments will be filed under this number, and you will be able to access information about your account by referencing it.

Additionally, please note that State law (Public Law 2001, c.134) requires all contractors and subcontractors with State agencies to provide proof of their registration with the Division of Revenue. The law also amended Section 92 of the Casino Control Act, which deals with the casino service industry.

We have attached a Proof of Registration Certificate for your use. To comply with the law, if you are currently under contract or entering into a contract with a State agency, you must provide a copy of the certificate to the contracting agency.

If you have any questions or require more information, feel free to call our Registration Hotline at (609) 292-1730.

I wish you continued success in your business endeavors.

Sincerely,

John E. Tuohy
John E. Tuohy, CPA
Acting Director

STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE
FOR STATE AGENCY AND CASINO SERVICE CONTRACTORS

DEPARTMENT OF TREASURY/
DIVISION OF REVENUE
PO BOX 252
TRENTON, N J 08646-0252

TAXPAYER NAME:

BIRDSALL ENGINEERING, INC.

TRADE NAME:

TAXPAYER IDENTIFICATION#:

222-577-347/000

SEQUENCE NUMBER:

0072651

ADDRESS:

611 INDUSTRIAL WAY WEST
EATONTOWN NJ 07724

ISSUANCE DATE:

04/16/04

EFFECTIVE DATE:

02/20/85

FORM-BRC(08-01)

John E. Tuohy
Acting Director

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address

EXHIBIT A

MANDATORY AFFIRMATIVE ACTION LANGUAGE PROCUREMENT, PROFESSIONAL, AND SERVICE CONTRACT

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 or sex. 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 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 forth provisions of this non-discrimination 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 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 the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including 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 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.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office 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 Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the administrative Code (NJAC 17:27).

Submitted By: BIRDSALL ENGINEERING, INC.

Name of Representative: Scott MacFadden

Signature of Representative:

Title: President

A handwritten signature in black ink, appearing to read "Scott MacFadden", written over the printed title "Title: President".

Date: January 1, 2009