

**TOWNSHIP OF HAMILTON**  
**CONTRACT FOR PROFESSIONAL SERVICES**  
**TOWNSHIP ENGINEER**

THIS AGREEMENT, made and executed, in the Township of Hamilton, in the County of Atlantic, State of New Jersey, on this 17<sup>th</sup> day of January, 2017 by and between **KEVIN J. DIXON and DIXON ASSOCIATES ENGINEERING, LLC**, 335 East Jimmie Leeds Road, 2<sup>nd</sup> Floor, Galloway Township, NJ, 08205, a New Jersey corporation, as Township Engineer (hereinafter referred to as "Engineer"), and the Township of Hamilton, in the County of Atlantic, a municipal corporation of the State of New Jersey (hereinafter referred to as "Township"), until the Reorganization Meeting of the Township Committee to be held in January 2018, or until a successor is qualified and appointed, whichever later occurs..

WITNESSETH that the Engineer and Township in consideration of the promises and covenants contained herein, hereby agree, covenant and promise as follows:

1. Services and Compensation in General. Engineer shall hold available to Township all officers, employees and facilities of Engineer to perform with Engineer's best efforts, all engineering services normally provided by the Engineer as requested by a majority vote of Township Committee or their designee, and shall compensate Engineer for services requested by Township in accordance with Paragraph 6D and performed by Engineer in accordance with the terms of this Agreement.
2. Limits on Political Contributions. Prior to awarding this contract, the Township received from Engineer a sworn statement, made under penalty of perjury, that Engineer has not made a contribution in violation of the Township of Hamilton Ordinance 1636-2008 (Limits on Political Contributions).
3. Costs and Expenses. Costs and expenses incurred by Engineer shall be borne by Engineer unless specifically reimbursable under another provision of this Agreement or specifically authorized in writing by the Township.
4. Scope of Services.
  - A. The Engineer shall at the request of the Township Officials (identified in Paragraph 1):
    - (1) Prepare feasibility studies.

- (2) Perform all necessary field work and prepare drawings and surveys.
- (3) Prepare plans in sufficient detail to illustrate the work to be performed.
- (4) Prepare specifications in a form as required for public bidding and in such detail as is required to describe the work to be performed by the contractor.
- (5) Assist the Township or its representatives in the preparation of the necessary application and/or permit forms as required by the nature of the work for submission to the proper agencies of government having jurisdiction over the work. Engineer shall not be responsible for any failure to issue, delay, or conditions imposed by such governmental agency.
- (6) Assist the Township in the receiving, analyzing and tabulation of bids received with recommendations by the Engineer to the Township or its authorized representative.
- (7) Compile three (3) sets of contracts; obtain performance bond and contract signatures from contractor; forward contracts to Township for approval and following approval by Township forward contracts to contractor along with proceed order.
- (8) Furnish observation of work as to progress and general quality; however, Engineer is not responsible for supervising the Township's contractors or commenting on, overseeing, or providing the means and methods of their work, including job site safety, and Engineer is not responsible for the failure of the Township's contractors to properly perform their work.
- (9) Review and approve or disapprove shop drawings prepared by contractor or manufacturer, but only for the limited purpose of checking for the design concept expressed in the drawings and specifications. Such review by Engineer is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities. The Engineer's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences or procedures.

- (10) Report on contractor's request for change orders and proposals to Township, submit Engineer's recommendation as to whether or not Township should approve said change order, and prepare change orders as approved.
- (11) Prepare and submit monthly certificates for interim payments according to contract items as work progresses and prepare and submit a final certificate upon completion, said certificate to state that to the best of Engineer's knowledge, based upon the observations made under this Agreement, the Contractor has performed in accordance with the plans, specifications and change orders.
- (12) Furnish full-time resident inspection of the work, if authorized by the Township consisting of:
  - (a) reporting on and making recommendations relating to the progress of the work and noting to Township any observed defects, deficiencies and unnecessary delays in the work of the contractor (without in any way guaranteeing such work); and
  - (b) approving of materials and equipment furnished.
- (13) Furnish copies of plans and specifications as follows:
  - (a) one (1) set for Township during bidding;
  - (b) three (3) sets to Township for preparing contracts;
  - (c) two (2) sets to State and/or Federal Agencies; for approvals. All other copies as required by Township or contractors shall be furnished at cost of reproduction to those requesting additional copies.
- (14) Attend Township meetings when contractors' proposals are to be accepted.
- (15) Perform other engineering services for the benefit of the Township upon authorization, such as the following:
  - (a) laboratory work;
  - (b) subsurface investigations;
  - (c) core borings;
  - (d) hydrographic surveys;

- (e) property surveys;
- (f) easement surveys and descriptions;
- (g) assisting the Township in connection with adjudication, litigation or negotiation;
- (h) preparation of forms required by various agencies of government for permits or for grants or loans;
- (i) preparation of "as-built" drawings upon completion of a project from data furnished by contractor;
- (j) preparation of maps;
- (k) review of site plans and subdivision plans;
- (l) attending meetings as requested by Township;
- (m) making drawings from field measurements of existing construction when required for planning additions, or alterations thereto;
- (n) additional services due to significant changes in general scope of the project or its design, including but not limited to, changes to size, complexity or character of construction;
- (o) revising previously approved studies, reports, design documents, and drawings or specifications during or after Design Phase;
- (p) preparing documents for alternate bids requested by the Township for work which is not executed; preparing detailed renderings, exhibits, or scale models for the project;
- (q) investigations involving study of operation, maintenance and overhead expenses, and the preparation of rate schedules, earning and expense statements, feasibility studies, appraisals and evaluations;
- (r) additional or extended services during construction made necessary by work damaged by fire or other cause during construction, prolongation of the construction contract time by more than twenty-five percent (25%), acceleration

of the work schedule involving services and normal working hours, and contract default due to Contractor delinquency or insolvency;

(s) assistance or instruction in the start-up and continued operation of equipment or devices and the preparation of manuals of operation and maintenance.

B. These services are for the sole and exclusive benefit of the Township, and no third party beneficiary is intended. The provision of these services by the Engineer shall not relieve others of their responsibility to the Township or others.

5. The Township's Responsibilities - The Township shall:

- A. Provide full information as to its requirements for the project.
- B. Assist the Engineer by placing at his disposal all available information pertinent to the site of the project including previous reports and any other data relative or necessary to the design or the construction of the project.
- C. Guarantee access to and make all provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform his work.
- D. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the Engineer and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the Engineer.
- E. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incidental thereto.
- F. Provide such legal, accounting and insurance counseling services as may be required for the project.
- G. Designate in writing a person to act as representative with respect to the work to be performed. Such person shall have complete authority to transmit instruction, receive information, interpret and define policies and decisions with respect to materials, equipment elements, and systems pertinent to the work.
- H. Give prompt written notice to the Engineer whenever the Township observes or otherwise becomes aware of any defect in the project.

- I. Obtain approval of all governmental authorities having jurisdiction over the project and such approvals and consents from such other individuals or bodies as may be necessary to complete the project. Township to pay all fees required by the governmental agencies.
  - J. The Township reserves the right to solicit competitive engineering proposals on projects where the engineering costs/fees exceed Twenty-Nine Thousand (\$29,000.00) Dollars (excluding annual road projects).
6. Compensation to the Engineer - Township will only make direct payment to consultants that it directly engages in a manner prescribed by the Local Public Contracts Law. Engineering Design Associates shall be responsible for any and all consultants it retains in connection with Township work when said consultants are not directly authorized by the Township in the manner prescribed by the Local Public Contract Law.
- A. Hourly Rates - All services rendered by Engineer will be compensated on the basis of the hourly rates for personnel performing the services as set forth in Exhibit A, annexed hereto and is made a part hereof as if sent forth herein at length, unless some other method of payment is required under this contract or agreed to as provided herein.
  - B. Lump Sum or Fixed Fee - When it is possible to define precisely the scope of the project and the engineering services to be performed, a lump sum fee based on estimated services required and other factors considered relevant by the parties may be determined and agreed upon for total compensation. In this case, the size and physical characteristics of the project, the estimated time required to complete the project and other relevant factors should be described as completely as possible.
  - C. Combination of Methods - A combination of methods for determining total compensation for professional engineering services may be employed for some projects. Services may be compensated by hourly rates for the project, until the precise scope is developed, then by lump sum for the remainder of the services.
  - D. **Professionals (auditors, engineers, attorneys, etc.) must obtain authorization for any work performed under this contract from the Township Administrator or by formal action (motion, resolution, or ordinance) of the Township Committee. Any work not specifically**

**authorized may be rejected for payment at the discretion of the Township Administrator when reviewing invoices, vouchers and submissions. Any work rejected by the Township Administrator is subject to review by the Township Committee, if requested.**

7. Payment to the Engineer

- A. The Township's Billing Rules & Procedures (Exhibit B) is annexed hereto and is made a part hereof as if sent forth herein at length.
- B. The Engineer shall append to each voucher for payment a breakdown of services and charges in accordance with this Agreement.
- C. Payments for services to be compensated on a lump sum basis shall, except as set forth in Paragraph 7D below be made upon completion of the project unless otherwise agreed at the time the lump sum payment is determined and agreed upon.
- D. Payments for services rendered under this contract on a lump sum basis involving the construction of improvements by an outside contractor will be made in accordance with the schedule shown below or as otherwise agreed by the parties. Progress payments may be made monthly in proportion to services performed and should amount to the following percentage of the total fee at completion of each phase of the work.

- (1) Design Phase- Sixty (60%) percent of total fee
- (2) Preparation of plans and/or specifications – Ten (10%) percent of total fee
- (3) Supervision of Bidding – Ten (10%) percent of total fee
- (4) Construction Supervision Phase – Twenty (20%) percent of total fee. Total fee for Basic Services – One Hundred (100%) percent. The twenty (20%) percent of total fee under paragraph 7.D.(4) Construction Supervision Phase shall be billed and payable during the period of construction and in direct proportion to the construction progress.

8. Future Changes in Fee - At any time either party may give the other party ninety (90) days' notice that renegotiations of any or all fees payable hereunder is necessary. Such notice shall be in writing and shall specify which fees must necessarily be renegotiated. All fees payable, under the terms of the

Agreement shall be effective until the expiration of said ninety (90) day period, and following agreement by both parties to the revised fee(s) only such fees that are so revised shall cease to be effective at the expiration of such ninety (90) days. Following such renegotiation, fee changes agreed upon shall be set forth in writing, executed by both parties. In the event the parties are unable to agree on revised fee(s), the existing fees shall remain in effect until the termination of the Agreement or until agreement is reached.

9. Maintenance of Township Maps - If requested by Township, Engineers shall maintain all Township maps and Township shall compensate Engineer for such services in accordance with Schedule A annexed hereto. In such circumstance, Engineer shall coordinate with the Township Tax Assessor, the revisions to the Tax Map, which shall be made by October 1st of each year.
10. Field Crews - When desired and requested by the Township field crews of Engineer shall be made available on seventy-two (72) hours' notice, excluding intervention of Saturdays, Sundays, Holidays, periods of inclement weather, and Acts of God.
11. Township Requests; Private Request - The Township Administrator, at the Direction of Township Committee, is hereby designated as the person authorized to make requests for services hereunder on behalf of the Township and Engineer shall respond to these requests, but in no case shall respond to, or provide any services or work hereunder upon the request of any citizen, person, firm, or other entity, except as expressly authorized pursuant to Paragraph 7D, above.
12. Filing of materials with the Township - Engineer shall deliver, by way of filing to the Township a true copy of all maps, charts, documents, work sheets and data for which the Engineer has been compensated by the Township. Additionally, Engineer shall file and carefully keep and maintain originals or true copies of all of the aforesaid in Engineer's office. All other copies of maps, charts, documents, work sheets and data shall be delivered upon payment by Township of the actual cost of reproduction. Such reproduction shall be accomplished by Engineer according to any process in any manner the Township desires.
13. Mandatory Affirmative Action Language for Procurement, Professional and Service Contracts - During the performance of this contract, the contractor agrees as follows:



- a. The Engineer 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 Engineer 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; layoffs or terminations; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Engineer 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;
- b. The Engineer 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, marital status or sex; The Engineer 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.
- c. The Engineer or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer's pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.
- d. The Engineer 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.

- e. The Engineer 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.
- f. The Engineer 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.
- g. The Engineer 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 or sex, and conform with the decisions of the State of New Jersey, and applicable Federal law and applicable Federal Court decisions.
- h. The Engineer 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).

13. Termination - Either party may terminate the effect of the Agreement as of the anniversary date hereof upon written notice of termination to the other party. No prior notice shall be required. Upon termination of services of Engineer to Township, Engineer shall surrender all maps, charts, documents, work sheets and records in connection with any work for which he has been compensated by the Township, or true and accurate copies of same, at cost of reproduction, together with all Township property and a status report on every pending project, to his successor as Township Engineer, or to such other person or Township Official or employee as the Township Official (or authorized representative) directs, without additional cost to the Township. All partially completed work and

services of Engineer shall be compensated by Township in accordance with Schedule A annexed hereto.

**NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE OR INTENDED BY THE PROVISION OF PROFESSIONAL SERVICES AND ADVICE OR BY THE FURNISHING OF THE PROFESSIONAL WORK PRODUCTS PURSUANT TO THIS AGREEMENT. NOTHING CONTAINED HEREIN, HOWEVER, SHALL ABRIDGE, MODIFY, NEGATE OR OTHERWISE RESTRICT THE ENGINEER'S DUTY TO EXERCISE THAT DEGREE OF CARE, SKILL AND KNOWLEDGE AS ARE GENERALLY DEEMED TO BE ACCEPTABLE PROFESSIONAL STANDARDS REGARDING THE PROFESSIONAL SERVICES PROVIDED FOR HEREIN AND/OR RENDERED BY THE ENGINEER.**

IN WITNESS WHEREOF, Engineer and Township have caused this Agreement to be executed the day and year first above written.

ATTEST:

DIXON ASSOCIATES ENGINEERING, LLC

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\_\_\_\_\_  
Kevin J. Dixon, PE, PP, PTOE, CME

ATTEST:

**TOWNSHIP OF HAMILTON**

\_\_\_\_\_  
Rita Martino  
Township Clerk

\_\_\_\_\_  
John Kurtz  
Mayor

EXHIBIT A

**FEE PROPOSAL**

**2017 Hourly Billing Rates:**

Dixon Associates proposes the following hourly rates:

Principal Engineer	\$	130.00
Associate	\$	115.00
Project Manager	\$	105.00
Engineer	\$	100.00
Engineer Assistant	\$	90.00
Inspector	\$	75.00
Cad Operator	\$	85.00
Administrative Assistant	\$	50.00
Clerical (Non-Overhead)	\$	40.00

**Reimbursable Expenses:**

Dixon Associates fee schedule for deliverable documents is as follows. It is the policy of Dixon Associates to invoice only deliverable documents, which are defined as documents that are submitted to the Municipality or any other agency on the Municipality's behalf:

<u>Copies:</u>	<u>Fee Per</u>
8.5"x11" B/W	\$ 0.10
8.5"x11" Color	\$ 0.75
11"x17" B/W	\$ 0.20
11"x17" Color	\$ 1.00

<u>Prints:</u>	<u>Fee Per</u>
24"x36" B/W	\$ 2.00
30"x42" B/W	\$ 3.00
36"x48" B/W	\$ 4.00
24"x36" Color	\$ 5.00
30"x42" Color	\$ 7.00
36"x48" Color	\$ 10.00

<u>Misc:</u>	<u>Fee Per</u>
Report Binding	\$ 1.00
Report Covers	\$ 1.00

Dixon Associates passes through delivery expenses such as courier or Federal Express but does not "mark-up" such fees. At times, application or permit fees are required to be submitted to various state agencies. It is the Township's responsibility to provide the fees when necessary. Dixon Associates may, at its discretion, "front" these fees and include them as pass-through expenses.

KD January 9, 2017

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*Dixon Associates Engineering, LLC*