

**Borough of Matawan**  
201 Broad Street, Matawan New Jersey 07747



**Karen Wynne, RMC**  
**Municipal Clerk**  
**(732) 566-3898 Ext. 602**  
**Fax (732) 290-7585**

**[karen.wynne@matawanborough.com](mailto:karen.wynne@matawanborough.com)**

**VIA EMAIL & FIRST CLASS MAIL**

November 29, 2017

Joseph Raftery, PE  
Maser Consulting, PA  
331 Newman Springs Road, Suite 203  
Red Bank, New Jersey 07701

**Subject: Resolution 17-11-15: Authorizing Maser Consulting to Provide Professional Services for the Matawan Recycling Center**

Dear Joe,

Enclosed please find three (3) certified copies of the above subject Resolution adopted by the Governing Body of the Borough of Matawan at its regular meeting of November 21, 2017.

Should you require anything further or have any questions, please do not hesitate to contact our office.

Yours,

*Karen*

Karen Wynne, RMC  
Municipal Clerk

KW:me  
Enclosures

Cc: Louis Ferrara, Borough Administrator ) – w/Enclosure  
Monica Antista, CFO )  
Grace Rainforth, Recycling Coordinator )

**RESOLUTION 17-11-15****AUTHORIZING MASER CONSULTING  
TO PROVIDE PROFESSIONAL SERVICES FOR  
THE MATAWAN RECYCLING FACILITY**

**WHEREAS**, the Borough of Matawan recognizes the benefit of a public drop-off recycling facility/convenience center for its residents previously adopting Resolution 16-08-37 authorizing Maser Consulting to provide professional services associated with the New Jersey Department of Environmental Protection Division of Land Use Regulation (NJDEP DLUR) Coastal Jurisdictional Determination application as well as perform all field investigations necessary to confirm all existing improvements and features for the preparation of design and construction for the Matawan Recycling Facility; and

**WHEREAS**, Maser Consulting has provided the attached proposal for professional services associated with the bidding and construction administration services associated with the development of a public drop-off recycling facility/convenience center located north of the unimproved portion of North Street previously utilized by the Matawan Department of Public Works and currently containing a sanitary sewer pump station; and

**WHEREAS**, it is the recommendation of the Borough Administrator, the Superintendent of Public Works and the Recycling Coordinator for the Mayor and Council of the Borough of Matawan to authorize the attached proposal in the amount of Twenty Eight Thousand Eight Hundred Fifty Dollars and No Cents (\$28,850.00) to Maser Consulting for professional services associated with the bidding and construction administration services for the Matawan Recycling Facility.

**NOW, THEREFORE BE IT RESOLVED** that the Council of the Borough of Matawan does hereby award the contract for professional services to Maser Consulting as outlined in the attached proposal for professional services for the Borough of Matawan Recycling Facility in an amount not to exceed Twenty Eight Thousand Eight Hundred Fifty Dollars and No Cents (\$28,850.00).

**BE IT FURTHER RESOLVED**, by the Council of the Borough of Matawan that the Mayor be and is hereby authorized as signatory on behalf of the Borough of Matawan.

**BE IT FURTHER RESOLVED** that a true certified copy of this Resolution shall be forwarded to the following Borough of Matawan Departments: Administration, Clerk, Finance, Public Works, Recycling as well as Maser Consulting.

**CERTIFICATION AS TO AVAILABLE FUNDING**

I, Monica Antista, Chief Financial Officer of the Borough of Matawan do hereby certify that as of the date of this certification funds are available from the 7-01-20-165-200 Budget of the Borough of Matawan to Maser Consulting for professional services for the Borough of Matawan Recycling Facility in an amount not to exceed Twenty Eight Thousand Eight Hundred Fifty Dollars and No Cents (\$28,850.00).

This certification is based solely on the information encumbered into the financial records of the borough by the appropriate using division as of this date and relies on the completeness of financial records.

Chief Financial Officer

(Signature on File)

\_\_\_\_\_  
Monica Antista, CMFO

Dated: November 21, 2017

**CERTIFICATION OF RESOLUTION**

I, Robin Klinger, Deputy Clerk of the Borough of Matawan, County of Monmouth, and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Borough Council of the Borough of Matawan on November 21, 2017.

**IN WITNESS WHEREOF**, I have hereunder set my hand and official seal of the Borough of Matawan this 21<sup>st</sup> day of November, 2017.

  
Robin Klinger  
Deputy Clerk



Engineers  
Planners  
Surveyors  
Landscape Architects  
Environmental Scientists

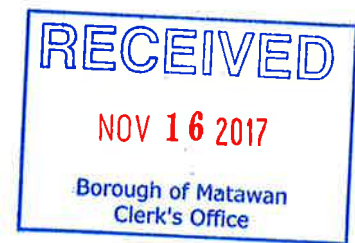
**Corporate Headquarters**  
331 Newman Springs Road, Suite 203  
Red Bank, NJ 07701  
T: 732.383.1950  
F: 732.383.1984  
www.maserconsulting.com

November 2, 2017

**VIA EMAIL & U.S. MAIL**

Lou Ferrara, Borough Administrator  
Borough of Matawan  
201 Broad Street  
Matawan, NJ 07747

Re: Proposal for Professional Services  
Matawan Recycling Facility  
Lots 7, 8, 9, & 10; Block 6  
Borough of Matawan, Monmouth County, NJ  
MC Proposal No. 14001580P-1



Dear Mr. Ferrara:

Maser Consulting P.A. is pleased to submit this proposal to provide construction administration services for the development of a public drop off recycling facility located north of the unimproved portion of North Street, Borough of Matawan, New Jersey. The scope of work will include Bidding Services and Construction Administration/Construction Observation.

This proposal is divided into four sections as follows:

- Section I – Scope of Services
- Section II – Business Terms and Conditions
- Section III – Technical Staff Hourly Rate Schedule and Reimbursable Expenses
- Section IV – Client Contract Authorization

The following scope of services has been separated into phases so that it may be more easily reviewed. The order in which the phases are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Maser Consulting to meet project schedules.

### **SECTION I – SCOPE OF SERVICES**

Based on our conversations and information noted above, we propose to complete the following:

#### **PHASE 1.0 BIDDING SERVICES**

After the Borough advertises, our office will compile the bid package and seek all necessary authorizations to bid the project. Our office will coordinate the bid and assist the Borough throughout the course of the bid, including bid questions and attendance at the bid opening. We



will review all bids received and prepare a Recommendation of Award to be presented to the Borough.

**Phase 1.0 Lump Sum Fee** **\$3,900.00**

**PHASE 2.0 CONSTRUCTION ADMINISTRATION**

Maser Consulting will provide contract administration services during construction of the project, after receiving written authorization from the Borough to proceed with the construction phase of the project. It is anticipated that the construction will take approximately three (3) months. This phase may include the following services which will be provided, if requested by the client:

- Attend a pre-construction conference to discuss project requirements with contractors.
- Review and approve contractors' submittals, samples, shop drawings and product data.
- Visit the construction site to observe project progress at appropriate intervals.
- Review Change Orders, when required, to confirm that changes to the project scope are accurate and the proposed change in cost and/or time is fair and reasonable.
- Review of Contractors' Application and Certificates of Payment to determine if amounts requested are in concurrence with work completed.
- Visit site to determine date of substantial completion and generate a "punch list" of unfinished work.
- Assist in project close-out, including collection of guarantees and releases of liens from the contractor.

Maser Consulting shall not be responsible for the means, methods, techniques or procedures of construction selected by the Contractor or the safety precautions and programs incident to the work of the Contractor.

Services accomplished under this phase will not include extra services requested by the client that differ from the original scope of service. Additional services will not be advanced without providing notice to you of the need for additional services beyond the estimated budget and obtaining your approval of the additional scope of services and fees.

**Phase 2.0 Estimated Fee** **\$24,950.00**



### **SCHEDULE OF FEES**

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services.

PHASE 1.0	BIDDING SERVICES	\$ 3,900.00
PHASE 2.0	CONSTRUCTION ADMINISTRATION SERVICES	<u>\$24,950.00</u>
	<b>TOTAL ESTIMATED FEE</b>	<b>\$28,850.00</b>

This Contract and Fee Schedule are based upon the acceptance of Maser Consulting's Business Terms and Conditions contained in Section II of this Contract, and the associated Schedule of Hourly Rates. Delivery, mileage, printing and reproduction, overnight mail service and postage costs are not included in the lump sum fees and will be added to each monthly invoice.

### **EXCLUSIONS AND UNDERSTANDINGS**

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement.

- Services not specifically outlined above in Section I;
- Changes or revisions beyond our control or changes in basic concept after design services have been accomplished.
- Exploratory or testing work, interpretations or conclusions related to determination of potential chemical, toxic, radioactive, or other type of contaminants on the site.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary Maser Consulting may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees with regard to the extra services.



## **SECTION II – BUSINESS TERMS AND CONDITIONS**

Maser Consulting P.A. agrees to provide professional services under the following terms and conditions:

The term Client referenced herein is the person, persons, corporation, partnership, or organization referenced in the proposal between Maser Consulting P.A. and said Client.

### **1.0 SCOPE OF SERVICES:**

A description of the services to be provided by Maser Consulting P.A. will be presented and agreed to in written form, whenever possible. Services not set forth in the Scope of Services, are excluded from the Scope of Services, and Maser Consulting P.A. will assume no responsibility to perform such services under the base contract. In situations where a written contract is not executed or where additional services becomes necessary during the course of the project, Maser Consulting P.A. may provide such services using our Technical Staff Hourly Rate Schedule in effect at the time of services (Note: Current Rate Schedule as set forth in Section III is attached hereto and made part hereof).

The proposed fees set forth in this Agreement shall be open for acceptance for sixty (60) days from the proposal date. If the Agreement is signed after that date, the proposed fees may be adjusted prior to commencement of services, subject to agreement by the Client and Maser Consulting P.A.

Where Lump Sum or Unit Price Contracts are signed, and services provided by Maser Consulting P.A. extend beyond a date 12 months after the date of execution of this Agreement, Maser Consulting reserves the right to increase such contract amounts in accordance with the Regions Consumer Price Index. In the event that a Lump Sum or Unit Price Contract is partially completed at such time that the price is to be adjusted, Maser Consulting P.A. reserves the right to increase the balance of the fee still to be billed as of the anniversary date. Since there are substantial costs to stop and restart a project once it is underway, should a project's progress be halted at any time by the client, for any reason, Maser Consulting P.A. reserves the right to charge a restart fee and/or to renegotiate the remaining fees within the contract.

The hourly rates listed in our Technical Staff Hourly Rate Schedule are adjusted semi-annually and the Client shall be billed at the rates that are in effect at the time of service.

These Business Terms and Conditions are applicable for any additional professional services rendered for this project including, but not limited to, change orders, client service authorization forms, etc.

### **2.0 STANDARD OF CARE:**

In performing services, we agree to exercise professional judgment, made on the basis of the information available to us, and to use the same degree of care and skill ordinarily exercised in similar circumstances and conditions by reputable consultants performing comparable services in the same locality. This standard of care shall be judged as of the time the services are rendered, and not according to later standards. Reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment shall not excuse a Client from paying for services rendered. NO OTHER REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IS MADE.

### **3.0 INVOICES:**

Maser Consulting P.A. bills its Clients on a monthly basis using a standard invoice format. This format provides for a description of services performed and a summary of professional fees, expenses, and other charges. For more detailed invoicing requests, Maser Consulting P.A. reserves the right to charge for invoice preparation time by staff members. Monthly invoices will be submitted based upon percentage of services completed and reimbursable expenses. Any comments or discrepancies, relative to invoices shall be submitted in writing within fourteen (14) days or the account will be considered correct.

For professional services billed on an hourly basis, Maser Consulting P.A. reserves the right to invoice all overtime services performed by our employees using our Technical Staff Hourly Rate Schedule in effect at the time of services at ONE AND ONE-HALF TIMES our standard hourly rate for those employees.

Expenses incurred for services, equipment, and facilities not furnished by Maser Consulting P.A. are charged to the Client at cost plus an up-charge not to exceed 15 percent of the invoice for said services.

Client shall pay Maser Consulting P.A. for reimbursable expenses, including, but not limited to, application fees, printing and reproduction, mileage, courier and express delivery service, special/overnight mailings, facsimile transmissions, specialized equipment and laboratory charges, and costs of acquiring materials specifically for the Client. Reimbursable charges will be added to each monthly invoice and are part of Client's responsibility.

### **4.0 PAYMENT:**

Maser Consulting P.A. bills are payable in full UPON RECEIPT and **payment is expected within thirty (30) days**. We reserve the right to assess a late charge of 1.5 percent per month for any amounts not paid within 45 days of the billing date. In the event payment is not made according to the terms and conditions herein, the matter may proceed to a collections agency or to an attorney for collection. Client shall be responsible for fees charged by the collections agency and/or attorney's fees incurred to collect the monies owed. Should the matter proceed to court, client shall also be responsible for court costs.

In addition, where payment is not received in accordance with the terms of this contract, Maser Consulting P.A. reserves the right to withdraw any applications to federal, state, or local regulatory agencies / boards filed on behalf of the client with the understanding that these applications are the property of Maser Consulting P.A. Maser Consulting P.A. will provide you with written notification two (2) weeks prior to taking any action to withdraw an application submitted on behalf of the client. If payment of all outstanding invoices is not received within two (2) weeks of receipt of this letter, Maser Consulting P.A. will withdraw all pending applications for the project.

### **5.0 RETAINER:**

**Maser Consulting P.A. reserves the right to request a retainer from the Client prior to the commencement of services on a project. While retainers are collected prior to the start of a project, the retainer is held to the end of the project, and will be applied to the final invoices. Retainers are not applied to the beginning of the project.**

### **6.0 RIGHT OF ENTRY/JOBSITE:**

Client will provide for right of entry for Maser Consulting P.A. personnel and equipment necessary to complete our services. While Maser Consulting P.A. will take all reasonable precautions to minimize any damage to the property, it is understood by the Client that in the normal course of our services, some damage may occur, the correction of which is not part of this Agreement.

Client shall furnish or cause to be furnished to Maser Consulting P.A. all documents and information known to the Client that relate to the identity, location, quantity, nature or characteristics of any hazardous or toxic substances at, on, or under the site. In addition, the Client will furnish or cause to be furnished such other information on surface and subsurface site conditions required by Maser Consulting P.A. for proper performance of its services. Maser Consulting P.A. shall be entitled to rely on the accuracy and completeness of Client provided documents and information in performing the services required under this Agreement and Maser Consulting P.A. assumes no responsibility or liability for their accuracy or completeness.



Maser Consulting P.A. will not direct, supervise, or control the work of Client's contractors or their subcontractors. Maser Consulting P.A. shall not have authority over or responsibility for the construction means, methods, techniques, sequences, or procedures and Maser Consulting P.A.'s services will not include a review or evaluation of the contractors (or subcontractor's) safety precautions, programs or measures. Maser Consulting P.A. does not guarantee the performance of the construction contract by the Client's contractors or the subcontractors and Maser Consulting P.A. does not assume responsibility for the Client's contractors' or subcontractors' failure to furnish and perform their work in accordance with the Contract Documents.

Maser Consulting P.A. shall be responsible only for its activities and that of its employees on any site. Neither the professional activities nor the presence of Maser Consulting P.A. or its employees or subcontractors on a site shall imply that Maser Consulting P.A. controls the operations of others, nor shall this be construed to be an acceptance by Maser Consulting P.A. of any responsibility for jobsite safety.

**7.0 UTILITIES:**

In the execution of our services Maser Consulting P.A. will take reasonable precautions in accordance with the professional standard of care to avoid damage or injury to subterranean structures or utilities. The Client agrees to hold Maser Consulting P.A. harmless and defend and indemnify Maser Consulting P.A. for any claims or damages to subterranean structures or utilities, which have not been marked-out under the One-Call system or are not shown or are incorrectly shown on the plans furnished.

**8.0 TERMINATION OR SUSPENSION OF SERVICES:**

Should Client fail to make payments when due or is otherwise in material breach of this Agreement, Maser Consulting P.A. at their election may suspend services at any time after PROVIDING WRITTEN NOTICE TO THE CLIENT until payments are brought current. Maser Consulting P.A. shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension and the Client agrees to indemnify and hold Maser Consulting P.A. harmless from any claim or liability resulting from such suspension.

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Maser Consulting P.A. shall be paid for service performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months, prior to completion of all services contemplated by the Agreement, Maser Consulting P.A. may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of Maser Consulting P.A. in completing such analyses, records and reports.

**9.0 SUBCONSULTANTS/SUBCONTRACTORS:**

Maser Consulting P.A. prefers that its Clients directly retain others whose services are required in connection with a project (e.g., drillers, analytical laboratories, transporters, other experts, etc.), except in unusual circumstances. As a service, we will advise Clients with respect to selecting other such subconsultants/subcontractors and will assist Clients in coordinating and monitoring their performance. In no event will we assume any liability or responsibility for the work performed by other subconsultants/subcontractors, or for their failure to perform any work, regardless of whether we hire them directly as subconsultants/subcontractors, or only coordinate and monitor their work. When Maser Consulting P.A. does engage a subconsultant/subcontractor on behalf of the Client, the expenses incurred, including rental of special equipment necessary for the work, will be billed as they are incurred, at cost plus an up-charge not to exceed 20 percent of the invoice. By engaging us to perform services, you agree to defend, indemnify and hold Maser Consulting P.A. its directors, officers, employees, and other agents harmless from and against any and all claims, losses, liabilities, damages, demands, costs, or judgments arising out of or relating in any way to the performance or non-performance of work by another subconsultant/subcontractor. In addition, Client agrees to pursue recovery of and assert any claims based upon its loss, expenses and/or damages solely and directly against those subconsultants/subcontractors. In consideration of such indemnity and waiver, Maser Consulting P.A. agrees to assign its rights and/or claims against those subconsultants/subcontractors pursuant to the subconsultants/subcontractors agreements with Maser Consulting P.A. to the Client.

**10.0 AGREED REMEDY:**

Maser Consulting P.A. shall be liable to the Client only for direct damages to the extent caused by Maser Consulting P.A.'s negligence in the performance of its services. UNDER NO CIRCUMSTANCES SHALL MASER CONSULTING P.A. BE LIABLE FOR INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, OR FOR DAMAGES CAUSED BY THE CLIENT'S FAILURE TO PERFORM ITS OBLIGATIONS. With regard to services involving hazardous substances, Maser Consulting P.A. has neither created nor contributed to the creation or existence of any actually or potentially hazardous, radioactive, toxic, or otherwise dangerous substance or condition at any site, and its compensation is in no way commensurate with the potential liability that may be associated with a substance or site.

To the fullest extent permitted by law, the total liability, in the aggregate, of Maser Consulting P.A. and Maser Consulting P.A.'s officers, directors, employees, agents and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of in any way related to Maser Consulting P.A.'s services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Maser Consulting P.A. under this Agreement, not including reimbursable expenses and any subconsultant/subcontractor fees rendered on the project.

It is intended by the parties to this Agreement that Maser Consulting P.A.'s services in connection with the project shall not subject Maser Consulting P.A.'s individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and /or asserted only against Maser Consulting P.A., a New Jersey corporation, and not against any of Maser Consulting P.A.'s employees, officers or directors.

**11.0 LIABILITY TO THIRD PARTIES:**

The Client agrees to be solely responsible for, and to defend, indemnify, and hold Maser Consulting P.A. harmless from any and all liabilities, claims, damages and costs (including reasonable attorney's fees and defense costs) by third parties arising out of, or in any way related to, our performance or non-performance of services, except claims for personal injury, death, or personal property damage to the extent caused by the sole negligence, gross negligence or willful misconduct of employees of Maser Consulting P.A.

**12.0 INDEMNIFICATION:**

Maser Consulting P.A. shall maintain, at its own expense, Workers Compensation Insurance, Comprehensive General Liability Insurance and Professional Liability Insurance at all times and will, upon request, furnish insurance certificates to the Client.

To the fullest extent permitted by law, Client shall indemnify, defend and hold harmless Maser Consulting P.A. and its agents, officers, directors and employees, subcontracts or consultants (herein for the remainder of this section collectively referred to as Maser Consulting) from and against all claims, damages, losses and expenses, whether direct, indirect or consequential or punitive, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the services of Maser Consulting or any claims against Maser Consulting arising from the acts, omissions or work of others, unless it is proven in a court of competent





jurisdiction that Maser Consulting is guilty of negligence, gross negligence, or willful misconduct in connection with the services and such negligence, gross negligence, or willful misconduct was the sole cause of the damages, claims, and liabilities.

Client agrees to defend, indemnify and hold harmless Maser Consulting from and against all claims, damages, losses and expenses, direct or indirect, and consequential damages, including but not limited to fees and charges of attorneys and court, and arbitration costs, brought by any person or entity, or claims against Maser Consulting which arise out of, are related to, or are based upon, the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemical, radioactive materials, liquids, gases, or any other material, upon it or into the surface or subsurface soil, water or watercourse, objects, or any tangible or intangible matter.

To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence breach of warranty or contract, or strict liability of Maser Consulting. This indemnification shall not apply to claims, damages, losses, or expenses which are determined by a court of competent jurisdiction to be the sole result of negligence or willful misconduct by Maser Consulting of obligations under this Agreement.

#### **13.0 ASSIGNS:**

The Client may not delegate, assign, sublet, or transfer his duties or interest in the Agreement without written consent of Maser Consulting P.A.

Maser Consulting P.A. shall not, in connection with any such assignment by the Client, be required to execute any documents that in any way might, in the sole judgment of Maser Consulting P.A., increase Maser Consulting P.A.'s contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.

The Agreement shall not create any rights or benefits to parties other than the Client and Maser Consulting P.A., and nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Maser Consulting P.A. Maser Consulting P.A.'s services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Maser Consulting P.A. because of this Agreement of Maser Consulting P.A.'s performance or nonperformance of services hereunder.

#### **14.0 OWNERSHIP AND RESTRICTION ON REUSE OF DOCUMENTS:**

All drawings, calculations, reports, plans, specifications, computer files, field data, notes, and other documents and instruments ("Documents") prepared by Maser Consulting P.A. are and remain the property of Maser Consulting P.A. as instruments of service. The Documents may not be copied by the Client or others on extensions of this project or on any other project. The Client agrees not to use Maser Consulting P.A.'s Documents for marketing purposes, for projects other than the project for which the Documents were prepared by Maser Consulting P.A., or for future modifications to this project, without Maser Consulting P.A.'s express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Maser Consulting P.A. will be at the Client's sole risk and without liability to Maser Consulting P.A. or its employees, subsidiaries, independent professional associates, sub consultants, and subcontractors. The Client shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Maser Consulting P.A. from and against any and all expenses, fees, demands, liabilities, suits, actions, claims, damages or losses including attorneys' fees and costs, arising out of or resulting from such unauthorized distribution or reuse of Documents.

Computer files are not considered part of deliverables unless specifically requested or required by the signed contract. If computer files are required, Maser Consulting P.A. shall provide Client files subject to the following conditions:

The Client must execute our standard Electronic Media Release form prior to any distribution of files. The Client recognizes that data, plans, specifications, reports, documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration, either intentional or unintentional due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, it is understood that electronic files provided to the Client are for informational purposes only and are not intended as an end-product. Maser Consulting P.A. makes no representation of any warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the Client agrees to waive any and all claims against Maser Consulting P.A. and Maser Consulting P.A.'s consultants relating in any way to the unauthorized use, reuse or alteration of the electronic documents. Any unlicensed use or reuse of the documents without our written consent will constitute a violation of our copyright. Only original plans and reports of the most recent date bearing the signature and the embossed seal of the professional will be considered documents of record.

Maser Consulting P.A., shall maintain in its storage facility, samples collected as part of their services provided for a period of three (3) months after issuance of final reports. After the three (3) month time limit, all samples will be disposed of in accordance with appropriate regulations at the time. Extended storage of samples can be arranged at an additional cost to be established on a project by project basis.

#### **15.0 GENERAL CONDITIONS:**

Maser Consulting P.A. shall not be responsible for the delays caused by factors beyond its reasonable control, including but not limited to delay due to accidents, an act of God, fire, hurricane, flood, explosions, strike, boycott or other labor dispute, failure of the Client to furnish timely information or approve or disapprove of Maser Consulting P.A.'s services or work product, delays caused by faulty performance by the Client or contractors of any level, or by acts of Government, which, in the opinion of Maser Consulting P.A., could not have been reasonably foreseen and provided for, such delay will entitle Maser Consulting P.A. to an extension of time in performing its Services. If there is any increase in the total cost of providing Services by reason of any such delay, Maser Consulting P.A. will notify Client of particulars, and Client will pay for such increase. When such delays beyond Maser Consulting P.A.'s reasonable control occur, the Client agrees that Maser Consulting P.A. shall not be responsible for damages, nor shall Maser Consulting P.A. be deemed in default of this Agreement.

The fees quoted in this proposal assume that upon authorization, this project will commence through to completion without a stop work order from the Client. Should a stop work order be received from the Client before completion of the project or any task, additional fees may be required to restart the project.



**16.0 CONSTRUCTION OBSERVATION SERVICES:**

If the Scope of Services for this Agreement includes construction observation services, then the following provisions shall apply:

During the project construction phase, Maser Consulting P.A. shall consult with and advise Client and act as Client's representative as provided in the Scope of Services provided in Maser Consulting P.A.'s Proposal. The extent and limitations of the duties, responsibilities and authority of Maser Consulting P.A. as outlined in the Scope of Services provided in Maser Consulting P.A.'s Proposal shall not be modified, except as Maser Consulting P.A. and Client may otherwise agree in writing.

Maser Consulting P.A. services during the construction phase are intended to provide Client a greater degree of confidence that the completed work of Contractor will conform in general to the approved plans and related documents. Maser Consulting P.A. shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work and Maser Consulting P.A. shall not, during visits to the project site or as a result of observation of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall Maser Consulting P.A. have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, Maser Consulting P.A. neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform its work in accordance with the Contract Documents.

If the Scope of Services for this Agreement includes Design Services but does not include Construction Phase Services, then the following provisions shall apply:

It is understood and agreed that Maser Consulting P.A.'s services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that the Client will provide such services. The Client assumes all responsibility for any interpretation of the Contract Documents or construction observation and supervision performed by others and expressly waives any claims against Maser Consulting P.A. that may be in any way connected thereto.

In addition the Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold Maser Consulting P.A. harmless from any loss, claim or cost, including reasonable attorney's fees and cost of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the design plans, reports, or any other documents produced by Maser Consulting P.A.

If the Client requests in writing that Maser Consulting P.A. provide any specific construction phase services and if Maser Consulting P.A. agrees in writing to provide such services, Maser Consulting P.A. shall be compensated in accordance with a written Agreement between the Client and Maser Consulting P.A.

**17.0 OPINIONS OF PROBABLE COST:**

In reviewing Maser Consulting P.A.'s opinions of probable construction cost, the Client understands that Maser Consulting P.A. has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that any opinions of probable construction costs provided by Maser Consulting P.A. are to be made based on Maser Consulting P.A.'s judgment, qualifications and experience as a design professional familiar with the construction industry. Maser Consulting P.A. makes no representation or warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

**18.0 HAZARDOUS MATERIALS:**

If the Scope of Services for this Agreement does not include services related to hazardous materials, then the following provision shall apply:

It is acknowledged by both parties that Maser Consulting P.A.'s Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event Maser Consulting P.A. or any other party encounters asbestos or hazardous or toxic materials at the project site, or should it become known in any way that such materials may be present at the project site or any adjacent areas that may affect the performance of Maser Consulting P.A.'s services, Maser Consulting P.A. may, at its sole option and without liability for consequential or any other damages, suspend performance of services on the project until the Client takes steps to identify, abate and/or remove the asbestos or hazardous or toxic materials, and to warrant that the project site is in full compliance with applicable laws.

If the Scope of Services for this Agreement includes services related to hazardous materials, then the following provision shall apply:

In consideration of the substantial risks to Maser Consulting P.A. posed by the presence or suspected presence of asbestos or hazardous or toxic materials on or about the project site, the Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Maser Consulting P.A., its officers, directors, employees, agents and independent consultants and any of them from all claims and losses, including reasonable attorney's fees and defense costs, arising out of, or in any way connected with, the performance or nonperformance of the obligations under this Agreement unless and until there has been an adjudication by a court or forum of competent jurisdiction that the claims at issue are a direct result of sole negligence of Maser Consulting P.A.

**19.0 TOPOGRAPHIC MAPPING:**

If the Scope of Services for this Agreement includes topographic mapping, then the following provisions shall apply:

Maser Consulting P.A. shall perform the services necessary to produce the required topographic mapping and/or shall retain an independent sub consultant to perform topographic mapping services. The topographic mapping shall be prepared in conformance with generally accepted standards for aerial mapping services. Maser Consulting P.A.'s sole responsibility and liability with regard to the accuracy or completeness of the topographic mapping is limited to the correction of any inaccurate information, and this shall be the Client's sole remedy related to the adequacy or accuracy of the topographic mapping and any information derived from the data.

If the location of subsurface information (i.e., underground utilities, storage tanks, structures, etc.) is to be provided by Maser Consulting P.A., the topographic survey shall be limited to the extent of the information provided by the Client or others. Maser Consulting P.A. shall not be responsible for any unknown conditions not identified in the information provided to Maser Consulting P.A. or any unknown condition beyond the reasonable scope of the information obtained as a result of any testing, test pit excavations, boring, or samples taken by Maser Consulting P.A.

**20.0 EARTHWORK ANALYSIS:**

In reviewing Maser Consulting P.A.'s earthwork analysis, calculations, reports or opinions, the Client understands that Maser Consulting P.A.'s data is based on the topographic mapping used as a Base Map for plan preparation and that this topographic mapping has certain standard tolerances and accuracy limits. The Client further understands that due to earthwork differences that result from topographic map accuracy limitations, construction changes, topsoil depth, replacement of unsuitable soils, weather conditions, construction methods, soil conditions, earthwork calculation methods, soil volume calculation methods and other factors, some of which are unique to each contractor and construction site, it is not possible to definitively predict quantities that will ultimately be determined to be associated with a particular project. Earthwork data provided by Maser Consulting P.A. is provided to assist the Client in understanding the general earthwork requirements. Since some degree of uncertainty may still exist, Maser Consulting P.A.'s sole responsibility and liability with regard to the accuracy or completeness of the earthwork analysis is limited to the correction of any inaccurate information. To determine actual quantities and costs associated with required earthwork, the Client must solicit actual construction bids from qualified contractors and must require such contractors to determine existing topographic conditions, subgrade conditions, construction plans and procedures.



Lou Ferrara, Borough Administrator  
MC Proposal No. 14001580P-1  
November 2, 2017  
Page 8 of 9

**21.0 GOVERNING LAW:**

The laws of the State within which the project is being performed will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be sought in that State or in a Federal Court, venued in that State.

**22.0 INVALID TERMS:**

In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

**23.0 SURVIVAL:**

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of Maser Consulting P.A. under this Agreement or the termination of this Agreement for any reason.

**24.0 ENTIRE AGREEMENT:**

This Agreement comprises the final and complete Agreement between the Client and Maser Consulting P.A. It supersedes all prior or contemporaneous communications, representations, or Agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had the opportunity to have questions explained by independent counsel and is satisfied with the terms and conditions contained herein. Amendments to this Agreement shall not be binding unless made in writing and signed by both the Client and Maser Consulting P.A.

To the extent Client provides its own Agreement and that Agreement conflicts with or is silent with respect to any term or condition expressed herein, these conditions shall prevail and shall be binding upon the parties.



**SECTION III – TECHNICAL STAFF HOURLY RATE SCHEDULE AND REIMBURSABLE EXPENSES**

The 2017 Rate Schedule is on file with the Borough.

**SECTION IV – CLIENT CONTRACT AUTHORIZATION**

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

Joseph Altomonte  
Signature

November 21, 2017  
Date

Joseph Altomonte  
Printed Name

Mayor  
Title

If you find this proposal acceptable, please sign where indicated above in Section IV, and return one signed copy to this office along with the Resolution from the Mayor and Council Authorizing the work. Invoices are due within 30 days. This proposal is valid until January 2, 2018.

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Very truly yours,

MASER CONSULTING P.A.

James A. Priolo, P.E., P.P., C.M.E.  
Principal

JAP/sab  
cc: Grace Rainforth, Borough of Matawan  
Leonardo E. Ponzio, PLS, Maser Consulting (via e-mail)