

# **FOREST HILLS BOROUGH**

## **Request for proposals and qualifications for Borough Engineer**

### **Minimum Qualifications**

**Applicant vendors must establish that they meet the minimum qualifications**

#### **1. PURPOSE AND INTENT**

Through this Request for Proposals and Qualifications (RFP), Forest Hills Borough seeks to engage a respondent as Borough Engineer for Forest Hills Borough upon appointment.

#### **2. PROPOSAL SUBMISSION**

An original, clearly marked as the ORIGINAL and six full, complete and exact copies of each proposal and one electronic .pdf copy on a USB flash drive shall be submitted in a sealed envelope and must be marked as “Borough Engineer Request for Proposals” and addressed to:

Steve Morus  
Borough Manager  
4400 Greensburg Pike  
Pittsburgh, PA 15221

The proposal must be received no later than **January 27, 2023 at 10:00 a.m.**

Faxed or emailed proposals will NOT be accepted. Any inquiry concerning this RFP should be directed in writing to:

Steve Morus  
Borough Manager  
4400 Greensburg Pike  
Pittsburgh, PA 15221

All documents/information submitted in response to this solicitation shall be available to the general public. Forest Hills Borough will not be responsible for any costs associated with the oral or written and/or presentation of the proposals. Forest Hills Borough reserves the right to reject any and all proposals, with or without cause, and waive any irregularities or informalities in the proposals. Forest Hills Borough also reserves the right to negotiate with all qualified sources, or to cancel in part or in its entirety the RFP when the Borough determines that such action is in its best interests. No bid or any portion thereof may be withdrawn after the bid opening date herein specified and during the ensuing ninety (90) days hereafter. The successful bidder shall be required to execute a contract for services as herein specified and return the executed Agreement within ten (10) calendar days after written verification of the award of said contract by the Borough Manager.

Forest Hills Borough further reserves the right to make such investigations as it deems necessary as to the qualifications and any and all respondents submitting proposals.

## **GENERAL INFORMATION**

Forest Hills Borough is located in Allegheny County, Pennsylvania. The Borough has seven-member Council and a full-time professional Manager. Forest Hills Borough is approximately 1.5 square miles and an estimated 2020 Census population of 6,429 people, an annual General Fund budget of approximately \$6.9 million and 25 full-time employees. The Borough Council meets the third Wednesday of each month as well as two monthly Committee meetings that generally meet on the first and second Tuesday of each month. Meeting dates are subject to change.

### **3. SCOPE OF WORK**

The Borough is soliciting proposals and qualifications from firms interested in providing municipal engineering services. The firm must have all applicable licenses to perform municipal engineering services in Pennsylvania, have at least seven (7) years of experience in a similarly sized municipality, and have experience with doing engineering studies and recommendations on a myriad of issues, including but not limited to:

#### **A. Plan Review Services**

The selected Borough Engineer will provide technical review of, and answer inquiries related to site plans, subdivision plans, improvement plans, land disturbance/grading plans, construction plans and escrows relating to projects proposed by applicants to be developed in the Borough to ensure that such conform to codes adopted by the Borough.

#### **B. Construction Inspection Services**

The selected Borough Engineer will provide construction inspections throughout the land development process to ensure sites are built in accordance with approved plans.

#### **C. Municipal Project Design Services**

The selected Borough Engineer must have the capacity to design a full array of public works type projects including transportation infrastructure systems, park and recreation facilities, and stormwater management systems, in a manner that the infrastructure is functional and cost effective. The selected consulting Borough Engineer must be able to provide structural/engineering guidance for municipal structures as well as geotechnical engineering services either in-house or through an identified third-party.

**D. Municipal Construction Administration and Observation**

The selected Borough Engineer will manage project construction for general compliance with the design plans and specifications, conduct pre-construction meetings, approve shop drawings, prepare daily reports for all work observed, process payment requests, and close-out contracts. The selected Borough Engineer must also have a professional engineer or other certified employee supervise road paving, sewer (storm and sanitary) and other municipal construction projects.

**E. Environmental Services & Regulatory Agency Interactions**

The selected Borough Engineer shall be well versed in regulatory compliance and permitting and be familiar with approval procedures of regulatory agencies including but not limited to the following: Pennsylvania Department of Transportation, PA Department of Conservation and Natural Resources, Pennsylvania Department of Environmental Protection, Pennsylvania Emergency Management Agency, U.S. Army Corps of Engineers, Federal Emergency Management Agency, Federal Highway Administration, and the U.S. Environmental Protection Agency and other regulatory agencies with jurisdiction in the Borough.

**F. Grant/Bid Assistance**

The selected Borough Engineer shall, as requested, complete or assist in the completion of grant applications and preparation of specifications and management of the bidding process for public works, recreation and road projects.

**G. Surveying, Easements and Related Services**

The selected Borough Engineer shall have the capability of performing boundary surveys, topographic surveys, construction stake-out, prepare easement plats and easement documents, and assist in easement acquisition.

**H. CAD and GIS Capabilities**

The selected Borough Engineer shall have computer aided drafting and geographical information system capabilities. The selected Borough Engineer must be familiar with the borough's GIS system (ESRI Arcview) and able to update all files at least annually (or sooner if major changes occur) on the Borough's system or any successor system. The selected Borough Engineer must assist the Borough in accessing and utilizing software for a road improvement program and asset management program.

**I. MS4 Program Services**

The selected Borough Engineer shall assist the Borough Manger in reporting, mapping and permitting requirements under the State Municipal Separate Storm Sewer Systems (MS4) Program and perform stormwater reviews in accordance with the relevant Act 167 Plan and Borough ordinance requirements.

**J. ALSOCAN/Borough Consent Decree**

The selected Borough engineer shall be familiar with the ALCOSAN consent decree and the Borough relationship with the authority and the represent the Borough with the authority as required. The selected Borough Engineer must be familiar with all aspects of the Borough's sanitary sewer consent decree and all required work and reporting under this order and any others required. Must advise the Borough on all related work associated with the decree and prepare needed reports to any and all agencies, authorities, organizations, etc. requiring said reports. Must attend all meetings related to the consent decree as a representative of the Borough including all held by various agencies associated with the consent decree.

**H. Budget**

The selected Borough Engineer will participate in the borough budgeting process including but not limited to providing estimates on the cost of all engineering services annually, assisting in the creation of a Corrective Action budget and Pavement Improvement budget, recommending estimates for sanitary and storm sewer related fees billed to borough property owners and assisting the borough in devising a plan for its annual road improvement project including recommendation on needed paving improvements as part of that program.

**4. MEETING ATTENDANCE AND PARTICIPATION**

The selected Borough Engineer may be expected to attend a variety of municipal meetings, including, but not limited to, council meetings, planning commission meetings, zoning hearing board meetings, meeting with the borough manager and public works foreman, meetings of affected property owners, and meetings with municipal staff and developers.

The Borough Council meets on the third (3<sup>rd</sup>) Wednesday of each month. The Public Works and Borough Property Committees generally meet on the first (1<sup>st</sup>) Tuesday of each Month. The Planning Commission meets as needed. Meeting dates are subject to change and the selected engineer must be able to comply with those changes for attendance as necessary.

**5. WORK PRODUCT**

The selected Borough Engineer will be expected to provide the Borough with copies of all work products without limitation, which shall include reports, analyses, correspondence, plans, proposals, submittals, schematics, exhibits, spreadsheets, drawings and any other documents

produced in connection with the consulting relationship with the Borough in printed form, as well as in electronic form to include portable document format and the root file(s).

## **6. ASSIGNMENT OF PROFESSIONAL ENGINEER**

The selected Borough Engineer shall assign to the Borough a minimum of one (1) staff person who is a Professional Engineer licensed to practice in the State of Pennsylvania, and include the following:

- Experience and qualifications of personnel to be assigned for these services, their functions and levels of responsibility.
- References and brief summaries of similar services provided within the preceding two years.
- Current workload of the selected firm and staff capability of meeting the limitations of this Request for Proposals.
- Hourly compensation schedule for services. Out of pocket expenses for normal everyday costs such as travel, typing, prints, postage, etc. shall be included in hourly rates.

## **7. RESPONSIVENESS**

The selected Borough Engineer must commit to provide services to the Borough in a timely manner, without unreasonable delays.

## **8. PROXIMITY**

The selected Borough Engineer must be located within reasonably proximity to the Borough to ensure meeting attendance if requested, meeting coordination and the conveyance of documents when sent via courier.

## **9. INSURANCE REQUIREMENTS**

**Commercial General Liability Insurance** - The minimum limit of liability shall be \$5,000,000 per occurrence (combined single limit for bodily injury and property damage) /\$10,000,000 aggregate, including products/completed operations and contractual liability insurance.

**Comprehensive Automobile Liability Insurance** - The policy shall cover owned, non-owned, hired, leased and rented vehicles with minimum limits of liability in the amount of \$1,000,000 per accident as a combined single limit for bodily injury and property damage. The coverage provided shall include automobile contractual liability covering liability assumed under this Agreement.

**Workers Compensation and Employer's Liability Insurance** - Worker's Compensation and Employer's Liability insurance shall be provided in accordance with the requirements of the laws of the Commonwealth of Pennsylvania.

**Professional Liability (Errors & Omission)** - Written on a "claims made" basis, with not less than \$5,000,000 for the Borough Engineer and not less than \$5,000,000 for any licensed professional retained by the Borough Engineer.

The Borough shall be named as an additional insured on all insurance policies obtained by the Borough Engineer in furtherance of this Agreement.

Please refer to the draft AGREEMENT pages 7-10 for full details regarding the insurance requirements.

## **10. PROPOSAL FORMAT**

- **Executive Summary/Cover Sheet** – In no more than 3 pages, provide an executive summary outlining the scope of services provided by your firm. The scope must be responsive to the scope of service shown by the borough in this RFP.
- **Cost Sheet** – In no more than 2 pages, provide a summary of all costs to the Borough including cost of any retainer for basic services and an hourly cost for any and all engineers who will service the borough. The proposal should outline specifically how the firm will bill the borough and what services are included as part of any retainer offered. All fees must be outlined here; the borough will assume that there are no other fees that it will be responsible to pay and the proposal must identify specific costs that may not be included with the scope of services or other information in this request.
- **Assigned Professionals** -- Include references, biographies of all professionals who will service the Borough including that of the primary engineer, and any and all other documentation that you feel may support your proposal.
- **Municipal Experience** – list all municipal clients currently and previously represented by the engineering firm and list three municipal references for the engineering firm generally and three different municipal references for the engineering professional that will be assigned to the Borough.
- **Claims / Violations** - Provide a list of all lawsuits against your firm within the last five years. Include name, date and description of lawsuit. If an outcome was reached, please provide description and any associated monetary values. Provide a list of any and all violations your firm been found to be in violation of any Federal, State, or local laws or regulations in the last five years. Please provide a description of each violation and associated remedy and/or action taken.

## **11. INTERVIEW**

The Borough Manager and/or Borough Council reserves the right to interview any and all of the respondents submitting a proposal. Although interviews may take place, the proposal should be

comprehensive and complete on its face. Forest Hills Borough reserves the right to request clarifying information subsequent to submission of the proposal.

## **12. SELECTION PROCESS**

All proposals will be reviewed by the Borough Manager and/or Borough Council to determine responsiveness. Non-responsive proposals will be rejected without evaluation. For respondents that satisfy the Minimum Qualifications and the Mandatory Contents of Proposal the Borough's evaluation will include but not be limited to the following evaluation criteria, separate or combined in some manner, and not necessarily listed in order of significance.

- a. The respondent's general approach to providing the services required under this RFP.
- b. The respondent's municipal experience and to the engagement addressed by this RFP.
- c. The qualifications and experience of the respondent's management, supervisory or other key personnel assigned to the engagement, with emphasis on municipal experience and to the services required by this RFP.
- d. The overall ability of the respondent to mobilize, undertake and successfully complete the scope of work in a timely fashion. This criterion will include, but not be limited to, the following factors: the number and qualifications of management, supervisory and other staff proposed by the respondent to perform the services required by this RFP; the availability and commitment to the engagement of the respondent's management, supervisory and other staff proposed.
- e. Cost and fee schedules.
- f. Other criteria as deemed appropriate by the Forest Hills Borough Council.

## **13. SELECTION AND CONTRACT**

Forest Hills Borough will select the respondent deemed most advantageous to the Borough, with price and other factors considered. The resulting contract will include this RFP, any clarifications or addenda thereto, the selected respondent's proposal, and any changes negotiated by the parties. Forest Hills Borough shall not be required to appoint the lowest cost respondent.

## **14. FILES**

At the termination of the employment of the engineer, he/she shall promptly return to the Borough all files complete with all documents, memos, legal research notes, correspondence and all other material contained therein including but not limited to electronic data, at no cost to the Borough.

**15. EXCEPTIONS**

Any exceptions to terms, conditions, or other requirements in any part of this RFP must be clearly pointed out in the candidate's proposal. Otherwise, the Borough will consider that all items offered are in strict compliance with this RFP, and the successful proposer will be responsible for compliance.

**16. QUESTIONS/CLARIFICATIONS:**

All official questions and/or clarifications shall be directed, in writing, to the person noted below by **January 13, 2023 at 10:00 a.m.** Questions raised after this cut-off will remain unanswered.

**Steve Morus  
Borough Manager  
4400 Greensburg Pike  
Pittsburgh, PA 15221  
Phone: (412) 351-7330  
manager@foresthillspace.com**



## AGREEMENT

THIS AGREEMENT, made and executed, on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ corporation authorized to transact business in Pennsylvania, as \_\_\_\_\_, with principal offices located at \_\_\_\_\_, hereinafter referred to as “CONSULTANT,” and the BOROUGH OF FOREST HILLS, in the County of Allegheny, a municipal corporation of the Commonwealth of Pennsylvania, hereinafter referred to as “CLIENT.”

WITNESSETH that CONSULTANT and CLIENT in consideration of the promises and covenants contained herein, and intending to be legally bound hereby, agree, covenant and promise as follows:

1. Services and Compensation in General.

CONSULTANT shall hold available to CLIENT all officers, employees and facilities of CONSULTANT to perform all engineering services normally provided by the CONSULTANT as requested by the CLIENT. CLIENT shall compensate CONSULTANT for any and all engineering services requested by CLIENT and performed by CONSULTANT in accordance with the terms of this Agreement.

2. Cost and Expenses.

All costs and expense incurred by CONSULTANT shall be borne solely by CONSULTANT unless specifically reimbursable under another provision of this Agreement or specifically authorized in writing by the CLIENT.

3. Scope of Services: CONSULTANT Responsibilities.

- A. In addition to the duties and obligations contained herein, CONSULTANT shall perform such duties and obligations as are set forth in the Pennsylvania Borough Code and the Forest Hills Code of Ordinances.
- B. CONSULTANT shall, at the request of the CLIENT, provide engineering, estimating, planning (including developing specifications), reporting, and/or surveying services as specified in the scope of services as provided in the proposal provided by CONSULTANT. CONSULTANT shall provide a proposal detailing the scope of services for each project requested by CLIENT unless authorized otherwise by CLIENT in writing.
- C. CONSULTANT'S services are for the sole and exclusive benefit of the CLIENT and no third-party beneficiary is intended. Unless otherwise agreed to the parties hereto, the provision of these services by CONSULTANT shall not relieve others of their responsibilities to the CLIENT.
- D. Unless otherwise directed by CLIENT, in any and all projects on which CONSULTANT renders services pursuant to this Agreement, CONSULTANT shall be responsible for obtaining approval of any and all governmental authorities having jurisdiction over such projects and any all approvals and consents from such other individuals or bodies as may be necessary to complete such projects.

4. CLIENT Responsibilities.

The CLIENT shall:

- A. Provide full information as to its requirements for any project for which it requests CONSULTANT'S services.

- B. Assist CONSULTANT by placing at CONSULTANT'S disposal all information available to CLIENT pertinent to the site of any project, including prior reports and any other data relative or necessary to the design, the construction, or the work of said project.
- C. Subject to applicable law, guarantee access to and make all provisions for CONSULTANT to enter upon CLIENT-owned lands and work with CONSULTANT to gain access to other public and private lands, to the extent required for CONSULTANT to perform its work.
- D. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents presented and produced by CONSULTANT in furtherance of CONSULTANT'S duties under this Agreement and provide, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.
- E. Advertise for proposals from bidders, open the proposals at the appointed time and place in accordance with the applicable rules and laws, and pay for all costs incidental thereto.
- F. Provide such legal, accounting and insurance counseling services solely to CLIENT as may be required for any and all projects for which CONSULTANT'S services are required.
- G. Designate in writing a person to act as the authorized representative with respect to any and all work to be performed by CONSULTANT. CLIENT'S authorized representative 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. Pay any and all fees required by any governmental agency related to any project for which CLIENT is utilizing CONSULTANT'S services pursuant hereto.

5. Compensation to CONSULTANT.

CONSULTANT will be compensated by CLIENT as set forth herein and approved by CLIENT:

A. Hourly Rates.

All services rendered by CONSULTANT under this Agreement will be compensated on the basis of the hourly rates for personnel in the rate schedule attached hereto as Exhibit A, unless an alternative rate schedule is agreed upon by the parties hereto in writing.

B. Fixed Fee.

When it is possible to define precisely the scope of any project and the services to be performed by the CONSULTANT, a fixed fee based on estimated services required and other factors considered relevant by the parties may be determined and agreed upon in writing for total compensation. In the event a fixed fee arrangement is agreed upon by the parties, progress payments will be made monthly by the CLIENT on a percentage of completion as described within the specific project proposal.

CLIENT will only make direct payment to consultants that it directly engages.

CONSULTANT will be responsible for payment to any and all sub-consultants it

retains in connection with services provided to CLIENT provided said sub-consultants are not directly contracted by the CLIENT.

6. Payment to CONSULTANT.

- A. Invoices shall be submitted by CONSULTANT to the CLIENT on a monthly basis.
- B. CONSULTANT shall append to each invoice for payment a detailed breakdown of services and charges in accordance with this Agreement.
- C. CLIENT shall make payment to CONSULTANT within sixty (60) days of receipt of the invoice for payment by CLIENT. No deduction shall be made from CONSULTANT'S compensation on account of penalty, liquidated damages or other sums withheld from payments to others or on account of the cost of changes in the work other than those for which CONSULTANT is directly responsible.
- D. All charges for services performed by CONSULTANT shall be invoiced no later than forty-five (45) days from the date of performance. CONSULTANT agrees that in the event said charge is not invoiced within forty-five (45) days of performance said charge is waived and shall not be subsequently charged to or sought from CLIENT.
- E. Disputes of invoices for payments, or portions thereof, shall be brought to CONSULTANT'S attention in writing within fifteen (15) days of the receipt of the invoice for payment by CLIENT.

7. Changes in Fees.

At any time either party may give the other party 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 approval of the renegotiation of fees. 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.

8. CLIENT Requests; Private Request.

The CONSULTANT shall respond to only those requests by CLIENT'S authorized representative, solicitor, or member of the governing body, but in no case shall respond to, or provide any services or work hereunder upon the request of any private citizen, person, firm, or other entity, except as expressly authorized in writing by the CLIENT.

9. Filing materials and certificates with the CLIENT.

A. CONSULTANT will deliver, by way of filing to the CLIENT a true copy of all maps, charts, documents, work sheets and data for which CONSULTANT has been compensated by the CLIENT. Reproduction shall be accomplished by CONSULTANT according to any process in any manner the CLIENT desires. Cost for reproduction shall be as indicated in the attached schedule of reproduction costs.

10. No Damage for Delay.

CONSULTANT and the CLIENT waive consequential damages for claims, disputes, delays or other matters in question, arising out of or relating to any monetary damages

that are alleged to be the result of any delay which is not the fault of the CLIENT. The CLIENT further agrees to undertake commercially reasonable efforts in an attempt to obtain by contract, to the fullest extent permitted by the law, similar waivers from any and all Contractors and subcontractors, if any, to any and all work for which CONSULTANT provides services to CLIENT.

11. Reserved.

12. Insurance.

CONSULTANT shall procure, and further require any and all subcontractors and sub-consultants to procure, prior to the commencement of services, and maintain, at its own expense, until final acceptance by the CLIENT of all services required under this Agreement, insurance for liability for damages imposed by law and assumed under this Agreement, of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do business in the Commonwealth of Pennsylvania. The insurance carriers shall have a Best's rating of "A" or better and a Best's financial size of "VII" or larger. All of the policies of insurance required to be purchased and maintained and the certificates, declaration pages, or other evidence thereof shall contain a provision or endorsement that the coverage afforded is not to be cancelled, materially changed or non-renewed without at least thirty (30) days prior written notice to the CLIENT.

A. Commercial General Liability Insurance. The minimum limit of liability shall be \$5,000,000 per occurrence (combined single limit for bodily injury and property damage) /\$10,000,000 aggregate, including products/completed operations and contractual liability insurance. The coverage to be provided under the policy shall

be at least as broad as that provided by the standard, basic, un-amended and unendorsed comprehensive general liability coverage forms currently in use in the Commonwealth of Pennsylvania, which shall not be circumscribed by any endorsement limiting the breadth of coverage.

- B. Comprehensive Automobile Liability Insurance. The policy shall cover owned, non-owned, hired, leased and rented vehicles with minimum limits of liability in the amount of \$1,000,000 per accident as a combined single limit for bodily injury and property damage. The coverage provided shall include automobile contractual liability covering liability assumed under this Agreement.
- C. Workers Compensation and Employer's Liability Insurance. Worker's Compensation and Employer's Liability insurance shall be provided in accordance with the requirements of the laws of the Commonwealth of Pennsylvania.
- D. Professional Liability (Errors & Omission). Written on a "claims made" basis, with not less than \$5,000,000 for CONSULTANT and not less than \$5,000,000 for any licensed professional retained by CONSULTANT against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of CONSULTANT, its licensed professionals, sub-consultants, contractors or subcontractors.
- E. CLIENT shall be named as an additional insured on all insurance policies obtained by CONSULTANT in furtherance of this Agreement.
- F. CONSULTANT shall furnish to the CLIENT within ten (10) days of the effective date of this Agreement, Certificates of Insurance representing insurance coverages



as set forth above, together with declaration pages, in a form satisfactory to the CLIENT.

13. Indemnification by CONSULTANT.

Except to the extent of the CLIENT'S gross negligence or willful misconduct, CONSULTANT shall indemnify and hold the CLIENT and the CLIENT'S officers, administrators, members of its Borough Council, employees, attorneys and agents (collectively, the "CLIENT Indemnitees") harmless from and against any and all liabilities, injuries (including death), losses, damages, costs, including reasonable attorney fees, judgments, settlements, claims, actions, causes of action, penalties, awards or expenses of any nature to the extent arising out of this Agreement or CONSULTANT'S, or its shareholders', members', partners', officers', directors', employees', personnel's, contractors', sub-contractors', consultants', sub-consultants' or agents' (collectively, the "CONSULTANT Indemnitors") performance or omission of performance pursuant hereto or related hereto from, including but not limited to, the following: (1) any and all labor, employment, unemployment compensation, or workers' compensation claims or causes of action or other claim or cause of action arising from an employment, collective bargaining or contractor relationship between CONSULTANT and any of the other CONSULTANT Indemnitors or any collective bargaining unit; (2) the intentional, negligent or wrongful performance, acts or omissions of any of CONSULTANT Indemnitors in connection with any services provided pursuant to this Agreement; (3) any breach, violation, inaccuracy, or misrepresentation of or contained in any term, condition, covenant, representation, warranty or covenant of CONSULTANT contained herein or any omission of a

material fact necessary to be stated herein in order to make such statement not a breach, violation, inaccurate or misrepresentation; (4) the claim of malpractice, ineffective rendering of service or other claim related to the negligent, wrongful or intentionally improper provision of services by any of CONSULTANT Indemnitors in connection with this Agreement; and (5) any claim, notice, violation, citation, breach or other failure alleging violation of any of CONSULTANT Indemnitors with respect to any federal, state or local law, regulation, ordinance, contract, or other obligation. CONSULTANT Indemnitor's duty to indemnify the CLIENT Indemnitees shall not be limited to the available proceeds of insurance coverage.

14. Waiver of Subrogation.

To the extent damages experienced by CLIENT or CONSULTANT are covered by property or casualty insurance, CLIENT and CONSULTANT waive all rights against each other, their agents, consultants and employees for such covered losses and shall obtain waivers from their respective property and casualty insurance carriers against subrogation of such covered losses. CLIENT shall require similar waivers of their contractors and its sub-contractors and suppliers and consultants of any tier as to CONSULTANT. The Parties shall advise their property and casualty carriers in writing as to such waivers.

15. Law and Venue.

A. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

B. In the event that any dispute arises out of the Agreement, the parties hereto consent and agree that venue and jurisdiction for any dispute hereunder shall be exclusively in the Court of Common Pleas for Bucks County, Pennsylvania.

16. Terms & Termination.

- A. The Borough Engineer serves at the pleasure of the Borough Council.
- B. Either party may terminate the Agreement for convenience upon thirty (30) days written notice. Notwithstanding the foregoing, either the CLIENT or CONSULTANT may terminate this Agreement upon the other Party's material breach of this Agreement, provided that: (a) the nonbreaching Party sends written notice to the breaching Party describing the breach in reasonable detail; and (b) the breaching Party does not cure the breach within twenty (20) working days following its receipt of such written notice. CONSULTANT will be compensated for its Services rendered to the date of termination. Termination of this Agreement for any reason whatsoever shall not affect any right or obligation of any party which is accrued or vested prior to the termination, and any provisions of this Agreement relating to any such right or obligation shall be deemed to survive the expiration or earlier termination of this Agreement.

17. Representation and Warranties; Warranty Obligations.

- A. CONSULTANT represents and warrants that: (i) any and all services furnished under this Agreement, shall comply with any applicable description of the services set forth in this Agreement; (ii) CONSULTANT has not made and will not make any commitments inconsistent with CLIENT'S rights and CONSULTANT'S obligations under this Agreement; and (iii) services furnished under this Agreement shall be performed (A) by technically competent and qualified personnel who are, where applicable, licensed to practice under the laws and/or regulations of the Commonwealth of Pennsylvania, (B) in accordance with Good Industry Practices

and generally accepted professional standards associated with the particular industry, trade, or discipline involved and (C) as expeditiously and economically as is consistent with the best interests of the CLIENT.

- B. In the event that the services rendered by or on behalf of CONSULTANT pursuant to this Agreement do not conform to any or all of the warranties set forth herein at any time from commencement of said services provided by CONSULTANT, CONSULTANT, at no cost or expense to the CLIENT, shall re-perform the Services and take all other actions necessary to correct any such nonconformity (each, a "Defect") in a manner and time acceptable to the CLIENT. CONSULTANT expressly waives all such costs and expenses in connection with the required re-performance of work or other corrective actions and all taxes in connection therewith.
- C. In the event the same, or substantially the same, Defect is discovered during the course of services as part of this Agreement on more than one project, or more than one time on any project, CONSULTANT shall perform a root cause analysis to determine the cause of such Defect. CONSULTANT shall provide the CLIENT with a monthly update describing the progress of each such root cause analysis and a copy of the results of the root cause analysis upon completion thereof.
- D. CONSULTANT further represents and warrants to CLIENT that, at all times during the Term of this Agreement: (i) it is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and duly authorized to operate in each jurisdiction in which all or any portion of the Services are to be performed, is financially responsible, fully licensed and competent to

perform all services, and any work provided thereunder, and has all requisite power and authority and has obtained and is maintaining all required applicable permits in connection with the services rendered pursuant to this Agreement or by applicable law or regulation at such time to be obtained or maintained by CONSULTANT, and does not require any action by any Governmental Authority which has not already been taken, to execute or deliver this Agreement or to perform its obligations thereunder; (ii) it has the power to execute, deliver and carry out this Agreement and to perform all of its obligations under this Agreement and all such actions have been duly authorized by all necessary corporate or comparable action on its part; (iii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by, the terms of its organizational documents or any applicable laws or any covenant, contract, agreement or instrument, to which it is a party or by which it or any of its assets are bound; and (iv) this Agreement has been duly and validly executed and delivered by it and constitutes a legal, valid and binding obligation of it, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or the application of general principles of equity.

- E. CONSULTANT further represents and warrants that (i) it has (and, with respect to items that are hereafter owned, licensed or otherwise used by CONSULTANT as part of the services contemplated under this Agreement, will have) all necessary

right and authority to assign ownership and to grant the licenses granted to CLIENT as provided in this Agreement (including, where necessary, by having obtained the necessary rights from its affiliates and third party licensors, as the case may be); (ii) the CONSULTANT Deliverables do not and will not infringe the Intellectual Property rights of any Person, and no infringement of the Intellectual Property rights of any Person will occur as a result of any services performed under this Agreement, or any part or component thereof, nor other performance of CONSULTANT'S obligations under this Agreement; and (iii) no infringement of any Intellectual Property rights of any Person will occur as a result of CLIENT'S ownership, use, repair, or maintenance of any project completed as part of the services contemplated in this Agreement.

18. Entire Agreement.

This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof only. The express terms of this Agreement control and supersede any course of performance inconsistent with any of its terms. This Agreement may not be modified or amended other than in writing signed by the CONSULTANT and the CLIENT.

19. Notice.

All notices shall be in writing and sent by certified mail, return receipt requested addressed as follows:

To CLIENT:                      Forest Hills Borough  
   4400 Greensburg Pike  
   Pittsburgh, PA 15221  
   Borough Manager

To CONSULTANT                      \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_  
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or to such other persons or places as either party may, from time to time, designate by notice.

20. Headings.

The headings in this Agreement are for convenience of reference only and shall not affect the construction hereof.

21. Waiver.

The failure of the CONSULTANT or CLIENT to insist upon strict performance of the covenants and conditions contained herein shall not be deemed a waiver of the right of the CONSULTANT or CLIENT to insist on the strict performance of such covenants or conditions at any other time. Any waiver by the CONSULTANT or CLIENT of any breach or violation of this Agreement shall not operate or be interpreted, therefore, as a waiver of any subsequent breach or violation of this Agreement.

22. Severability.

In the event that any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid any other provisions of this Agreement.

23. Counterparts.

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 22, a signed copy of this



Agreement delivered by facsimile or email or other means of electronic transmission shall be given the same legal effect as delivery of an original signed copy of this Agreement.

24. Cumulative Remedies.

All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

25. Assignment.

CONSULTANT shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of CLIENT. Any purported assignment or delegation in violation of this Section 28 shall be null and void. No assignment or delegation shall relieve CONSULTANT of any of its obligations hereunder. CLIENT may at any time assign, transfer or subcontract any or all of its rights or obligations under this Agreement without CONSULTANT'S prior written consent.

26. Successors and Assigns.

This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

27. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business trust, joint venture or other form of joint enterprise, employment or

fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused these presents to be executed and their corporate or common seals hereto affixed the day and year first above mentioned.

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

**BOROUGH OF FOREST HILLS**

\_\_\_\_\_  
\_\_\_\_\_

