



Municipality of Princeton

*Municipal Building
400 Witherspoon Street
Princeton, NJ 08540-3496*

*Department of Community Development
Office of the Engineer
Telephone (609)921-7077
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ROBERT V. KISER, P.E.
Municipal Engineer

**To: Mayor & Council
Robert W. Bruschi, Administrator**

From: Robert V. Kiser, P.E., Municipal Engineer *RVK*

**Subject: Recommendation to Award a Professional Services Agreement– Land
Surveying Services**

Date: April 26, 2013

This memorandum recommends that a Professional Services Agreement (PSA) be awarded to Johnson, Mirmiran & Thompson, Inc. (JMT) for Land Surveying Services. These services are related to the preparation of easement plan and description revisions associated with the Harry's Brook Culvert near Madison Street.

During this past year and a half, the Borough Engineer's office had undertaken studies and inspections of the Harry's Brook Culvert, which is situated in a number of properties fronting Vandeventer Avenue, Park Place, Madison Street, Willow Street, and Spruce Street. This work was done to confirm the location and condition of the Culvert, because of its age and close proximity to nearby houses and structures. Plans on file in the Engineer's office indicate that the culvert was constructed in the 1930's or earlier. However, the office had not discovered any easements granted by owners of those properties.

During the time period of these investigations, the property owners of 4-6 Madison Street, also known as Block 28.02, Lot 44, a condominium, voiced their desire to grant an easement to the municipality. The Borough engaged JMT to prepare the necessary plan and description. From that work by JMT, a Plat of Easement dated March 28, 2012 was prepared.

More recently, the property owners of the property in question asked that several revisions be prepared to define the pipe location more precisely with respect to the house, and to reduce the width of the easement in the front yard area, so that less of that area was encumbered by the easement. If awarded, this agreement would enable JMT to prepare the requested revisions.

The cost to prepare the revised easement plan and description by JMT would be \$900.00.

A Resolution, a Professional Services Agreement, and the consultant's proposal are attached. Please contact me with any questions.

Enclosures

Cc: Linda S. McDermott, Clerk
Sandra Webb, CFO

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**MUNICIPALITY OF PRINCETON
PROFESSIONAL SERVICES AGREEMENT 2013**

AGREEMENT, made this 13th day of May 2013, by Johnson, Mirmiran & Thompson, Inc., located at 1200 Lenox Drive, Suite 101, Trenton, NJ 08648 (hereinafter referred to as "Provider"), and the Municipality of Princeton, a municipal corporation in the County of Mercer and State of New Jersey (hereinafter referred to as the "Municipality") located at 400 Witherspoon Street, Princeton. New Jersey 08540.

WHEREAS, the Municipality wished to enter into a professional service agreement with the Provider for the performance of professional services in connection with certain activities being conducted by the Municipality, as hereafter more particularly stated in the Providers' proposal dated March 27, 2013, and revised April 18, 2013, hereby attached; and

WHEREAS, the services to be performed are professional services which are exempt from public bidding under the Local Public Contracts Law. N.J.S.A. 40A:11-1 et seq., and

NOW, THEREFORE, in consideration of the mutual obligations hereafter set forth, the parties hereto agree as follows:

1. STATEMENT OF WORK: The Provider shall use its best efforts to perform professional services for:

Surveying services for preparation of easement plan and description revisions associated with the Harry's Brook Culvert near Madison Street, in Block 28.02, Lot 44.

Under this Agreement the Provider shall at all times act as an independent professional contractor and not as an employee of the Municipality and shall have no authority to act as an agent or representative of the Municipality or to enter into any financial or other contractual commitment on behalf of the Municipality without the prior written approval of same granted in accordance with law. This Agreement shall be supplemented by the terms of the Provider's proposal including the standard provisions of the proposal except where such terms are contradicted by the terms of this Professional Services Agreement in which case the terms of this Agreement shall apply. The Agreement will be effective from May 14, 2013 through December 31, 2013 subject to available budgetary funding.

2. PAYMENT:

- a. Total fee of nine hundred dollars (\$900.00).
- b. Rendition of Invoices: Payment of fees and reimbursement for such expenses incurred will be made upon the submission by the Provider to the Municipality of invoices in duplicate in the form prescribed by the Municipality not later than the tenth (10th) day of the month following that covered by the invoice, and shall specify in detail the periods for which fees or other compensation are claimed, the services performed, and an itemized listing of all expenses incurred for which reimbursement is claimed. The Provider shall give written

notice to the Municipality when the Provider has billed eighty percent (80%) of the compensation set forth in paragraph 2.a of this Agreement.

3. TERMINATION.

This Agreement shall be effective for the period provided above, although it may be sooner terminated, with or without cause for any reason whatsoever, at any time by the Municipality by giving thirty (30) days written notice to the Provider.

4. NON-CONFLICTS OF INTEREST.

The Provider represents that neither it nor its firm is now performing and expressly agrees to refrain during the period of effectiveness of this Agreement from so performing, any professional services for any person, firm or corporation which results or might result in a conflict of interest between the Provider and the Municipality, directly or indirectly. The Provider agrees to disclose in writing to the Municipality any and all such conflicts of interest, which may arise, giving full particulars.

5. TITLE TO DATA AND PROPERTY PRODUCED BY THE PROVIDER.

The Provider agrees that title to and all rights and other legal interest in all correspondence, Memoranda, records, data, analysis, graphs, reports, physical property and other subject matter prepared, procured or produced in the rendition of services hereunder shall vest exclusively and remain jointly with the Municipality and Provider and the Provider shall not have the right to sell, disclose, or make same available to third parties without the prior written consent of the Municipality.

6. CONFIDENTIALITY.

The Provider agrees to, treat and maintain as confidential, and not to disclose to any third party or to use for its own benefit, reproduce or have reproduced, any information or other such document or data obtained, learned or produced as a result of the services rendered hereunder (except to the extent required by law) without the prior written consent of the Municipality, which consent shall not unreasonably be refused, and to both require and furnish copies to the Municipality of an identical covenant executed by all agents, employees, or subcontractors of the Provider participating in the rendering of the services hereunder.

7. COMPLIANCE WITH LAWS.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The contractor or subcontractor where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975. c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act;

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

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions;

The contractor 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, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions;

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

8. COMPLETE AGREEMENT.

This Agreement and any attachments hereto or incorporated by the reference represents the entire contract between the parties and shall take precedence over all other prior or existing understandings or agreements, if any, whether oral or written, and shall not be modified, assigned or transferred except upon the written consent of both parties hereto. All notices by either party to the other required or permitted hereunder may be sent by regular mail to their respective addresses first set forth above unless sooner revised by written notice.

WITNESS

MUNICIPALITY OF PRINCETON

Linda S. McDermott, Clerk

By: _____
Elizabeth Lempert, Mayor

By: _____
Johnson, Mirmiran & Thompson, Inc.

**RESOLUTION 2013-R
OF THE MAYOR AND COUNCIL
OF THE MUNICIPALITY OF PRINCETON
AUTHORIZING AN AWARD FOR PROFESSIONAL SERVICES
LAND SURVEYING SERVICES**

WHEREAS, the Municipality desires to enter into a professional services agreement in connection with certain activities being conducted by the Municipality, as hereafter more particularly stated, and

WHEREAS, the services to be performed are professional services which are exempt from public bidding under the Local Public Contracts Law.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Municipality of Princeton as follows:

The Mayor and Clerk are hereby authorized to enter into a contract for professional services with Johnson, Mirmiran & Thompson, Inc. (hereinafter referred to as "Provider") to provide land surveying services for the Municipal Department of Engineering, as hereafter more particularly stated.

1. The contract so authorized shall require the Provider to provide services and other related duties, as follows:

Provider shall serve as a professional land surveying company on behalf of the Municipal Department of Engineering to provide land surveying services for preparation of easement mapping and descriptions. Specifically, the Provider shall perform the services provided for in their proposal dated March 27, 2013 and revised April 18, 2013.

Under this Agreement, Provider shall at all times act as an independent professional contractor and not as an employee of the Municipality, and shall have no authority to act as an agent or representative of the Municipality or to enter into any financial or other contractual commitment on behalf of the Municipality without the prior written approval of same granted in accordance with law.

Payment of fees will be made upon the submission to the Provider to the Municipality of invoices in duplicate in the form prescribed by the Municipality not later than the tenth (10th) day of the month following that covered by the invoice, and shall specify in detail the periods for which fees are claimed for the services performed. The provider shall give written notice to the Municipality when the Provider has billed eighty (80%) of the compensation set forth in paragraph I of the Agreement.

2. The form of contract shall include standard provisions common to professional service agreements entered into by the Municipality and shall be subject to approval by the Municipal

Attorney.

3. The contract shall be awarded without competitive bidding as a contract for professional services under the provisions of the Local Public Contracts Law because the subject services will be performed by a person or persons authorized by law to practice a recognized profession and whose practice is regulated by law.

4. A notice of this action shall be published in the Princeton Packet as required by law within ten (10) days of its passage.

Councilperson	Absent	Present	1 st	2 nd	Yea	Nay	Abstain	Disqualified
Ms. Butler								
Mrs. Crumiller								
Ms. Howard								
Mr. Liverman								
Mr. Miller								
Mr. Simon								
Mayor Lempert								

I, Linda S. McDermott, Clerk of the Municipality of Princeton, do hereby certify that the above is a true and complete copy of a resolution adopted by the Mayor and Council of said Municipality at a meeting held May 13, 2013.

IN WITNESS WHEREOF, I hereunto set my hand and affix the corporate seal of said Municipality, this 14th day of May, 2013.

Linda S. McDermott
Municipal Clerk



JOHNSON, MIRMIRAN & THOMPSON
Engineering A Brighter Future®
An Employee Owned Company

Over **40** Years
of Engineering Excellence

March 27, 2013
Revised April 18, 2013

Donald Mayer-Brown
Project Engineer
Princeton Engineering Department
PO Box 390, One Monument Drive
Princeton, NJ 08542

RE: Survey Services – Easement Plan and Description revisions
Harry's Brook Culvert and Madison Street
Block 28.02, part of Lot 44, Princeton, NJ
JMT Job No. 11-1365-999 (005)

Dear Mr. Mayer-Brown:

We are pleased to submit our scope of services and lump sum fee proposal to provide survey services for the subject project:

The scope of services is as follows:

- Revise the easement plan and description, dated March 28, 2012 to depict the frontage of Madison Street to measure approximately 5' from centerline of pipe based on JMT survey and CCTV inspection; and add the note from the 2008 location of centerline of pipe relative to existing building to depict 1.2' from the outer face of wall. Easement geometry will be best fit to delineate straight tangent lines, no curve data will be calculated.
- Deliverables to include revised easement and description.

The proposed fee for surveying services will be on a lump sum basis in the amount of **\$900.00**. JMT is ready to begin services upon the written notice to proceed and anticipates completion in approximately 1 business days from notice to proceed. If you have any questions or require any additional information, please do not hesitate to contact this office. Thank you for the opportunity.

Very truly yours,

JOHNSON, MIRMIRAN & THOMPSON

Ambrose Gmeiner, PLS
Senior Associate

TERMS & CONDITIONS

A. General Provisions

JMT agrees that this proposal shall remain open for 60 days from the date of this proposal. Acceptance of the proposal after the end of the 60 day period is valid if JMT elects, in writing, to reaffirm the proposal and waive its right to re-evaluate and resubmit the proposal.

JMT reserves the right to renegotiate the contract which this proposal, if accepted, will comprise, on or after six (6) months from the date of this proposal, provided the Client is given 30 days notice in writing, if salaries or operational costs increase in a sufficient amount. Our present quotation is based upon current salaries and operational costs.

It is understood and agreed that once work is started on this project by JMT, only the Client or its duly authorized representative has the authority to order the work stopped on his behalf and only upon giving the Engineer, JMT, 10 days notice in writing, as to when the work shall stop. The Client further agrees to be liable and pay to JMT, for all labor done, work performed, materials furnished, and expenses incurred up to and including the day work is stopped in accordance with the notice.

B. Time of Payments and Litigation Expenses

JMT will submit monthly certified invoices for services rendered during the preceding month. Payments are due and payable within 30 days from the date of invoice. If OWNER fails to pay the full amount due for services and expenses within 30 days after date of invoice, the amount due will include a charge at the rate of 1-1/2% per month of the outstanding balance from said 30th day. In addition, in the event any invoice has not been paid in full by its due date, JMT may, after giving three (3) days written notice to OWNER, suspend services under this Agreement until OWNER has paid in full amounts due JMT for services, expenses and interest.

In the event JMT deems it necessary to refer any unpaid invoices to its attorneys for the purposes of instituting collection or mechanic's liens proceedings, OWNER agrees to pay JMT's attorney's fees, court costs, and litigation expenses, including fees for expert witnesses, trial and deposition transcripts, cost of printing briefs, and travel expenses for witnesses, attorneys and employees.

In the event OWNER asserts a claim against JMT and/or JMT's subconsultants for any act arising out of performance of the services provided herein, whether by an original action, or by counterclaim set-off or other defense to any mechanic's lien or other claim asserted by JMT as a result of OWNER non-payment of fees and expenses for services rendered, and if OWNER fails to prevail in such action, counterclaim, set-off, or defense, OWNER agrees to pay all attorney's fees, costs and litigation expenses (including fees for expert witnesses, trial transcripts and deposition transcripts) incurred by JMT and/or JMT's subconsultants in opposing any such action, counterclaim, set-off or defense.

JMT may withhold the delivery, signature or sealing plans and specifications, and may repossess all plans and specifications previously delivered to or otherwise made available to OWNER, their agents or assigns, without incurring any liability for direct and/or consequential damages to OWNER or anyone claiming through them or on their behalf whenever JMT deems it necessary to ensure payment for services rendered. Should any claim for such damages be made, OWNER agrees to hold JMT harmless from all litigation expenses incurred by JMT as defined herein.

C. Additional Services

In the event additional services beyond those identified in the Scope of Work are required by the OWNER or by circumstances beyond JMT's control, JMT will furnish such services upon written authorization of the OWNER. Payment for Additional Services will be charged at the following hourly rates which are inclusive of labor, overhead, payroll burden and profit.

<u>Classification</u>	<u>Hourly Rate</u>
2-Person Survey Crew	\$150.00
Professional Land Surveyor	\$150.00
Survey Technician	\$ 90.00

Any changes to the previously approved submittals will be considered a change in scope of services and JMT will be entitled to additional compensation at the rates herein specified.

D. Insurance

JMT maintains Professional Liability, General Liability and Workmen's Compensation Insurance. On request, JMT will furnish OWNER certification of insurance.

E. Termination

In the event of termination of this Agreement by OWNER, OWNER shall pay JMT for services (including additional services) rendered, performed, or procured through such phase, including Expenses, at the rates stated in the Agreement, plus all termination expenses. Termination expenses mean additional Reimbursable Expenses directly attributable to termination.

F. Indemnification and Limitation of Liability

Except as otherwise agreed, JMT shall hold harmless and indemnify the OWNER against injury, loss or damage arising out of the negligent acts, errors or omissions of JMT. The OWNER agrees to limit JMT's liability hereunder to OWNER and to all Construction Contractors and Subcontractors on the project, due to such negligent acts, errors or omissions, such the total aggregate liability of JMT to all those named shall not exceed JMT's total fee for services rendered on this project.

G. Site Work

All survey control points will be set at selected locations on the site outside of actual construction areas (as possible) and will be conspicuously flagged with guard stakes. All other stakeout will be placed as requested and/or required and will be properly marked and/or flagged. Work required to reset destroyed control point and destroyed surveys will be considered extra work and if requested will be billed at the hourly rates stipulated in this proposal. A minimum of four (4) hours work is required for each field stakeout request.

H. Standard of Care

JMT shall perform the services in a manner consistent with the degree of skill and care ordinarily exercised by members of the same profession currently practicing under the same conditions.

WE HEREBY AUTHORIZE JOHNSON, MIRMIRAN & THOMPSON, INC. TO PROCEED IN ACCORDANCE WITH THE ABOVE PROPOSAL. IF ANY PROFESSIONAL SERVICES ARE ORDERED BY A REPRESENTATIVE OF THE CLIENT, FOR ITEMS LISTED ABOVE WITH A RETURNED ACCEPTANCE, THE PRICES AND TERMS OF THIS PROPOSAL SHALL BE IN EFFECT.

ORGANIZATION: _____

DATE: _____

BY: _____

TITLE _____