2014 LAND DEVELOPMENT REVIEW AGREEMENT

THIS AGREEMENT, made this 2nd day of January, 2014, by and between **PRINCETON**, a municipal corporation of the State of New Jersey, 400 Witherspoon Street, Princeton, New Jersey 08540 (hereinafter referred to as **"PRINCETON"**) and **OSTERGAARD ACOUSTICAL ASSOCIATES**, 200 Executive Drive, West Orange, New Jersey 07058 (hereinafter referred to as **"CONSULTANT"**).

WITNESSETH:

WHEREAS, **PRINCETON** requires for the **PRINCETON** Planning Board and the **PRINCETON** Zoning Board of Adjustment professional acoustical engineering services in order to assist said Boards in evaluating 2014 land development applications; and

WHEREAS, the **PRINCETON** has adopted a Resolution pursuant to the New Jersey Local Public Contracts Law *N.J.S.A.* 40A:11-3 *et seq.* authorizing the award of a Contract for Professional Services without competitive bidding to the **CONSULTANT** as permitted by law; and

WHEREAS, the New Jersey Municipal Land Use Law, *N.J.S.A.* 40:55D-53.1 permits **PRINCETON** to retain expert consultants to assist the Boards in evaluating land development applications and to charge the applicant for this expense through the applicant's land development escrow account.

NOW, THEREFORE, IT IS AGREED by and between **PRINCETON** and **CONSULTANT**, as follows:

1. **PRINCETON** hereby retains the **CONSULTANT** to assist the **PRINCETON** Planning Board and the **PRINCETON** Zoning Board of Adjustment in its evaluation of land development applications during 2014.

2. **PRINCETON** agrees to compensate the **CONSULTANT** for a sum not to exceed $5,000.00 in accordance with the **CONSULTANT**'s 2014 billing rates: Principals, $195.00 per hour; Senior Engineer, $150.00 per hour; and Staff Engineer, $125.00 per hour.

3. The **CONSULTANT** agrees that Edward M. Clark, P.E. shall be the principal to undertake, complete and oversee this work.

4. The **CONSULTANT** shall coordinate its work through **PRINCETON**'s Deputy Development Enforcement Officer and submit its billing through **PRINCETON**'s Finance Department, Attention: Escrow Control Clerk.

5. As may be requested by the Deputy Development Enforcement Officer, the **CONSULTANT** shall prepare and submit on a timely basis the **CONSULTANT**'s analysis of the sound emissions which will likewise be generated by the jazz club use and the impact of said sound emissions on surrounding residential properties. The **CONSULTANT** agrees to complete all of its work within the statutory review periods as provided for under the New Jersey Municipal Land Use Law and the **PRINCETON** Land Use Code. The **CONSULTANT** shall meet with representatives of **PRINCETON** as necessary in order to discuss with said **PRINCETON** representatives the various aspects of the **CONSULTANT**'s research and recommendations concerning the land development application. The work authorized by this agreement shall not be undertaken until the **CONSULTANT** is notified by **PRINCETON**'s Finance Department/Escrow Control Clerk that funds have been deposited for same by the land development applicant. No certification of availability of funds by **PRINCETON**'s Chief Financial Officer is required at this time since services will not be requested until said sufficient escrow funds have been reserved in the appropriate land development escrow account by **PRINCETON**. **PRINCETON** shall issue to the

CONSULTANT a specific purchase order against the appropriate land development escrow account for billing purposes by the **CONSULTANT**.

6. The **CONSULTANT** will invoice **PRINCETON** by voucher on a monthly basis, showing the professional time spent, hourly rates of said professionals (in quarterly hour increments) and reimbursable direct expenses for such matters as telephone, photocopying and postage. The **CONSULTANT** shall bill **PRINCETON** at the **CONSULTANT**'s 2014 rates as reflected in paragraph 2 hereinabove. A brief description of the work completed with each invoice shall be submitted. Pursuant to *N.J.S.A.* 40:55D-53.1 *et seq.*, the **CONSULTANT** shall furnish copies of the **CONSULTANT**'s invoices directly to the land development applicant. Invoices and payments, however, shall be addressed to **PRINCETON**'s Engineering Department and the responsibility for payment of same shall be that of **PRINCETON**. **PRINCETON** will bill against the land development escrow account established for this land development application. If there are not sufficient funds on deposit with **PRINCETON** for the **CONSULTANT**'s work, **PRINCETON** shall so notify the **CONSULTANT** and the work shall be suspended until sufficient funds are available.

7. **PRINCETON** and **CONSULTANT** hereby incorporate into this Contract the mandatory affirmative action/non-discrimination language as set forth in attached Exhibit A.

8. The **CONSULTANT** shall provide **PRINCETON**'s Chief Financial Officer a copy of its New Jersey Business Registration Certificate as per attached Exhibit B.

9. The parties agree to adhere to the provisions of the New Jersey Local Unit Pay-to-Play statute, *N.J.S.A.* 19:44A-20.7, per attached Exhibit C.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and date first written above.

ATTEST:

_____
Linda S. McDermott, Clerk

PRINCETON, a municipal corporation of the State of New Jersey

By:_____
Liz Lempert, Mayor

OSTERGAARD ACOUSTICAL ASSOCIATES

_____

By:_____
Edward M. Clark, P.E., Principal

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EXHIBIT A

AFFIRMATIVE ACTION/ EQUAL EMPLOYMENT GOAL COMPLIANCE ATTACHMENT

for

PROCUREMENT AND SERVICE CONTRACTS, INCLUDING PROFESSIONAL SERVICES AGREEMENTS

Pursuant to N.J.A.C. 17:27-3.5(a)1 and 4.3(a)1, each vendor (also referred to herein as "contractor") shall submit to Princeton (also referred to as "public agency" or "agency"), after notification of award but prior to execution of a goods and services contract with Princeton, one of the following three documents:

(1) Appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program; or

(2) A certificate of employee information report approval, issued in accordance with N.J.A.C. 17:27-4; or

(3) An employee information report (Form AA302) provided by the Division and distributed to Princeton to be completed by the contractor, in accordance with N.J.A.C. 17:27-4. A contractor shall not be eligible to submit nor shall Princeton accept an employee information report unless the contractor certifies and agrees to the following: The contractor, where appropriate, certifies that he or she has never before applied for a certificate of employee information report in accordance with rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time; and agrees to submit immediately to the Division a copy of the employee information report.

A contractor shall not enter into a binding subcontract with a subcontractor unless the subcontractor has submitted to said contractor one of the three documents listed above.

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

A. 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity 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.

B. 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

C. 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.

D. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

E. The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with:

(1) Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2; or

(2) Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

F. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

G. 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;

H. In conforming with the targeted employment goals, 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

I. The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be requested by the Division 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 Division of Contract Compliance and EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).**

As required by N.J.S.A. 10:2-1 ("Discrimination in employment on public works; contract provisions; set-aside programs"), the contractor agrees as follows:

A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

B. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

C. There may be deducted from the amount payable to the contractor by Princeton, under this contract, a penalty of $50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

D. This contract may be canceled or terminated by Princeton, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from Princeton of any prior violation of this section of the contract.

Certification 30825

CERTIFICATE OF EMPLOYEE INFORMATION REPORT

RENEWAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of **15-MAY-2008** to **15-MAY-2015**

OSTERGAARD ACOUSTICAL ASSOCIATES
200 EXECUTIVE DRIVE
WEST ORANGE NJ 07052

Acting State Treasurer

EXHIBIT B

BUSINESS REGISTRATION & SALES & USE TAX ADDENDUM

P.L. 2004, c.57 (N.J.S.A. 52:32-44) imposes the following requirements on contractors and subcontractors that **knowingly** provide goods or perform services for a contractor fulfilling this contract:

A. Proof of Contractor's Business Registration

The contractor must provide a copy of its business registration certificate issued by the Department of the Treasury or such other form or verification that the contractor is registered with the Department of the Treasury. Proof of business registration must be submitted no later than at the time of execution of this contract.

B. Proof of Subcontractors' Business Registration

The contractor shall not enter into any contract with a subcontractor under this contract unless the subcontractor first provides proof of valid business registration to the contractor. Also, if the contractor subcontracts any of the work:

1. The contractor shall provide written notice to its subcontractors of the responsibility to submit proof of business registration to the contractor. Subcontractors through all tiers of the project must provide written notice to their subcontractors to submit proof of business registration, and subcontractors shall collect such proofs of business registration.

2. The contractor shall forward copies of proof of the subcontractors' business registrations to the contracting agency.

3. The contractor shall maintain and submit to the contracting agency a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance.

4. Before final payment is made by the contracting agency under this contract, the contractor shall submit to the contracting agency a complete and an accurate list of all subcontractors, along with their proof of business registration (if not previously provided), used in fulfillment of the contract. If no subcontractors were used, the contractor shall attest to same prior to final payment.

A contractor or subcontractor who fails to provide proof of business registration or provides false information of business registration shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each proof of business registration not properly provided under a contract with a contracting agency.

C. Sales and Use Tax

For the term of this contract, the contractor and each of its affiliates shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and

Use Tax Act," P.L. 1966, c.30 (C.54:32B-1 et seq.) on all their sales of tangible personal property delivered into this State.

In the event the contractor subcontracts any of its work, the contractor shall include within its subcontracts the requirement that, for the term of this contract, the subcontractor and each of its affiliates shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act," P.L. 1966, c.30 (C.54:32B-1 et seq.) on all their sales of tangible personal property delivered into this State.

Information on the law and its requirements is available by calling (609) 292-9292.

11/30/01

Taxpayer Identification# **221-971-127/000**

Dear Business Representative:

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

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

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

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

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

I wish you continued success in your business endeavors.

Sincerely,

Patricia A. Chiacchio

Patricia A. Chiacchio
Director, Division of Revenue

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

DEPARTMENT OF TREASURY/
DIVISION OF REVENUE
P.O. BOX 252
TRENTON, N.J. 08646-0252

TAXPAYER NAME:
OSTERGAARD ASSOCIATES

TRADE NAME:

TAXPAYER IDENTIFICATION#
221-971-127/000

CONTRACTOR CERTIFICATION#
0098259

ADDRESS
200 EXECUTIVE DR
WEST ORANGE NJ 07052

ISSUANCE DATE:
11/30/01

EFFECTIVE DATE:
08/21/72

Patricia A. Chiacchio

Director, Division of Revenue

FORM BRC(08-01)

This Certificate is NOT transferable. It must be prominently displayed at the above address.

EXHIBIT C

NEW JERSEY "LOCAL UNIT PAY-TO-PLAY LAW" COMPLIANCE

Political Contribution Disclosure

This Agreement has been awarded to CONTRACTOR/CONSULTANT based on the merits and abilities of CONTRACTOR/CONSULTANT to provide the goods or services as described herein. This Agreement was not awarded through a "fair and open process" as that phrase is defined in *N.J.S.A.* 19:44A-20.7. As such, CONTRACTOR/CONSULTANT hereby certifies that CONTRACTOR/CONSULTANT (including persons and other business entities having an interest in CONTRACT/CONSULTANT as defined by *N.J.S.A.* 19:44A-20.7) has neither made a contribution, that is reportable pursuant to the Election Law Enforcement Commission pursuant to *N.J.S.A.* 19:44A-1 *et seq.* (*i.e.*, in excess of $300.00), in the one (1) year period preceding the award of this Agreement that would, pursuant to P.L. 2004, c.19 affect its eligibility to perform this Agreement, nor will it make a reportable contribution during the term of this Agreement to any municipal committee of a political party if a member of that political party is serving in an elective public office for Princeton when the Agreement is awarded, or to any candidate committee of any person serving in an elective public office for Princeton when the Agreement is awarded.