

MASON, GRIFFIN & PIERSON
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor & Council of Princeton

From: Edwin W. Schmierer, Esq.



Date: February 12, 2014

Re: Princeton - AvalonBay: Environmental Consultant

At the meeting of the Mayor and Council on January 27, 2014, Princeton authorized the retention of an environmental consultant to assist in the analysis of various environmental issues related to the AvalonBay project involving the hospital site.

Princeton Engineer Robert V. Kiser, P.E. identified Ira L. Whitman, P.E., Ph.D, as the individual most qualified to assist Princeton with its independent evaluation of environmental issues related to the above-referenced site. Dr. Whitman has begun his analysis of the environmental data and background with regard to the site; has met with the Princeton staff and is scheduled to meet with representatives of AvalonBay and their LSRP on February 24, 2014. Thereafter, Dr. Whitman will be in a position to make recommendations to the Mayor and Council.

The Mayor and Council originally authorized an agreement with an environmental consultant for a sum not to exceed \$5,000.00. Based upon the work done to date and anticipated meetings, Dr. Whitman has requested a budget not to exceed \$8,000.00 for his work. Mr. Kiser can discuss with you why the nature and scope of his work is somewhat greater than initially anticipated and why the \$8,000.00 in his opinion would be appropriate.

To this end, I have prepared and attached hereto the proposed resolution and professional services agreement. We would appreciate your considering this matter as a part of your agenda on February 18, 2014.

EWS:kaj

cc: Robert W. Bruschi
Kathryn Monzo
Linda McDermott
Robert V. Kiser

COUNTY OF MERCER

PRINCETON

STATE OF NEW JERSEY

RESOLUTION NO. 2014-

WHEREAS, Princeton requires professional engineering services in order to assist with the evaluation of environmental issues related to construction by AvalonBay on the former hospital site; and

WHEREAS, the New Jersey Local Public Contracts Law *N.J.S.A. 40A:11-1 et seq.* requires that a resolution authorizing the award of a contract for “Professional Services” without competitive bidding and the contract itself must be available for public inspection.

NOW THEREFORE be it resolved by the Mayor and Council of Princeton as follows:

1. The Mayor and Clerk of Princeton are hereby authorized and directed to enter into an agreement for a sum not to exceed \$8,000.00 with Whitman, 7 Pleasant Hill Road, Cranbury, New Jersey 08512 to assist Princeton in evaluating various environmental issues related to the proposed development by AvalonBay of the former hospital site. The agreement authorized by this resolution is on file in the office of the municipal clerk and may be inspected during regular business hours.

2. This contract is being awarded without competitive bidding as a “Professional Services” contract in accordance with the provisions of *N.J.S.A. 40A:11-5(1)(a)* of the New Jersey Local Public Contracts Law, for services to be performed by a person authorized by law to practice a recognized profession that is by law regulated.

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

CERTIFICATION

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the foregoing Resolution was considered and adopted by the Princeton Council at its regular meeting held on the 18th day of February, 2014.

Linda S. McDermott, Clerk
Princeton

2014

AGREEMENT

THIS AGREEMENT, made this 18th day of February, 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 **WHITMAN**, 7 Pleasant Hill Road, Cranbury, New Jersey 08512 (hereinafter referred to as "**CONSULTANT**").

WITNESSETH:

WHEREAS, **PRINCETON** requires professional environmental engineering services to independently evaluate environmental issues associated with the AvalonBay redevelopment of the hospital site; and

WHEREAS, **PRINCETON** has adopted a Resolution pursuant to the New Jersey Local Public Contracts Law, *N.J.S.A. 40A:11-1 et seq.*, authorizing the award of a Contract for Professional Services to the **CONSULTANT** to provide said environmental consulting services.

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

1. **PRINCETON** hereby retains the **CONSULTANT** to assist **PRINCETON** in an independent evaluation of environmental issues associated with the AvalonBay redevelopment of the hospital site including but not limited to issues related to the former incinerator on the property and issues related to the demolition of existing structures on the property as the property is redeveloped.
2. **PRINCETON** agrees to compensate the **CONSULTANT** at the **CONSULTANT**'s prevailing 2014 rates for a sum not to exceed Eight Thousand Dollars (\$8,000.00).

3. The **CONSULTANT** agrees to designate Ira L. Whitman, P.E., Ph.D. as the primary member of the **CONSULTANT** to provide the above-referenced services.

4. The **CONSULTANT** agrees to coordinate its work with the office of the Princeton Engineer.

5. **PRINCETON** and **CONSULTANT** hereby incorporate by reference into this Contract the mandatory affirmative action language as set forth on Exhibit A attached hereto.

6. The **CONSULTANT** agrees to comply with the New Jersey Registration Act as set forth on Exhibit B attached.

7. The **CONSULTANT** agrees to comply with the requirements of the New Jersey Local Unit Pay-to-Play Act, *N.J.S.A. 19:44-20.7*, 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

Whitman

By: _____
Ira L. Whitman, P.E., Ph.D.
Principal

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.

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.

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.



Corporate Headquarters
7 Pleasant Hill Road
Cranbury, NJ 08512

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www.whitmanco.com

January 30, 2014

Robert V. Kiser, P.E.
Municipal Engineer
Municipality of Princeton
400 Witherspoon Street
Princeton, New Jersey 08540

RE: Proposal for Expert LSRP Services
University Medical Center at Princeton
253 Witherspoon Street
Princeton, New Jersey
Proposal #32760

Dear Mr. Kiser:

I am pleased to provide you with this proposal for LSRP expert services in connection with the demolition of the former University Medical Center at Princeton, and the potential redevelopment of the site by AvalonBay.

1.0 BACKGROUND

Concerns have been expressed about environmental issues generated by the proposed demolition and construction at the 253 Witherspoon Street property, primarily as related to the presence and former use of an on-site incinerator for medical waste disposal. Princeton has expressed its interest in retaining a NJ Licensed Site Remediation Professional (LSRP) to provide an independent assessment of the incinerator issue.

2.0 SCOPE OF WORK

Based on preliminary discussions between Robert V. Kiser, P.E. and Ira L. Whitman, P.E., LSRP, the following activities will be carried out.

- Initial meeting with Municipal Engineer Robert V. Kiser, P.E., Land Use Engineer John M. West, P.E., P.P. and Ira L. Whitman, P.E., LSRP (January 29).
- Inspection of the hospital grounds with a focus on the medical waste incinerator (January 29).

◆
Environmental and Engineering Excellence from Concept to Completion

- Review documents provided to me by Princeton, including:
 - Phase I Environmental Site Assessment, September 15, 2011, Ecol Sciences, Inc.
 - Limited Phase II Site Investigation Report, November 9, 2011, Ecol Sciences, Inc.
 - Final Summary/Submission – Demolition Plan, former University Medical Center at Princeton, January 6, 2014, AvalonBay.
- Conduct independent research, as necessary, on hospital incinerators and any other relevant environmental areas of concern.
- Provide informal guidance and advice to Princeton as necessary.
- Prepare an independent expert report evaluating the environmental issues associated with the incinerator at the former University Medical Center at Princeton.
- Present my independent findings and recommendations at the Princeton Council meeting on February 18, 2014.

3.0 SCHEDULE

Because of my travel schedule beginning February 9, 2014, the following schedule is anticipated:

February 3, 2014	Completion of document review.
February 5, 2014	Completion of independent research.
February 5, 2014	Informal discussion of issues with Princeton's Municipal Engineer
February 7, 2014	Completion of draft report for discussion.
February 10-12, 2014	Finalize expert report.
February 18, 2014	Presentation at Princeton Council meeting by Barry Skoultschi, P.E.

4.0 PERSONNEL

Ira L. Whitman, LSRP will conduct the proposed investigation and prepare the expert LSRP report.

A senior level Environmental Scientist will provide a second review of the Phase I Environmental Report and Phase II Site Investigation Report. The person assigned specializes in environmental due diligence, and is not an LSRP.

Robert V. Kiser, P.E.
Municipal Engineer
Municipality of Princeton
Proposal #32760
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Barry Skoultchi, P.E., CEO of Whitman, will present the findings and recommendations at the Council meeting on February 18th as Dr. Whitman will be out of the country.

5.0 COST

The Scope of Work will be completed at a cost not to exceed **\$5,000**. All work will be billed according to the rates indicated on our attached Fee Structure.

Should the Scope of Work be expanded at Princeton's request, Whitman will provide an updated cost estimate.

It is understood that Whitman will be retained for the proposed services at the Council's Meeting on February 18, 2014. I would appreciate an acknowledgement by Princeton of its receipt of this proposal and its intent to retain me as its independent LSRP for this assignment.

6.0 FEE STRUCTURE

The fee structure for this work is included in Attachment 1 as part of this proposal and will be a part of the Agreement between the Municipality of Princeton and Whitman.

7.0 TERMS AND CONDITIONS

Whitman's Standard Terms and Conditions are included as Attachment 2 as part of this proposal.

8.0 SUMMARY

This proposal describes the services to be provided by Whitman to the Municipality of Princeton at the site located in Princeton, New Jersey. The estimated cost to complete the Scope of Work is **\$5,000**.



Robert V. Kiser, P.E.
Municipal Engineer
Municipality of Princeton
Proposal #32760
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To acknowledge receipt and concurrence with this proposal and the Scope of Work, please return a signed copy of this proposal. Please contact me at (732) 390-5858 if you have any questions regarding this proposal.

Very truly yours,



Ira L. Whitman, P.E., LSRP
Principal

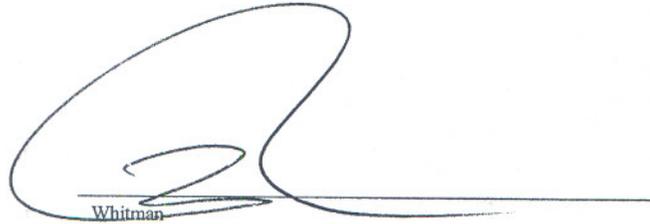
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Attachment

cc: Barry Skoultchi, P.E., CEO, Whitman

Acknowledgement, Municipality of Princeton

Robert V. Kiser, P.E.

Robert V. Kiser, P.E.
Municipal Engineer
Municipality of Princeton
Proposal #32760
January 30, 2014
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Whitman

Client's or Agent's Signature

Barry Skoultchi, P.E.

Type or Print Name of Client or Agent

Type or Print Name

Name of Company

CEO

Title

Date

January 30, 2014

Date

Name & Address of Whom to Invoice:

Name

Company

City, State, Zip

Address

Phone Number

ATTACHMENT 1

FEE STRUCTURE Proposal #32760

1. Professional fees for the services of Whitman's staff are at the following rates:

Principal	\$260.00 per hour
CEO	\$225.00 per hour
President	\$200.00 per hour
Senior Vice President	\$190.00 per hour
LSRP	\$190.00 per hour
Vice President	\$170.00 per hour
Director	\$155.00 per hour
Senior Project/Technical Manager	\$140.00 per hour
Project/Construction/Technical Manager - II	\$125.00 per hour
Project/Construction/Technical Manager - I	\$115.00 per hour
Senior Engineer - II	\$110.00 per hour
Senior Scientist/Hydrogeologist - II	\$105.00 per hour
Senior Engineer - I	\$100.00 per hour
Senior Scientist/Hydrogeologist - I	\$ 95.00 per hour
Project Engineer - II	\$ 95.00 per hour
Project Scientist/Hydrogeologist - II	\$ 90.00 per hour
Project Engineer I	\$ 90.00 per hour
Project Scientist/Hydrogeologist - I	\$ 85.00 per hour
Staff Engineer - II	\$ 85.00 per hour
Staff Scientist/Hydrogeologist - II	\$ 80.00 per hour
Staff Engineer - I	\$ 80.00 per hour
Staff Scientist/Hydrogeologist - I	\$ 75.00 per hour
CAD	\$ 75.00 per hour
Environmental Technician - II	\$ 70.00 per hour
Environmental Technician - I	\$ 65.00 per hour
Administrator	\$ 60.00 per hour
Environmental Laborer/Driver	\$ 55.00 per hour
Word Processor/Administrative Support	\$ 50.00 per hour

These rates also apply to overtime work.

2. Expert testimony for deposition or trial is billed at 1 ½ standard billing rate.
3. Labor billings include miscellaneous direct costs such as telephone calls, faxes, copying and postage. No charges are levied for use of computers, plotters, or CAD systems.
4. Subcontractors' costs, plus 20% service fee.
5. Daily vehicle use will be invoiced at \$90.00 per day.

