MASON, GRIFFIN & PIERSON
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor and Council of Princeton

From: Edwin W. Schmierer, Esq.

Date: February 27, 2014

Re: Princeton Zoning Board of Adjustment: Louis P. Rago, Esq. Conflict Counsel

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The Princeton Zoning Board of Adjustment will consider a matter for which its attorney, Karen L. Cayci, Esq. has a conflict. The Board has requested that Louis P. Rago, Esq. be appointed as conflict counsel.

To this end, I have prepared and attach hereto a proposed resolution and professional services agreement. We would appreciate your considering this request as a part of your agenda on March 10, 2014.

EWS:kaj

cc: Robert W. Bruschi, Administrator
Kathryn Monzo, Assistant Administrator
Linda S. McDermott, Clerk
Robert V. Kiser, Municipal Engineer
Derek Bridger, Zoning Officer
Debra Rogers, Board Secretary

PRINCETON

COUNTY OF MERCER **STATE OF NEW JERSEY**

RESOLUTION

WHEREAS, there exists a need for professional legal services for the Princeton Zoning Board of Adjustment to serve as conflict counsel for 2014; and

WHEREAS, the Princeton Council wishes to authorize a Professional Services Agreement with Louis P. Rago, Esq., 109 Washington Street, Morristown, New Jersey, 07960 to serve as conflict counsel for said Board during 2014 as authorized pursuant to the provisions of the New Jersey Local Public Contracts Law, *N.J.S.A.* 40A:11-1 *et seq*. which requires that a resolution authorizing the award of a contract for "professional services" must be publicly advertised and 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 a professional services agreement with Louis P. Rago, Esq., 109 Washington Street, Morristown, New Jersey, 07960 to serve as conflict counsel to the Princeton Zoning Board of Adjustment during the calendar year 2014. Services shall not exceed $7,500.00. The Professional Services Agreement authorized by this resolution is on file in the office of the Princeton Clerk and may be inspected during regular office hours.

2. This Agreement is being awarded without competitive bidding as a "Professional Service" contract under the provisions of the New Jersey Local Public Contracts Law because a service will be rendered or performed by a person or persons authorized by law to practice a recognized profession and whose practice is regulated by law.

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

CERTIFICATION

I, Linda S. McDermott, Clerk of Princeton, do hereby certify that the above resolution was adopted by the Mayor and Council of Princeton at its regular meeting held on March 10, 2014.

_____

Linda S. McDermott, Clerk
Princeton

2014

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement entered into on this 10th day of March, 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 Louis P. Rago, Esq., 109 Washington Street, Morristown, New Jersey, 07960 (hereinafter referred to as the "Attorney").

WITNESS

WHEREAS, the Princeton Zoning Board of Adjustment during 2014 will require special legal services from time to time with the Board attorney has a conflict; and

WHEREAS, the Princeton Zoning Board of Adjustment has recommended the appointment of the Attorney to serve the Board as special conflict counsel; and

WHEREAS, Princeton has adopted a resolution authorizing the award of a contract for professional services to the Attorney to serve as conflict counsel to the Princeton Zoning Board of a Adjustment without competitive bidding as authorized by *N.J.S.A.* 40A:11-1 *et seq.*

NOW THEREFORE, it is agreed by and between Princeton and the Attorney as follows:

1. Princeton, for and on behalf of the Princeton Zoning Board of Adjustment hereby appoints the Attorney to serve as special legal counsel to said Board for the calendar year 2014 with regard to conflicts related to services by the regular Board attorney.

2. Princeton, through said Board, shall compensate the Attorney for 2014 at the rate of $165.00 per hour for routine, escrow and litigation services for a sum not-to-exceed $7,500.00.

3. As requested by said Board, the Attorney will assist with the review and processing of all land development applications coming before said Board for which the Board

requires the Attorney's services. Additionally, the Attorney shall be available to said Board to provide legal services on routine legal matters and litigation, should the need for said services arise as specifically authorized by said Board through the Director of Planning.

4. For all of the Attorney's work associated with the processing of land development applications before the Board, no work shall be undertaken or completed by the Attorney until specifically authorized by the Director of Planning. This work will only be authorized after it has been confirmed that the applicant has deposited sufficient escrow funds as referred to hereinbelow. A Certificate of Availability of Funds by Princeton Chief Financial Officer is required at this time since services will not be requested until sufficient escrow funds have been received in the appropriate land development escrow account for the Attorney's work.

5. The Attorney shall prepare and submit to the aforementioned Board on a monthly basis an itemized statement setting forth the professional legal time spent, hourly rate for said professionals and reimbursable direct expenses. A brief description of the work completed on each matter shall also be submitted. Separate invoices shall be prepared by the Attorney for each development application. Princeton, through said Board, will bill against the various land development escrow deposits for the specific work performed by the Attorney on a given land development application. Copies of all invoices shall be furnished by the Attorney to the land development applicant as required by *N.J.S.A.* 40:55D-53.1. All invoicing shall comply with the requirements of the Office of the State Comptroller's Report dated June 25, 2014.

6. Princeton and the Attorney hereby incorporate into this Agreement the mandatory Affirmative Action/Non-Discrimination Requirements set forth on Exhibit A attached.

7. The Attorney shall submit to Princeton Chief Financial Officer its New Jersey Business Registration Certificate in accordance with the requirements set forth on Exhibit B attached.

8. The Attorney shall comply with the requirements of the New Jersey Local Unit Pay-to-Play Act, *N.J.S.A.* 19:44A-20.7 per Exhibit C attached.

9. The Attorney shall submit to the aforementioned Board Secretary a copy of the Attorney's Professional Liability Insurance Certificate naming Princeton as an additional insured.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seal 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

WITNESS

_____

By:_____
Louis P. Rago, Esq.

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.