MASON, GRIFFIN & PIERSON
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Mayor & Council of Princeton

From: Edwin W. Schmierer, Esq.
Assistant Municipal Attorney

Date: May 21, 2014

Re: Resolution and Professional Services Agreement: Miller, Porter & Muller, PC

Miller, Porter & Muller, PC have been reappointed by the Princeton Planning Board as the Board's attorneys for 2014. The Mayor and Council adopted a resolution on January 27, 2014 appropriating the sum of $7,500.00 for their legal services to the Board under the then-2014 Princeton temporary budget.

The total sum required by the Planning Board for the Miller, Porter & Muller, PC services for the entire year of 2014 totals $34,000.00. The Planning Board has approved this figure.

Consequently, I have prepared and attach hereto a proposed resolution and supplemental professional services agreement appropriating the sum of $34,000.00 for the Planning Board legal services for 2014.

We would appreciate your considering this matter as a part of a future agenda.

EWS:kaj

cc: Robert W. Bruschi, Administrator
Kathryn Monzo, Assistant Administrator
Linda S. McDermott, Municipal Clerk
Robert V. Kiser, P.E., Municipal Engineer
Ilene Cutroneo, Planning Board Coordinator

PRINCETON

COUNTY OF MERCER **STATE OF NEW JERSEY**

RESOLUTION

WHEREAS, the Princeton Planning Board ("Board") pursuant to *N.J.S.A.* 40:55D-24 requires the services of legal counsel during the calendar year 2014; and

WHEREAS, the Mayor and Council adopted a resolution on January 27, 2014 appropriating under the then-2014 temporary budget the sum of $7,500.00 for legal services to be provided to the Board by Miller, Porter and Muller, P.C.; and

WHEREAS, Princeton has adopted its 2014 operating budget; and

WHEREAS, the total sum of legal services to be provided by Miller, Porter and Muller, P.C. to the Board for the entire calendar year 2014 totals $34,000.00; and

WHEREAS, the Board has recommended to Princeton that pursuant to the provisions of the New Jersey Local Public Contracts Law, *N.J.S.A.* 40A:11-1 *et seq.* that a resolution be adopted awarding a supplemental contract for "professional services" to Miller, Porter and Muller, P.C. and that the award of the supplemental contract be publicly advertised as required by law.

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 on behalf of the Princeton Planning Board to enter into a supplemental professional services agreement with Miller Porter and Muller, PC, 1 Palmer Square, Suite 540, Princeton, New Jersey, 08540 for a supplemental sum not to exceed $26,500.00. This sum shall be in addition to the initial

appropriation made by Princeton pursuant to the 2014 temporary budget of $7,500.00. The total therefore not-to-exceed figure pursuant to the original agreement and the supplemental agreement for the calendar year 2014 shall be $34,000.00. The agreement authorized by this resolution is on file in the office of the Princeton clerk and with the secretary of the Princeton Planning Board and may be inspected during regular office hours

2. This supplemental contract is being awarded without competitive bidding as a "professional service" 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 10 days of its passage.

CERTIFICATION

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

_____
Linda S. McDermott, Clerk
Princeton

2014

SUPPLEMENTAL PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made on the day of , 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 **MILLER PORTER & MULLER, P.C.**, One Palmer Square, Suite 540, Princeton, New Jersey 08540 (hereinafter referred to as the "**ATTORNEYS**").

WITNESSETH:

WHEREAS, the **PRINCETON PLANNING BOARD** (hereinafter referred to as "**BOARD**") requires legal services for the entire calendar year 2014; and

WHEREAS, the **BOARD**, pursuant to *N.J.S.A.* 40:55D-24, has employed the **ATTORNEYS** as its legal counsel for the calendar year 2014; and

WHEREAS, **PRINCETON** concurred with this appointment by resolution dated January 27, 2014 and appropriated the sum of $7,500.00 for said legal services under the then-2014 temporary budget; and

WHEREAS, **PRINCETON** has adopted its 2014 operating budget; and

WHEREAS, the providing of legal services to the **BOARD** during the entire calendar year 2014 shall exceed the original appropriation; and

WHEREAS, the **BOARD**, by resolution, has appointed the **ATTORNEYS** as its legal counsel pursuant to the provisions of the New Jersey Local Public Contracts Law, *N.J.S.A.* 40A:11-1 *et seq.*, and recommends having **PRINCETON** award a Supplemental Professional Services Contract to the **ATTORNEYS** without competitive bidding for the entire calendar year 2014.

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

1. **PRINCETON** hereby retains for the **BOARD** the **ATTORNEYS** for the entire calendar year 2014 for a total sum not to exceed $34,000.00. There is hereby appropriated the additional sum of $26,500.00 in addition to the original sum of $7,500.00 authorized by resolution dated January 27, 2014 for the total sum of $34,000.00.

2. All of the remaining terms and conditions of the original professional services agreement between **PRINCETON** and the **ATTORNEYS** dated January 27, 2014 shall remain in full force and effect.

3. The parties hereby incorporate into this supplemental agreement the attached affirmative action/non-discrimination addendum as per attached Exhibit "A".

4. The **ATTORNEYS** agree to file with **PRINCETON**'s Chief Financial Officer their updated New Jersey Business Registration Certificate as required by P.L. 2004, c. 57 of the Laws of the State of New Jersey per attached Exhibit "B".

5. The **ATTORNEYS** shall comply with the requirements of the New Jersey Local Unit Pay-to-Play Act, *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

ATTEST:

_____

PRINCETON

By:_____
Liz Lempert, Mayor

MILLER PORTER MULLER, PC

By:_____
Allen D. Porter, 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.