

MASON, GRIFFIN & PIERSON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

MEMORANDUM

To: Princeton Mayor & Council of Princeton

From: Trishka W. Cecil, Esq.



Date: June 20, 2014

**Re: *AvalonBay Communities, Inc. v. Princeton et al.*, Docket No. MER-L-1066-14
Retention of Environmental Attorney to Serve as Co-Counsel**

At its closed session meeting on June 9, 2014, the Princeton Mayor and Council discussed retaining the services of an environmental attorney to serve as co-counsel in the above-captioned litigation. Princeton Administrator Robert Bruschi and this office identified Neil Yoskin of Sokol, Behot & Fiorenzo as an attorney eminently qualified to provide assistance with the various environmental issues raised in the litigation. Mr. Yoskin has reviewed the pleadings and indicated his and his firm's willingness to undertake the required representation at the rate of \$285 per hour for partners and \$225 per hour for associates, for a not-to-exceed sum of \$15,000. Mr. Yoskin would be the primary attorney from his firm assigned to the litigation.

Mr. Yoskin's June 18, 2014 letter proposal and curriculum vitae are attached to this memorandum. I have also prepared and attached hereto a proposed resolution and professional services agreement retaining Mr. Yoskin's services. I would appreciate your considering this matter as a part of your agenda on June 23, 2014.

TWC:kaj

Encl.

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 the professional services of an environmental attorney to serve as co-counsel in litigation captioned *AvalonBay Communities, Inc. v. Princeton et al.*, Docket No. MER-L-1066-14; 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 \$15,000.00 with Neil Yoskin of Sokol, Behot & Fiorenzo to serve as co-counsel in litigation captioned *AvalonBay Communities, Inc. v. Princeton et al.*, Docket No. MER-L-1066-14. 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 23rd day of June, 2014.

Linda S. McDermott, Clerk
Princeton

2014

PROFESSIONAL SERVICES AGREEMENT
(Legal Services)

THIS AGREEMENT, made this ____ day of June, 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 **NEIL YOSKIN and SOKOL, BEHOT & FIORENZO**, 229 Nassau Street, Princeton, New Jersey 08542 (hereinafter referred to as “**COUNSEL**”).

WITNESSETH:

WHEREAS, PRINCETON requires the professional services of an environmental attorney to serve as co-counsel in litigation captioned *AvalonBay Communities, Inc. v. Princeton et al.*, Docket No. MER-L-1066-14; 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 **COUNSEL** to provide said legal services.

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

1. **PRINCETON** hereby retains **COUNSEL** to serve as co-counsel in litigation captioned *AvalonBay Communities, Inc. v. Princeton et al.*, Docket No. MER-L-1066-14.
2. **PRINCETON** agrees to compensate **COUNSEL** at the rate of two hundred and eighty-five dollars (\$285) per hour for partners and two hundred and twenty-five

dollars (\$225) per hour for associates, for a sum not to exceed fifteen thousand dollars (\$15,000.00).

3. **COUNSEL** agrees to designate Neil Yoskin, Esquire as the primary member of **COUNSEL** to provide the above-referenced services.
4. **PRINCETON** and **COUNSEL** hereby incorporate by reference into this Contract the mandatory affirmative action language as set forth on Exhibit A attached hereto.
5. **COUNSEL** agrees to comply with the New Jersey Registration Act as set forth on Exhibit B attached.
6. **COUNSEL** 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

SOKOL, BEHOT & FIORENZO

By: _____
Neil Yoskin, Esquire

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.

SOKOL, BEHOT & FIORENZO

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OF COUNSEL FOR MATTERS OF TAXATION
KULZER & DIPADOVA, P.A.

PLEASE REPLY TO
PRINCETON ADDRESS

June 18, 2014
Via E-mail trishka@mgplaw.com

Dictated but not read.

Trishka W. Cecil, Esq.
Mason Griffin & Pierson
101 Poor Farm Road
Princeton, NJ 08540

RE: Avalon Bay Communities Inc. v. Princeton, et al.

Dear Trish:

Please accept this letter as a proposal for legal services as co-counsel to the municipality of Princeton in the above-captioned matter. We understand that the municipality believes that it is advisable to retain, as co-counsel with your firm, a firm with substantial experience in environmental law. We will be pleased to serve in that capacity. Because of the highly specialized nature of our representation, our proposed hourly rates are \$285 per hour for partners and \$225 per hour for associates. It is my expectation that I would be the primary attorney assigned to the matter. We make this proposal with the understanding that if it goes beyond the range of fees that the municipality has historically paid for counsel, that we would agree to a different fee.

I look forward to hearing from you.

Sincerely,
SOKOL, BEHOT & FIORENZO



Neil Yoskin

NY/cl

SOKOL, BEHOT & FIORENZO
COUNSELLORS AT LAW

NEIL YOSKIN

Neil Yoskin is a partner in the law firm of Sokol, Behot & Fiorenzo, where he chairs the Firm's Environmental Practice Group and is partner in charge of the Princeton office. He is a former staff attorney with the New Jersey Department of Environmental Protection, where he served in a variety of capacities, beginning as Counsel to the Division of Coastal Resources and later as Chief of the Department's Office of Legal Affairs.

Mr. Yoskin's practice includes all aspects of environmental, land use and redevelopment law. He regularly represents clients before the NJDEP, USEPA, the U.S. Army Corps of Engineers, the New Jersey Highlands Council, Pinelands Commission and Meadowlands Commissions and before local land use boards throughout New Jersey. He has litigated matters relating to public access, wetlands, waterfront development, port facility siting, endangered species, solid waste licensing and groundwater pollution in both State and Federal courts.

Mr. Yoskin has represented numerous beachfront property owners and beach clubs in the public access context. In 2007, he successfully represented the Borough of Avalon, New Jersey in challenging DEP regulations that sought to condition state aid for shore protection to requirements that municipalities provide physical access every quarter-mile of beachfront, construct bathrooms every half-mile and allow beach access 24 hours a day without regard to local conditions. In 2012, he was successfully represented the owner of an historic property in challenging DEP's attempt to assign corporate liability to an individual officer under the Wetlands Act and attempting to increase penalties during the pendency of an appeal under the Environmental Enforcement Enhancement Act.

Mr. Yoskin is active in numerous professional and community organizations, including the New Jersey State Bar Association's Environmental and Land Use Law Sections. He has served on USEPA's Environmental Finance Advisory Board and the City of Trenton's Brownfields Advisory Board, and was the recipient of a fellowship in environmental law from the German Marshall Fund of the United States. He has also served as an adjunct faculty member at Seton Hall Law School, and continues to serve as a high school mock trial coach. He is a resident of Lawrenceville, New Jersey.

Mr. Yoskin received his B.A. from the University of Virginia and his J.D. from Temple University, and is admitted to the Bar in New Jersey and Pennsylvania.

Sokol, Behot & Fiorenzo is a full service law firm with offices in Hackensack and Princeton, New Jersey and in New York City. Founded in 1975, The Firm's practice areas include civil litigation, administrative, business, corporate, environmental, land use, redevelopment and real estate law. The Environmental Practice Group, based in the Princeton Office, provides environmental, natural resource, transactional and land use counseling, due diligence, permit compliance, litigation and related services.