

REQUEST FOR PROPOSALS
FOR
SANITARY SEWER SYSTEM EVALUATION CONSULTANT

Issued by the
BOROUGH OF BRADLEY BEACH

Date Issued: March 10th, 2023

Responses due by 12:00 P.M. EST on May 9th, 2023
BOROUGH OF BRADLEY BEACH
CLERK'S OFFICE
701 MAIN STREET
BRADLEY BEACH NJ 07720

REQUEST FOR PROPOSALS FOR SANITARY SEWER SYSTEM EVALUATION CONSULTANT

1.0 PURPOSE AND INTENT

The BOROUGH OF BRADLEY BEACH (the “Borough”), by means of this Request for Proposals for Sanitary Sewer System Evaluation Consultant (the “RFP”) is soliciting proposals from qualified firms interested in performing the services described herein as a Sanitary Sewer System Evaluation Consultant (the “Consultant”) to perform a sanitary sewer system for Bradley Beach.

The Consultant will be engaged for a term of up to a maximum of 180 calendar days, commencing with the date of appointment which is expected to be on or about June 1, 2023. The Borough reserves the right to extend the term of engagement for a period of six (6) months.

2.0

The Borough is seeking a Consultant to conduct a sanitary sewer system evaluation of specific manholes, pump stations and pipes that may be reused in the sale of said property. The Consultant will also prepare a financial analysis for determining the sale of the said property. Specific activities to be performed by the Consultant include, but are not limited to: Manhole Inspections; CCTV Inspections; Pump Station Evaluation; Flow Monitoring; Rate Analysis and Infrastructure Debt.

3.0 PROPOSAL SUBMISSION

8 (eight) copies of the proposal (one (1) unbound, original; seven (7) bound copies; one (1) copy in PDF format on a CD) must be submitted marked “**Sanitary Sewer System Evaluation Consultant**” and addressed to:

BOROUGH OF BRADLEY BEACH MUNICIPAL CLERK
701 Main Street Bradley Beach NJ 07720

Proposals must be received by May 9, 2023 at 12:00 p.m. Eastern Standard Time.

No faxed or email proposals will be accepted. Proposals received after the time and date listed above will not be considered.

The Borough will not be responsible for any expenses in the preparation and/or presentation of the proposals and oral interviews, if any, for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise.

The Borough reserves the right to request additional information if necessary, or to request an interview with firm(s), or to reject any and all proposals with or without cause, and waive any irregularities or informalities in the proposals submitted. The Borough further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting proposals. In the event that all proposals are rejected, the Borough reserves the right to re-solicit proposals.

Responding firms may withdraw their proposals at anytime prior to the final filing date and time, as indicated on the cover page to this RFP, by written notification signed by an authorized agent of the firm(s). The proposal may thereafter be resubmitted, but only up to the final filing date and time.

The responding firm assumes sole responsibility for the complete effort required in the RFP. No special consideration shall be given after proposals are opened because of a firm's failure to be knowledgeable about all requirements of this RFP. By submitting a proposal in response to this RFP, the firm represents that it has satisfied itself, from its own investigation, of all of the requirements of this RFP.

Documents and information submitted in response to this RFP shall become property of the Borough and generally shall be available to the general public as required by applicable law, including the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

The Borough reserves the right to hold oral interviews with any or all of the firms submitting a proposal. The Borough expects to hold oral interviews, if any, on or about the week of May 8th, 2023. If held, each firm being requested to attend oral interviews will be notified by the Borough on or about May 5, 2023.

Communications with representatives of the Borough concerning this RFP, by you or on your behalf, are **NOT** permitted during the term of the submission and selection process. Communications regarding this RFP in any manner **will result in disqualification** from consideration of the firm seeking the appointment as Consultant pursuant to this RFP.

4.0 QUESTIONS AND ANSWERS

Potential bidders will be permitted to ask questions regarding any aspect of this RFP via email. The Borough will also accept questions regarding any aspect of this RFP until 1:00 p.m. EST on April 27th, 2023, from all potential bidders. Questions should be directed via e-mail to:

Mwhile@bradleybeachnj.gov

All answers to questions posed will be posted on the Borough website at www.bradleybeachnj.gov and/or through an addendum (if any) to this RFP made available to all potential bidders at the Borough website.

5.0 SCOPE OF SERVICES

The Scope of Services to be provided by the Consultant pursuant to this RFP is attached hereto as Attachment #1.

6.0 SUBCONTRACTING

The Borough encourages each firm responding to this RFP that to the extent that there are opportunities for such firm to subcontract services under this procurement, the firm will make good faith efforts to subcontract work to qualified small businesses in accordance with the Set Aside Contracting and Subcontracting Program, N.J.A.C. 17:13-4 et seq. and Executive Order No. 71 (McGreevey 2003).

The firm must identify any and all subcontractors in its Proposal (as defined below). Regardless if whether a firm uses a qualified small business subcontractor or a subcontractor that is not a qualified small business, the firm must use the subcontractor identified in the firm's Proposal to perform the services required, unless the firm requests the approval from the Borough for the substitution of a subcontractor who can also provide the services required, with such approval of the Borough to be in the Borough's sole decision.

7.0 THE PROPOSAL

The Proposal to be submitted by your firm consists of the Technical Proposal and the Cost Proposal. Additionally, the requested supporting documents listed must be included with the Proposal.

PLEASE NOTE: Payment for all services provided by the Consultant is subject to the availability and receipt of funds. This engagement is subject to termination for convenience by the Borough, without penalty to the Borough, if funds are not available by the Borough at any time during the term of this engagement.

7.1 INSTRUCTIONS FOR SUBMITTING A TECHNICAL PROPOSAL

The bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Services attached hereto as Attachment #1. The Technical Proposal must consist of the following:

- A. Cover Letter
- B. References
- C. Description of Firm's Prior Experience
- D. Management Overview and Approach
- E. Organization Chart
- F. Key Team Member List
- G. Resumes of Key Team Members
- H. Potential Problems

All of the above items must be addressed in the Technical Proposal in the same order as stated above. Each firm's Technical Proposal will be based upon the evaluation criteria enumerated in Section 10.0 below. The Technical Proposal should be submitted on 8 ½ by 11 inch pages.

A more detailed description of the items required in the Technical Proposal follows:

7.1.A Cover Letter

The bidder must include a cover letter which indicates the full name and address of the firm and the branch office location (if any) that will perform the services described in this RFP. The bidder must indicate the name and contact information for the individual who will be the senior contact person for the responding firm for this engagement. The bidder must also indicate whether the firm is operating as an individual proprietorship, partnership, corporation or a joint

venture. The cover letter should also indicate the state of incorporation of the bidder and list all licenses obtained by the firm enabling it to operate. The cover letter must also include identification of any and all subcontractors of the bidder.

7.1. B References

The bidder must provide at least three (3) client references with contact names and telephone numbers.

7.1. C Description of Firm's Prior Experience

The bidder shall provide a description of those projects which demonstrate the firm's prior experience with sewer system evaluation projects of a similar size and scope as Bradley Beach. The bidder shall also include in the description of such projects of a similar size and scope as Bradley Beach the total value of the sewer system evaluation study performed for such projects. The description of prior experience should include a demonstration of, but not limited to, the bidder's experience with sewer system inflow and infiltration evaluations, manhole inspections, CCTV inspection of sewer pipes, and flow monitoring as well as financial analysis.

7.1. D Management Overview and Approach

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative should convince the Borough that the bidder understands the objectives that the engagement is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the engagement. This narrative should convince the Borough that the bidder's general approach and plans to undertake and complete the engagement are appropriate to the tasks and subtasks involved.

Mere reiterations of the tasks and subtasks set forth in the Scope of Services are strongly discouraged, as they do not provide insight into the bidder's ability to complete the engagement. The bidder's response to this section should be designed to convince the Borough that the bidder's detailed plans and proposed approach to complete the Scope of Services are realistic, attainable and appropriate and that the bidder's proposal will lead to successful completion of the engagement to provide the services requested pursuant to this RFP.

7.1. E Organization Chart

The organization chart must include all Key Team members, their labor category and titles for this engagement and the firm they represent. In the event the respondent firm is a "joint venture," the respondent firm must indicate from which participating firm each Key Team Member originates. For the purposes of this engagement, a "Key Team Member" is a principal,

partner or officer of the firm, or a project executive, project manager, senior principal, studio head or job captain identified in the Technical Proposal as having a responsible role in the successful completion of the services requested pursuant to this RFP and who generally spends or is expected to spend twenty (20) percent or more of his/her time on this engagement.

If the responding firm is a “joint venture”, there must be included a clear statement of responsibility associated with each member and/or entity of the joint venture.

7.1. F Key Team Member List

The responding firm must list each Key Team Member and the percentage of time each Key Team Member will spend on this engagement, based upon a forty (40) hour work week.

7.1. G Resumes of Key Team Members

A resume of each Key Team Member must be included as part of the Technical Proposal.

7.1. H Potential Problems

The bidder should set forth a summary, to the extent possible, of any and all problems that bidder anticipates during the term of the engagement. For each problem identified, the bidder should provide its proposed solution.

7.2 INSTRUCTIONS FOR SUBMITTING A COST PROPOSAL

The bidder shall provide a complete fee schedule, which shall include the fixed fee per unit cost to complete each task and subtask listed in the Scope of Services. The bidder should also include a statement of any assumptions or exclusions underlying the bidder’s Cost Proposal. The bidder shall also provide a total fixed fee based on the sum of all tasks and subtasks to be performed. This total fixed fee shall be the bidder’s firm fixed price to perform the services requested pursuant to the RFP. Please use the Fee Schedule Form attached hereto as Attachment #6 to present your firm’s proposed fees for this engagement. If the Fee Schedule does not contain a specific category applicable to your firm’s proposed fees, please append such additional information to the Fee Schedule Form.

The information provided will be taken into consideration as part of the selection process. Failure to submit all information required may result in the bid being considered non-responsive. Each bidder is required to hold its prices firm through the selection process and the appointment of the Consultant by the Borough.

8.1 On-site Hours of Work

On-site work will be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. No on-site work will be permitted on Federal holidays.

8.2 Property Damage Caused by the Consultant

The Consultant is responsible to repair/restore in kind, any damage to property resulting from the Consultant's activities in performing the tasks required by this engagement, including, but not limited to: damage to pavement, turf, curbing and vegetation.

9.0 MISCELLANEOUS DOCUMENTS

The following documents must be included with the Proposal in order for the Proposal to be considered responsive:

1. New Jersey Business Registration Certificate. A valid New Jersey Business Registration Certificate is required. If the firm is not already registered with the New Jersey Division of Revenue, the form should be completed, online, at the Division of Revenue website at: <http://www.state.nj.us/treasury/revenue/index.html>.

2. Chapter 51. Pursuant to Public Law 2005, Chapter 51 ("Chapter 51"), State departments, agencies and authorities, such as the Borough, are precluded from awarding contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, to avoid any appearance that the selection of Borough contractors is based on the contractors' political contributions. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C. 527 that also meet the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. **Please refer to Attachment #2 which explains the requirements of Chapter 51. Failure to submit the attached certification form(s) and disclosure form(s) shall be cause for rejection of your firm's proposal.** The firm selected to provide services to the Borough as the Consultant shall maintain compliance with Chapter 51 during the term of their engagement.

3. Chapter 271. Pursuant to Public Law 2005, Chapter 271, please be advised of your firm's responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC"), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if your firm receives contracts in excess of \$50,000 from a New Jersey public entity, such as the Borough, during a calendar year. It is your firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or www.elec.state.nj.us.

4. Chapter 92. Pursuant to Public Law 2005, Chapter 92 (“Chapter 92”), please identify the location by country where the services will be performed. Pursuant to Chapter 92, all services performed by firms selected pursuant to this RFP shall be performed within the United States of America.

5. Public Law 2006, Chapter 16 Political Contributions Certification. Pursuant to Public Law 2006, Chapter 16 (“Chapter 16”), the Borough is precluded from entering into a contract having an anticipated value in excess of \$17,500, with a “business entity”, if, on or after September 1, 2004, or 18 months prior to the dissemination of a request for proposals, the business entity has made a contribution that is reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 *et seq.*) to the candidate committee of any person serving as a member of the Borough when the contract is awarded or to the State, county or municipal committee of the political party to which any person serving as a member of the Borough belongs when the contract is awarded. **Please see Attachment #4 for the form of the Chapter 16 political contributions certification. Failure to submit the Chapter 16 political contributions certification shall be cause for rejection of your firm’s proposal.**

A business entity that has entered into a contract, having a value in excess of \$17,500, with the Borough, shall not make, during the duration of the contract, a contribution that is reportable by the recipient under P.L. 1973, c. 83 to the candidate committee of any person serving as a member of the Borough or to the State, county or municipal committee of the political party to which any person serving as a member of the Borough belongs. **Please note: The selected firm will be required to submit a political contributions certification on an annual basis in substantially the same form as Attachment #3.**

For purposes of the Chapter 16 political contributions certification, a “business entity” has the same meaning as prescribed by section 5 of Public Law 2005, Chapter 51. Please see Attachment #3 for the definition of “business entity”.

6. Standard Terms and Conditions. By submitting a Proposal, the firm agrees that if selected, it shall be bound by the Standard Terms and Conditions

7. **Note:** Required insurance coverages/policies to be held by the firm appointed as Consultant are set forth in the Standard Terms and Conditions.

8. Confidentiality Agreement. The firm appointed as Consultant will be required to enter into a confidentiality agreement with the Borough, the form of which will be provided to the firm to be appointed as Consultant at the conclusion of the selection process. The executed confidentiality agreement must be returned to the Borough prior to the commencement of performance by the Consultant. The form of the confidentiality agreement is not subject to negotiation and no proposed comments or revisions will be entertained by the Borough.

10.0 SELECTION PROCESS

10.1 All proposals will be reviewed to determine responsiveness. Non-responsive proposals will be rejected without evaluation. Responsive proposals will be evaluated by an evaluation committee pursuant to the criteria specified below. The Borough reserves the right to request clarifying

information subsequent to submission of the proposal, if necessary.

10.2 An evaluation by Mayor and Council will review and score each Technical Proposal pursuant to the criteria specified below in Section 10.3.

10.3 The criteria used to evaluate responsive Technical Proposals shall include, but not be limited to expertise, capacity, experience and personnel and may include the following evaluation criteria categories:

- (1) Bidder's general overview and approach in meeting the requirements of this RFP;
- (2) Bidder's detailed approach and plans to perform the services required by the Scope of Services;
- (3) Bidder's experience in successfully completing projects of a similar scope and size to that required by this RFP;
- (4) Qualifications and experience of Key Team Members assigned to work with the Borough;
- (5) Overall quality of response to RFP; and.
- (6) Quality of oral interview, if any
- (7) Disclosure of Prohibited Activities

10.4 The evaluation will be based upon the information provided to the Borough in response to this RFP and any necessary verification of such information provided thereof.

10.5 Proposals will receive a final technical ranking based on the Technical Proposal's evaluation, except that, at its sole option, the Borough may conduct interviews, and such interviews, when employed, shall determine the final technical ranking, based on the evaluation criteria.

10.6 Following the final technical ranking, the Cost Proposals will be opened and evaluated by Borough staff. Using the Cost Proposals as a guideline, the Borough shall negotiate engagement with the firm with the highest-ranked Technical Proposal, at a compensation level that the Borough determines to be fair and reasonable. Should the Borough be unable to negotiate a satisfactory engagement with any such firm, the Borough may select additional firms in order of their ranking and continue negotiations until an agreement is reached or, at its option, the Borough may reject any or all Proposals. The Borough reserves the right to negotiate and/or request best and final offers from the selected bidder, as the Borough may deem appropriate in its sole discretion.

10.7 Notwithstanding anything to the contrary, the Borough has no obligation to make an award and reserves the right to waive any non-material defects, reject all Proposals for any reason and terminate the selection process at any time.

A. TIMETABLE

A tentative timeline for the major milestones of this engagement are set forth below. This timeline is subject to change by the Borough, at the Borough's sole discretion, as events and conditions warrant.

Approval of Appointment of Consultant by Borough Mayor and Council	On or about June 2023
Project Initiation Meeting	On or about July 2023
Project Start Date	On or about July 2023
Interim Report - Borough Council Meeting	September 2023
Final Report - Borough Board Meeting	September 2023
Final Report and project completion	October 2023

APPENDIX A

LETTER OF QUALIFICATION

(Note: To be typed on Respondent's Letterhead. No modifications may be made to this letter)

Date: _____

Kimberly Humphrey, Administrator, QPA
Borough of Bradley Beach
701 Main Street
Bradley Beach, NJ 07720

Re: LETTER OF QUALIFICATION

Dear Ms. Humphrey

The undersigned has/have reviewed my/our Qualification Statement/Proposal submitted in response to the Request for Qualifications (RFQ/RFP) issued by the Borough of Bradley Beach ("Borough"), dated OCTOBER 31, 2022, in connection with the Borough's need for a_____.

I/We affirm that the contents of the enclosed Qualification Statement/Proposal (which Qualification Statement/Proposal is incorporated herein by reference) is accurate, factual and complete to the best of our knowledge and belief and that the Qualification Statement/Proposal is submitted in good faith upon express understanding that any false statement may result in the disqualification of

_____(Respondent).*

Signed: _____

Printed: _____

Title: _____

- * If a joint venture, partnership or other formal organization other than a natural person is submitting a Qualification Statement/Proposal, this Letter of Qualification must be signed by an individual with the legal authority to bind the organization.

APPENDIX C
BUSINESS ENTITY DISCLOSURE CERTIFICATION AND POLITICAL CONTRIBUTION FORM

BUSINESS ENTITY DISCLOSURE CERTIFICATION FOR NON-FAIR AND OPEN CONTRACTS

Required Pursuant To N.J.S.A. 19:44A-20.8

BOROUGH OF BRADLEY BEACH

Part I – Vendor Affirmation

The undersigned, being authorized and knowledgeable of the circumstances, does hereby certify that _____ has not made and will not make any reportable contributions pursuant to N.J.S.A. 19:44A-1 et seq. that, pursuant to P.L. 2004, c. 19 would bar the award of this contract in the one year period preceding January 1, 201_ to any of the following named candidate committee, joint candidates committee; or political party committee representing the elected officials of the *Borough of Bradley Beach* as defined pursuant to N.J.S.A. 19:44A-3(p), (q) and (r).

Part II – Ownership Disclosure Certification

☐ I certify that the list below contains the names and home addresses of all owners holding 10% or more of the issued and outstanding stock of the undersigned.

Check the box that represents the type of business entity:

- ☐ Partnership ☐ Corporation ☐ Sole Proprietorship ☐ Subchapter S Corporation
☐ Limited Partnership ☐ Limited Liability Corporation ☐ Limited Liability Partnership

Name of Stock or Shareholder	Home Address

Part 3 – Signature and Attestation:

The undersigned is fully aware that if I have misrepresented in whole or part this affirmation and certification, I and/or the business entity, will be liable for any penalty permitted under law.

Name of Business Entity: _____ Signed: _____ Title: _____

Print Name: _____ Date: _____

Subscribed and sworn before me this _____ day of _____, 2_____. My Commission expires: _____	
_____	(Affiant)
_____	(Print name & title of affiant) (Corporate Seal)

PUBLIC LAW 2006, CHAPTER 16 POLITICAL CONTRIBUTIONS CERTIFICATION

I, _____, the _____ of _____,
HEREBY CERTIFY that pursuant to Section 11 of P.L. 2006, c. 16, that no contribution, on or after September 1, 2004, that is reportable by the recipient of such contribution pursuant to P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to the candidate committee of any person serving as a member of the BOROUGH OF BRADLEY BEACH (the "Borough") or to a State, county or municipal committee of the political party to which any person serving as a member of the Borough belongs to when the contract is awarded has been made, and that this certification has been made with full knowledge that the Borough shall rely upon the truth of the statements contained.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 200__.

Firm Name: _____

By: _____
Name:
Title:

BUSINESS ENTITY DISCLOSURE CERTIFICATION
FOR NON-FAIR AND OPEN CONTRACTS
Required Pursuant To N.J.S.A. 19:44A-20.8
BOROUGH OF BRADLEY BEACH

The following is statutory text related to the terms and citations used in the Business Entity Disclosure Certification form.

“Local Unit Pay-To-Play Law” (P.L. 2004, c.19, as amended by P.L. 2005, c.51) 19:44A-20.6

Certain contributions deemed as contributions by business entity.

5. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

19:44A-20.7 Definitions relative to certain campaign contributions.

6. As used in sections 2 through 12 of this act:

“business entity” means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

“interest” means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

Temporary and Executing

12. Nothing contained in this act shall be construed as affecting the eligibility of any business entity to perform a public contract because that entity made a contribution to any committee during the one-year period immediately preceding the effective date of this act.

~~~~~  
**The New Jersey Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-1 et seq.)**

**19:44A-3 Definitions.** In pertinent part.

p. The term "political party committee" means the State committee of a political party, as organized pursuant to R.S.19:5-4, any county committee of a political party, as organized pursuant to R.S.19:5-3, or any municipal committee of a political party, as organized pursuant to R.S.19:5-2.

q. The term "candidate committee" means a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) for the purpose of receiving contributions and making expenditures.

r. the term "joint candidates committee" means a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) by at least two candidates for the same elective public offices in the same election in a legislative district, county, municipality or school district, but not more candidates than the total number of the same elective public offices to be filled in that election, for the purpose of receiving contributions and making expenditures. For the purpose of this subsection: ...; the offices of member of the board of chosen freeholders and county executive shall be deemed to be the same elective public offices in a county; and the offices of mayor and member of the municipal governing body shall be deemed to be the same elective public offices in a municipality.

**19:44A-8 and 16 Contributions, expenditures, reports, requirements.**

*While the provisions of this section are too extensive to reprint here, the following is deemed to be the pertinent part affecting amounts of contributions:*

“The \$300 limit established in this subsection shall remain as stated in this subsection without further adjustment by the commission in the manner prescribed by section 22 of P.L.1993, c.65 (C.19:44A-7.2)

## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

### Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee\*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
  - of the public entity awarding the contract
  - of that county in which that public entity is located
  - of another public entity within that county
  - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed \$300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs).

When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." (N.J.S.A. 19:44A-20.26(b)) The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor's submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law.

**NOTE: This section does not apply to Board of Education contracts.**

\* N.J.S.A. 19:44A-3(s): "The term "legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L. 1993, c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures."



## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Required Pursuant To N.J.S.A. 19:44A-20.26

**This form or its permitted facsimile must be submitted to the  
local unit no later than 10 days prior to the award of the**

### Part I – Vendor Information

|              |        |      |  |
|--------------|--------|------|--|
| Vendor Name: |        |      |  |
| Address:     |        |      |  |
| City:        | State: | Zip: |  |

The undersigned being authorized to certify, hereby certifies that the submission provided herein represents compliance with the provisions of N.J.S.A. 19:44A-20.26 and as represented by the Instructions accompanying this form.

Signature

Printed Name

Title

### Part II – Contribution Disclosure

Disclosure requirement: Pursuant to N.J.S.A. 19:44A-20.26 this disclosure must include all reportable political contributions (more than \$300 per election cycle) over the 12 months prior to submission to the committees of the government entities listed on the form provided by the local unit.

☐ Check here if disclosure is provided in electronic form.

| Contributor Name | Recipient Name | Date | Dollar Amount |
|------------------|----------------|------|---------------|
|                  |                |      | \$            |
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**List of Agencies with Elected Officials Required for Political Contribution Disclosure**  
**N.J.S.A. 19:44A-20.26**

**County Name: Monmouth**

Municipalities- Bradley Beach (Mayor and members of governing body, regardless of title):

### STOCKHOLDER DISCLOSURE CERTIFICATION

**Name of Business:**

☐ I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

**OR**

☐ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

**Check the box that represents the type of business organization:**

- ☐ Partnership                      ☐ Corporation                      ☐ Sole Proprietorship  
☐ Limited Partnership    ☐ Limited Liability Corporation    ☐ Limited Liability Partnership  
☐ Subchapter S Corporation

**Sign and notarize the form below, and, if necessary, complete the stockholder list below.**

Stockholders:

|               |               |
|---------------|---------------|
| Name:         | Name:         |
| Home Address: | Home Address: |
|               |               |
| Name:         | Name:         |
| Home Address: | Home Address: |
|               |               |
| Name:         | Name:         |
| Home Address: | Home Address: |
|               |               |

|                                                               |                                 |
|---------------------------------------------------------------|---------------------------------|
| Subscribed and sworn before me this ____ day of _____, 2____. | _____                           |
| (Notary Public)                                               | (Print name & title of affiant) |
| My Commission expires: _____                                  | (Corporate Seal)                |

## **EXHIBIT A**

### **MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127) N.J.A.C. 17:27 et seq.**

#### **GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS**

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

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 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, up- grading, 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.

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.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, 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.

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.

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, race, 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.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: [http://www.state.nj.us/treasury/contract\\_compliance/](http://www.state.nj.us/treasury/contract_compliance/)).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office 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 Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

(2016)

**APPENDIX**  
**A**  
**AMERICANS WITH DISABILITIES ACT OF 1990**  
**Equal Opportunity for Individuals with Disability**

The contractor and the Borough of Bradley Beach of Bradley Beach, NJ, (hereafter "owner") do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. 5121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the *owner shall* expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement

**BOROUGH OF BRADLEY BEACH  
MONMOUTH COUNTY, NEW JERSEY  
NON-COLLUSION AFFIDAVIT**

State of New Jersey County of \_\_\_\_\_ ss:

I \_\_\_\_\_ residing in \_\_\_\_\_  
(name of affiant) (name of municipality)  
in the County of \_\_\_\_\_ and State of \_\_\_\_\_ of full age, being duly sworn  
according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_, (title or  
position) (name of firm)  
the bidder making this Proposal for the bid proposal entitled \_\_\_\_\_,  
(title of bid proposal)

and that I executed the said Proposal with full authority to do so that said bidder had not, directly or indirectly  
entered into any agreement(s), participated in any collusion, or otherwise taken any action in restraint of free,  
competitive bidding in connection with the above-named project; and that all statements contained in said Proposal  
and in this affidavit are true and correct, and made with full knowledge that the \_\_\_\_\_

\_\_\_\_\_ relies upon the truth of the statements contained in said Proposal and in this  
(name of contracting unit)  
affidavit in awarding the contract for the said Project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such  
contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except  
bona  
fide employees or bona fide established commercial or selling agencies maintained by  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Type or print name of affiant under signature

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

My Commission expires \_\_\_\_\_ 20\_\_\_\_ .

**DEBARRED, SUSPENDED AND DISQUALIFIED CONSULTANT AFFIDAVIT**

STATE OF NEW JERSEY

)

)

COUNTY OF

)

I, \_\_\_\_\_ of the Borough of \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of \_\_\_\_\_ being of full age, being duly sworn according to law on my oath depose and say:

I am \_\_\_\_\_, an officer of the firm(s) of \_\_\_\_\_, the Professional making the proposal for the above named work; I executed the said proposal with full authority to do so; said Professional at the time of making this proposal {as applicable, insert "is" or "is not"} included on the State of New Jersey, State Treasurer's List of Debarred, Suspended and Disqualified Professionals; and all statements contained in said proposal and in this affidavit are true and correct and made with the full knowledge that the Borough of Bradley Beach as the Local Unit relies upon the truth of the statements contained in said proposal and in the statements contained in this affidavit in awarding the contract for said work:

- I. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, state or local government agency within the past 3 years;
- II. Does not have a proposed debarment pending; and
- III. Has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

The undersigned further warrants that should the name of the firm making this proposal appear on the State Treasurer's List of Debarred, Suspended and Disqualified Consultants at any time prior to, and during the life of the contract, including the Guaranteed Period, that the Local Unit shall be immediately so notified by the signatory of this Eligibility Affidavit.

**(Insert Exceptions - For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. If no exceptions, insert "None".)**

Subscribed and Sworn

Before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Name and address of Consultant

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name and Title of Affiant

My commission expires: \_\_\_\_\_

Signed: \_\_\_\_\_  
Signature of Officer or Individual





**CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES  
IN RUSSIA OR BELARUS PURSUANT TO P.L. 2022, c. 3**

CONTRACT / BID SOLICITATION TITLE \_\_\_\_\_

CONTRACT / BID SOLICITATION No. \_\_\_\_\_

**CHECK THE APPROPRIATE BOX**

☐

I, the undersigned, am authorized by the person or entity seeking to enter into or renew the contract identified above, to certify that the Vendor/Bidder is not engaged in prohibited activities in Russia or Belarus as such term is defined in P.L. 2022, c. 3,<sup>1</sup> section 1.e, except as permitted by federal law.

I understand that if this statement is willfully false, I may be subject to penalty, as set forth in P.L. 2022, c.3, section 1.d.

**OR**

☐

I, the undersigned am unable to certify above because the person or entity seeking to enter into or renew the contract identified above, or one of its parents, subsidiaries, or affiliates may have engaged in prohibited activities in Russia or Belarus. A detailed, accurate and precise description of the activities is provided below.

Failure to provide such description will result in the Quote being rendered as non-responsive, and the Department/Division will not be permitted to contract with such person or entity, and if a Quote is accepted or contract is entered into without delivery of the certification, appropriate penalties, fines and/or sanctions will be assessed as provided by law.

**Description of Prohibited Activity**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Attach Additional Sheets if Necessary.*

If you certify that the bidder is engaged in activities prohibited by P.L. 2022, c. 3, the bidder shall have 90 days to cease engaging in any prohibited activities and on or before the 90<sup>th</sup> day after this certification, shall provide an updated certification. If the bidder does not provide the updated certification or at that time cannot certify on behalf of the entity that it is not engaged in prohibited activities, the State shall not award the business entity any contracts, renew any contracts, and shall be required to terminate any contract(s) the business entity holds with the State that were issued on or after the effective date of P.L. 2022, c. 3.

\_\_\_\_\_

Signature of Vendor's Authorized Representative

\_\_\_\_\_

Date

\_\_\_\_\_

Print Name and Title of Vendor's Authorized Representative

\_\_\_\_\_

Vendor Name

\_\_\_\_\_

Vendor Phone Number

\_\_\_\_\_

Vendor Address (Street Address)

\_\_\_\_\_

Vendor Fax Number

\_\_\_\_\_

Vendor Address (City/State/Zip Code)

\_\_\_\_\_

Vendor Email Address for Authorized Representative

<sup>1</sup> Engaged in prohibited activities in Russia or Belarus means (1) companies in which the Government of Russia or Belarus has any direct equity share; (2) having any business operations commencing after the effective date of this act that involve contracts with or the provision of goods or services to the Government of Russia or Belarus; (3) being headquartered in Russia or having its principal place of business in Russia or Belarus, or (4) supporting, assisting or facilitating the Government of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit.

NJ Rev. 6.6.2022

## STANDARD TERMS AND CONDITIONS

By submitting a proposal in response to the Request for Proposal (“RFP”) for services, the bidder certifies that it understands and agrees that all of the following terms, conditions and definitions (collectively, “Standard Terms and Conditions”) are part of any contract(s) awarded as a result of the RFP unless specifically and expressly modified by reference in the RFP or in a writing executed by an authorized officer of the BOROUGH OF BRADLEY BEACH.

**I. Definitions:** As used in these Standard Terms and Conditions, the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

“Borough” means the BOROUGH OF BRADLEY BEACH. The Borough is the intended beneficiary of the Contract.

“Bidder” means any person or entity submitting a proposal in response to the RFP to provide the Borough services specified in the RFP.

“Contract” means a mutually binding legal relationship obligating the Contractor to furnish services and the Borough to pay for them. The Contract consists of these Standard Terms and Conditions, the RFP, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the “contract” does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract. The Contract can only be modified or amended by a writing signed by an authorized officer of the Borough and of the Contractor.

“Contractor” means the person or entity which submits a proposal in response to the RFP and to whom (or which) the Contract is awarded.

“Request for Proposal” or “RFP” means a request for offers or proposals to provide the sought after services as specified herein.

“Shall” denotes a mandatory condition.

“State” means the State of New Jersey.

## **II. Applicability and incorporation of standard terms and conditions:**

**A.** These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is specifically instructed otherwise in the RFP or in any other amendment

thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with the same unless the RFP specifically indicates otherwise.

**B.** All of the Borough's Standard Terms and Conditions will become part of the Contract awarded as a result of this RFP, whether stated in part, in summary or by reference. In the event the Contractor's terms and conditions conflict with the Borough's, the Borough's Standard Terms and Conditions will prevail, unless the Contractor is notified in writing of the Borough's acceptance of the Contractor's terms and conditions.

### **III. Contractor's Status and Responsibilities:**

**A. Contractor's Status:** The Contractor's status shall be that of an independent contractor and not that of an employee of the State or the Borough.

**B. Contractor's Certification as to its Representations:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that the violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for termination of the contract award. In addition, the Contractor's violation of any statute or regulation relating to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor's enforcement of its rights under the Contract including any and all claims at law or equity.

**C. Contractor's Performance:** The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the Borough of any changes in circumstances which might affect the Contractor's ability to be awarded or to perform its obligations under the Contract.

**D. Responsibilities of Contractor:**

1. The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all services to be furnished by the Contractor under the Contract.
2. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services furnished under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the Borough of any rights under the Contract or of any cause of action arising out of the Contractor's performance of the Contract.

3. The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the Corporation has or may have for latent defects or errors or other breaches or warranty or negligence.
  4. Except for those subcontractors identified in the Contractor's response to the RFP, the Contractor shall not hire, employ or otherwise engage subcontractors to furnish the performance contemplated by the Contract, unless the prior written approval of the Borough is obtained by the Contractor.
  5. The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the Borough may have against the Contractor.
- E. **Investigation:** By submitting a proposal in response to the RFP, the bidder certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.
- F. **Cost Liability:** The Borough assumes no responsibility and no liability for costs incurred by the bidder prior to the award of the Contract and thereafter only as specifically provided in the Contract.
- G. **Indemnity/Liability to Third Parties:**
1. The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the Borough, its officers, employees and attorneys from and against any and all claims, demands, suits, actions, recoveries, judgments, liabilities and costs and expenses which may arise out of the breach of any term of the Contract or the default thereunder by the Contractor, its employees, servants or agents and on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the services supplied under this Contract.
  2. The Contractor shall hold and save the Borough, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Contract.
  3. The Contractor further agrees that:

- a) Any approval by the Borough of the work performed by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;
  - b) The Borough assumes no obligation to indemnify or save harmless the Contractor, its agents, servants or employees for any claim which may arise out of its performance of the Contract; and
  - c) The provisions of this indemnification shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the Borough from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.
- H. **Availability of Records:** The Borough has the right to request, and the Contractor agrees to furnish free of charge, all information and copies of all records and documents which the Borough requests. The Contractor shall allow the Borough to visit the office(s) of the Contractor periodically, upon reasonable notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate with the Borough may be, at the Borough's discretion, cause for termination of the contract award and/or suspension or debarment of the Contractor from the Borough.
- I. **Data Confidentiality:** All data not otherwise publicly available contained in documents supplied by the Borough after the award of the Contract, any data not otherwise publicly available gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered confidential and shall be solely for the use of the Borough. The Contractor is required to use reasonable care to protect the confidentiality of the data. Any use, sale or offering of this data in any form by the Contractor, its employees, agents, servants or assignees will be considered in violation of the Contract and will cause the information to be reported to the State Attorney General for possible prosecution. Penalties for violations of this provision include, but are not limited to, termination of the contract award and/or legal action without the Borough being liable for damages, costs and/or attorney fees. The Contractor shall be liable for any and all damages arising from its breach of this confidentiality provision.
- J. **No Waiver of Warranties or Remedies at Law or Equity:** Nothing in the Contract shall be construed to be a waiver by the Borough or any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by an authorized officer of the Borough. Further, nothing in the Contract shall be construed to be a waiver by the Borough of any remedy available to the Borough under the Contract, at law or equity except as specifically and expressly stated in a writing executed by an authorized officer of the Borough.

- K. **Publicity:** Publicity and/or public announcements pertaining to the services being furnished pursuant to the Contract shall be approved by the Borough.

#### IV. **Contractual Relationship:**

- A. **Assignment:** The Contractor shall not assign or transfer its obligations or rights, under the Contract without the prior written consent of the Borough. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Borough shall not relieve the Contractor of any duty; obligation or liability assumed by it under the Contract and shall be cause for termination of the contract award.
- B. **Mergers, Acquisitions and Dissolution:**
1. **Merger or Acquisition:** If, subsequent to the award of any contract, resulting from the RFP, the Contractor shall merge with or be acquired by another firm, the Borough may terminate the contract award upon ten (10) days notice to the Contractor. In such case, the provisions of VI.C. And D shall apply.
  2. **Dissolution:** If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Borough must be so notified. Upon receipt of such notice, the Borough may terminate the Contract, in which case the provisions of VI. C. and D. shall apply. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.
- C. **Notice:** The Contractor shall promptly provide notice to the Borough of all information related to its merger, acquisition and/or dissolution.

V. **Mandatory Compliance with Law:** The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the Borough. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and is available for review at the State Library, 155 West State Street, Trenton, New Jersey 08625.

#### A. **Corporate Borough:**

1. All New Jersey corporations must obtain a Certificate of Incorporation from the Office of the Secretary of State of New Jersey prior to conducting business in the State of New Jersey.

2. If a bidder is a corporation incorporated in a state other than New Jersey, the Contractor must obtain a Certificate of Borough to do business from the Office of the Secretary of State of New Jersey prior to receipt of the final contract award. Within seven (7) days of its receipt of a notice of intent to award, the successful bidder shall provide either a certification or notification of filing with the Secretary of State. Failure to comply may result in the Borough withdrawing the notice of intent to award.
3. If the bidder awarded the Contract is an individual, partnership or joint venture not residing in this State or a partnership organized under the laws of another state, then the bidder shall execute a power of attorney designating the Secretary of State as his true and lawful attorney for the sole purpose of receiving process in any civil action which may arise out of the performance of the Contract. The appointment of the Secretary of State shall be irrevocable and binding upon the bidder, his heirs, executors, administrators, successors and assigns. Within ten (10) days of receipt of this service, the Secretary of State shall forward same to the bidder at the address designated in the bidder's proposal.

B. **Affirmative Action:** During the performance of the Contract, the Contractor agrees to comply with the requirements of P.L. 1975, c.127 (N.J.A.C. 17:27), as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, up-grading, 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.
2. The Contractor 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, sex, affectional or sexual orientation.
3. The Contractor 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 Borough's contracting

officer, advising the labor union or worker's representative of the Contractor's commitments under the act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor agrees to comply with the regulations promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, and the Americans with Disabilities Act.
5. The Contractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2, promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.
6. The Contractor agrees to inform, in writing, appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
7. The Contractor 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 applicable Federal Law and applicable Federal Court decisions.
8. The Contractor 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, sex affectional or sexual orientation, and conform with the applicable employment goals, consistent with the status and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal Court decisions.
9. The Contractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the Office 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 Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the New Jersey Administrative Code (N.J.A.C. 17:27).



- C. **Americans with Disabilities Act:** The Contractor shall abide by the provisions of the Americans with Disabilities Act, 42 U.S.C., Sec. 12101, etseq.
- D. **Bidders Warranty:** By submitting a proposal in response to the RFP, the bidder warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in termination of the contract award without the Borough being liable for damages, costs and/or attorney fees or, in the Borough's discretion, a deduction from the Contract price or consideration the full amount or such commission, percentage, brokerage or contingent fee.
- E. **Standards Prohibiting Conflicts of Interest:** The following prohibitions shall apply to all contracts made with the Borough.
1. No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any officer or employee of the State or the Borough, or special State officer or employee as defined in N.J.S.A. 52:13D-13b and e, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13f of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
  2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by an officer or employee of the Borough from any State Bidder or Contractor shall be reported in writing forthwith by the vendor to the State Attorney General.
  3. No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement express or implied, or sell any interest in such Contractor to any officer or employee of the Borough or special State officer or employee, or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Borough or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.
  4. No Contractor shall influence, or attempt to influence or cause to be influenced any officer or employee of the Borough in his official capacity in any manner which might tend to impair the objectivity or independence or judgment of said officer or employee.

5. No Contractor shall cause or influence, or attempt to cause or influence, any officer or employee of the Borough to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Contractor or any other person.
6. It is agreed and understood that the Borough reserves the right to determine whether a conflict of interest or the appearance of a conflict of interest exists which would under State law adversely affect or would be contrary to the best interest of the Borough.

**VI. Termination of the Contract Award:** The Borough may terminate the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:

- A. **For Convenience:** Where circumstances change and/or the needs of the Borough change, or the Contract is otherwise deemed by the Borough to no longer be in the public interest or the services of the Contractor are no longer desired by the Borough, the Borough may terminate the contract award upon no less than thirty (30) days notice to the Contractor. In the event of such a termination of the contract award, the Contractor shall furnish to the Borough, free of charge, such close-out reports as may reasonably be required.
- B. **For Cause:**
  1. Where a Contractor fails to perform or comply with the Contract, the Borough may terminate the contract award upon ten (10) days notice to the Contractor.
  2. The Borough's right to terminate the contract award for cause includes violation of state and federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the Contractor to fulfill its contractual obligations. The Borough may also terminate any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- C. Upon a termination of the contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered up to the date of termination for that portion of the fee which the services were actually and satisfactorily performed by it, as determined by the Borough, shall bear to the total services contemplated under the Contract, less payments previously made.

- D. Upon termination of the contract award, the Borough may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been terminated the difference in price, and the said Contractor shall be liable for same.

**VII. Contractor Compensation:** The Contractor shall submit invoices no more frequently than every 30 days. Supporting information containing specific details and proof of completion of the tasks and specific units completed shall be provided. Payment will not be made until the Borough has approved payment. Payment of the Contractor is subject to the availability and receipt of funds. The Contract is subject to termination for convenience by the Borough, without penalty to the Borough, if funds are not available and/or received by the Borough at any time during the duration of the Contract.

**VIII. Insurance:** The Consultant shall maintain, at its own cost and expense, the following insurance coverages/policies insuring the Consultant, its employees and agents. In each policy, the Consultant shall have incorporated a provision requiring written notice to the Borough at least thirty (30) days prior to the cancellation, non-renewal or material change of any insurance required under the Contract. Any and all deductibles shall be paid by the Consultant. The Consultant shall provide the renewal date of each policy and shall provide proof of renewal of each policy to the Borough. The types and minimum amounts of insurance required are as follows:

- A. Professional Liability Insurance (Errors & Omissions), with all coverage retroactive to the Consultant's date of appointment by the Borough, covering any and all bodily injury and property damage arising from the services performed under the Contract in an amount not less than \$1,000,000 per occurrence. Such coverage must be maintained for a period of five (5) years after the date of final payment by the Borough hereunder or if coverage is not commercially available for such period of time, then for such shorter period of time as such insurance is commercially available.
- B. Worker's Compensation Insurance and Employers Liability Insurance in accordance with the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of services under the Contract. The coverage shall be statutory with an employer's liability coverage of \$1,000,000 for bodily injury, each occurrence, \$1,000,000 for disease for each employee, and \$1,000,000 for disease, aggregate limit. The policy shall name as additional insured's the Borough and the State of New Jersey.
- C. Commercial General Liability Insurance, including any and all bodily injury and property damage arising out of or in connection with the services performed under the Contract. The policy shall include coverage for contractual liability and shall be in an amount not less than \$1,000,000 per claim; for bodily injury and shall be

in an amount not less than \$500,000 per occurrence, \$1,000,000 aggregate; and for property damage and shall be in an amount not less than \$500,000 per occurrence. The policy shall name as additional insured's the Borough and the State of New Jersey. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.

- D. Comprehensive Automobile Liability Insurance, including coverage for all owned and non-owned and hired vehicles, covering bodily injury and property damage. Such coverage shall be in the amount of \$1,000,000 combined single limit. The policy shall name as additional insured's the Borough and the State of New Jersey.

**IX. Notices:** All notices required under the Contract shall be in writing and shall be validly and sufficiently served by the Borough upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addressee set forth in the Contract. Notice to the Borough shall be mailed to the following address:

Mailing and Overnight Delivery Address:  
BOROUGH OF BRADLEY BEACH  
701 MAIN STREET BRADLEY BEACH NJ 07720

**X. Claims:** All claims against the Borough by the Contractor concerning interpretation of the Contract, Contractor performance and /or termination of the contract award shall be subject to the New Jersey Tort Claims Act N.J.S.A. 59:1-1, et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

**XI. Applicable Law:** This Contract and any and all litigation arising there from or related thereto shall be governed by the applicable law, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

## BOROUGH OF BRADLEY BEACH Fee Schedule

### A. MANHOLE INSPECTION

FIRM ASSIGNED \_\_\_\_\_

## B. CCTV INSPECTION

| <u>Sewer Size</u> | <u>Quantity</u> | <u>Unit Price</u> | <u>Subtotal</u> |
|-------------------|-----------------|-------------------|-----------------|
|-------------------|-----------------|-------------------|-----------------|

Main Post Subtotal \$\_\_\_\_\_

FIRM ASSIGNED \_\_\_\_\_

### C. PUMP STATION EVALUATIONS

FIXED FEE \$\_\_\_\_\_

FIRM ASSIGNED \_\_\_\_\_

#### D. FLOW MONITORING

| <u>Description</u> | <u>Quantity</u> | <u>Unit Price</u> | <u>Subtotal</u> |
|--------------------|-----------------|-------------------|-----------------|
|                    |                 | \$ _____/un       | \$ _____        |

## E. PROJECT ADMINISTRATION/MANAGEMENT

FIXED FEE \$\_\_\_\_\_

FIRM ASSIGNED \_\_\_\_\_

## F. PROJECT FINANCIAL ANALYSIS

FIXED FEE \$\_\_\_\_\_

FIRM ASSIGNED \_\_\_\_\_

**F. FINAL REPORT OF RECOMMENDATIONS**

**FIXED FEE**

**\$** \_\_\_\_\_

**FIRM ASSIGNED** \_\_\_\_\_

**TOTAL PROJECT COST**

**\$** \_\_\_\_\_

**WRITE TOTAL PROJECT COST IN WORDS:**

\_\_\_\_\_

### **Engineer Scope of Work**

Awarded Professional is to act as engineer and consulting advisor to the Borough of Bradley Beach, in an evaluation of the Borough's sanitary sewerage system. The evaluation will meet the letter and intent of the Water Infrastructure Protection Act (WIPA), such that – if the Borough concludes that expedited sale of the sewer system is in its best interest – the necessary technical and financial analytic framework will be in-place to proceed with such a sale, as regulated by NJDEP, NJBPU, and the NJ Department of Community Affairs / Division of Local Government Services.

The engineer firm plans a collaborative effort with Certified Public Accountants and audit advisors – to provide consulting services with regard to the Borough's current fiscal picture, and review of monetary consequences for proceeding to either long-term lease or full sale of the municipal sanitary sewer system. Specifically, awarded professional anticipates the following tasking:

Task 1 – Sanitary Sewerage Asset Inventory and Conditional Assessment

Task 2 – Review of Emergent Condition Criteria

Task 3 – Summary Advisory Framework (Collaboration between Engineer and Financial Consultant)

It is critical to understand that contracted engineer tasking specifically excludes the financial audit component of the feasibility study. This aspect of the work (review of the Borough's rate structure, cash flow, utility agreements with third party agencies, organizational pyramid and salary structure, bonding capacity, financial analysis of the sewer utility, depreciation analysis of infrastructure assets, etc.), is specifically excluded from engineers proposed scope of work, and is anticipated to be performed by financial consultant, covered under this contract between the Borough and Engineer firm and subcontracted financial consultant for proposes to working cooperatively and collaboratively with the Borough and project representatives, to deliver an integrated and complementary set of study documents. Below find a detailed narrative of our proposed work scope:

Task 1 – Sanitary Sewerage Asset Inventory and Conditional Assessment

o Scope of Work – Contracted firm will conduct a kickoff meeting with members of Borough of operations staff (business administrator, director of public works, sewer system employees) to develop a framework and schedule for proceeding with the greater effort of constructing a sanitary sewer asset inventory, conditional assessment, and obtaining system operations and financial information. Contracted firm will perform a review of system mapping, records of average and peak flows, review existing inspection data and conditional reports, and perform our own independent review of system assets. The contracted firm will provide a project manager and staff engineer for a field review of the entire system, reviewing major drainage sub-areas, the locations of terminal manholes, major collector manholes, selected gravity trunk line manholes, and the existing sanitary sewage pump station and force main. This effort will be an identification process rather than full conditional assessment. The contracted firm will review the Borough's transmission agreement with TNSA. The contracted firm will administer interaction with TNSA regarding historic flows and billing step structure. The contracted firm will review the pending/potential WIPA certification with NJDEP, NJBPU, and NJDCA, with regard to expectations on approach to analysis and reporting. The contracted firm will conduct a review of sewerage collection system with regard to history of compliance, via contact with sewer system case manager at NJDEP Division of Water Quality.

Deliverables – Deliverables under Task 1 will be a series of meeting minutes and an asset inventory report addressed to the Borough, documenting the firms findings with regard to condition of the sewer system and constraints / expectations on the reporting process as expressed by the various agencies either with system regulatory history, or with governance on the process of potential applications for certification to the sell the system. Additionally, the contracted firm will compile and digitize Borough sewer system record

drawings, as-built information, inspection reports, permits, historical compliance documents, and other related data, contributing to an overall digital record of system history and regulatory compliance. The contracted firm will structure same in an accessible fashion, and make such information accessible via our secure, cloud-based file management system (Newforma), with access codes provided to project stakeholder individuals as may be certified by the Borough. The scope of work proposed under Task 1 includes one (1) kickoff meeting with Borough staff, and one (1) follow-up meeting to review the results of our research before transition to detailed analysis and reporting.

o Notes and Exclusions – This evaluation specifically excludes detailed, pipe-by-pipe analysis of the sanitary sewer collection system linear assets (gravity sewer, force mains, the majority of manholes unless specifically cited above). Inspection of critical point assets (terminal manholes, wastewater pump stations, etc) is included in the contracted firms inspection and conditional assessment scope – however, the scope is limited to visual assessment only, and specifically excludes formal structural evaluation and destructive testing, and testing of capacity or conditional of electrical/MEP/controls systems. Rather, the intent of the analysis is to aggregate and make use of existing collection system assessments (such as existing system I/I Study performed in July 2013). Our Task 1 scope of work excludes preparation for and/or attendance at public meetings on behalf of the Borough. If comprehensive inspection of the gravity sewer system is desired (i.e. TV inspection of the gravity collections system), The contracted firm can, provided such support via contract amendment.

#### Task 2 – Review of Emergent Condition Criteria

o Scope of Work – The contracted firm will review the sewer system in comparison to WIPA criteria for certification of emergent conditions. The contracted firm may perform specific point inspections of various points in the system, to verify questions which may arise regarding condition, network connectivity, or system composition / materials of construction.

Deliverables – Deliverable under Task 2 will be a technical memorandum addressed to the Borough, reviewing the criteria promulgated under the WIPA law, and comparing to conditions discovered in the firm's review of the Borough sanitary sewerage infrastructure. The scope of work proposed under Task 2 additionally includes one progress meeting to discuss draft outcomes and narrative language points to be included in the final memorandum.

Exclusions – The Task 2 scope excludes formal outreach to NJDEP to initiate discussions regarding a WIPA-based sale of the Borough's sanitary sewerage system, and excludes coordination with project stakeholders beyond Borough personnel and subcontracted financial firm hired within this contract.

#### Task 3 – Summary Advisory Framework

Scope of Work – Upon completion of the contracted firm's technical evaluation and financial consultant's audit, the Borough may benefit from a series of meetings where the work of these two analyses are reviewed collaboratively, and integrated to a simplified set of information. The contracted firm shall work with the Borough and financial professional in a series of two (2) meetings, to mutually review report results, compare to applicable regulations, discuss the current and near-future market environment for utility sales, and discuss actions items, if any are warranted on behalf of the Borough or other stakeholders.

Deliverables – Deliverable under Task 3 will be a technical memorandum addressed to the Borough, reviewing and memorializing the content and conclusions of the two (2) proposed stakeholders' discussions, and recommending action items and a schedule for immediate and long-term ownership by the involved parties.



Exclusions – The proposed Task 3 scope specifically excludes detailed coordination for actual sale of the sanitary sewerage system, and/or formalized WIPA coordination with NJDEP or other third-party stakeholders beyond the financial professional.

### **Financial Firm Scope of Work**

The financial professional will perform a Utility Valuation and Ratepayer Impact Study Report for the Borough of Bradley Beach utilizing the income approach to valuation to ascertain a value of the system. Through our engagement, we will work with the contracted engineering consulting firm and internal engineers to include the cost of capital improvements deemed necessary to sustain the Utility and address any emergent conditions identified.

All Services and deliverables hereunder shall be solely for your use and benefit pursuant to our client relationship. This engagement does not create privity between the financial consultant and any person or party other than The Borough of Bradley Beach, and is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the Services or deliverables of the financial consultant hereunder.

The sufficiency of the consulting work is solely the responsibility of those parties specified in the agreement. Consequently, we make no representation regarding the sufficiency of the consulting work either for the purpose for which this consulting work has been requested or for any other purpose. If, for any reason, we are unable to complete the consulting work, we will describe any restrictions on the performance of the procedures in our final reporting, or will not issue a report as a result of this engagement.

The financial consultant's Services will not constitute an audit, review, compilation, examination or other form of attest engagement. The financial consultant shall have no responsibility to address any legal matters or questions of law. After completion of the Services, the financial consultant will have no responsibility to update its advice, recommendations or work product for changes or modifications to the law and regulations or for subsequent events or transactions, unless the Client separately engages the financial consultant in writing to do so.

For the financial consultant to remain independent, professional standards require the financial consultant to maintain certain respective roles and relationships with you regarding the Services. You understand and agree that the financial consultant will not perform management functions or make management decisions on your behalf. However, the financial consultant will provide advice and recommendations to assist management in performing its functions and fulfilling its responsibilities. In connection with the financial consultant's provision of Services, you agree that you shall perform the following functions: (a) make all management decisions and perform all management functions with respect to the Services performed by the financial consultant; (b) assign an individual who possesses suitable skill, knowledge and experience to oversee such Services and to evaluate the adequacy and results of such Services; and (c) accept responsibility for the results of such Services.

The successful execution of the project is based upon the following assumptions and dependencies:

- The Client supplies the financial consultant with all requested documentation and supporting materials necessary to execute project activities in a timely fashion.
- The documentation and supporting materials provided by the Client are accurate.
- The Client provides access to the internal resources (people, processes, technology, and facilities) necessary to execute project activities in a timely fashion.
- All resources staffed to this project, both at the Client and the financial consultant, are available to perform their required functions.

- In the event of an unplanned change in staffing, the change will be reconciled within a reasonable timeframe.
- Any unanticipated delay in resource and material availability may delay the project timeline.

The fee estimate is based on the dependencies stated herein and the assumption that unexpected circumstances will not be encountered during the engagement. If significant additional time is necessary, we will keep you informed of any problems we encounter and our fees will be adjusted accordingly.

Each party agrees that it will not at any time during or after the termination of this Agreement reveal, divulge or make known to any person, firm or corporation any secret or confidential information concerning the other party's business or operations, which information became known or available to the receiving party during the term of this Agreement ("Confidential Information"). "Confidential Information" means all information relating to the business, business plans, customers, suppliers, operations, methodologies, technologies, systems, hardware, software or procedures of a party that is not generally known to the public and which information is either identified as "Confidential" and/or "Proprietary," or which, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary. Confidential Information shall not include information that (1) is, at the time of disclosure, or thereafter becomes, part of the public domain through a source other than through a breach by the receiving party of the provisions of this Agreement or any other non-disclosure agreement between the parties then in effect; (2) was known to the receiving party at the time of disclosure without any obligation of confidentiality to the disclosing party with respect to such information; (3) is independently developed by the receiving party without the use or assistance of information that otherwise would be independently deemed Confidential Information; or (4) is subsequently learned from a third party not known by the receiving party to be subject to an obligation of confidentiality with respect to the information disclosed.

Each party will, at all times, hold all Confidential Information in confidence. Without express written authorization from the disclosing party, the receiving party will not use Confidential Information for its own benefit or for the benefit of any party other than the disclosing party, and will not duplicate or disclose the Confidential Information in any manner to any other party other than such of its employees who have a need to know such information in connection with their performance of the services described in this engagement letter.

the financial consultant incurs great expense in hiring and training its personnel. Accordingly, during the period beginning with the Effective Date of this Agreement and ending twelve (12) months after the date of the last invoice from the financial consultant to Client, neither the Client nor its respective affiliates will offer employment to or hire any current or recent the financial consultant employee or the financial consultant affiliate or subsidiary employee who had contact with the Client either leading up to or during the provision of Services to the Client under this Agreement, without the prior written consent of the financial consultant. "Recent Employee" shall include any individual employed by the financial consultant during the preceding twelve months. "Employment" shall include any form of employment, consulting, independent contractor relationship, or other arrangement in which an individual will directly or indirectly perform services or work for, or on behalf of, Client. In the event that Client breaches this clause, Client shall pay the financial consultant an amount equal to one hundred percent (100%) of the hired employee's prior twelve (12) month compensation with the financial consultant or with the financial consultant affiliate or subsidiary, not as a penalty but as liquidated damages and compensation.