

**RESOLUTION
TOWNSHIP OF MAHWAH
P.O. BOX 733
MAHWAH, NJ 07430**

Resolution # 304-17

Date: August 24, 2017

Name	Motion	Second	Yes	No	Abstain	Absent
Ariemma						
Ervin						
May						
Sbarra						
Wong						
Wysocki						
Hermansen						

WHEREAS, the Township of Mahwah has recently become involved in litigation entitled *Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah*; and

WHEREAS, the Township Council believes that it would be in the best interest of the Township to retain counsel experienced in this type of litigation; and

WHEREAS, the Township Council desires to retain the firm of Holwell, Shuster & Goldberg, LLP at the rate as set forth on the attached proposal for these services with a limit not to exceed the sum of \$50,000.00; and

WHEREAS, Holwell, Shuster & Goldberg, LLP has indicated a willingness to perform the aforementioned services for the amount offered; and

WHEREAS, the Purchasing Agent has determined and certified in writing that the anticipated aggregate value of this professional service to Holwell, Shuster & Goldberg, LLP will exceed \$17,500.00; and

WHEREAS, the Township Council is awarding this contract at this time without the submission of the Political Contribution Disclosure and other documents required ten (10) days in advance in accordance with N.J.S.A. 19:44A-20.4, et seq., as an exigency exists for these services as a result of the need for immediate legal assistance with respect to the above litigation; and

WHEREAS, Holwell, Shuster & Goldberg, LLP will complete and submit a Business Entity Disclosure Certification, which certifies that Holwell, Shuster & Goldberg, LLP has not made any reportable contributions to a political or candidate committee in the Township of Mahwah in the previous one year, and that it is prohibited from making any reportable contributions through the term of the contract; and

WHEREAS, the Township Council and Holwell, Shuster & Goldberg, LLP will enter into a professional service contract for the services to be rendered with respect to the litigation entitled *Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah*.

NOW, THEREFORE BE IT RESOLVED that the Township Council of the Township of Mahwah hereby authorizes the Mayor and Township Clerk to execute the Agreement between the Township and Holwell, Shuster & Goldberg, LLP at the rate as set forth on the attached proposal not to exceed the total sum of \$50,000.00, and that adoption of the Resolution is contingent upon the Township C.F.O. submitting a certificate as to the availability of funds, and the Township Clerk shall attach said certificate to the original of this Resolution.

BE IT FURTHER RESOLVED that the Township Council of the Township of Mahwah authorizes the Purchasing Agent to approve purchase orders to Holwell, Shuster & Goldberg, LLP, as an alternate non-fair and open contract for professional services, as said.

BE IT FURTHER RESOLVED that Holwell, Shuster & Goldberg, LLP shall submit a complete Business Entity Disclosure Certification within ten (10) days of adoption of this Resolution.

BE IT FURTHER RESOLVED that said Contract is being awarded pursuant to N.J.S.A. 40A:11.5 et seq. because the practice of Professional Legal Services are regulated by law and because it has been determined that the personnel of Holwell, Shuster & Goldberg, LLP, attorneys-at-law, are authorized to practice said profession.

BE IT FURTHER RESOLVED that a notice of this action be printed in the official newspaper of the Township of Mahwah.

BE IT FURTHER RESOLVED, that the Township Clerk be and she is hereby authorized and directed to maintain a copy of the Agreement in her offices for public inspection, pursuant to law.

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be provided to the Township Chief Financial Officer and the law firm of Holwell, Shuster & Goldberg, LLP, and copies to the Business Administrator, Administrative Assistant/QPA, and Township Attorney.

I hereby certify that this resolution consisting of three pages was adopted at a meeting of the Township Council of the Township of Mahwah, 24th day of August, 2017.

Kathrine Coviello, RMC/CMC/MMC
Municipal Clerk

Robert G. Hermansen
Council President

**PROFESSIONAL CONTRACT
BETWEEN
TOWNSHIP OF MAHWAH
AND
HOLWELL, SHUSTER & GOLDBERG, LLP**

THIS AGREEMENT, made effective the _____ day of _____, 2017, by and between the TOWNSHIP OF MAHWAH, a body politic and corporate of the State of New Jersey, party of the first part, hereinafter referred to as the "Township"; and Holwell, Shuster & Goldberg, LLP, 750 Seventh Avenue, 26th Floor, New York, New York 10019, party of the second part, hereinafter referred to as the "Township Special Counsel- Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah".

WITNESSETH:

WHEREAS, there exists a need for legal services in connection with the Township of Mahwah litigation entitled Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah; and

WHEREAS, Holwell, Shuster & Goldberg, LLP, has been appointed as one of the Township Special Counsels for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah.

NOW THEREFORE, the parties hereto, in consideration of the promises and the terms and conditions hereinafter set forth, agree as follows:

1. Township Special Counsel in the matter of Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah shall perform the services required in connection with legal services of the

Municipality as Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah.

2. The Township agrees to pay and Township Special Counsel in the matter of Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah agrees to perform as one of the two Township Counsels for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah. These services shall be billed at an hourly rate, as follows, not to exceed \$50,000.00: James McGuire, Esq. - \$400.00/hour; HSG associates - \$290.00/hour; and paralegals - \$150.00/hour; payable monthly upon the submission of vouchers.

3. The services contemplated by this Agreement shall be performed under the supervision and direction of Holwell, Shuster & Goldberg, LLP.

4. It is understood that within Agreement has been awarded pursuant to N.J.S.A. 40A:11-1(a)(i), because the practice of law is regulated by law and because the Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah represents that their employees are authorized to practice the law profession.

5. During the performance of this Agreement, the Township Special Counsel in the matter of Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah, agrees to follow the affirmative action requirements as set forth in the attached Exhibit A.

6. The Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah shall, within

thirty (30) days of this Agreement of appointment, file, if applicable, Financial Disclosure Statements(s) required by Chapter 29 of the Law of New Jersey 1991. The Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah also agrees that the Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah is a local government officer bound by all of the terms and provisions of that Act and any regulations promulgated pursuant thereto.

7. The Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah agrees that any information, data, material, designs, scheme or plans developed, created or prepared for Mahwah shall be the sole and exclusive property of the Township of Mahwah. Unless the Township consents, no information, data or plans developed for it shall be used in whole or in part directly or indirectly without the prior written consent of the Township.

8. All original work; i.e., plans, reports, memoranda, pleadings, etc., are the property of the Township and shall be delivered to the Township prior to Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah receiving payment for same. The Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah shall, if possible, prepare all material for the Township by way of computer and provide to the Township of Mahwah a disk, either floppy or hard disk, to the Township of Mahwah in addition to the hard copy of all such materials prepared.

9. If the Township Special Counsel for Bergen Rockland Eruv Association, Inc., Yisroel Friedman and S. Moshe Pinkasovits vs. The Township of Mahwah is a corporation, an appropriate corporate resolution accepting this Contract shall be delivered with the signed Contract.

10. The term of this Agreement is for a twelve-month period Commencing August 24, 2017. This agreement provides for an hourly rate out outlined in No. 2 herein, not to exceed \$50,000.00.

11. This Contract is subject to a certification of availability of funds pursuant to N.J.A.C. 5:34-5.3(c)2 as a 12 month contract not coinciding with the Township's fiscal year and upon the appropriation of monies in the 2017 budget.

12. Political Contribution Disclosure: This Agreement has been awarded to the Professional based on the merits and abilities of the Professional to provide the services as described herein. An invitation to bid for this Agreement was not advertised. Accordingly and pursuant to N.J.S.A. 19:44A-20.4 et seq., the undersigned does hereby attest that the Professional, its subsidiaries, assigns or principals controlling excess of 10% of the company has neither made a contribution that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the Agreement that would, pursuant to P.L. 2004, c19, affect its eligibility to perform this Agreement, nor will it make a reportable contribution during the term of the Agreement to any political party committee in the municipality if a member of that political party is serving in an elective public office of that municipality when the Agreement is awarded, or to any candidate committee of any person serving in an elective public office of that municipality when the Agreement is awarded.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed and attested to by their proper corporate officers and their proper corporate seals to be hereto affixed the day and year first above written.

ATTEST:

TOWNSHIP OF MAHWAH

Kathrine G. Coviello, RMC/CMC/MMC
Municipal Clerk

By: _____
William Laforet, Mayor

WITNESS:

HOLWELL, SHUSTER & GOLDBERG, LLP

_____ By: _____

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

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE 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, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

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
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance 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 Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

Vender Name and Title

Date

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

The CONTRACTOR and the OWNER do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "ACT") (42 U.S.C. §12101 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 thereunto, 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 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 proceedings 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 or otherwise at law.

EMERGENCY APPROPRIATION - CURRENT FUND

WHEREAS, an emergency has arisen with respect to the Current Fund of the Township of Mahwah as a result of increased litigation, and no adequate provision was made in the 2017 Municipal Budget for the aforesaid purpose, and N.J.S.A. 40A:4-46 provides for the creation of an emergency appropriation for the purpose above mentioned, and

WHEREAS, the total amount of emergency appropriations created including the appropriation to be created by this resolution is \$100,000.00

and three percent of the total operations in the Current Fund Budget for the year 2016 is \$847,272.96

NOW, THEREFORE, BE IT RESOLVED (not less than two-thirds of all the members thereof affirmatively concurring) that in accordance with N.J.S.A. 40A:4-48,

1) An emergency appropriation be and the same is hereby made for:

General Appropriations
Operations within "CAPS"

Division of Law:
Other Expenses \$100,000.00

- 2) That said emergency appropriation shall be provided in full in the 2018 municipal budget.
- 3) That two certified copies of this resolution be filed with the Director of the Division of Local Government Services.