

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement ("Agreement") is made this ____ day of January 20__ between the Township of Montclair, a body politic and corporate of the State of New Jersey (the "Township") and the following professional service provider ("Provider"):

Name of Provider: Eric M. Bernstein & Associates, LLC

Office address: 34 Mountain Blvd. Building A PO Box 4922 Warren, NJ 07059

Professional license type: Legal Attorney Registration #: 014001982

WHEREAS, it is agreed as follows:

1. **Services.** Provider shall provide the Planning Board with professional services as directed by the Director of Planning. The services to be performed shall include legal services in connection with matters pending before the Planning Board including advice and consultation, attendance at Board meetings, preparation of documents and representation of the Board in lawsuits and other proceedings and other services as may be required from time to time and all services as outlined in the attached proposal dated October 26, 2021. The services shall also include other matters as assigned.

2. **Term.** The term of this Agreement shall be January 1, 2022 through December 31, 2022. The term may not exceed one year.

3. **Compensation.** Provider shall be compensated as follows:

Fixed amount (s): _____

Hourly rate: \$140 per hour for tasks implicating litigation and applicant escrows

Total shall not exceed: \$15,000

The Township shall not be charged for the time spent by Provider preparing, reviewing or discussing its bill for or with the Township. The Township shall also not be charged for Provider's clerical staff.

4. **Disbursements.** In addition to fee income but included in the "not to exceed" limit, Provider will be entitled to payment or reimbursement for the reasonable costs and expenses incurred hereunder on the Township's behalf.

5. **Estimates.** Although Provider will, upon the Township's request, furnish estimates of fees and costs that are anticipated, the parties understand that these estimates are by their nature inexact.

6. **In-House Costs.** The Township shall not be charged for in-house costs for photocopies at a rate greater than ten cents per copy, the line and usage charges for telephone calls, e-mails, or facsimiles.

7. **Billing.** Fees and expenses will be billed monthly upon submission of periodic vouchers accompanied by a statement of services rendered. No payment under this Agreement shall be made until Provider claiming same presents a detailed bill of items on demand specifying particularly how the bill is made up upon a Township voucher form with the Certification of Provider claiming that it is correct, together with a Certification of some officer or duly designated employee of the Township that said goods have been received or the services rendered to the Township. The Township shall not be obligated to pay fees and expenses not billed within sixty (60) days of when incurred.

8. **Communication.** Upon request, Provider shall provide a written update for the Township Provider including a brief description of activity to date, the current status of matters outstanding, what developments are expected during the current quarter and billing information.

9. **Severability of Provisions.** If any provision of this Agreement or the application of any provision to any party or circumstance shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties or to other circumstances.

10. **Waiver of Breach.** The waiver by the Township of any breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition of this Agreement.

11. **Discrimination.** The provisions of N.J.S.A. 10:2-1 through 10:2-4, inclusive, relating to discrimination in employment on public contracts, and rules and regulations promulgated thereunder, are incorporated into the terms and conditions of Provider's retention and made a part of hereof.

12. **Affirmative Action.** Attachment A containing the Affirmative Action requirements is incorporated herein.

13. **Americans with Disabilities Act.** Attachment B containing the Americans with Disabilities Act requirements is incorporated herein.

14. **Political Contribution Disclosure.** Attachment C containing the requirements for a non-fair and open contract is incorporated herein.

This Agreement has been awarded to the Provider based on the merits and abilities of the Provider to provide the goods or services as described herein. This Agreement was not awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. As such, the Provider does hereby attest that the Provider, its subsidiaries, assigns or principals controlling in 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, c.19, 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 Township if a member of that political party is serving in an elective public office of the Township when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the Township when the contract is awarded.

15. **Conflicts of Interest.** During the period of this Agreement, the Provider and all entities with which is engaged shall not accept engagements, do work, for any entity, private or governmental, for work or services in the Township which deal with the functioning, operations, grants, studies, litigation, appearances before its bodies and officials, developmental applications or public work which will be considered a conflict with this Agreement. As a public entity, the Township cannot waive a conflict of interest. Provider agrees to notify the Director of Planning and if further directed, the Township Attorney, immediately if a conflict arises or is discovered during the term of or in the course of performing the services pursuant to this Agreement.

16. **Confidentiality.** Provider agrees that all reports and conclusions are for the confidential use and information of the Planning Board and that Provider will not disclose the conclusions, in whole or in part, to any person or persons whatsoever.

17. **Termination.** Either party shall have the right to terminate this Agreement with or without cause upon providing not less than thirty (30) days prior written notice to the other party. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto.

18. **Notices.** All notice given pursuant to this Agreement shall be in writing and delivered by mailing same, by regular mail, lawyers' service or some other method of overnight delivery to the respective parties at the address set forth below:

Eric M. Bernstein & Associates, LLC
34 Mountain Blvd, Building A
PO Box 4922
Warren, New Jersey 07059

Township of Montclair
Township Manager's Office
205 Claremont Avenue
Montclair, New Jersey 07042

Township of Montclair
Township Attorney's Office
205 Claremont Avenue
Montclair, New Jersey 07042

19. **Hold Harmless.** The Provider specifically agrees to save and hold the Township harmless from all acts of negligence by the Provider which may arise out of this Agreement. This relationship created by this Agreement is that of an independent contractor. Nothing in this Agreement shall be construed so as to create a partnership or any other employee/employer relationship between the parties. Provider agrees to abide by all requirements contained in the "Local Public Contracts Law," N.J.S.A. 40:11-1 et seq. and all local, state and federal laws in effect during the term of this Agreement.

20. **Insurance.** The Provider shall be responsible to maintain all insurance which is required by the laws of the State of New Jersey. The Provider shall maintain professional liability insurance in the amount of at least \$1,000,000.00 at all times during the term of this Agreement.

21. **Agreement.** Provider's signature on this Agreement constitutes acceptance of the foregoing terms and conditions, and if applicable, ratification of those terms and conditions in connection with work already performed. This Agreement constitutes the entire understanding concerning the Township's engagement of Provider and cannot be modified except in a writing signed by both parties.

22. **Additional Provisions.** X None Attached

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement on the dates set forth below.

ERIC M. BERNSTEIN & ASSOCIATES, L.L.C.



By: Eric M. Bernstein

WITNESS:



Name: MERRIE BERNSTEIN

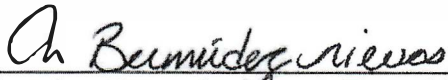
TOWNSHIP OF MONTCLAIR



Timothy F. Stafford, Esq.
Township Manager

1/18/22

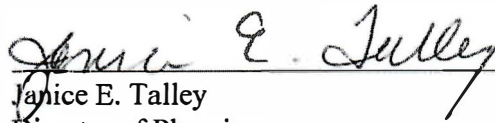
ATTEST:



Angelese Bermudez Nieves, Township Clerk

Authority:

This Agreement was approved on January 10, 2022 by Resolution of the Planning Board of the Township of Montclair.



Janice E. Talley
Director of Planning