

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2014-014

Council Meeting Date: 01-06-2014

Date Adopted: 01-06-2014

TITLE RESOLUTION APPOINTING MICHAEL CRESITELLO AS BOROUGH ATTORNEY FOR THE BOROUGH OF NEW PROVIDENCE COUNTY OF UNION AND STATE OF NEW JERSEY

Councilperson Muñoz submitted the following resolution, which was duly seconded by Councilperson Kapner.

WHEREAS, in accordance with N.J.S.A. 40A:9-139 the Borough of New Providence is required to appoint a Municipal Attorney; and

WHEREAS, the Borough solicited proposals for legal services through a "fair and open" process in accordance with the provisions of N.J.S.A. 19-44A-20.5; and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Michael Cresitello has submitted a proposal, indicating he will provide professional legal services for an amount not to exceed \$75,000.00; and

WHEREAS Michael Cresitello, has completed and submitted a Business Entity Disclosure Certificate which certifies that he has not made any reportable contributions to a political or candidate committee in the Borough of New Providence in the previous one year, and that the contract will prohibit him from making any reportable contributions through the term of the contract, and

WHEREAS, funds are available and have been certified by the Chief Financial Officer; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-5) requires that the resolution authorizing and awarding of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of New Providence that they hereby agree as follows:

1. The Mayor and Borough Clerk are hereby authorized and directed to execute the attached agreement with Michael Cresitello, for professional Legal Services.
2. Such contract is awarded without competitive bids as a "professional service" in accordance with N.J.S.A. 40A:11-5(1) (a) of the Local Public Contracts Law, because the services to be rendered are professional in nature and are unspecifiable as to requirements for performance. Such services must be rendered by a person particularly trained and licensed in this area, which requires extensive specific education and long experience in both the Federal and State procedural requirements.
3. A notice of this action shall be published once in the Courier News.

APPROVED, this 6th day of January, 2014.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 6th day of January, 2014.

Wendi B. Barry, Borough Clerk

AGREEMENT

This AGREEMENT, entered into this 6th day of January 2014, between the BOROUGH OF NEW PROVIDENCE, a municipal corporation of the State of New Jersey, hereinafter called the “BOROUGH,” having municipal offices located at the Municipal Building, 360 Elkwood Avenue in the BOROUGH OF NEW PROVIDENCE, County of Union, State of New Jersey, and MICHAEL CRESITELLA of DiFRANCESCO, BATEMAN, COLEY, YOSPIN, KUNZMAN, DAVIS, LEHER & FLAUM, P.C. having an office located at 15 Mountain Boulevard, Warren, NJ07059, hereinafter referred to as the “ATTORNEY.”

WITNESSETH:

WHEREAS, there is a need, pursuant to N.J.S.A. 40A:9-139, for the BOROUGH to appoint an attorney to the position of Borough Attorney to provide legal services to the BOROUGH; and

WHEREAS, the BOROUGH advertised a request for proposals utilizing a fair and open process; and

WHEREAS, the BOROUGH has determined that the services to be provided constitute professional services as provided in the Local Public Contracts Law of the State of New Jersey; and

WHEREAS, the BOROUGH has authorized a contract with the ATTORNEY to provide the aforementioned services to the BOROUGH in accordance with the compensation set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, the parties agree as follows:

I. PARTS OF CONTRACT

The parties agree that the terms and conditions contained in the following documents which comprise and are hereinafter called the contract documents are made part of this agreement and are binding on all parties as if all conditions contained in the contract documents were set forth in this agreement:

- A. Request for Proposals
- B. Resolution
- C. This Agreement

II. CONTRACT PERIOD

This contract shall be effective from the period January 1, 2014 through December 31, 2014.

III. WORK

The ATTORNEY agrees to provide all services necessary for the following:

- A. All regular and routine activities of Borough Attorney, including without limitation, preparation for and attendance at all Borough Council meetings, preparation of ordinances and resolutions, as needed, consultations and conferences, legal research, rendering of legal advice, preparation of bid specifications, preparation of contracts and review of contracts as required.
- B. Additional legal services as set forth below may be performed by the Borough Attorney at the direction of the Mayor and Council or Borough Administrator may include, but not limited to:
 - 1. All litigation, including but not limited to actions by and against the BOROUGH, all tax appeals, and all legal work in connection with pending litigation, including but not limited to litigation in which the BOROUGH is represented by insurance counsel or other outside counsel.
 - 2. All real estate matters, including but not limited to real estate sales, purchases and lease and acquisition of easements or other interests in land, including negotiations.
 - 3. Attendance at meetings other than meetings of the BOROUGH Council. Such meetings shall include those of Federal, State, County, and other local government entities, at the direction of or with permission of the Mayor and Council or Borough Administrator
 - 4. All legal work in connection with any redevelopment plan or redevelopment agreement of the BOROUGH.
 - 5. Codification of ordinances and major revisions of chapters of the municipal code of BOROUGH.
 - 6. Labor relations.
 - 7. Such other legal services as the Borough Council may direct.

The ATTORNEY declares and agrees that it will be responsible for the full performance and completion of all work to be done under this Agreement and by the execution hereof acknowledges that it has carefully informed itself regarding conditions pertaining to the work to be done.

IV. **PAYMENT**

The BOROUGH shall pay and the ATTORNEY shall accept in payment and in consideration for the performance of the ATTORNEY'S obligations hereunder compensation for services rendered as follows:

A. For services under paragraph IIIA, above, an annual payment of \$40,000.00, which shall be paid in equal monthly payments of \$3,333.00 to DiFRANCESCO, BATEMAN, COLEY, YOSPIN, KUNZMAN, DAVIS, LEHER 7 FLAUM, P.C upon receipt of the monthly invoice.

B. For services under paragraph III B, above, fees at the rate of \$160.00 per hour for Michael Cresitello, \$150.00 per hour for all other attorneys, and \$75.00 per hour for paralegals. Fees shall not exceed \$75,000 for legal services under paragraph III B, unless the BOROUGH shall authorize additional funds.

The ATTORNEY shall submit itemized monthly bills to the BOROUGH for all services performed under paragraph III B, above. Such out-of-pocket expenses as are necessary to proper performance of the ATTORNEY'S duties hereunder shall be billed at actual cost in each monthly bill submission. The BOROUGH does not pay for travel related expenses or training necessary for the ATTORNEY to perform his duties under this agreement. Payment to ATTORNEY is subject to the availability of appropriated funds. The ATTORNEY shall submit its payment requisitions on voucher forms of the BOROUGH in proper form. Acceptance of the work and payment therefor shall be conditioned upon the ATTORNEY'S complying with all of the terms and conditions of the contract documents referred to herein.

V. **CONTRACT DOCUMENTS**

The contract documents comprise the documents listed in Article I of this Agreement, entitled "Parts of Contract". In the event that any provisions of one document conflict with the provisions of another document, the provisions in the document first listed as follows shall govern, except as otherwise specifically stated:

1. Agreement (this instrument)
2. Resolution
3. Any other documents

VI. WAIVER

Neither the inspection by the BOROUGH nor any of its agents, nor any order, measurement, or certificate by the BOROUGH or its agent, nor any order by the BOROUGH for the payment of money nor payment for, nor acceptance of, the whole nor any part of the work by the BOROUGH, nor an extension of time, nor any possession taken by the BOROUGH or its employees, shall operate as a waiver of any provisions of this agreement or of any power herein reserved to the BOROUGH, or any right to damages herein provided, nor shall any waiver of any breach of this contract be held to be a waiver of any other or subsequent breach. Any remedy provided for in this agreement shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and in addition to all other suits, actions, or legal proceedings, the BOROUGH shall also be entitled as of right to a writ of injunction against any breach of any of the provisions of this agreement.

VII. RESPONSIBILITY OF THE BOROUGH COUNCIL

The BOROUGH COUNCIL or its authorized agents or employees shall decide any and all questions which may arise as to the quality and acceptability of work furnished and all questions as to the acceptable fulfillment of the agreement on the part of the ATTORNEY. Any and all directions, communications and/or inquiries from the BOROUGH shall be made by the BOROUGH Administrator.

VIII. AFFIRMATIVE ACTION

The ATTORNEY shall comply in all respects with the provisions of NJ.S.A. 10:5-31, et seq., and the regulations promulgated thereunder, a copy of which is attached hereto and expressly made a part hereof as Exhibit A. The ATTORNEY shall, within seven days after receipt of notification of intent to award this contract or receipt of the contract, whichever is sooner, provide the BOROUGH with a letter of Federal Affirmative Action Approval, a Certificate of Employee Information Report from the State of New Jersey, or a completed Form AA302.

IX. SUCCESSORS AND ASSIGNS

This agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the BOROUGH and the ATTORNEY and their respective successors, assigns and legal representatives. Neither the BOROUGH nor the ATTORNEY shall have the right to assign, transfer, or sublet its interests or obligations hereunder without prior written consent of the other party.

X. WRITTEN NOTICE

All notices, requests or other communications pursuant to this agreement shall be in writing and shall be sent pursuant to this agreement by U.S. Mail, addressed as set forth above.

XI. ENTIRE AGREEMENT

This agreement contains the entire agreement between the parties and no amendment, modification or addendum to this agreement shall be effective unless in writing, dated subsequent to the date hereof, and executed by the duly authorized officers of the respective parties. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this Article and this shall be deemed an essential term of the agreement.

XII. VALIDITY

If any term or conditions of this agreement, or any application of this agreement shall be determined to be contrary to the laws of the State of New Jersey or the United States, then such term or condition or application shall not be deemed valid except to the extent permitted by law, but all other terms and conditions or applications shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their duly authorized officers and their seals to be affixed the day and year above written.

BOROUGH OF NEW PROVIDENCE

J. Brooke Hern, Mayor

ATTEST:

Wendi B. Barry, Clerk

WITNESS:

Michael Cresitello, Esq.

EXHIBIT A**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31, et seq., N.J.A.C. 17:27****GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICE CONTRACTS**

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

The Attorney or sub Attorney, 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 or sex. Except with respect to affectional or sexual orientation, the Attorney 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, affectional or sexual orientation or sex. Such action 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 Attorney 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 Attorney or sub Attorney, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Attorney, 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 or sex.

The Attorney or sub Attorney, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Attorney's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Attorney or sub Attorney, 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 Attorney or sub Attorney agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2,

The Attorney or sub Attorney agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Attorney or sub Attorney 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 applicable employment goals, the Attorney or sub Attorney agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation 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 Attorney 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

The Attorney and its sub Attorneys shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.