

R2023-28

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH HAWKINS, DELAFIELD & WOOD, LLP FOR SERVICES RELATED TO THE NEW JERSEY WATER INFRASTRUCTURE PROTECTION ACT N.J.S.A. 58:30-1

WHEREAS, the Town of Phillipsburg has a need to acquire professional services relative to the New Jersey Water Infrastructure Protection Act N.J.S.A. 58:30-1; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5(1)(a)(i), a contract for such services may be awarded without competitive bidding by reason that such services constitute "professional services" which are services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship; and

WHEREAS, the Town of Phillipsburg wishes to retain Hawkins, Delafield & Wood LLP subject to the proposal made a part hereof and attached hereto at a cost NOT TO EXCEED the sum of \$250,000; and

WHEREAS, the Town Council finds it to be in the best interest of the Town of Phillipsburg to authorize said work, which work is not subject to public bidding; and

WHEREAS, sufficient funds are available as evidenced by the attached certification of funds.

NOW THEREFORE BE IT RESOLVED, THIS RETAINER AGREEMENT, made and entered into as of February 7, 2023, by and between the Town of Phillipsburg, New Jersey (the "Municipality") and Hawkins, Delafield & Wood LLP, a limited liability partnership (the "Firm").

WITNESSETH:

WHEREAS, the Municipality intends to sell its wastewater system pursuant to the procurement procedures, and authority set forth in either the New Jersey Water Infrastructure Protection Act (N.J.S.A. 58:30-1 et seq.) or the "Referendum Law" (N.J.S.A. 40:62-3 – 40:62-6); and

WHEREAS, the Firm has a national reputation for expertise in the field of water and wastewater system contract negotiations, procurements and financings; and

WHEREAS, the Municipality is authorized by law to employ attorneys and to fix their compensation, and desires to retain the professional services of the Firm in connection with the sale of its wastewater system; and

WHEREAS, the Firm has determined to accept the retainer and provide to the Municipality the services described herein.

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

Section 1. Retainer. The Municipality hereby retains the Firm to render legal advice and assistance to the Municipality pertaining to the sale of the Municipality's wastewater system on the terms and conditions set forth herein. The Firm hereby accepts the Municipality's retainer and agrees to provide such advice and assistance.

Section 2. Scope of Services. (A) The Firm agrees to provide all legal services requested by the Municipality from time to time under this Agreement in relation to the sale of the wastewater system. Such services may include those services set forth on Attachment A.

(B) Services under this Agreement shall be performed under the direction of the Municipality's Business Administrator. In light of the variability of the time and complexity of the issues involved in transactions of this nature, the Firm and the Municipality agree to consult regularly as to the level of effort which is appropriate to the carrying out of services hereunder and the Firm shall provide a monthly statement to the Municipality with the total amount billed from the inception of the engagement to the current month.

(C) Professional Judgment and Legal Advice. The Firm acknowledges that the Municipality has engaged it to render legal advice at a reasonable price in a manner that is consistent with the Firm's professional responsibilities. The Firm agrees to perform legal services on behalf of the Municipality in accordance with professional standards. The Firm does not make any representations, warranties or guarantees regarding the outcome of any aspect of the proposed transaction. The Firm will be compensated for the time and effort it devotes on the Municipality's behalf and not for any particular result. The Firm's engagement is limited to the workscope set forth in paragraph (A) above and is not engaged to provide advice with respect to other areas of law, or with respect to credit standing, financing statements, price proposals, technical qualifications or merit, or other similar financial, technical or other non-legal matters or conditions pertaining to any proposer, to any proposal, or to the company executing any agreement. The Firm advises the Municipality to seek qualified independent professional advice concerning all such matters.

Section 3. Compensation. (A) The Municipality agrees to pay the Firm for services rendered hereunder at a blended rate of \$450 per hour for each attorney rendering services hereunder. Partners Rick Sapir and Counsel Megan Sartor will be the primary attorneys working on the engagement.

(B) The Municipality further agrees to reimburse the Firm for actual out-of-pocket expenses incurred in rendering services under this Agreement. These include expenses for travel, telephone tolls, postage, messenger, courier and delivery services, document reproduction (only if an outside service is required), conference call expenses, and similar out-of-pocket items. In any billing for disbursements, the Firm shall provide the Municipality with a statement breaking down the amounts for each category of expense.

(C) The individual time and disbursement records customarily maintained by the Firm for billing evaluation and review purposes shall be made available to the Municipality in connection with bills rendered by the Firm.

(D) The Firm agrees to forward to the Municipality a statement of account for each one month period of services under this Agreement, and the Municipality agrees to compensate the Firm on this basis.

Section 4. Budget Limit. The initial budget limit for the services of the Firm described in Attachment A is \$250,000. The Firm shall not be compensated for services in excess of the initial budget for such services without the approval of the Municipality. The budget may be increased from time to time in the Municipality's discretion if the Municipality desires to have the Firm undertake services that would exceed the initial budget.

Section 5. Termination. This Agreement may be terminated (i) at any time by mutual consent of both parties, or (ii) by either party in its discretion effective on 30-days written notice to the other.

Section 6. Counterparts. This agreement may be executed in counterparts, which together will constitute the entire agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

THE TOWN OF PHILLIPSBURG, NEW
JERSEY

BY _____
Name:
Title:

HAWKINS DELAFIELD & WOOD LLP

BY _____
Name: Eric J. Sapir
Title: Partner

ATTACHMENT A

WORK SCOPE

- (i) perform all necessary legal research associated with the sale by the Municipality;
- (ii) attend meetings with the Municipality's Town Attorney, business administrator, officials, and board to discuss issues associated with the sale;
- (iii) provide advice with respect to structure of the procurement;
- (iv) prepare certification of Emergent Conditions;
- (v) provide assistance with procurement of Independent Financial Advisor;
- (vi) review and comment upon Independent Financial Advisor report;
- (vii) assist with preparation of notice of public hearing;
- (viii) prepare for and attend public hearing on proposed Emergent Conditions certification;
- (ix) prepare resolution certifying Emergent Conditions;
- (x) submit request for approval of Emergent Conditions certification from DEP, respond to DEP questions and prepare correspondence to BPU and DLGS;
- (xi) assistance with notice of DEP approval;
- (xii) attend to issues necessary to prepare the solicitation documents and the Sales Contract (e.g. identifying all assets, specific Municipality requirements, status of existing related contracts, ongoing and planned capital improvements, permits...);
- (xiii) prepare notice of intent to Office of the State Comptroller ("OSC");
- (xiv) provide assistance with the preparation of Request for Qualifications ("RFQ") and discussions with Municipality Team as necessary to issue final RFQ;
- (xv) submit draft RFQ to OSC for approval, address any issues raised by the OSC and revise draft RFQ as necessary;
- (xvi) prepare resolution authorizing issuance of RFQ and assist with publication of Notice of RFQ availability;
- (xvii) attend to potential respondent questions regarding RFQ and preparation of addenda;

(xviii) assist with review of Statements of Qualifications and shortlisting process including preparation of clarification questions (if necessary);

(xix) prepare and discuss issues list related to Request for Proposals (“RFP”) and draft Sales Contract;

(xx) prepare draft RFP and Sales Contract and discuss with Municipality Team;

(xxi) revise documents as necessary to issue final RFP and draft Sales Contract;

(xxii) submit draft RFP to Office of State Comptroller for approval, address any issues raised by the OSC and revise draft RFP as necessary;

(xxiii) attend to Proposers’ questions regarding RFP and draft Sales Contract and preparation of addenda;

(xxiv) assist with review of Proposals and selection process;

(xxv) preparation of report supporting selection of the most advantageous proposer;

(xxvi) negotiate and prepare final Sales Contract, assistance with obtaining statutorily required State approvals;

(xxvii) prepare resolution approving submission of contract to BPU and use of proceeds to DLGS; assist Municipality with preparation of submittals, and attend to questions from BPU and DLGS;

(xxviii) prepare resolution authorizing execution of Sales Contract and prepare submission of final Sales Contract to OSC;

(xxix) assistance with real estate related matters; and

(xxx) assistance with Closing.