

TOWN OF WEST NEW YORK

REQUEST FOR QUALIFICATIONS

ABC PROSECUTOR

Qualification Period – February 1, 2012 – January 31, 2013

SUBMISSION DEADLINE

9:30 a.m. January 12, 2012

**ADDRESS ALL PROPOSALS TO DESIGNATED
CONTACT PERSON:**

Ms. Carmela Riccie,
West New York Town Clerk
Municipal Building
428 60th Street
West New York, NJ 07093

**All proposals must indicate on the outside envelope: RFQ: ABC
PROSECUTOR**

GENERAL INFORMATION & SUMMARY

ORGANIZATION REQUESTING STATEMENT OF QUALIFICATION

Town of West New York
Municipal Building
428 60th Street
West New York, NJ 07093

CONTACT PERSON:

Ms. Carmela Riccie
West New York Town Clerk
Municipal Building
428 60th Street
West New York, NJ 07093

PURPOSE OF REQUEST

The Town of West New York (Town) is requesting qualification statements from qualified attorneys to provide Legal Services as Legal/Liability Counsel/Special Counsel. Proposals will be evaluated in accordance with the criteria set forth in this Request for Qualifications (RFQ). One or more individuals/firms may be selected to provide all or part of the requested services, or no one may be selected. If a Respondent is selected, the governing body will approve a resolution awarding a contract to the Respondent based on a rate of compensation to be set by the Governing Body not to exceed an amount specified in the resolution without further action by the Governing Body.

PERIOD OF QUALIFICATION

February 1, 2012 through January 31, 2013.

CONTRACT FORM

If selected to provide services, a qualified Respondent shall be required to execute a form contract, which may include indemnification, insurance, termination and licensing provisions. A form of contract is appended hereto. A response to this Request for Qualifications constitutes consent for the Town to award a successful Respondent a contract under the substantially similar terms to those contained therein (the terms of which may be amended in the normal course). As this is a Request for Qualifications, the Town may request that a qualified respondent accept a contract with terms substantially different than those contained in the form of contract appended hereto, in line

with the terms of this Request for Qualifications.

It must also be agreed and understood that the acceptance by the respondent of the final payment shall be considered a release in full of all claims against the Town of West New York arising out of, or by reason of, the work done and materials furnished under a Contract.

CONTRACT PERIOD

A contract for ABC PROSECUTOR shall be from February 1, 2012 through January 31, 2013.

GLOSSARY

The following definitions shall apply to and are used in this Request for Qualifications (RFQ):

"Qualification Statement" - refers to the complete responses to this RFQ submitted by the Respondents.

"Qualified Respondent" - refers to those Respondents who (in the sole judgment of the Town) have satisfied the qualification criteria set forth in this RFQ.

"RFQ" - refers to this Request for Qualifications, including any amendments thereof or supplements thereto.

"Respondent" or "Respondents" - refers to the interested persons and/or firm(s) that submit a Qualification Statement.

"Town" – refers to the Town of West New York.

SECTION 1

INTRODUCTION AND GENERAL INFORMATION

1.1. Introduction and Purpose.

The Town is soliciting Qualification Statements from interested persons and/or firms for the provision of Services as more particularly described herein. Through a RFQ process described herein, persons and/or firms interested in assisting the Town of West New York with the provision of such services must prepare and submit a Qualification Statement in accordance with the procedure and schedule in this RFQ. The Town will review Qualification Statements only from those persons and/or firms that submit a Qualification Statement which includes all information required to be included as described herein (in the sole judgment of the Town).

The Town intends to qualify person(s) and/or firm(s) that:

- a. possess the professional, financial and administrative capabilities to provide the proposed services; and
- b. will agree to work under the compensation terms and conditions determined by the Town to provide the greatest benefit to the taxpayers of West New York.

1.2. Procurement Process and Schedule.

The selection of Qualified Respondents is not subject to the Local Public Contracts Law, N.J.S.A. 40A: 11-1 et seq., as the services sought are “professional services” and/or “extraordinary unspecifiable services” as defined therein. The selection is subject to the “New Jersey Local Unit Pay-to-Play” Law, N.J.S.A. 19:44A-20.5 et seq. The Town has structured a fair and open procurement process in accordance with N.J.S.A. 19:44A-20. et seq.* that seeks to obtain the desired results described above, while establishing a competitive process to assure that each person and/or firm is provided an equal opportunity to submit a Qualification Statement in response to the RFQ. Qualification Statements will be evaluated in accordance with the criteria set forth in Section 5 of this RFQ, which will be applied in the same manner to each Qualification Statement received.

Qualification Statements will be reviewed and evaluated by the Town and its legal and/or financial advisors (collectively, the “Review Team”). The Qualification Statements will be reviewed to determine if the Respondent has met the minimum professional, administrative and financial areas described in this RFQ. Under no circumstances will a member of the Review Team review responses to a RFQ for which they or their firm has submitted a response. Based upon the totality of the information contained in the Qualification Statement, including information about the reputation and experience of each Respondent, the Town will determine which Respondents are qualified (professionally, administratively and financially) to provide the services. Each Respondent that meets (in the sole judgment of the Town) the requirements of this RFQ will be designated as a Qualified Respondent and will be given the opportunity to participate in the selection process determined by

the Town.

The RFQ process commences with the issuance of this RFQ. The steps involved in the process and the anticipated completion dates are set forth in Table 1, Procurement Schedule. The Town reserves the right to, among other things, amend, modify or alter the Procurement Schedule upon notice posted on the Town's website, www.westnewyorknj.org

All communications concerning this RFQ or the RFQ process shall be directed to the Town's Designated Contact Person, in writing.

Qualification Statements must be submitted to, and be received by the Town Clerk, via mail or hand delivery, by **9:30 a.m. prevailing time on January 12, 2012**. Qualification Statements shall be opened in public in the Town Clerk's Office located at 428 60th Street, Town of West New York, New Jersey.

All RFQs shall be submitted in sealed envelopes addressed to the Town Clerk of West New York, the envelope shall have marked conspicuously on its face on the top right-hand side in letters not less than one inch the word **"Request for Qualifications"** followed immediately below those words in letters not less than one half inch high: **"Request for Qualification for ABC Prosecutor"** and underneath that **"To be received on the January 12, 2012 at 9:30 a.m."** **Qualification Statements will not be accepted by facsimile transmission or e-mail.**

If RFQs responses are to be transmitted by mail or courier, the RFQ responses must be placed in an outer envelope, which on the top right-hand side shall clearly designate in the same manner as set forth above, the same size and information. The inner envelope shall have specifically placed in the center the same information as set forth above and on the bottom left-hand side the name and address of the Respondent.

The burden is upon the Respondent to comply specifically with the directions in this RFQ. The Respondents are put on notice that because of precautions resulting from terrorist's threats, packages may be opened if directed to the wrong office of the Town.

Any RFQ response not delivered in the manner shall be declared void unless the deviation is deemed to be a minor technical violation.

Subsequent to issuance of this RFQ, the Town (through the issuance of addenda to all persons and/or firms that have requested and received a copy of the RFQ) may modify, supplement or amend the provisions of this RFQ in order to respond to inquiries received from prospective Respondents or as otherwise deemed necessary or appropriate by (and in the sole judgment of) the Town.

* Qualified Respondents are advised that a for-profit business entity that has received \$50,000 or more through government contracts in a calendar year, must file an annual disclosure statement on political contributions with the New Jersey Election Law Commission pursuant to

P.L. 2005 c. 271 by March 30. It is the Qualified Respondent's responsibility to determine if filing is necessary. Additional information on this requirement is available from ELEC at 888313-3532 or at www.elec.state.nj.us.

TABLE 1 ANTICIPATED PROCUREMENT SCHEDULE

ACTIVITY	DATE
1. Issuance of Request for Qualifications	December 30, 2011
2. Receipt of Qualification Statements	January 12, 2012
3. Completion of Evaluation of Qualification Statements	no later than January 20, 2012
4. Designation of Qualified Respondents	no later than January 31, 2012

1.3 Conditions Applicable to RFQ.

Upon submission of a Qualification Statement in response to this RFQ, the Respondent acknowledges and consents to the following conditions relative to the submission and review and consideration of its Qualification Statement:

- 1 This document is an RFQ and does not constitute a Request for Proposals (RFP).
- 2 This RFQ does not commit the Town to issue an RFP nor to follow any other procurement or process for obtaining services.
- 3 All costs incurred by the Respondent in connection with responding to this RFQ shall be borne solely by the Respondent.
- 4 The Town reserves the right (in its sole judgment) to reject for any reason any and all responses and components thereof and to eliminate any and all Respondents responding to this RFQ from further consideration for this procurement.
- 5 The Town reserves the right (in its sole judgment) to reject any Respondent that submits incomplete responses to this RFQ, or a Qualification Statement that is not responsive to the requirements of this RFQ.
- 6 The Town reserves the right, without prior notice, to supplement, amend, or otherwise modify this RFQ, or otherwise request additional information.
- 7 All Qualification Statements shall become the property of the Town and will not be returned.
- 8 All Qualification Statements will be made available to the public at the appropriate time, as determined by the Town (in the exercise of its sole discretion) in accordance with law.
- 9 The Town may request Respondents to send representatives to the Town for interviews.
- 10 Any and all Qualification Statements not received by the Town by 9:30 a.m. prevailing time on January 12, 2012 will be rejected.
- 11 Neither the Town nor its officers, officials or employees shall be liable for any claims or damages resulting from the solicitation or preparation of the Qualification Statement, nor will there be any reimbursement to Respondents for the cost of preparing and submitting a Qualification Statement or for participating in this procurement process.

1.4. Rights of Town.

The Town reserves, holds and may exercise, at its sole discretion, the following rights and options with regard to this RFQ and the procurement process in accordance with the provisions of applicable law:

1. To determine that any Qualification Statement received complies or fails to comply with the terms of this RFQ.
2. To supplement, amend or otherwise modify the RFQ through issuance of addenda posted on the Town's website, www.westnewyorknj.org
3. To waive any technical non-conformance with the terms of this RFQ.
4. To change or alter the schedule for any events called for in this RFQ (upon the issuance of notice to all prospective Respondents who are known to have received a copy of this RFQ, if prior to the date set for receipt of Qualification Statements).
5. To conduct investigations of any or all of the Respondents, as the Town deems necessary or convenient, to clarify the information provided as part of the Qualification Statement and to request additional information to support the information included in any Qualification Statement.
6. To suspend or terminate the procurement process described in this RFQ at any time (in its sole discretion.) If terminated, the Town may determine to commence a new procurement process or exercise any other rights provided under applicable law without any obligation to the Respondents.
7. A response to this RFQ is not considered to be a binding "bid". This RFQ does not guarantee that a contract for Legal Services – ABC Prosecutor will be issued, or any set amount of compensation or limit on compensation if such a contract is issued. The Town of West New York disclaims any obligation to issue a contract pursuant to any compensation request contained in any Qualification Statement, even if a contract is issued in response to such Qualification Statement.
8. The Town shall be under no obligation to complete all or any portion of the procurement process described in this RFQ.

1.5 Addenda or Amendments to RFQ.

During the period provided for the preparation of responses to the RFQ, the Town may issue addenda, amendments or answers to written inquiries. Those addenda will be noticed by the Town and will constitute a part of the RFQ. All responses to the RFQ shall be prepared with full consideration of the addenda issued prior to the Qualification Statement submission date.

1.6 Cost of Qualification Statement Preparation.

Each Qualification Statement and all information required to be submitted pursuant to the RFQ shall be prepared at the sole cost and expense of the Respondent. There shall be no claims whatsoever against the Town, its officers, officials or employees for reimbursement for the payment of costs or expenses incurred in the preparation of the Qualification Statement or other information required by the RFQ.

1.7 Qualification Statement Format.

Qualification Statements must cover all information requested in this RFQ. Qualification Statements which in the judgment of the Town and/or Commission fail to meet the requirements of the RFQ or which are in any way conditional, incomplete, obscure, contain additions or deletions from requested information, or contain errors may be rejected.

SECTION 2

SCOPE OF SERVICES

It is the intent of the Town to solicit Qualification Statements from Respondents that have expertise in the provisions of legal services as may be required of an Alcoholic Beverage Control Board Prosecutor. Firms and/or persons responding to this RFQ shall be able to demonstrate that they will have the continuing capabilities to perform these services. Respondents must demonstrate that they will have the continuing capabilities to perform these services.

Counsel will, on an “as needed” basis, be assigned and required to provide representation in any or all of the following aspects of litigation, including but not limited to, preparation of pleadings, motions, and discovery documents, participation in all discovery including attendance at all depositions; participation in and attendance at settlement conferences, pre-trial motions and trials.

Counsel may be called upon to attend meetings, including meetings of the governing body in regard to those matters to which he/she has been assigned.

Counsel may also be called upon to provide other types of legal services of a specialized nature within the scope of his/her expertise and professional qualifications.

SECTION 3

SUBMISSION REQUIREMENTS

3.1 General Requirements.

The Qualification Statement submitted by the Respondent must meet or exceed the professional, administrative and financial qualifications set forth in this Section 3 and shall incorporate the information requested below.

In addition to the information required as described below, a Respondent may submit supplemental information that it feels may be useful in evaluating its Qualification Statement. Respondents are encouraged to be clear, factual, and concise in their presentation of information.

3.2 Administrative Information Requirements.

The Respondent shall, as part of its Qualification Statement, provide the following information:

1. An executive summary (not to exceed two (2) pages) of the information contained in all the other parts of the Qualification Statement.
2. An executed Letter of Qualification.
3. Name, address and telephone number of the Respondent submitting a Qualification Statement pursuant to this RFQ, and the name of the key contact person.
4. A description of the business organization (i.e., corporation, partnership, joint venture, etc.) of each Respondent, its ownership and its organizational structure.
 - a. Provide the names and business addresses of all Principals of the Respondent submitting the Qualification Statement. For purposes of this RFQ, "Principals" means persons possessing an ownership interest in the Respondent. If the Respondent is a corporation, "Principals" shall include each investor who has any operational control over the Respondent, and every stockholder having an ownership interest of 10% or more in the firm.
 - b. If a Respondent is a partially owned or a fully-owned subsidiary of another firm, identify the parent company and describe the nature and extent of the parents' approval rights over the activities of the Respondent submitting a Qualification Statement. Describe the approval process.
 - c. If the Respondent is a partnership or a joint venture or similar organization, provide comparable information as required in (b) above for each member of the partnership, joint venture or similar organization.
 - d. A statement that the Respondent has complied with all applicable affirmative action (or similar) requirements with respect to its business activities, together with evidence of such compliance.
5. The number of years Respondent has been in business under the present name.
6. The number of years Respondent has been under the current management.
7. Any judgments within the last three (3) years in which Respondent has been adjudicated liable for professional malpractice or breach of contract. If yes, please explain.

8. Whether the Respondent is now or has been involved in any bankruptcy or re-organization proceedings in the last ten (10) years. If yes, please explain.
9. Confirm appropriate federal and state licenses to perform activities.
10. Describe those portions of the Respondent's services, if any, that the Respondent presently anticipates subcontracting out to a subcontractor if awarded a contract for legal services. (A subcontractor means any business organization that is not a contractor that **knowingly** provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract issued by a contracting agency where the cost of the subcontractors work exceeds 15% of the contracting unit's bid threshold. Please note that **if** you identify any subcontractors in your Qualification Statement you must provide a copy of a Business Registration Certificate for such subcontractor; we are **not** asking you to identify subcontractors at this time) (See Item H. attached hereto).
10. An executed letter of intent.

3.3 Professional Information Requirements.

1. Respondent shall submit a description of its overall experience in providing the type of services sought in the RFQ. At a minimum, the following information on past experience should be included as appropriate to the RFQ:
 - a. Description and scope of work by Respondent.
 - b. Name, address and contact information of reference to the RFQ.
 - c. Explanation of perceived relevance of the experience to the RFQ, including any Board Certification in relevant areas of practice.
2. Brief description of Respondent's relevant clients, including a listing of all municipal government or other public entity clients, during the last three (3) years.
3. Resumes of key employees, and an indication of which employees would be directly working with the Town.
4. A narrative statement of the Respondent's understanding of the Town's needs and goals.
5. List all immediate relatives of Principal(s) of Respondent who are Town employees or elected officials of the Town. For purposes of the above, "immediate relative" means a spouse, parent, stepparent, brother, sister, child, stepchild, direct-line aunt or uncle, grandparent, grandchild and in-laws.
6. Limits of Malpractice/liability insurance coverage and name of insurance carrier.
7. A listing of all other engagements where services of the type proposed were provided in the past five (5) years. This should include other municipal governments and other levels of government, including the Town of West New York. Contact information for the recipients of the similar services must be provided. The Town may obtain references from any of the parties listed.
8. Respondents must demonstrate a familiarity with the rules New Jersey Court Rules and Rules and Procedures of the Federal District Court for the District of New Jersey, as appropriate, and/or demonstrate a proven record of cases tried or argued at the trial level and the Appellate Divisions of the Superior Court of New Jersey.

9. Demonstration of ability with appropriate personnel or other arrangements to perform the required tasks in a timely fashion, including the attendance at meetings, as necessary.
10. Demonstration of ability to properly perform the services of an ABC Board Prosecutor.
11. A listing of all professional organization memberships.
12. Respondents must list all cases where they have been adverse to the Town or in which they sued the Town or in which they represented a client that sued the Town in cases filed within the last five calendar years.
13. A listing of all employment positions with the Town, its Boards, Agencies and subordinate entities, including both salaried positions and/or professional service or other contracts of Respondent, stating the period of time and position held.
14. A detailed statement of whether potential conflicts exist that would preclude the issuance of a contract for the legal services herein described.

SECTION 4

INSTRUCTIONS TO RESPONDENTS

4.1. Submission of Qualification Statements.

Respondents must submit an original and three (3) copies of their Qualification Statement to the Designated Contact Person:

Qualification Statements must be received by the Town no later than 9:30 a.m. prevailing time on January 12, 2012, and must be mailed or hand-delivered. Qualification Statements forwarded by facsimile or e-mail will not be accepted.

To be responsive, Qualification Statements must provide all requested information, and must be in strict conformance with the instructions set forth herein. Qualification Statements and all related information must be bound, and signed and acknowledged by the Respondent.

SECTION 5

EVALUATION

The Town's objective in soliciting Qualification Statements is to enable the Town to select a Respondent that will provide high quality and cost effective services to the citizens of the Town of West New York. The Town will consider Qualification Statements only from Respondents that, in the Town's sole judgment, have demonstrated the capability and willingness to provide high quality services to the citizens of the Town in the manner described in this RFQ.

Qualification statements will be evaluated by the Town and Qualified Respondents will be selected based on the evaluation factors set forth below:

1. Experience and reputation in the field;
2. Knowledge of the Town and the subject matter of the pertinent contract;
3. Availability to accommodate the required meetings of the Town ;
4. Experience in the areas of law described in Section 2 of this RFQ;
5. Pertinent government experience; and
6. Other factors demonstrated to be in the best interests of the Town .

Each Qualification Statement must satisfy the objectives and requirements detailed in this RFQ. The Town will select the most advantageous Qualification Statements based on all of the evaluation factors set forth in this RFQ.

Each Qualification Statement must satisfy the objectives and requirements detailed in this RFQ. Successful Respondents shall be determined by an evaluation of the total content of the Qualification Statement submitted. The Town reserves the right to:

1. not select any of the Qualification Statements;
2. award a contract for the requested services at any time within the qualification period;
3. award one or more contracts to qualified respondents for all or any part or parts of the services (in any manner provided for under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., or other law) such that more than one respondent may be engaged for the entire scope of work, multiple respondents may be engaged for various portions of the needed work, and any respondent may be obligated to work with others in connection with the provision of the requested services.

Every Qualification Statement should be valid through the entire qualification period.

The Town shall not be obligated to explain the results of the evaluation process to any Respondent.

SECTION 6

GENERAL TERMS AND CONDITIONS

1. The Town reserves the right to reject any or all Qualification Statements, if necessary, or to waive any informalities in the Qualification Statements, and, unless otherwise specified by the Respondent, to accept any item, items or services in the Qualification statement should it be deemed in the best interest of the Town to do so.
2. Each Qualification Statement must be signed by the person authorized to do so.
3. Qualification Statements may be hand delivered or mailed consistent with the provisions of the legal notice to Respondents. In the case of mailed Qualification Statements, the Town assumes no responsibility for Qualification Statements received after the designated date and time and will return late Qualification Statements unopened. Qualification Statements will not be accepted by facsimile or e-mail.
4. No Respondent shall influence, or attempt to influence, or cause to be influenced, any Town officer or employee to use his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
5. No Respondent shall cause or influence, or attempt to cause or influence, any Town officer or employee to use his/her official capacity to secure unwarranted privileges or advantages for the respondents or any other person.
6. Should any difference arise between the contracting parties as to the meaning or intent of

these instructions or specifications, the Town Attorney's decision shall be final and conclusive.

7. The Town shall not be responsible for any expenditure of monies or other expenses incurred by the Respondent in making its proposal.

END OF GENERAL INSTRUCTIONS

TOWN OF WEST NEW YORK

VENDOR: _____

RESPONDENT’S CHECKLIST

Item	Respondent Initials
A. Letter of Qualification	
B. Letter of Intent	
C. Non-Collusion Affidavit properly notarized	
D. Public Disclosure Statement	
E. Mandatory Affirmative Action Language	
F. Americans with Disabilities Act	
G. Affirmative Action Compliance Notice	
H. MWBE Questionnaire (2 Copies)	
I. Form AA302 – Employee Information Report, (Note: See Affirmative Action Compliance Notice, Item E) or you may additionally include a copy of your Certificate of Employee Information Report)	
J. Copy of Business Registration Certificate of Respondent and of any subcontractor identified in Qualification Statement-Proposal.	
K. Original signature(s) on all required forms.	

APPENDIX A

LETTER OF QUALIFICATION

(To be Typed on Respondent’s Letterhead. NO MODIFICATIONS MAY BE MADE TO THIS LETTER)

Ms. Carmela Riccie
Municipal Building
428 60th Street (Room #2)
West New York, NJ 07093

Dear Mrs. Riccie:

The undersigned have reviewed our Qualification Statement submitted in response to the Request for Qualifications (RFQ) issued by the Town of West New York (“Town”), dated (*Insert Date*) in connection with the Town’s need for Legal Services – ABC Prosecutor.

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

CHIEF EXECUTIVE OFFICER

CHIEF FINANCIAL OFFICER

Dated: _____ Dated: _____

Respondent shall sign and complete the spaces as provided above. If a joint venture, partnership or other formal organization is submitting a Qualification Statement, each participant must execute this Letter of Qualification

APPENDIX B LETTER OF INTENT

STATE OF NEW JERSEY
TOWN OF WEST NEW YORK ss:

I _____ certify that I am the _____

of the firm of _____, the Respondent

submitting Qualifications in response to a Request for same from the Town in regards to ABC Prosecutor. I further certify that:

1. I executed said Proposal with full authority so to do; and
2. All statements contained in the Submission and in this affidavit are accurate, factual and complete, and made with full knowledge that the Town of West New York is relying upon the truth of the statements contained in the Submission and the statements contained in this affidavit in evaluating Respondent's Qualifications; and
3. Respondent has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project through participation with any other person, firm or party; and
4. Respondent agrees to participate in good faith in the procurement process as described in the RFQ and to adhere to the Town's procurement schedule;
5. Respondent acknowledges that all costs incurred by it in connection with the preparation and submission of the Qualification Statement and any proposal prepared and submitted in response to the RFQ, or any negotiation which results therefrom, shall be borne exclusively by the Respondent. In no event shall the Town have any liability to Respondent for any costs incurred by the Respondent for the Qualification Statement.
6. Respondent acknowledges and agrees that the Town may modify, amend, suspend and/or terminate the procurement process in its sole judgment.
7. Respondent is aware that any contract executed with respect to the services referred to in the RFQ must comply with the applicable affirmative action and similar laws, and agrees to take such actions as may be required to comply with such applicable laws in the event that a contract is formed.

(Signature of Respondent) _____

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF 20____ NOTE: THIS FORM MUST BE COMPLETED, NOTARIZED AND RETURNED WITH THIS PROPOSAL.

Professional Services Agreement for ABC Prosecutor

This agreement dated _____ 20__ is made BETWEEN the client, Town of West New York, whose principal business address is Municipal Building, 428 - 60th Street, West New York, New Jersey, and [FIRM] whose address is [ADDRESS]

WITNESSETH

WHEREAS, the Town desires to engage the services of [FIRM], under the supervision of [ATTORNEY(s)] (Collectively "Counsel") to perform professional legal services to the Town as ABC Prosecutor pursuant to a Fair and Open Process adopted by the Board of Commissioners; and

WHEREAS, Counsel has substantial experience in providing the legal services of an ABC Prosecutor; and

WHEREAS, the Commissioners of the Town of West New York have authorized the Mayor to execute an agreement, by and between the Town and the Law offices of [ATTORNEY(s)], for the Services of [ATTORNEY(s)] as ABC Prosecutor and for the services of the firm of [ATTORNEY(s)], under his supervision for the provision of ABC Prosecutor having been appointed as ABC Prosecutor for the Period February 1, 2012 through January 31, 2012; and; and

WHEREAS, pursuant to N.J.S.A. 40A:11-5(1)(a)(i), such services constitute professional services, as to which contract may be awarded without public advertising for bids and bidding therefor; and

WHEREAS, this contract was awarded through a fair and open process pursuant to N.J.S.A. 19:44A-20.5 et seq. through a publicly advertised Request for Qualifications;

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

1. Legal Services to be Provided. The Town and Counsel agree that Counsel will:

Counsel, under the direction of the Town Attorney, will, on an "as needed" basis, be assigned and required to provide representation in any or all of the following aspects of litigation, including but not limited to, preparation of pleadings, motions, and discovery documents, participation in all discovery including attendance at all depositions, participation in and attendance at settlement conferences, pre-trial motions and trials, in matters involving any general liability legal matter, including litigation and appeals at all levels, or any other matter designated by the Town Attorney.

Counsel shall receive direction from the Town Attorney.

Counsel may be called upon to attend meetings, including meetings of the governing body. Counsel may also be called upon to provide other types of legal services of a specialized nature within the scope of his/her expertise and professional qualifications and in regard to those matters he/she has been assigned.

2. Legal Fees. Counsel shall charge the following fees for matters assigned to it by the Town.

(A) Hourly Rate. The Town agrees to pay Counsel for legal services at the following rates:

<u>RATE PER HOUR</u>	<u>SERVICES OF</u>
\$150.00	ALL ATTORNEYS
\$ 50.00	ALL LAW CLERK & PARALEGALS

The Town will be billed at the hourly rates set forth in paragraph 2A for all services rendered (minimum charge of 6 minutes). This includes telephone calls, dictating and reviewing letters, travel time to and from meetings and the Court, legal research, negotiations and any other service relating to assigned matter. Payment shall be made pursuant to a paper voucher submitted on forms provided by the Town, such vouchers to be submitted to the Town on a monthly basis.

3. Counsel shall provide at no additional cost to the Town supportive services such as office facilities and secretarial help as may be required. Counsel shall not be reimbursed for out-of-pocket expenses including, but not limited to long distance telephone charges, or telecopier costs associated with the performance of requisite legal services by Counsel.
4. Counsel shall be reimbursed for the following costs that are necessary and associated with the services provided to the Town by Counsel under this Agreement: all necessary and reasonable court costs, deposition costs, transcript costs, service of process fees, online research charges, reproduction (\$.10 for black and white/page, \$.25 for color copies/page), and messenger services.
5. Counsel shall be reimbursed for expert fees that are necessary and associated with the services provided to the Town by Counsel under this Agreement; if such expert fees exceed 15% of the Town's bid threshold, Counsel shall obtain a Business Registration Certificate from the expert prior to retention of expert. (See Paragraph 17).
6. Special Counsel shall not be retained except upon notice and approval of the Town Attorney, if same are deemed necessary for the operation of the Town.
7. It is agreed that under the terms of the within contract the compensation and reimbursement

for services, costs, expenses and fees to be paid hereunder, shall not exceed **\$10,000**.

8. The contract for services as ABC Board Prosecutor shall take effect commencing on **February 1, 2012**.
9. Counsel and the Town hereby incorporate into this contract the mandatory language of *N.J.A.C. 17:27-3.4(a)* and the mandatory language of *N.J.A.C. 17:27-5.3* promulgated pursuant to *N.J.S.A. 10:5-31 to 38* (P.L. 1975, c. 127, as amended and supplemented from time to time), and Counsel agrees to comply fully with the terms, the provisions, and the conditions of *N.J.A.C. 17:27-3.4(a)* and *N.J.A.C. 17:27-5.3*, provided that *N.J.A.C. 17:27-3.4(a)* shall be applied. The provisions of Exhibit A are incorporated herein.
10. Counsel and the Town hereby incorporate into this contract the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (*42 USC S121 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 thereunder. The terms of Exhibit D of the Statement of Qualifications submitted by Counsel, in response to the Request for Qualifications for Legal/Liability Attorney are incorporated as if set forth at length herein.
11. Counsel represents and agrees that its attorneys at law are duly licensed and possess the requisite experience to perform all services under this agreement in a manner consistent with that duty and level of due care and skill, respectively, ordinarily exercised by attorneys under similar circumstances. **[ATTORNEY(s)]** shall remain an attorney admitted to the practice of law in the State of New Jersey in good standing; **[FIRM]** shall remain otherwise qualified to serve the Town as provided for under the terms of this Agreement.
12. Counsel hereby represents that it has filed with the Town proof of professional liability insurance with coverage amounts acceptable to the Town. Counsel shall maintain that amount of professional liability maintained as of January 1, 2012.
13. This Agreement shall be in full force and effect until such time as either party gives written notice to the other of termination. The parties agree that the Town, its successors and/or assigns shall have the right to terminate this Agreement at any time, with or without cause, by giving Counsel written notice of termination in accordance with the terms of this Agreement. Should termination occur, Counsel shall be paid for all services provided up to the date of written notice of termination, subject however, to set-off by the Town. In determining the value of the work performed by Counsel prior to such termination, such compensation shall be based On hourly billings, calculated at Counsel's rate(s) for the services to be performed and at the rates set forth herein; Counsel shall submit detailed vouchers for processing, approval and, if appropriate, payment on the Town's prescribed forms. Counsel may terminate this Agreement upon thirty (30) days written notice to the Town, Counsel taking care to properly assign all matters that may be assigned to Counsel to succeeding counsel as designated by the Town.
14. The acceptance by Counsel of final payment due under this Agreement shall be considered a

release in full of all claims against the Town of West New York arising out of, or by reason of, the work done and materials furnished under this Agreement.

15. Nothing in this contract is intended to create an employer/employee relationship between the Town and Counsel, both parties acknowledging that their relationship is contractual relationship for professional services under N.J.S.A. 40A:11-5.
16. As a courtesy, Counsel is advised that a for-profit business entity that has received \$50,000 or more through government contracts in a calendar year, must file an annual disclosure statement on political contributions with the New Jersey Election Law Commission pursuant to P.L. 2005 c. 271 by March 30. It is the Counsel's responsibility to determine if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.
17. Business Registration Certificate: Counsel shall provide written notice to its subcontractors of the responsibility to submit proof of business registration to Counsel prior to entry into a contract with Counsel.

"Subcontractor" means any business organization that is not a contractor that knowingly provides goods or performs services for a Counsel or another subcontractor in the fulfillment of this Agreement where the aggregate cost of the subcontractors work exceeds 15% of the Town's bid threshold.

Before final payment on the Agreement is made by the Town, Counsel shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of this Agreement, or shall attest that no subcontractors were used.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

For the term of the contract, Counsel and each of its affiliates and a subcontractor and each of its affiliates (N.J.S.A. 52:32-44(g)(3)) shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

18. Counsel understands that it may be requested to handle matters in litigation. As such, Counsel shall be familiar with all rules of the Town of West New York Self Insurance Fund and the New Jersey Municipal Self Insurers' Joint Insurance Fund and shall cooperate, as necessary and appropriate with the Town of West New York Self Insurance Fund and the New Jersey Municipal Self Insurers' Joint Insurance Fund and the New Jersey Municipal Self Insurers'

Joint Insurance Fund Third Party Administrator, including attending all meetings, and of the Town of West New York Self Insurance Fund and the New Jersey Municipal Self Insurers' Joint Insurance Fund, as may be necessary. Counsel will coordinate its activities on behalf of the Town with the Town of West New York Self Insurance Fund and the New Jersey Municipal Self Insurers' Joint Insurance Fund and the Third Party Administrator as appropriate and necessary.

19. Any provision which attempts to have the Town indemnify, defend, or hold harmless Counsel is hereby negated. The Town shall not be bound to confidentiality agreements to the extent that they are contrary to state law. The Town shall not be required to submit to arbitration for any claim, dispute or other matters in question between the parties. There shall be no assignment of the rights or obligations in this agreement by Counsel.
20. This Agreement shall be subject to the Town's annual availability and appropriation of sufficient funds as may be required to meet this obligation. In the event that it becomes apparent that adequate funds will not be available to meet this obligation, the Town shall immediately notify Counsel.

Counsel shall notify the Town's Municipal Administrator if it is anticipated that the costs of services provided under this Agreement will exceed the approved not to exceed amount and request that the Municipal Administrator request an amendment of the contract from the Board of Commissioners, as soon Counsel becomes aware of the possibility. If the Board of Commissioner's declines to approve a requested increase, such declination shall be considered a decision to terminate this agreement once Counsel has provides services up to the approved amount.

Services provided in excess of the contract not to exceed amount, without prior Board of Commissioner approval, are provided at Counsel's own risk.

21. This agreement is subject to the laws of the State of New Jersey without any consideration being given to any principles of choice or conflict of laws.
22. This Agreement may not be amended or modified without the express written consent of each party.
23. No representations or promises shall be binding on the parties hereto except those representations or promises contained herein or in some future writing signed by the party making such representations or promises.
24. This Agreement is for the sole benefit of the Town, its successors and assigns, and Counsel, its successors and assigns, and no third party beneficiary to this Agreement is contemplated or implied.
25. This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, pertaining to the subject matter hereof;

there are no warranties, representations or agreements among the parties in connection with the subject matter hereof except his set forth or referred to herein. Any provision appearing in any other agreement to the contrary, shall, to the extent of its contradiction or inconsistency herewith, be superseded hereby. No supplement, modification or waiver of this Agreement or any provisions herein shall be binding unless executed in writing by the parties. No waiver of any of the provisions of this Agreement shall constitute a continuing waiver unless otherwise expressly provided.

26. If any paragraph or provision of this Agreement is adjudged to be invalid or unenforceable, then it shall be deemed severed from this Agreement, and the balance of this Agreement shall survive as if such paragraph or provision was not contained within this Agreement.
27. This award was accomplished through a Fair and Open Process, which was ratified by Resolution adopted by the Board of Commissioners.
28. IN WITNESS WHEREOF, the Town and Counsel have executed this Agreement as of the date first written above.

Attest:

TOWN OF WEST NEW YORK

CARMELA RICCIE, RMC

FELIX ROQUE, Mayor

Attest:

FIRM

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 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, gender identity or expression, disability, nationality 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 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, 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 contractor's commitments under this act 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 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 contractor or subcontractor 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, 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 applicable 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, 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

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO 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 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.