



UNION COUNTY UTILITIES AUTHORITY

1499 US Highway One, Rahway, New Jersey 07065

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RESOLUTION NO.: 63-2023

DATE: September 20, 2023

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY AUTHORIZING THE AWARD OF A LEGAL SERVICES CONTRACT.

APPROVED AS TO FORM:
Bianka Vargas
Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
UNION COUNTY UTILITIES AUTHORITY

By: *Bianka Vargas*

By: *John Cuffe*

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
Eastman, Treasurer	X		X				
Figueiredo	X		X				
Jackus	X		X				
Kahn		X					
Holder	X		X				X
McManus, Secretary	X		X			X	
Rachlin	X		X				
Scutari, Vice Chairperson	X		X				
Szpond, Chairperson	X		X				
Alma, Alternate No. 1	X		X				
Scott-Bey, Alternate No. 2	X						

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
AUTHORIZING THE AWARD OF A LEGAL SERVICES CONTRACT.**

WHEREAS, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the "SWMA"), each county within the State of New Jersey is designated a solid waste management district with responsibility for the development of a solid waste management plan setting forth the solid waste disposal strategy to be applied in the district; and

WHEREAS, the Board of County Commissioners of the County of Union (the "County") has adopted the Union County District Solid Waste Management Plan, as amended from time to time (the "County Plan"); and

WHEREAS, the County has designated the Union County Utilities Authority (the "Authority") as the agency responsible for implementing the County Plan; and

WHEREAS, in order to carry out the stated purposes and goals for which the Authority was created, as well as the powers granted by the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq., and pursuant to N.J.S.A. 40A:11-1 et seq., the Authority has determined that it will require the provision of certain general and specialized consulting and professional services relating to and in furtherance of its activities; and

WHEREAS, the Authority has determined to undertake a fair and open process in accordance with the New Jersey Local Unit Pay-to-Play Law, N.J.S.A. 19:44A-20.4, et seq. through the issuance of a Request for Qualifications ("RFQ") for contract awards for such services required on and after the Authority's 2023 reorganization through and until its reorganization in 2024; and

WHEREAS, the Authority has established and implemented a procedure for such a process which required, at a minimum (1) public advertisement of the RFQ, in the official Authority newspaper for ten (10) calendar days, (2) establishment of appropriate evaluation criteria, which was documented in writing and disclosed prior to the solicitation of qualifications, and (3) public opening; followed by announcement of any contract award; and

WHEREAS, moreover the Authority established an evaluation committee to evaluate any and all responses to the RFQ, consisting of the following individuals: Chairman Raymond Szpond, Acting Executive Director Linda Stender and Deputy Executive Director Lisa M. da Silva; and

WHEREAS, the Authority advertised RFQ's for various professional services on January 5, 2023 and February 8, 2023, received responses to the RFQ's, respectively, on January 19, 2023 and February 22, 2023 and, after reviewing and evaluating such responses and based upon recommendations of the Authority's evaluation committee and the PPI committee, the Authority adopted Resolution 11-2023 at its February 15, 2023 Reorganization Meeting which qualified all firms meeting the evaluation criteria established in accordance with the Fair and Open Process and the Authority's By-laws, which list was supplemented on March 15, 2023 through the adoption of Resolution No. 23-2023; and

WHEREAS, the Authority wishes to award a legal services contract to the previously qualified firm – Hawkins Delafield & Wood, LLC -- as set forth herein below.

NOW, THEREFORE, BE IT RESOLVED by the Union County Utilities Authority, that:

1. All of the above recitals are incorporated herein as if fully set forth at length.
2. The Authority Hereby awards a contract to Hawkins Delafield & Wood, LLC to provide professional legal services to the Authority in connection with the Authority's solid waste system during the time period covering September 21, 2023 through the Authority's next reorganization meeting in February 2024.
3. The Authority authorizes the Acting Executive Director to execute a Contract with Hawkins Delafield & Wood, LLC in substantially the same form of Contract as is attached hereto in an amount not to exceed \$100,000.00.
4. This action constitutes an award for professional services not subject to the public bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., inasmuch as the appointees are each authorized and regulated by law to provide the aforementioned services and/or the services are specialized in nature and require knowledge and training of an advanced type, which each of said firms and/or individuals possesses.
5. This Contract, although exempt from formal public bidding, are each awarded as part of a "Fair and Open" process in accordance with N.J.S.A. 19:44A-20.4 et seq.
6. To the extent not already done so, the Authority shall cause a notice of the above-described contract award to be published according to N.J.S.A. 40A:11-5(1)(a), et seq.
7. This Resolution shall take effect immediately.

CONTRACT FOR SPECIAL COUNSEL SERVICES
BY AND BETWEEN
UNION COUNTY UTILITIES AUTHORITY
AND
HAWKINS DELAFIELD & WOOD, LLC

THIS CONTRACT, dated as of **September 21, 2023**, by and between the **UNION COUNTY UTILITIES AUTHORITY**, with its principal offices located at 1499 Routes 1&9 North, Rahway, New Jersey 07065 (hereinafter referred to as the "Authority" or "UCUA"), and **HAWKINS DELAFIELD & WOOD, LLC**, One Gateway Center, 24th Floor, Newark, New Jersey 07102-5311, (hereinafter referred to as "Attorney" or "Contractor"):

W I T N E S S E T H

WHEREAS, the Authority wishes to engage an Attorney to provide legal consulting services to the Authority with respect to the Authority's programs, facilities and activities, all as described in Paragraph 1, Scope of Services; and

WHEREAS, Attorney has agreed to provide such services as set forth in the aforesaid Scope of Services and is qualified and experienced in providing such services.

NOW THEREFORE, the parties hereto, each intending to be legally bound hereby, agree as follows:

1. **SCOPE OF SERVICES:**

a) Attorney hereby agrees to perform Solid Waste Counsel legal services as defined in the Authority's Request for Qualifications for such services issued on January 5, 2023 and February 8, 2023, as required by the Authority in connection with the Authority's programs and activities (hereinafter "Services").

b) Such Services shall include but not be limited to providing advice and counsel regarding solid waste management and solid waste system matters, and such other matters as requested by the Authority.

c) The Attorney, during any month within which they provide Services to the Authority, at the request of the Authority, shall provide a Status Report to the Authority on or before the Wednesday preceding the next meeting of the Authority's Board of Commissioners. The Status Report shall be a comprehensive, type-written report depicting the status of all projects, litigation, and/or other matters, including activities and accomplishments, being handled by the Attorney as of the first day of the reporting month. The Status Report shall not be a recitation of the Attorney's Billing

Statement. The Status Report shall be provided to the Authority's Acting Executive Director and shall be clearly marked "Confidential. Attorney-Client Privileged."

2. PERSONNEL:

a) Attorney represents that it has or will secure, at its own expense, all personnel required to perform the Services.

b) Personnel shall not be employees of, or have any other contractual relationship with, the Authority.

c) The Services shall be performed by, or under the direct supervision of Rick Sapir, Esq., and all personnel, whether employees of the Attorney or sub-consultants, to whom Mr. Sapir delegates responsibility for performing the Services under this Contract, shall be fully qualified to perform whatever duties that have been delegated to them.

d) None of the work or Services shall be subcontracted without the prior written approval of the Authority.

e) By entering into this Contract and/or performing Services for the Authority, Attorney represents that it has, or has available to it, the skills, experience, facilities, and financial resources required to perform the Services in a satisfactory manner and within the time frame specified. Attorney agrees to employ and pay from its own funds all persons or entities that Attorney needs to meet the requirements of this Contract.

3. TIME OF PERFORMANCE:

It is understood and agreed by and between the parties hereto, that this Contract shall be for a period commencing September 21, 2023 and end on the date of the Authority's reorganization meeting in February 2024, during which time the Attorney agrees to perform the Services in such a manner as to assure their expeditious completion in light of the purpose of this Contract.

4. COMPENSATION:

a) The budget cap applicable to these Services shall not exceed \$100,000.00 during the term of this professional services agreement.

b) Except with respect to matters that are performed on a subcontract basis, as provided herein, the Authority agrees to pay Attorney for Services provided on the basis of hourly time charges, except to the extent provided in paragraph (b) below. Such Services shall be billed at the hourly rate of \$350.00 for Partners, Of-counsel and Associates.

c) To the extent that any Services are performed by any personnel other than as set forth above, the hourly rates for such attorneys shall be submitted to the Authority for review and written approval prior to payment for such Services.

d) With respect to any financing or proposed financing to be undertaken by the Authority, the Authority may request that the Attorney perform such Services on the basis of a fixed fee. Such fixed fee shall be mutually acceptable to the Authority and the Attorney and shall be agreed-to prior to the provision of Services with respect to such proposed financing.

e) When the value of Services rendered under this contract has reached 80% of the above-referenced budget cap the Attorney shall notify the Authority's Acting Executive Director and Comptroller of same in writing. The failure to comply with the provisions of this paragraph shall be deemed a material breach of the contract by the contractor and shall subject the contractor, at the Authority's option, to termination and dishonor of any and all bills or vouchers exceeding 80% of the budget cap (or any amended budget cap). If such notice is properly and timely made, Attorney shall be entitled to full (100%) compensation up to the approved budget cap (or any amended budget cap).

f) The Authority agrees to reimburse Attorney for out-of-pocket expenses incurred in connection with performance of the Services to be provided under this Contract. Such out-of-pocket expenses shall include, but not be limited to, the cost of duplication, word processing, telecopy, Federal Express or similar overnight mail services, messenger service, meals, if appropriate, long-distance calls, travel expenses and payments to subcontractors.

g) The Attorney covenants and agrees to have available, upon request, at the Authority, their books and records for inspection by appropriate officials covering the charges, fees and costs under this Contract.

h) Vouchers and Itemized Billing Statements shall be submitted to the Authority's Comptroller, along with a copy for the Acting Executive Director on or before 4:00 PM on the first Wednesday of the month or 14 days prior to the Authority's Board of Commissioners Meeting (whichever is later). Failure to submit such documents in a timely manner may result in a delay in processing applicable payments.

5. SERVICE AND DOCUMENT CONFORMANCE/APPROVAL:

All Services rendered and documents prepared by the Attorney shall strictly conform to all laws, statutes and ordinances and the applicable rules and regulations, methods and procedures of all governmental boards, bureaus, offices and commissions and other agencies, in effect when the Services are rendered and the documents are prepared.

All of the Services required of the Attorney by the Authority shall be performed to

the satisfaction of, and with the approval of, the Authority, which approval shall not be unreasonably withheld.

6. DOCUMENT OWNERSHIP:

All plans, notes, briefs, reports, opinions, calculations, drafts, contracts, specifications, designs, memoranda and all other documents pertaining to the Services and prepared or obtained by the Attorney in the performance of this Contract shall be the absolute property of the Authority; subject however, to the Authority making payment for the provision of the Services.

7. RECORD RETENTION:

Pursuant to N.J.A.C. 17:44-2.2, the Attorney shall, at a minimum, to maintain all documentation related to products, transactions or services under the contract for a period of five (5) years from the date of final payment. Such records shall be made available to the Authority and the Office of the New Jersey State Comptroller upon request. Such retention period shall be deemed only a minimum period and the prospective contract partner will be subject to all other retention periods required under any and all other applicable laws, rules, regulations and contract provisions governing record retention for the types of services to be provided.

8. TERMINATION:

The Authority reserves the right to terminate this Contract, at its sole discretion, by giving at least ten (10) days prior written notice to Attorney of such termination and specifying the effective date. Upon any termination of the Contract, Attorney shall be entitled to be reasonably compensated for any Services rendered prior to the date of termination.

a) Upon payment for all Services rendered to the Authority as of the date of termination, all finished or unfinished documents, calculations, drafts, contracts, specifications, designs, memoranda, data, studies, agreements and/or reports prepared or obtained by the Attorney under this Contract, shall be delivered promptly to the Authority in accordance with Paragraph 6.

b) Payment shall be made in accordance with the provisions of Paragraph 4.

9. ASSIGNMENT:

This Contract shall not be assigned or assignable, either by action of the Attorney or by law.

10. ERRORS AND/OR OMISSIONS:

The Authority reserves the right to deny payment of the part of any fee that is based on an increase in costs in the preparation of documents or Services resulting from an error or omission of the Attorney.

11. INDEMNIFICATION:

Attorney shall indemnify, defend and hold harmless the Authority, its members, officers, directors and employees from and against any and all losses, claims, actions, damages, liability and expenses, including, but not limited to, those in connection with loss of life, bodily and personal injury or damage to property, to the extent they are occasioned, in whole or in part, by Attorney's negligent acts or omissions, or the negligent acts or omissions of Attorney's agents, sub-consultants, employees or servants, in the performance of the Services pursuant to this Contract.

12. LITIGATION:

In the event the Authority becomes involved in any litigation with third parties concerning or relating in any way to Attorney's Services, whether such litigation occurs during or after the term of the Contract, Attorney agrees, at no additional fees other than the hourly rates called for under this Contract, to make its members and employees available to the Authority, to consult, assist and cooperate in any such litigation to the extent such consultation, assistance and cooperation may be required by the Authority.

13. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION:

See **Exhibit A**, which is attached hereto and made a part hereof.

14. FIRM HISTORY:

Attorney represents that no corporation, partnership, individual or association, officer, director, employee, manager, parent, subsidiary, affiliate or principal shareholder of Attorney, has been adjudicated in violation of any state or federal anti-trust or other similar statute within the preceding five years, or previously adjudged in contempt of any court order enforcing any such law, or has an operating history which shows a recurring pattern of flagrant and consistent violation of prohibited or illegal acts.

15. AUTHORITY REPRESENTATIONS AND WARRANTIES:

The Authority represents and warrants that this Contract has been duly authorized by its board membership, and when executed by the Acting Executive Director of the Authority and the Attorney, shall be valid and binding upon the Authority and shall be in full force and effect.

16. GOVERNING LAW:

The interpretation of this Contract shall be governed by the laws of the State of

New Jersey. The Attorney consents to venue and jurisdiction in the State of New Jersey,

17. LABOR LAW:

The Attorney is required to conform to all applicable labor laws of the State of New Jersey and the various acts amendatory and supplemental thereto, as applicable, and in accordance with the New Jersey Department of Labor and Industry Prevailing Wage Rate Determination. When applicable, the rate of wages for all laborers employed by the Attorney shall not be less than the prevailing wage rate so established for any work to be performed under the terms of the Contract and a copy of the Determination of the Wage and Hour Bureau or other documents specifying the prevailing wages is considered as incorporated by reference.

18. AWARD:

This Contract has been awarded in accordance with a Fair and Open Process pursuant to the New Jersey Local Unit Pay-to-Play Law (N.J.S.A. 19:44A-20.4 et seq.).

19. SEVERABILITY:

A waiver or breach of any term condition or covenant by either party shall not constitute a waiver or breach of any other term condition or covenant. If any court of competent jurisdiction declares a provision of the Contract to be invalid, illegal or otherwise unenforceable, the remaining provisions of the contract shall remain in full force and effect.”

20. STATE SALES TAX EXEMPTION:

The Authority is an organization exempt from certain New Jersey State sales and use taxes, imposed under N.J.S.A. 54:32B-1 et. seq., (See: N.J.S.A. 54:32B-9(a)(1)).

21. INSURANCE:

The Attorney shall maintain the following insurance coverage during the term of this Contract, and provide a Certificate of Insurance to the Authority evidencing same: Comprehensive Liability, Property/Casualty (\$2 million aggregate/\$1million per occurrence) (unless similar level of Umbrella coverage are present); Workers Compensation (statutory limits); Professional Malpractice (\$2 million aggregate/\$1 million per occurrence) naming the Authority as an additional insured.

22. AMERICANS WITH DISABILITIES ACT COMPLIANCE:

See **Exhibit B**, which is attached hereto and made a part hereof.

23. EXECUTION OF COUNTERPARTS. This Contract may be executed in any number of counterparts, which, taken together, shall constitute one instrument. It is

not necessary that all parties sign all of the counterparts, but each party must sign at least one counterpart for this Contract to be effective.

IN WITNESS WHEREOF, the Authority has caused these presents to be duly executed and the Attorney has caused these presents to be duly executed, as of the day and year first above written.

ATTEST:

UNION COUNTY UTILITIES AUTHORITY

By: Supamdas J. [Signature]
9/21/03

By: Linda Stender [Signature]
LINDA STENDER
Acting Executive Director

(SEAL)

HAWKINS DELAFIELD & WOOD, LLC

By: _____

Name:

Title

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 Purchase & Property, CCAU, EEO Monitoring Program 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 Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT B

AMERICANS WITH DISABILITIES ACT OF 1990 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DIABLITY

The Contractor and the Authority do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. S12101 *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 regulation promulgated pursuant thereunto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the Authority pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event 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 Authority in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the Authority, 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 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 Authority's grievance procedure, the contractor agrees to abide by any decision of the Authority, which is rendered pursuant to, said grievance procedure. If any action or administrative proceeding results in an award of damages against the Authority or if the Authority 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 Authority 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 proceeding is brought against the Authority or any of its agents, servants, and employees, the Authority shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the Authority or its representatives.

It is expressly agreed and understood that any approval by the Authority 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 Authority pursuant to this paragraph.

It is further agreed and understood that the Authority 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 Authority from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.