

**TOWN OF NORTH HEMPSTEAD
COMMUNITY DEVELOPMENT AGENCY
51 ORCHARD STREET
ROSLYN HEIGHTS, N.Y. 11577**

Mr. Wasserman presented the following Resolution and moved for its adoption. The Resolution was seconded by Mr. Handy and adopted by the vote set forth below.

RESOLUTION NO. 75 (2004)

**A RESOLUTION MODIFYING RESOLUTION NO. 59 (2004)
PERTAINING TO THE EXECUTION OF AN AGREEMENT FOR LEGAL
SERVICES.**

WHEREAS, pursuant to Resolution No. 5 (2004), duly adopted at their meeting held on January 29, 2004, members (“Members”) of the Town of North Hempstead Community Development Agency (the “Agency”) approved and authorized the issuance and advertising by Agency staff of a Request for Proposals / Qualifications seeking the identification and retention of one or more law firms (“Law Firms”) for the providing of legal services to undertake condemnation proceedings, litigation, real estate transactional work and related legal services on the Agency’s behalf (the “Services”); and

WHEREAS, pursuant to Resolution No. 59 (2004), duly adopted at their meeting held on August 26, 2004, the Members authorized the selection and the execution of contracts for the Services with the Law Firm of Mark A. Cuthbertson (the “Cuthbertson Firm”) and with Twomey, Latham, Shea & Kelley, LLP (the “Twomey Firm”); and

WHEREAS, Agency staff has subsequently concluded that it would be desirable to centralize responsibility for providing the Services with a single Law Firm, and to provide that firm with the authority, subject to Agency staff approval, to refer portions of the Services to other firms to avail the Agency of the special expertise or administrative capabilities of such firms, is desirable; and

WHEREAS, Agency staff has recommended that the Members modify Resolution No. 59 (2004) to affirm the selection of the Cuthbertson Firm to provide the Services for the reasons set forth in Resolution No. 59 (2004), to make the Cuthbertson Firm the sole Law Firm selected to provide the Services, and to provide the Cuthbertson Firm with the authority, 1, to from time to time refer portions of the Services to other firms to avail the Agency of the special expertise or administrative capabilities of such firms, with each such referral subject to the prior approval of Agency staff (the “Staff Recommendation”); and

WHEREAS, Members wish to adopt the Staff Recommendation.

NOW, THEREFORE, BE IT

RESOLVED, that the Members hereby adopt the Staff Recommendation; and be it further

RESOLVED, that the Executive Director of the Agency and any other officer thereof is hereby authorized to execute such instruments and documents and to take such other action as may be necessary to carry out the foregoing.

Ayes: Messrs. Handy, Hawkins, and Wasserman, and Ms. Cisco

Nays: None

Abstained: None

Date: September 30, 2004

IN D.V.

CONTRACT FOR PROFESSIONAL OR TECHNICAL SERVICES

THIS CONTRACT, effective as of September 1, 2004, between **THE TOWN OF NORTH HEMPSTEAD COMMUNITY DEVELOPMENT AGENCY** (the "Local Public Agency" or the "Municipality"), a corporate and body politic organized and existing as a municipal urban renewal agency under the General Municipal Law of the State of New York (the "State"), having its offices at 51 Orchard Street, Roslyn Heights, New York 11577, and **MARK A. CUTHBERTSON, doing business as the LAW OFFICES OF MARK A. CUTHBERTSON**, a sole proprietor under the laws of the State, having his offices at 434 New York Avenue, Huntington, New York 11743 (the "Contractor" or "Consultant"), (the Local Public Agency and the Contractor are hereinafter referred to as the "Parties").

WITNESSETH:

WHEREAS, to retain expertise required for a proper analysis and evaluation of the Proposals, the Members, pursuant to Resolution No. 5 (2004), duly adopted at their meeting held on January 29, 2004, authorized Local Public Agency staff to issue a request for proposals or qualifications (the "RFPQ") and to advertise for the retention of a law firm ("Law Firm") providing legal services (the "Services"); and

WHEREAS, on or about April 30, 2004, the Local Public Agency issued and advertised the request for qualifications more fully set forth in the rider entitled "Part IA - The RFPQ", attached hereto and made a part hereof (the "RFPQ"), and the Contractor in response thereto, submitted the proposal set forth in rider entitled "Part IB - The Proposal", attached hereto and made a part hereof (the "Proposal"); and

WHEREAS, members of the Local Public Agency, by Resolution No. 59 (2004) as adopted at their meeting held on August 26, 2004, as modified by Resolution No. 75 (2004), duly adopted at their meeting held on September 30, 2004, have authorized the Local Public Agency to enter into this Agreement with the Contractor for the performance of the Services as set forth below, in exchange for payment set forth in the Proposal.

NOW THEREFORE, pursuant to the terms, provisions, covenants and conditions more fully set forth below, the Parties hereto agree as follows:

1. Relationship of the Parties.

The Parties intend and agree that the relationship of the Contractor to the Local Public Agency established by and under this Contract is that of an independent contractor, and not an employment relationship. Contractor shall have no authority to create or assume obligations on behalf of the Local Public Agency or otherwise bind the Local Public Agency.

2. **Services.**

Contractor shall perform the Services in accordance with the RFPQ and the Proposal. Where the RFPQ and the Proposal conflict, the RFPQ shall control.

3. **Term.**

- (a) This Agreement shall commence on the agreement date as set forth above, and, unless terminated as otherwise set forth herein, shall expire on or before August 31, 2006.
- (b) Either Party may terminate this Agreement upon the mailing notice of same by certified mail, return receipt requested, no fewer than thirty (30) days in advance of the date of termination set forth in said notice. The Local Public Agency will be responsible for payment of any portion of the Services completed prior to termination and satisfactory to the Local Public Agency.

4. **Contractor Responsibility.**

Subject to the provisions of Section 21 hereof, Contractor has been engaged for Contractor's unique skill and experience, and is fully and exclusively responsible for Services rendered hereunder.

5. **Independent Judgment.**

The manner, details, and methods by which Contractor performs the Services under this Agreement shall be solely within its discretion and in accordance with its independent judgment. Contractor shall perform the Services in a manner satisfactory to the Local Public Agency.

6. **Consultation.**

Contractor and the Local Public Agency's representative shall meet periodically, at mutually agreeable times, to discuss the status of Contractor's progress in performance of the Services.

7. **Availability.**

Contractor shall make itself available at reasonable times with reasonable frequency and upon reasonable notice, in person or by telephone, to consult regarding the Services provided hereunder.

8. **Time of Performance.**

Contractor shall be fully responsible for performing the Services in a timely manner, and shall devote such time as is required to complete the Services.

9. **Nonexclusive Services.**

Contractor represents that it makes itself available to the general public on a regular basis, and the Local Public Agency agrees that the Contractor shall be free to perform services for other entities or persons during the term of this Agreement to the extent not inconsistent with his responsibilities hereunder.

10. **Fees For Services and Expenses; Procedures for Time Billing; Rules Regarding Payment for Services Rendered.**

(a) The Local Public Agency shall make payments to the Contractor for the Services in arrears based a fee of \$175 per billable hour. None of the Contract Amount shall be paid by the Local Public Agency except pursuant to timely filed claim forms containing documentation of the costs claimed based on completion of the Services, all in form and substance satisfactory to the Local Public Agency. Invoices for services performed by Contractor during any calendar year must be submitted to the Local Public Agency no later than the 15th day of January of the following calendar year.

(b) For time billings made pursuant to Section 10 (a) hereof, Contractor will bill in units of one-tenth of an hour. Each task performed shall be listed individually so that time spent on each task is easily ascertainable. Contractor shall not perform legal research requiring more than ten (10) hours of billable time per month without consulting the Local Public Agency. Furthermore, if Contractor reasonably believes that it will require more than ten (10) hours of billable time to prepare any motions, briefs or other documents, then it will provide the Local Public Agency with an estimate of the number of hours of billable time it anticipates taking to prepare same, and obtain consent to prepare same from the Local Public Agency prior to commencing such Services.

(c) The Local Public Agency shall not pay for preparing or discussing billing invoices; excessive review of, proofing of or revision to papers; intra-office

conferences; more than one attendee at trials (except with consent of the Local Public Agency), conferences or depositions. Further, the Local Public Agency shall not pay for court appearances where none is required, including, but not limited to, motions returnable to a submission part. Finally, the Local Public Agency shall not pay an attorney rate for tasks which should have been performed by a paralegal or a support staff member.

(d) The Local Public Agency shall not pay an attorney rate for tasks which should have been performed by a paralegal or a support staff member.

(e) The Contractor shall also be compensated for all reasonable expenses and disbursements actually incurred, including, but not limited to out-of-pocket disbursements for travel, messengers, investigators, trial preparation services and other legitimate expenses. The Local Public Agency shall not reimburse the cost of electronic legal research performed on Westlaw, Lexis, or any other electronic database. The Local Public Agency shall not reimburse expenses it is exempt from paying, including, but not limited to, index number fees, the Secretary of State's service of process fee and sales taxes. All out-of-pocket expenses shall be substantiated with proper paid receipts or other documentation submitted together with the invoices upon which the expenses appear. The Local Public Agency shall not reimburse expenses unless receipts or other appropriate documentation is provided for same. Furthermore, there shall be no compensation for Services rendered or for expenses incurred in addition to those specified above in the absence of prior written consent from the Local Public Agency.

(f) If the Contractor believes that an expert should be retained, it must secure prior approval from the Local Public Agency. A resume or curriculum vitae for the proposed expert shall be submitted at the time of the request for prior approval.

11. Reporting.

The Contractor shall provide regular periodic status reports to the Local Public Agency. Regarding litigation matters, such reports shall include an initial report within thirty (30) days after receipt of the file evaluating the likelihood of success on the merits and potential liability; quarterly status reports thereafter; a summary of testimony taken at examinations before trial, and implications thereof; a pretrial report after a Note of Issue is filed and recommendations for settlement, if any. The Contractor shall prepare such other reports as shall be requested by the Local Public Agency. The Contractor shall provide copies of said reports to the Local Public Agency's insurance carriers, or their designated representatives, if the requested by the Local Public Agency. In addition, the Contractor shall prepare a report to the Local Public Agency's auditors, within the time frame they set forth, upon request. Contractor shall immediately notify the Local Public Agency of any motions, settlement discussions, notices of appeal or other noteworthy developments.

12. **Copies of Documents.**

Contractor shall provide the Local Public Agency with copies of all pleadings, bills of particulars, briefs, memoranda of law, motion papers, closing documents and any other documents prepared and submitted in Court, including those served by the opposing parties, or to other parties in connection with any transaction in which Contractor is representing the Local Public Agency. Contractor shall promptly provide copies of any other documents requested by the Local Public Agency.

13. **Books and Records.**

Contractor shall maintain full and complete books and records of accounts in accordance with accepted accounting practices and such other records as may be prescribed by the Local Public Agency, including a contemporaneous record of work indicating in brief summary, a description of the work performed. Such books and records shall be retained for a period of six (6) years and shall at all times be available for audit and inspection by the Local Public Agency, the Local Public Agency's auditors or a duly designated Local Public Agency representative.

14. **Freedom of Information Law.**

Certain documents within the Contractor's possession may be subject to release under the New York State Freedom of Information Law ("FOIL"). Contractor will promptly provide a response to any requests from the Local Public Agency's Records Access/FOIL Officer (the "Records Access Officer"). In the event a FOIL request is sent to Contractor, Contractor shall immediately notify the Records Access Officer.

15. **Dispute Resolution Regarding Fees.**

In the event that a dispute arises between the parties relating to fees, Part 137 of the Rules of the Chief Administrator of the Courts shall apply.

16. **Benefits.**

The Parties acknowledge and agree that, as an independent contractor, Contractor is not entitled to any employee benefits provided by the Local Public Agency to its employees. Contractor shall be solely responsible for any benefit coverages for Contractor.

17. **Taxes.**

Contractor accepts sole responsibility and liability for the payment of any and all taxes owing to any governmental authority with respect to or on account of any payments made by the Local Public Agency to Contractor under this Contract.

18. Indemnification.

It is expressly understood that the Contractor shall, to the fullest extent provided by law, defend and indemnify and save harmless the Local Public Agency from claims, suits, action, damages and costs of every name and description resulting from the negligent performance of the Services, and such defense and indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of Services within the meaning of this provision shall include, in addition to negligence founded upon tort, negligence based upon the Contractor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing in this provision or in this Agreement shall create or give third parties any claim or right of action against the Contractor or the Local Public Agency beyond those provided by law.

19. Insurance

Contractor agrees to procure and maintain, with a carrier holding an "A" rating from AM Best Company, and furnish certificates of insurance evidencing its procuring of legal malpractice insurance and workers' compensation insurance. The Local Public Agency shall be entitled to 30 days advance written notice of the cancellation or termination of said policy.

20. Rider

The attached riders, entitled "Part IA – The RFPQ" (6 pages), and "Part IB – The Proposal" (12 pages), and "Part II – Terms and Conditions" (4 pages), are hereby incorporated in and made a part of this Contract.

21. Subcontracting of the Services

Notwithstanding anything to the contrary in Section 4, at the direction of the Local Public Agency, or upon the written request of the Contractor, approved in advance by the Local Public Agency, the Contractor may, from time to time, subcontract portions of the Services to a Law Firm (the "Subcontractor"), subject to the following terms and conditions:

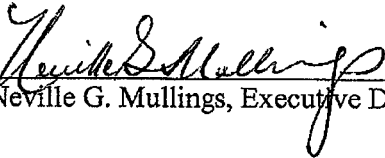
- a. The fees and costs payable to the Subcontractor shall be no greater than the Fees and Costs payable to the Contractor hereunder.
- b. The Contractor shall enter into a contract with the Subcontractor (the "Subcontract") which shall:

- i. identify (i) the portion of the Services to be provided by the Subcontractor, the term of the Subcontract, and the fees and costs payable by Contractor to the Subcontractor, subject to the provisions of Section 16 (a) hereof;
- ii. include a provision indicating that the portion of the Services performed shall be performed in a manner consistent with this Contract;
- iii. incorporate the provisions contained in Sections 3 (b), 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 hereof, Part II- Terms and Conditions, and a copy of this Contract, provided, however, that:
 - (1) where the terms "Local Public Agency" or "Municipality" appear, the term "Contractor" shall be substituted therefore, and wherever the terms "Contractor" or "Consultant" appear, the term "Subcontractor" shall be substituted therefor.
 - (2) Section 18 shall be drafted so that obligations of the Subcontractor to indemnify, defend, and hold harmless shall run to both the Contractor and the Local Public Agency.
 - (3) Section 19 shall be drafted so that both the Local Public Agency and the Contractor are named as additional insured under the policies described therein, and are each entitled to 30 days advance written notice of cancellation of each of

said policies.

IN WITNESS WHEREOF, the Parties have set their hands as of the date first above written.

**TOWN OF NORTH HEMPSTEAD
COMMUNITY DEVELOPMENT AGENCY**

By: 
Neville G. Mullings, Executive Director

**MARK A. CUTHBERTSON, doing business as the
LAW OFFICES OF MARK A. CUTHBERTSON**

