

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. TA16-0421-12

Date of Adoption APRIL 21, 2016

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY

[Signature]
Legislative Research Officer

HUDLEY

COX

PRESENTED BY COUNCIL MEMBER

SECONDED BY

**RESOLUTION RATIFYING PROFESSIONAL SERVICES CONTRACT
FOR LITIGATION/DEFENSE COUNSEL SERVICES**

WHEREAS, resolution number TA 15-1027-36 qualified twelve firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2015 until October 31, 2016; and

WHEREAS, the resolution requires that all cases assigned to counsel for this purpose must be approved by the Municipal Council; and

WHEREAS, the Township Attorney has determined that Eric Bernstein & Associates, LLC. has the most experience to defend the Township of Irvington in the case of United States of America v. Michael A. Thompson, et als. Case No. 2;16-CV-00857-KM-JBC; and

WHEREAS, the Township Attorney has recommended that a contract be awarded to Eric Bernstein & Associates, LLC, 34 Mountain Blvd. Building A, Warren, NJ 07059; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Eric Bernstein & Associates, LLC, 34 Mountain Blvd. Building A, Warren, NJ 07059 for a contract amount not to exceed \$15,000.00. The billing rate for this contract is \$150.00 per hour; and

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contracts for this case and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, that funds for this service will be paid from the Insurance fund for a contract amount not to exceed \$15,000.00. The billing rate for this contract is \$150.00 per hour.

RECORD OF COUNCIL VOTE

X = Indicates Vote N.V. = No Vote A.B. = Absent

| COUNCIL MEMBER | YES | NO | N.V. | A.B. | COUNCIL MEMBER | YES | NO | N.V. | A.B. |
|-----------------------------|-----|----|------|------|--------------------------|-----|----|------|------|
| BURGESS, 1ST VICE PRESIDENT | X | | | | JONES, 2ND VICEPRESIDENT | | | | X |
| COX | X | | | | LYONS | | | | X |
| HUDLEY | X | | | | FREDERIC, PRESIDENT | X | | | |
| INMAN | X | | | | | | | | |

PRESIDENT OF COUNCIL *[Signature]* MUNICIPAL CLERK *[Signature]* DATE APRIL 21, 2016

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK *[Signature]* DATE APR 21 2016

ADMINISTRATOR ASSESSOR BLDG CFO COLLECTOR COURT ENGINEER FIRE HEALTH HOUSING INIC JUDGE LEGAL LIBR LICEN MAYOR OCDP PARKS PAYROLL PUBLIC SAFETY DIR PUBLIC WORKS PURCHASING SEC PB/ZBA TRAFFIC ZONING OFF DLGS GNCD OTHER(S): _____

CONTRACT FOR PROFESSIONAL LEGAL SERVICES

This Agreement made the day of _____, between the Township of Irvington, a municipal corporation of the State of New Jersey (hereinafter referred to as "Township") and Eric Bernstein & Associates, LLC, 34 Mountain Blvd. Building A, Warren, NJ 07059 (hereinafter referred to as "Counsel").

WHEREAS, the Township is in need of the services of outside counsel to provide legal services and/or legal representation in the matter venued in Superior Court of New Jersey known as **United States of America v. Michael A. Thompson, et als. Case No. 2;16-CV-00857-KM-JBC** representing the Township of Irvington, (hereinafter referred to as the "Legal Matter"); and

NOW, THEREFORE, it is agreed as follows:

1. **Services.** Counsel shall provide the Township of Irvington with legal representation in the above-referenced Legal Matter and perform in accordance with the terms and conditions set forth herein. The services to be provided are "professional services" within the meaning of N.J.S.A. 40A:11-5(1)(a)(i).

2. The term of this agreement shall be November 1, 2015 through October 31, 2016.

3. **Compensation.** The total contract price for this agreement, including reimbursement for expenses, shall not exceed a maximum of **\$15,000.00** without prior approval of the Township of Irvington Municipal Council. Counsel will cease all activities on the within Legal Matter that have reached their contract limit and will not undertake any further representation without prior written approval of the Township of Irvington Municipal Council. Township Counsel and the above named Counsel are aware that any work undertaken beyond the contracted amount, without prior approval, will be at Counsel's expense, and the Township will not be liable therefor. Unless otherwise provided in this agreement, billing and payment shall be in accord with standard Township procedure. Counsel shall be compensated for legal services billed in six minute increments at its customary hourly rates not to exceed one hundred fifty dollars (\$150.00) per hour. The rates for paralegals and law clerks shall not exceed seventy-five (\$75.00) per hour billed in six minute increments. The Township will not be charged for the time spent by Counsel preparing, reviewing, or discussing its bill(s) for or with the Township. The Township shall also not be charged for the time of Counsel's clerical staff. The Township will not be charged by the firm for the preparation of their monthly reports.

4. **Disbursements.** In addition to its fees, Counsel will be entitled to payment or reimbursement for reasonable out-of-pocket costs and expenses incurred hereunder on the Township's behalf, provided, however, such reimbursements shall be included within the contract maximum amount. Payment for services rendered by third party providers such as expert witnesses, certified shorthand providers, transcripts, title company fees, expert witnesses, surveyors, arbitrators and mediators shall be advanced by Counsel and reimbursed and charged against the contract maximum amount as hereinabove provided.

5. **Estimates.** Although Counsel will, upon the Township's request, furnish estimates of fees and costs that are anticipated, the parties understand that these estimates are by their nature inexact.

6. **In-House Costs.** The Township shall not be charged for Counsel's in-house costs for photocopies at a rate greater than ten cents per copy. Line and usage charges for telephone calls, e-mails, or facsimiles will be at actual cost.

7. **Billing.** Fees and expenses will be billed monthly. The Township shall not be obligated to pay fees and expenses not billed within sixty days of when incurred. The Township is aware that pursuant to Court Rule 1:20A-6 it may dispute any of Counsel's invoices and initiate fee arbitration by immediately contacting the local Fee Committee secretary to request the appropriate forms.

8. **Severability of Provisions.** If any provision of this agreement or the application of any provision to any party or circumstance shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties or to other circumstances.

9. **Titles.** The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

10. **Waiver of breach.** The waiver by the Township of any breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition of this agreement.

11. **Choice of Law.** This agreement shall be construed, governed, and enforced in accordance with the laws of the State of New Jersey. Any action based upon the terms of this agreement shall be venued within the Township of Irvington.

12. **Discrimination.** The provisions of N.J.S.A. 10:2-1 through 10:2-4, inclusive, relating to discrimination in employment on public contracts, and the rules and regulations promulgated thereunder, are incorporated into the terms and conditions of Counsel's retention and made a part hereof.

13. **Conflicts.** The Supreme Court in In Re Supreme Court Advisory Committee Opinion on Professional Ethics Opinion No. 697, set forth the applicable standard on "conflicts" to which we agree to abide. See 188 N.J. 549 (2006).

14. **Agreement.** Counsel's signature on this agreement, or if work has already begun the Counsel's failure to object to these terms promptly in writing, constitutes acceptance of the foregoing terms and conditions. This agreement constitutes the entire understanding concerning the Township's engagement of Counsel, and cannot subsequently be modified except in a writing signed by authorized representatives of each party.

15. **Authorization Required.** Counsel is required to get prior written approval from the Office of Township Counsel for all settlements of suit; motions to be filed; and depositions to be taken.

16. **Termination.** Upon 30 days' Notice, the Township has the authority to cancel this agreement.

IN WITNESS WHEREOF, the parties have signed and sealed this agreement on the dates set forth below.

WITNESS:

TOWNSHIP OF IRVINGTON

HAROLD E. WIENER
MUNICIPAL CLERK

By: _____
MAYOR ANTHONY VAUSS

DATE:

DATE:

ATTEST:

Eric Bernstein & Associates, LLC,

By: _____

APPROVED AS TO FORM

Ramon E. Rivera, Esq.
Township Attorney

DATE: