

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2012-01

TITLE: TEMPORARY APPOINTMENT OF MICHAEL DONOHUE AS ACTING SOLICITOR UNTIL THE GOVERNING BODY DETERMINES TO RE-APPOINT MICHAEL DONOHUE OR APPOINT A SOLICITOR

WHEREAS, the Township of Lower ("Township") has a need to acquire legal counsel as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and,

WHEREAS, the Township has determined and certified in writing that the value of the acquisition will exceed \$17,500; and,

WHEREAS, Michael Donohue has submitted a proposal indicating he will provide the goods or services described hereinabove for a total price not to exceed \$150,000 for the year; and

WHEREAS, the CFO has determined sufficient funds are available in the current budget as follows:
Appropriation # 2-01-20-155-200 Signature 

WHEREAS, Blaney & Donohue has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee in the Township of Lower in the previous one year, and that the contract will prohibit them from making any reportable contributions through the term of the contract.

NOW, THEREFORE, BE IT RESOLVED that the Township Council of the Township of Lower hereby appoints Michael Donohue as Solicitor and approves the contract with Michael Donohue for the goods and services described above.

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution.

BE IT FURTHER RESOLVED that a notice of Award of Professional Contract for the above appointment shall be published in the official Township paper.

I hereby certify the foregoing to be a true copy of a Resolution adopted by the Township Council at a meeting held on January 4, 2012.

Claudia R. Kammer, Township Clerk

	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
CONRAD	X		X			
DOUGLASS			X			
LARE		X	X			
BECK				X		

TOWNSHIP OF LOWER

**CONTRACT FOR PROFESSIONAL SERVICES FOR ACTING TOWNSHIP
SOLICITOR**

THIS AGREEMENT made as of the 4th day of January 2012, by and between THE TOWNSHIP OF LOWER, a municipal corporation of the State of New Jersey (hereinafter referred to as "Township") and MICHAEL J. DONOHUE, ESQUIRE, an attorney-at-law of the State of New Jersey, of the Law Firm of Blaney & Donohue, P.A., having an office at 3200 Pacific Avenue, Suite 200, Wildwood, New Jersey 08260 (hereinafter referred to as "Township Solicitor").

WITNESSETH:

WHEREAS, pursuant to Resolution adopted by the Township Council on the 4th day of January, 2012, Michael J. Donohue, Esquire was appointed Acting Township Solicitor for the Township of Lower, until reappointed or a successor is named.

WHEREAS, said appointment was made without competitive bidding in accordance with the provisions of the Local Public Contracts Law of the State of New Jersey which nevertheless requires the execution of a written contract; and

WHEREAS, the Chief Financial Officer of the Township of Lower has certified the availability of funds for the purposes hereof through an adequate appropriation in the municipal budget for the current year.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. **APPOINTMENT**: The Township hereby employs Michael J. Donohue, Esquire as its Township Solicitor in accordance with Code 3-8 (B)(5)(a)(2), until reappointed or a successor is named. Mr. Donohue designates William G. Blaney, Esquire, to handle Labor Relations matters and other attorneys of the firm to handle matters as may be in the best interests of the Township.

2. **MONTHLY STIPEND:** Township shall pay to the Law Firm of Blaney & Donohue, P.A. (the "Law Firm") the sum of Fifty Thousand Dollars payable in equal monthly amounts on or before the 15th day of each month, as compensation for day-to-day municipal attorney functions. In consideration of the monthly stipend, The Solicitor agrees

- (a) To attend regular and special meetings of the Township Committee;
- (b) To prepare Resolutions and Ordinances as necessary;
- (c) To receive, review and respond to, in consultation with the Township, on matters of law, all correspondence pertaining to the Township's day-to-day operations and all questions from the Township Committee, Mayor and Manager and such other Township officers, employees and agents in consultation with the Township Manager;
- (d) To review agenda items for legal issues and advise as to applicable privileges and/or legal requirements relevant to such items;
- (e) To assist the Township Clerk in connection with duties under the Open Public Records Act, unless such assistance is approved by Township Manager as an extraordinary service as detailed below.
- (f) To review, research and render such written and/or verbal legal opinions as the Township may require on matters related to the day-to-day operation of the Township;
- (g) To review as to form all documents related to bonding procedures;
- (h) To review as to form and sufficiency, all documents related to the public bidding process for individual projects and render an opinion thereon for purposes of awarding or rejecting bids;
- (i) To field and respond to questions of land use law from the Zoning Officer;
- (j) To keep abreast of current legal changes and issues affecting the Township of Lower and to make recommendations to the Township with regard to same;

3. **EXTRAORDINARY SERVICES OUTSIDE OF MONTHLY STIPEND:** In the event that Attorney is called upon to carry out services on behalf of the Township in addition to those detailed at #2 above, including but not limited to preparation of real estate documents including deeds and easements for the Township of Lower (Attorney to be compensated at the rate of \$150.00 per document), legal research projects, extraordinary consultations with internal and outside professionals and/or agencies, dealings with the media on legal issues, attendance and/or participation at extraordinary meetings, hearings, information sessions on behalf of the Township and/or assisting the Manager in extraordinary matters outside of the day-to-day operation of the Township, Attorney shall submit an outline of such services to the Township Manager and, subject to approval of same in accordance with Township policy, shall be compensated for such extraordinary services at the rate of \$125.00 per hour, together with reimbursement for reasonable associated costs, if any, payments to be handled as form 1099 compensation.

4. **LITIGATION:** Attorney shall be litigation counsel for the Township and shall handle all aspects of general litigation that is not assigned to the ACJIF and shall, under this section, serve as liaison between the Township and any and all other legal professionals representing the Township. Attorney shall be compensated at the rate of \$125.00 per hour in fees and shall be reimbursed for all reasonable and associated costs and expenses for all litigation related work. Litigation shall be deemed commenced upon the Township being informed by a potential adversary of circumstances that may lead to suit against the Township. Attorney keep the Manager and Council advised as necessary and payment to Attorney shall be handled as form 1099 compensation.

5. **TAX APPEALS:** As required by law, Attorney shall be designated as the Attorney for the Tax Assessor in any tax appeal matters and shall be compensated as for litigation.

6. The Township shall have no responsibility to provide items generally regarded to be included in the overhead costs of a law practice.

7. The Township shall not be required to furnish any medical hospitalization or major medical coverage to the Township Solicitor.

8. The Township Solicitor's law office shall provide workmen's compensation insurance and disability insurance for any employees of the Law Firm.

9. The term of this Agreement shall be from the 4th day of January, 2012, until the first meeting of the Township Council in 2013, or until reappointment or the appointment of a successor. This Agreement may be extended upon the written execution thereof by all parties and in accordance with law.

10. Any controversy or claim arising out of or relating to the interpretation of this contract shall be settled by arbitration in Cape May County under the laws of the State of New Jersey before an arbiter chosen by the American Arbitration Association; the decision of the arbiter shall be final and binding upon both parties and any award made by the arbiter may be entered as a Judgment in any Court of competent jurisdiction.

11. This contract has been awarded to Michael J. Donohue, Esquire, based on his merits and abilities to provide the goods and services as described herein. This contract was not awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.5. As such, the undersigned does hereby attest that Michael J. Donohue, Esquire, his subsidiaries, assigns or principals controlling in excess of 10% of the company he works for has neither made a contribution, that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year preceding the award of the contract that

would, pursuant to P.L. 2004, c.19, affect his eligibility to perform this contract, nor will he make a reportable contribution during the term of the contract to any political party committee in the municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded, or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded.

12. During the performance of this Agreement, the Township Solicitor agrees as follows:

a. The Township Solicitor 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 or sex. The Township Solicitor 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 or sex. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. The Township Solicitor 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 non-discrimination clause.

b. The Township Solicitor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the Township Solicitor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex.

c. The Township Solicitor or subcontractor, where applicable, will send to each labor union or representative of 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 Township Solicitor's commitments

under applicable law, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Township Solicitor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer of the State of New Jersey ("Treasurer") pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

e. The Township Solicitor or subcontractor, where applicable, agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

f. The Township Solicitor or subcontractor, where applicable, agrees to inform in writing appropriate recruitment agencies in the area, including 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 or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g. The Township Solicitor or subcontractor, where applicable, 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 or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.

h. The Township Solicitor or subcontractor, where applicable, shall furnish such reports or other documents to the Affirmative Action Office as may be requested

from time to time in order to carry out the purposes of the regulations of the Treasurer promulgated under P.L. 1975, c.127, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conduction of a compliance investigation pursuant to Subchapter 10 of N.J.A.C. 17:27.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date first above written.

ATTEST:

THE TOWNSHIP OF LOWER

Claudia R Kammer
Claudia R. Kammer, Clerk

BY: Michael E Beck
Michael E. Beck, Mayor

WITNESS:

TOWNSHIP SOLICITOR

Claudia R Kammer

BY: Michael J. Donohue
Michael J. Donohue, Esquire