

PROFESSIONAL
SERVICE
AGREEMENT

January 17

2023

CONTRACT between The City of South
Amboy and PKF O'Connor, Davies, LLP, to serve
in the position as City Auditor for calendar year
2023

AUDITOR

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT, is made between The City of South Amboy, in the County of Middlesex and the State of New Jersey, hereinafter referred to as "South Amboy" or "City", and , PKF O'Connor, Davies, LLP, 300 Tice Blvd., Suite 315, Woodcliff Lake, New Jersey 07677, hereinafter referred to as "Professional", to serve in the position as City Auditor for calendar year 2023.

WHEREAS, there was a need to acquire professional services for City Auditor for calendar year 2023, to be procured in formal manner as a fair and open and competitive process to assure that each person and/or firm is provided an equal opportunity to submit a proposal under N.J.S.A. 40A:11-4.1a et sec; and

WHEREAS, the Purchasing Agent received, and the Municipal Clerk witnessed, the receipt of timely proposals for said professional services; and

WHEREAS, the Evaluation Committee recommends the award of contract to serve as City Auditor for 2023; and

WHEREAS, it is in the best interest of the City of South Amboy to enter into an agreement with PKF O'Connor, Davies, LLP to serve in the position as City Auditor for calendar year 2023; and

WHEREAS, the firm Professional shall be compensated for these services as outlined within their contract for an authorization not-to-exceed \$50,000.00 for auditing, exclusive of special project services; and

WHEREAS, the Chief Financial Officer has certified that \$50,000.00 is available for this purpose in FY2023 budget, excluding special services, which shall be charged to appropriate accounts as certified by the Chief Financial Officer, and

WHEREAS, on the 4th day of January, 2023 the City Council of the City of South Amboy authorized the Mayor to execute and the City Clerk to witness this agreement with PKF O'Connor Davies, LLP to serve as City Auditor in an amount not to exceed \$50,000.00 for auditing, exclusive of supplementary authorizations.

NOW, THEREFORE, SOUTH AMBOY and the PROFESSIONAL, in consideration of their mutual covenants hereinafter set forth, agree as follows to wit:

I. EXTENT OF SERVICES

The services to be provided by the Professional are defined within the sections of this contract attached hereto and made a part hereof.

II. STATUS OF PROFESSIONAL, HIS ASSOCIATED FIRM AND EMPLOYEES

1. The Professional, when engaged in the performance of his/her duties and services related to any duty or responsibility imposed on the Professional by any Government statute, law, regulation or ordinance (including specific services described herein) shall be acting as an independent consulting agent to the City and shall be entitled to all rights, privileges and immunities normally accorded to such Professional by virtue of the Professional's status as an independent consulting agent of South Amboy.
2. South Amboy, subject to appropriation of funds, authorizes the Professional to secure any and all Professional, technical and non-technical staff which may from time to time be necessary in the performance of the services required. It is agreed and understood that services will be provided and certain functions will be performed on behalf of South Amboy, pursuant to the terms of this proposal, by employees of the Professional's associated firm.
3. The Professional, technical and non-technical staff referred to in this section, Paragraph 2, when they are engaged on behalf of South Amboy, in the performance of duties and services referred to herein, shall be deemed as independent contractors under this professional services contract.

III. PROFESSIONAL'S RESPONSIBILITIES

1. To provide, with the usual thoroughness and competence of the profession, services noted and set forth above.
2. To stand ready to explain and defend, under the terms and for the compensation hereinafter mentioned, all work completed under the terms of this contract.
3. To provide, at the request of South Amboy, such supplementary proposals as may be requested.
4. To arrange for the City to examine all cost records relating to the services provided.
5. To obtain the services of other Professionals as required and/or ordered by the City for the compensation provided herein.
6. To secure, maintain, and comply with all insurance requirements included herein.

IV. SOUTH AMBOY'S RESPONSIBILITIES

1. To provide the Professional with full information as to South Amboy's requirements and with full access to the site of the work of any proposed project and to all records and documents necessary to complete the Professional's services.
2. To designate a person to act as the "Municipal Representative" with respect to the work to be performed such individual to have full authority to act for the City in regard to directing

and supervising the work of the Professional. Unless otherwise designated by action of the City, such person shall be the City Business Administrator..

3. To provide the Professional with forty-eight (48) hours notice when the City will require the Professional to be present at any meeting or to specifically initiate any of the services outlined in this professional services contract.
4. To request any supplementary proposals required.
5. To authorize and direct committees, employees, and agents of the City to consult with the Professional at all reasonable times upon the request of the Professional as to:
 - a. The work and services to be done or rendered by the Professional and/or others in the employ of South Amboy;
 - b. The applications, plans, reports or other documents to be reviewed by the Professional which are submitted by South Amboy;
 - c. The coordination of the Professional's services for any project or application; and
 - d. Any and all matters, as requested by the Professional, relating to the work and services of the Professional.
6. To submit to the Professional all relevant applications, plans, reports and documents prepared by others within such time so as to give the Professional ample opportunity to properly review same and consult with respect thereto and to make any necessary reports to South Amboy, without the Professional causing undue delay in the progress of any work of South Amboy, its officers, employees or agents.
7. The City acknowledges that although the Professional is to cooperate with and make recommendations to the City with respect to matters related to the services provided by the Professional, the final decisions are to be made by the City.

The Professional shall not be liable in any way for any discretionary decision of the City (or consequences thereof) which (i) are not in accordance with the Professional's advice, or (ii) are based on or related to any failure on the part of the City to accept or follow any recommendations of the Professional. The City hereby releases the Professional from any and all liability and waives any and all claims against the Professional arising out of or relating to any such discretionary decisions or the consequences thereof, and agrees to indemnify, defend, and save harmless the Professional against loss, liability, claim, damage, and expense, including reasonable counsel fees, arising out of or relating to any such discretionary decisions or the consequences thereof.

V. TIME OF PERFORMANCE

The Professional must be able to attend a meeting with the City within 20 days of issuance of a "Notice to Proceed" to discuss plans with the Municipal Representative. The Notice to Proceed shall be issued upon execution of this contract as authorized by the City.

The Contract shall end December 31, 2023 unless ongoing work is authorized through supplemental authorizations.

VI. PAYMENT FOR SERVICES

1. All services outlined shall be billed monthly showing hourly rates and reimbursable expenses, in an amount not to exceed \$50,000.00 for general matters exclusive of supplemental authorizations.
2. Vouchers or invoices must be rendered monthly for services performed. Such billings shall be due within thirty (30) days of the date of receipt by the City.
3. Included within the not to exceed amount are reimbursable direct charges which include disbursements that are actual expenses incurred by the Professional and/or his associated firm in connection with providing said service to the municipality. Reimbursable expenses include the following:
 - a. Out-of-State transportation and subsistence for Professional and technical staff.
 - c. Furnishing and maintaining field office facilities when same are authorized and approved by South Amboy.
 - d. Point-to-point travel at the IRS Standard Mileage Rate (currently 58 cents per mile) not to exceed \$50.00 per round trip.
 - e. Payment of permit fees, application fees, review fees and similar charges.
 - f. Outside printing, reproduction, binding, collating and other graphic services.
 - g. Messenger service, postage and handling of drawing and specifications, reports, contracts and other bulky items.
4. The Professional must submit monthly claims for expenses in compliance with South Amboy's Code South Amboy's Code, Chapter 5-68: Payment of bills and claims.
5. Professional, upon performing services totaling 70% of the encumbered amount whether all such services have been billed or not shall provide the City and the City of South Amboy with an estimate as to whether additional funds are anticipated to be necessary to conclude the matter. If such additional funds are necessary, the Professional shall provide an estimated amount thereof. Any additional funds necessary to conclude the matter shall be authorized by a new or amended Professional Service Resolution, adopted by the City.

If the Professional determines in accordance with the provisions hereof that, having expended 70% of the encumbered amount that the remaining 30% will be insufficient to complete the tasks set forth in this professional services contract, the Professional shall immediately notify the City requesting that the City approve an amended Professional Service Budget and Resolution prior to the rendering of any additional services beyond the encumbered amount.

OWNERSHIP OF DOCUMENTS

All plans, specifications, reports and other documents ordered by the City and submitted to the City shall remain with the City for use in current or future programs. Unless the City directs otherwise, the Professional shall provide one (1) reproducible record set of all project reports and documents. All work and direct charges shall be billed as herein provided. At the completion of work or in the event of termination, all work sheets and internal office

communications of the Professional, including drawing, sketches, calculations, field notes and memoranda are and shall remain the property of the Professional, as instruments of his service. South Amboy, at its expense, may obtain reproducible record prints of any reports, sketches or drawings and copies of any and all documents. The Professional will provide South Amboy, or its representatives, access to his/her files during normal working hours for the purpose of determining the extent of necessary duplication.

VII. EEO/AA LANGUAGE

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 AA-302 (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 Public Contracts Equal Employment Opportunity Compliance 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 Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

AMERICANS WITH DISABILITIES ACT
Equal Opportunity for Individuals With Disabilities

The Professional and the City do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. §12101 *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 pursuant thereunto, are made a part of this contract. In providing any aid, benefit or service on behalf of the City pursuant to this contract, the Professional agrees that the performance shall be in strict compliance with the Act. In the event that the Professional, its agents, servants, employees, violate or are alleged to have violated the Act during the performance of this

contract, the Professional shall defend the City in any action or administration proceeding commenced pursuant to this Act. The Professional shall indemnify, protect, and save harmless the City, its agents, servants, and employees from and against any and all suits, claims, losses, demands or damages of whatever kind of nature arising out of or claimed to arise out of the alleged violation. The Professional 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 City's grievance procedure, the Professional agrees to abide by any decision of the City which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the City or the City incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the Professional shall satisfy and discharge the same at its own expense.

The City shall, as soon as practicable after a claim has been made against it, given written notice thereof to the Professional along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the City or any of its agents, servants and employees, the City shall expeditiously forward or have forwarded to the Professional every demand, complaint, notice, summons, pleading or other process received by the City or its representatives.

It is expressly agreed and understood that any approval by the City of the services provided by the Professional pursuant to this contract will not relieve the Professional of the obligation to comply with the Act and to defend, indemnify, protect and save harmless the City pursuant to this paragraph.

It is further agreed and understood that the City assumes no obligation to indemnify or save harmless the Professionals, its agents, servants, or employees for any claim which may arise out of their performance of this professional services contract. Furthermore, the Professional expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Professional's obligations assumed in this professional services contract, nor shall they be construed to relieve the Professional from any liability, nor preclude the City from taking any other actions available to it under any other provisions of this professional services contract or otherwise at law.

IX. TERMS AND CONDITIONS

Attached hereto and made a part hereof, Part II "Term and Conditions" is incorporated into and made part of this professional services contract, except to the extent inconsistent with the terms and provisions herein, or any Ordinance of the City of South Amboy, or any law of the State of New Jersey.

PROFESSIONAL SERVICES CONTRACT

PART II

TERMS AND CONDITIONS

TERMINATION OF CONTRACT

Notwithstanding the term of this contract or any other provisions, the City may terminate this contract at any time by a notice in writing from City to the Professional. Termination may be for cause or for the convenience of the City; no reason for termination is required or need be cited by the City, which reserves the right and option to terminate this contract at any time. In the event of termination, all unfinished or finished documents, data, studies, legal research, files and reports prepared by the Professional under this Contract or prior Contracts for the same or similar services to the City, shall, at the option of the City, become its property and shall be delivered to the City upon the City's request. Subsequent to the delivery of the foregoing, the Professional shall be entitled to receive just and equitable compensation for all satisfactory work completed by the Professional at the rate and to the maximum amount specified in this Contract. Notwithstanding the above, the Professional shall not be relieved of liability to the City by virtue of any breach of the professional services contract by the Professional for the purpose of set-off until such time as the exact amount of damages or other losses due the City from the Professional is determined. The Professional shall have no right to retain or withhold any documents, data, studies, reports, etc., prepared by the Professional for or on behalf of the City, regardless of whether payment has been made therefore, and the Professional waives any lien he or she may have to the same. The Professional's rights and claims shall be limited to monetary compensation as specified in this contract.

CHANGES AND AMENDMENTS

The City may, from time to time, request supplemental authorizations, changes, or amendments in the scope of the services of the Professional to be performed. Such changes or amendments, including changes in the amount of the Professional's compensation, which are mutually agreed upon by and between the City and the Professional, shall be incorporated into written amendments to this Contract and submitted to the City for approval. No change or amendment which enlarges the scope of the services or changes the amount of the Professional's compensation shall be valid or binding upon the City until duly authorized by formal action of the City.

PERSONNEL

Professional represents that he or she has or will secure at his or her own expense all personnel, equipment, materials, books, secretarial services, utilities and other materials in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All services required hereunder will be performed by the Professional or under his or her supervision.

COMPLIANCE WITH THE LAWS

Professional shall comply with all applicable laws, ordinances and codes of the State and all other governmental agencies having jurisdiction and shall and does hereby agree to forever defend the City with respect to full compliance therewith.

CLAIMS AND DISPUTES PERTAINING TO COMPENSATION OR RATES

Claims or disputes pertaining to rates or other compensation for the Professional or any of his or her employees performing work under this Contract shall not delay or affect the continued performance of the Professional hereunder. All or portions of payments requested in vouchers submitted by Professional may be withheld by the City, without liability and without affecting the progress of the services and work hereunder, until the claim or dispute has been satisfactorily resolved. All disputes shall be in accordance with New Jersey's Prompt Payment Law codified as N.J.S.A. 40A:11-50 et al.

Professional acknowledges and agrees to abide by the New Jersey Local Unit Pay-to-Play Law, N.J.S.A. 19:44A-20.4 et seq. and Section 5-112 *et seq.*, entitled, Awarding of Public Professional Contracts, of the Code of the City of South Amboy, as well as any and all relevant Executive Orders and the New Jersey Election Law Enforcement Commission disclosure requirements.

INSURANCE

Professional will carry all statutory workers compensation insurance for its employees and will provide professional liability insurance as detailed within section titled "Insurance" of the contract.

PERSONAL SERVICE CONTRACT

This is a personal service contract with the Professional and neither he/she nor their firm, may assign, sublet or transfer this Contract, nor any interest herein, nor any of the services required to be performed hereby, without the express written consent of the City.

DIRECTIONS AND AUTHORIZATIONS

All services and work hereunder shall be performed at the direction of the City and/or the City Municipal Representative. In addition, Professional agrees to accept direction only by formal action of the City; performing services at the request of any other agency, official, or employee shall constitute a violation of this contract and shall not in any way bind the City.

ORAL MODIFICATION

This Contract may not be modified or changed orally.

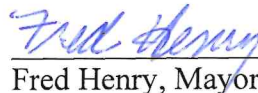
X. AUTHORIZATION OF CONTRACT.

This Contract has been authorized by resolution at a meeting of the Mayor and City Council of the City of South Amboy held on January 4, 2023.

ATTEST:

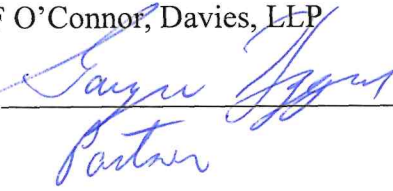


Deborah Brooks, City Clerk

 2/3/23

Fred Henry, Mayor

PKF O'Connor, Davies, LLP

By: 

Partner