

AGREEMENT BY AND BETWEEN
UNION COUNTY IMPROVEMENT AUTHORITY
AND
RAINONE COUGHLIN MINCHELLO, LLC
FOR GENERAL COUNSEL SERVICES

THIS AGREEMENT, dated as of _____, 2020, by and between the Union County Improvement Authority, 1499 Routes 1 and 9, Rahway, New Jersey 07065 (the "Authority") and Rainone, Coughlin, Minchello, LLC, 555 U.S. Route One South, Suite 440, Iselin, New Jersey 08830

WITNESSETH:

WHEREAS, the Authority issued a Request for Qualifications (the "RFQ") for General Counsel Services pursuant to a "Fair and Open Process," N.J.S.A. 19:44A-20.1 *et seq.*, and, received sealed proposals in response to the RFQ on January 3, 2020; and

WHEREAS, upon review of the proposals, the Authority determined that Rainone, Coughlin, Minchello, LLC is qualified to provide General Counsel Services, having an excellent reputation in its field, and significant knowledge of the Authority and its operations; and

WHEREAS, on February 5, 2019, by Resolution No. 10-2020, the Authority approved the appointment of Rainone, Coughlin, Minchello, LL C (the "Professional") to provide General Counsel Services during the period from February 5, 2020 until the Authority's next reorganization meeting in February 2021; and

WHEREAS, the Authority and the Professional wish to enter into this Agreement to set forth the services to be rendered by the Professional (the "Services") and the compensation to be paid for the Services;

NOW THEREFORE, the Parties hereto, each intending to be legally bound herein, do mutually agree as follows:

1. Scope of Services. The Professional hereby agrees to perform such Legal Services as shall include, but not be necessarily limited to, those set forth in the RFQ and the Professional's response to the RFQ, which are incorporated herein and made a part hereof as though repeated in full.
2. Personnel Services. The Professional represents that only its personnel will perform the Services required under this Agreement. In the event the Professional cannot provide the Services due to vacation, illness, or other reason, the Authority will designate other qualified persons to perform the Services temporarily. In no event shall the Professional assign or transfer its obligations under this Agreement to another firm or individual. The Professional's personnel shall not be employees of or have any other contractual relationship with the Authority.

3. Term. This Agreement shall be for the period commencing February 5, 2020 and terminating upon the appointment of a firm to provide General Counsel Services at the Authority's Annual Reorganization Meeting in February 2021, unless otherwise extended or terminated in writing.

4. Compensation. The Authority shall compensate the Professional for the Services in accordance with the fee schedule set forth in Schedule A attached hereto, in an amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000), not inclusive of General Counsel services associated with the issuance of bonds.

5. Affirmative Action. During the performance of this Agreement, the Professional shall comply with the anti-discrimination provisions of N.J.S.A. 10:2-1 *et seq.*, the New Jersey Law Against Discrimination, and N.J.S.A. 10:5-1, *et seq.*, N.J.A.C. 17:27-1.1, *et seq.* and N.J.A.C. 6:4-1.6, as set forth in Exhibit A to this Agreement. The Professional also agrees to afford equal opportunity in performance of this Agreement in accordance with an affirmative action program approved by the State Treasurer, as stated in Exhibits C & F to the RFQ, which the Professional acknowledged and affirmed in its response thereto.

6. Professional's Representations. The Professional makes the following representations and covenants:

(a) the Professional has the legal capacity to enter into this Agreement and perform each of its undertakings herein set forth;

(b) the Professional is a duly organized and validly existing legal entity under the laws of the State of New Jersey and has duly adopted the necessary resolutions approving and authorizing the execution and delivery of this Agreement and authorizing and directing the persons executing this Agreement to do so for and on its behalf;

(c) to the best of the Professional's knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or (ii) is likely to result in a material adverse change in such entity's authority, property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement;

(d) the Professional's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any partnership and/or stockholder agreement or of any agreement, mortgage, indenture, instrument or judgment, to which it is a party;

7. Authority's Representations. The Authority makes the following representations and warrants:

(a) that this Agreement has been duly authorized by its Governing Body according to law, and upon execution by its Chairman, it shall be valid and binding upon the Authority;

(b) To the best of the Authority's knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this

Agreement; or (ii) is likely to result in a material adverse change in such entity's authority, property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

8. Default and Termination.

(a) Events of Default by the Professional. The following shall constitute Events of Default by the Professional unless such event results from the occurrence of an Uncontrollable Circumstance or the fault of the Authority or any third party:

(i) the persistent and repeated failure(s) of the Professional to timely perform any material obligation under the terms of this Agreement, subsequent to its receipt of a written notice from the Authority of such persistent and repeated failure(s) to perform, and the Professional has not, within 20 days, cured or attempted or commenced a cure of such failure;

(ii) (1) the Professional being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (2) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding is instituted by the Professional under the laws of any jurisdiction or against the Professional if it does not take appropriate action to dismiss said proceedings within 30 days of the institution of such proceedings, or (3) any action or answer by the Professional approving of, consenting to, or acquiescing in, any such proceeding, or (4) the levy of any distress, execution or attachment upon the property of Professional that shall substantially interfere with its performance hereunder;

(iii) breach of any material representations by the Professional set forth in this Agreement, and failure to remedy such breach for a period of 30 days after written notice thereof has been provided by the Authority specifying such failure and requesting that such condition be remedied;

(b) Events of Default by the Authority. The following shall constitute Events of Default by the Authority unless such event results from the occurrence of an Uncontrollable Circumstance or the fault of the Professional or any third party:

(i) the persistent and repeated failure(s) of the Authority to timely perform any material obligation under the terms of this Agreement, subsequent to receipt by the Authority of a written notice from the Professional of such persistent and repeated failure(s) to perform, and the Authority has not, within 20 days, cured or attempted or commenced a cure of such failure;

(ii) breach of any material representations by the Authority set forth in this Agreement and failure to remedy such breach for a period of 20 days after written notice thereof has been provided by the Professional specifying such failure and requesting that such condition be remedied.

(c) Initial Remedy in the Event of Default. Except as otherwise provided in this Agreement, in the event of a default under this Agreement or any of its terms or conditions by either party, the defaulting party shall, within 20 days of receiving written notice from the other, proceed to commence to cure or remedy the default. In case such action is not taken or not diligently pursued,

or the default shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy the default, including, but not limited to, proceedings to compel specific performance by the defaulting party.

9. Remedies in the Event of Termination of Agreement. Upon termination, the Authority shall pay the Professional in full for Services rendered up to the date of termination, including out of pocket expenses, in accordance with the provisions of Paragraph 4 hereof, and the Professional shall release to the Authority each and every document in its possession relating to or regarding the Project.

10. Termination by the Authority. The Authority may, in its sole discretion, terminate this Agreement upon ten days prior written notice to the Professional of such termination, which shall specify the effective date on which the Agreement will be terminated. Upon termination the Authority shall pay the Professional in full for Services rendered up to the date of termination in accordance with the provisions of Paragraph 4 hereof.

11. Insurance. Throughout the Term, the Professional shall maintain the insurance coverage set forth below. Such insurance shall be obtained from insurance companies authorized to do business in the State and with a Best's rating of at least "B+" or the equivalent.

(a) Workers Compensation: Statutory requirements.

(b) Comprehensive AL/GL, Bodily Injury, and Property Damage with a certificate of insurance specifying as a minimum, Broad Form Property Damage; Contractual Liability (Broad Form) including Third-Party Coverage and Personal Injury insurance combined single limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, and in no case less than \$1,000,000 per person.

(c) Professional Liability Insurance: Minimum \$1,000,000 per claim and a \$2,000,000 annual aggregate limit of liability.

(d) Form and Content. Except with respect to the professional liability insurance policy, all policies, binders or interim insurance contracts with respect to the insurance coverage to be maintained by the Professional shall:

(i) designate the Authority, its offices, employees and agents (except in the case of Workers' Compensation insurance) as additional insureds;

(ii) provide that there shall be no recourse against the Authority for payment of premiums or commissions or any additional premiums or assessments;

(iii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Authority or the Professional to the extent that such other insurance provides the Authority or the Professional with contingent and/or excess liability insurance with respect to its interest in the Project; and such insurance shall expressly provide that all provisions thereof (except the limits of liability, which shall be applicable to all insureds as a group and liability for premiums) shall operate in the same manner as if each were a separate policy covering each insured;

(iv) provide that the Authority shall be furnished with at least 30 days prior written notice by registered mail, return receipt requested, of any cancellation, expiration or non-renewal of coverage and that no cancellation, expiration or non-renewal shall be effective absent such notice;

(v) waive any right of subrogation of the insurers against the Authority or the Professional and any right of the insurers to any set off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of such person/party insured under such policy.

(c) Prior to the date on which the Professional shall begin the Services, it shall provide the Authority with certificates of insurance that evidence compliance with the requirements stated above. Thereafter, new or renewal certificates shall be delivered at least 30 days prior to expiration of the current policy. If the Professional shall fail or neglect to obtain or to maintain (or cause same to be obtained or maintained) any insurance that it is required to provide or to furnish the Authority with satisfactory evidence of coverage on any such policy, the Authority may purchase such insurance if the Professional fails to do so within five days after receipt of written notice from the Authority of the lack of required coverage. Any such payments made by the Authority shall be recoverable from the Professional immediately upon demand by the Authority.

12. Indemnification and Hold Harmless. The Professional and its consultants agree to indemnify and defend, to the fullest extent possible under the Professional's insurance coverage, and hold harmless the Authority, and its officers, employees, and agents from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including reasonable attorney's fees, because of bodily injury, sickness, disease or death, sustained by any person or persons or injury or damages to, or destruction of, any property, but only to the extent of arising out of the Professional's negligent acts or omissions in connection with the performance of the Services.

13. Notices. Any notice or communication which is required or permitted to be given hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, with a copy sent by nationally recognized overnight delivery service providing for receipt against delivery, courier, or telecopy (with a copy sent by one of the other means of delivery), as follows:

To Professional: David Minchello, Esq
Rainone Coughlin Minchello, LLC
555 U.S. Route One South, Suite 440
Iselin, New Jersey 08830

To Authority: Mr. Daniel P. Sullivan, Executive Director
Union County Improvement Authority
1499 Routes 1 and 9
Rahway, New Jersey 07065

14. Waiver. The waiver by either party of a default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach of such provision or any other provision. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

15. Modifications. The provisions of this Agreement may be modified or amended only by written agreement duly executed by both parties.

16. Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement nor shall they affect the interpretation thereof.

17. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey. Any litigation that may result from a dispute between the parties concerning this Agreement and the rights and obligations of the parties hereto shall be venued in the court for the State of New Jersey or the United States District Court for the District of New Jersey, as applicable.

18. Counterparts. This Agreement may be executed in more than one counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same instrument.

19. Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall use their best efforts to negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or to such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

20. Third Party Relationships. Nothing contained in the Agreement shall create a contractual relationship with, an obligation to, or a cause of action in favor of any third-party against either the Authority or the Professional.

21. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to their rights and obligations hereunder. The terms of the Professional's Proposal are incorporated herein and made a part of this Agreement as though the Proposal was set forth in full herein. In the event of a conflict between this Agreement and the terms of the Professional's Proposal, the terms of this Agreement shall prevail.

22. Dispute Resolution. Any and all disputes arising out of this Agreement shall be submitted to an alternative dispute resolution practice such as mediation, binding arbitration or non-binding arbitration, pursuant to industry standards, prior to being submitted to a court for adjudication. The alternative dispute resolution practices shall not apply to any dispute concerning any subcontracts to be entered into pursuant thereto. Notwithstanding the foregoing, nothing contained herein shall prevent the Authority from seeking injunctive or declaratory relief from a court of competent jurisdiction, at any time.

IN WITNESS WHEREOF, the Authority, by resolution duly adopted, has caused this Agreement to be approved and executed, and the Authority and the Professional have caused this Agreement to be executed on the day and year first above written.

ATTEST:

UNION COUNTY IMPROVEMENT AUTHORITY

By:

A handwritten signature in blue ink, appearing to be "M. P. Smith", written over a horizontal line.

By:


Daniel P. Sullivan, Executive Director

RAINONE COUGHLIN MINCHELLO, LLC

By:

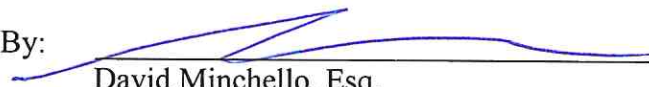

David Minchello, Esq.

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 Subchapter 10 of the Administrative Code at N.J.A.C.17:27.

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.

SCHEDULE A

Rainone Coughlin Minchello, LLC -2020 Billing Rates

Partners: \$185 per hour
Associates: \$185per hour
Paralegals: \$120 per hour

Customary disbursements shall be added to the fees referred to in the Agreement. Secretarial and other clerical staff and overhead are included in the above hourly rate, but not reasonable out-of-pocket expenses as verified by receipts, where obtainable, including utilization of reproduction apparatus and messenger service which shall be itemized and reimbursed as separate items. These expenses shall be billed within sixty (60) days of the time they are incurred or at the time of closing on an issue.