

RESOLUTION #16-133

**RESOLUTION GRANTING AUTHORIZATION TO RETAIN PROFESSIONAL SERVICES THE COST OF WHICH IS ANTICIPATED NOT TO EXCEED \$17,500 IN ACCORDANCE WITH THE LOCAL PUBLIC CONTRACTS LAW
PRINCETON HYDRO – STEWART LAKE IMPROVEMENTS**

WHEREAS, *N.J.S.A.* 40A:11-1, *et seq.* known as the Local Public Contracts Law, requires that all contracts or agreements for the performance of any work, shall not be made or awarded unless Public advertising for Bids and bidding, therefore, is solicited; and

WHEREAS, *N.J.S.A.* 40A:11-5 provides that any contract or agreement may be made, negotiated or awarded without public advertising for bids and bidding, therefore, if the subject matter, therefore, consists of professional services, are rendered or performed by a person authorized by law to practice a recognized profession; and

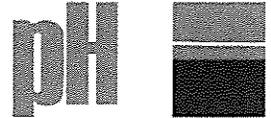
WHEREAS, the City of Woodbury has need for such professional services, which said services will be performed by persons authorized by Law to practice a recognized professional as non-fair and open contracts pursuant to the provisions of *N.J.S.A.* 19:44A-20.5; and

WHEREAS, the City of Woodbury is in need of professional engineering hydrology services to assist the City of Woodbury with the design, permitting and coordination of improvements to the City's Stewart Lake shoreline and recreational area; and

WHEREAS, the City of Woodbury has determined that Princeton Hydro has the requisite experience and expertise to provide such services;

WHEREAS, the City Administrator has determined and certified in writing that the value of the aforementioned contract is anticipated not to exceed \$17,500.

16-133



August 16, 2016

City of Woodbury
Attn: Michael Theokas, Administrator
33 Delaware Street
Woodbury NJ 08096

Scientists, Engineers &
Environmental Planners
Designing Innovative
Solutions for Water,
Wetland and Soil
Resource Management

via email: mtheokas@woodbury.nj.us

**Re: Stewart Lake Improvements
City of Woodbury, New Jersey
pH No. 0333.004**

Dear Michael,

Based on our discussion during our July 21st meeting and site visit, I have prepared this scope of services to work in a collaborative fashion with Federici & Akin and assist the City of Woodbury with the design, permitting and coordination of improvements to the City's Stewart Lake shoreline and recreational area. Since our meeting I have also had additional conversations with Paul Brier which have assisted in developing the scope of services contained in this proposal.

Project Understanding

The purpose of this effort is to successfully meet with the various sub-agencies within NJDEP and obtain preliminary approval for the scope of work associated the improvements and also obtain preliminary NJDEP approval related to the scope of required permitting which will be necessary for the completion of this project. We have already completed some initial research into the permitting requirements with respect to the concept plan. Based on the size and scope of the project we fully anticipate that the project will require an Individual Flood Hazard Area permit. This is a result of the type and extent of shoreline stabilization, dredging, and the location and extent of the proposed improvements.

Scope of Services

For your clarification, our proposed scope of services has been broken into separate tasks as follows.

Task 1 Concept Plan Development

Based on my conversations with Paul Brier, we believe the most time and cost effective method to proceed it to for us to work in a collaborative fashion to create a redline/mark-up of the existing concept plan which was originally presented to

~ 1108 Old York Road PO Box 720
■ 1200 Liberty Place
~ 203 Exton Commons
~ 20 Bayberry Road

Princeton Hydro, LLC
Ringoes, NJ 08551
Sicklerville, NJ 08081
Exton, PA 19341
Glastonbury, CT 06033

t. 908.237.5660 f. 908.237.5666
t. 856.629.8889 f. 856.629.8866
t. 610.524.4220 f. 610.524.9434
t. 860.652.8911 f. 860.652.8922

NJDEP during the June 28th meeting. This will accomplish a number of objectives. First, it will show the NJDEP representatives that we have taken their initial feedback into consideration and secondly, from an environmental impact standpoint, the markup will indicate that we have scaled the project back to some extent without compromising the outcome of the project. Finally it will ensure that they will have actually looked at the plans themselves which was something that was not fully accomplished in the first meeting.

We will provide input to Federici & Akin which they will incorporate into their existing concept plan. Our input will focus on the specific shoreline stabilization measures we discussed during our site visit. We will also be able to further refine various regulatory thresholds which should be discussed with NJDEP at the upcoming preapplication meeting. During the preparation of the mark-up concept plan we will also submit a new Natural Heritage Program Data Request as this may dictate some of the regulatory aspects of the project.

We will also prepare standard details related to shoreline stabilization methods for incorporation into the mark-up of the concept plan. These will be critical to have during our discussion with NJDEP. This task will be completed on a Fixed Fee basis for \$2,800.00.

Task 2 Preapplication Meeting with NJDEP

This task will entail the participation in a preapplication meeting with NJDEP. We recommend that the meeting be attended by yourself, Paul, and potentially your contact at Green Acres. Myself and a colleague at Princeton Hydro would both attend the meeting. My colleague is extremely familiar with NJDEP regulations and staff and will be an invaluable resource at the meeting. We will coordinate with Federici & Akin with respect to the scheduling of the preapplication meeting at NJDEP. This task will be completed on a Fixed Fee basis for \$1,300.00.

Task 3 Additional Services

Any additional services deemed necessary will be billed on a Time and Materials basis in accordance with our reduced government rates shown on the attached rate schedule. These services may include additional meetings, site visits or revisions outside of those contemplated in the previous tasks. No work will be completed under Task 3 without your prior written approval for such services.

Closing

At the conclusion of the preapplication meeting, I believe we will have enough information to confidently proceed with final design efforts and project permitting. This will ensure that the project is proceeding in an efficient manner and there is no backtracking or duplication of efforts.

If you agree with the proposed scope of services please complete the attached Professional Services Agreement and our Standard Terms and Conditions. Our services will commence immediately upon receipt of the completed Professional Services Agreement and Standard Terms and Conditions documents.

We look forward to providing you with these engineering services for the City of Woodbury. Please do not hesitate to contact me by phone 856-629-8889 or email (cemerson@princetonhydro.com) with any questions.

Sincerely,



Clay Emerson, Ph.D. PE CFM
Princeton Hydro, LLC

Cc: Stephen Souza PhD, President Princeton hydro
Gail Skupien, Princeton Hydro

Encl: (3) Professional Services Agreement
Standard Terms and Conditions
2016 Rate Schedule

THIS AGREEMENT, made this 16th day of August 2016 , by and between **CITY OF WOODBURY** (hereinafter referred to as the "Client") having a business address 33 Delaware Street, Woodbury, New Jersey 08096 and **PRINCETON HYDRO, LLC**, (hereinafter referred to as "Princeton Hydro"), having a business address of PO Box 720, 1108 Old York Road, Ringoes, New Jersey 08551.

WHEREAS, the Client desires to obtain professional consulting services for **Stewart Lake Improvements, City of Woodbury, New Jersey**, and,

WHEREAS, Princeton Hydro desires to provide such services for the compensation and on the terms herein provided;

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

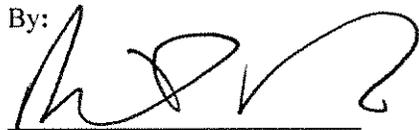
FIRST: Princeton Hydro shall perform those services as described in its proposal of **August 16, 2016**, a copy of which is attached hereto and made a part hereof.

SECOND: For its efforts rendered pursuant to Paragraph "FIRST," Client shall pay Princeton Hydro a fixed fee of Four Thousand One Hundred (\$4,100.00) Dollars for Tasks 1 & 2. Task 3 will be billed on a time and materials basis in accordance with Attachment A.

THIRD: All other provisions will be those as described in Princeton Hydro's Standard Terms and Conditions, a copy of which is attached hereto and made a part hereof.

CITY OF WOODBURY

By:



Michael Theolmas
Printed Name

9/28/16
Date Signed

PRINCETON HYDRO, LLC

By:



Stephen J. Souza, Ph.D.
President

STANDARD TERMS AND CONDITIONS OF PROFESSIONAL SERVICE AGREEMENTS

1. Definitions. The following terms as used herein shall have the meanings stated:

“Princeton Hydro” - **PRINCETON HYDRO, LLC**

“Client” - **CITY OF WOODBURY**

2. Contract Formation. Approval of the bid or proposal by the Client indicates assent to the terms and conditions hereof. Client’s written notification of agreement to Princeton Hydro’s billing rates, as indicated, and the terms and conditions hereof, shall represent the contractual basis for work to be performed.

3. Firm Price. Unless otherwise specifically provided herein, the prices stated in Princeton Hydro’s Scope of Services or Proposal are firm and are not subject to increase.

4. Payment. Payment shall be made to Princeton Hydro within thirty (30) days after date of invoices. Princeton Hydro shall be entitled, at its sole option, to terminate its obligations under this Agreement if any invoice is not paid within thirty (30) days of its receipt. Interest charges of 2% per month will be added to invoices outstanding after 30 days.

For services provided on a Lump Sum or Fixed Price Basis, the amount of each monthly invoice shall be determined on the “percentage of completion method” whereby Princeton Hydro will estimate the percentage of the total work (provided on a Lump Sum basis) accomplished during the invoicing period. Additionally, if the services provided include the procurement of contractors or subconsultants by Princeton Hydro, a separate invoice may be generated and forwarded to the client upon completion and receipt of an invoice from said contractors or subconsultants within the same period of service of the monthly invoice described above.

5. Termination. In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

The Client may terminate this Agreement for the Client’s convenience and without cause upon giving Princeton Hydro not less than seven (7) calendar days’ written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days’ written notice for the following reasons:

- Substantial failure of the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or Princeton Hydro’s services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of Princeton Hydro, the Client shall pay Princeton Hydro, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Princeton Hydro in connection with the orderly termination of this Agreement, including, but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

6. Excusable Delay. Princeton Hydro shall be excused for any delay in performance hereunder arising from a cause beyond its control which it could not through the exercise of due diligence have avoided, including an act of any governmental authority, an act of God, an accident such as a fire or explosion not due to the negligence of Princeton Hydro, a strike, a riot, or a failure of public transportation facilities. Princeton Hydro shall give written notice and full particulars of the cause of delay as soon as possible after its occurrence.

7. Consultants Opinion. In Princeton Hydro's professional opinion, services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the accepted practice. For professional services, Princeton Hydro will exercise reasonable care, skill, competence and judgment consistent with professional standards in performing the services and in meeting any estimate of cost or schedule set forth in the proposal or scope of work.

8. Indemnification. Princeton Hydro agrees, to the fullest extent permitted by law to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Princeton Hydro's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Princeton Hydro is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Princeton Hydro, its officers, directors, employees and subconsultants (Collectively, Princeton Hydro) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

9. Right of Entry. The Client shall provide for Princeton Hydro's right to enter the property owned by the Client and/or others in order for Princeton Hydro to fulfill the Scope of Services or Proposal included hereunder. Although Princeton Hydro will exercise reasonable care in performing its services, the Client understands that the use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Princeton Hydro, its officers, directors, employees and subconsultants (collectively, Princeton Hydro) against any damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising or allegedly arising from procedures associated with testing or investigative activities or connected in any way with the discovery of hazardous materials or suspected hazardous materials on the property.

10. Confidentiality. Princeton Hydro agrees to keep confidential and not to disclose to any person or entity, other than Princeton Hydro's, employees, subconsultants and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by Princeton Hydro or furnished to Princeton Hydro and marked CONFIDENTIAL by the Client. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict

Princeton Hydro from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for Princeton Hydro to defend itself from any legal action or claim.

11. Late Payment. In the event that Client fails to make payment to Princeton Hydro in accordance with Paragraph 4 of this Agreement, Client shall be responsible for all of Princeton Hydro's costs, fees and expenses, including reasonable attorneys' fees, in connection with collection actions instituted to secure payment of outstanding amounts due.

12. Code Compliance. Princeton Hydro shall exercise usual and customary professional care in its efforts to comply with all laws, codes, and regulations in effect as of the date of the enclosed Scope of Services or Proposal. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle Princeton Hydro to a reasonable adjustment in the Project schedule and additional compensation as necessary to complete the tasks outlined in the enclosed Scope of Services or Proposal.

13. Judicial Proceedings. Any action or proceeding arising hereunder shall be brought in the Courts of the State of New Jersey; provided, that if any such action or proceeding arises under the Constitution, the laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties hereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the State of New Jersey or any successor court thereto.

14. Limit of Liability. To the maximum permitted by law, the Client agrees to limit Princeton Hydro's liability for Client damages to the sum of \$100,000.00 or the Consultant's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory asserted.

15. Attorney's Fees. In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorney's fees and all other related expenses in such litigation.

16. Consequential Damages. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

17. Permitting. Princeton Hydro shall assist the Client in applying for those permits and approvals normally required by law for projects similar to the one for which Princeton Hydro's services are being engaged. The assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by Princeton Hydro and as described in the Scope of Services or Proposal of this Agreement. However, Princeton Hydro does not make any warranties, guarantees or representations as to the success of our effort on behalf of the Client. Compensation for services rendered by Princeton Hydro is not contingent upon the successful acquisition of these permits.

18. Hazardous Wastes, Materials, or Substances. The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless Princeton

Hydro, its officers, partners, employees, and consultants (collectively, Princeton Hydro) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of Princeton Hydro.

19. Documents. All original sketches, tracings, drawings, computations, details, design calculations, and other documents and plans that result from Princeton Hydro's services under this Agreement are and remain the property of Princeton Hydro as instruments of service. Where such documents are required to be filed with governmental agencies, Princeton Hydro will furnish copies to the Client upon request. Reuse or modification by the Client is prohibited. Any unapproved use or modification shall be at the Client's or others' sole risk without liability or legal exposure to Princeton Hydro unless approved in writing by Princeton Hydro prior to such reuse.

20. Construction Services. Neither the professional activities of Princeton Hydro, nor the presence of Princeton Hydro or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Princeton Hydro and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the General Contractor shall be solely responsible for job site safety, and warrants that this intent shall be carried out in the Client's contract with the General Contractor. The Client also agrees that the Client, Princeton Hydro and Princeton Hydro's subconsultants shall be indemnified by the General Contractor and shall be made additional insured under the General Contractor's policies of general liability insurance.

21. Mediation. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and Princeton Hydro agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Client and Princeton Hydro further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

CITY OF WOODBURY

By:



9/28/16
Date Signed

PRINCETON HYDRO, LLC

By:



Stephen J. Souza, Ph.D.
President

PRINCETON HYDRO LLC

ATTACHMENT A
Government/NGO

**2016/2017 - Hourly Billable Rates for Princeton Hydro Personnel and
Basis for Billing of Direct Charges**

<u>Job Grade</u>	<u>Hourly Billable Rate (\$)</u>
Principal	186
Associate	145
Senior Project Manger	130
Engineer III	127
Engineer II	98
Engineer I	86
Staff Engineer II	74
Staff Engineer I	61
Environmental Scientist III	118
Environmental Scientist II	102
Environmental Scientist I	84
Staff Scientist III	79
Staff Scientist II	69
Staff Scientist I	61
Technician III	80
Technician II	54
Technician I	50
Administrator IV	57
Administrator II	61
Administrator I	33
Planner II	98
Staff Landscape Architect I	66

Note:

- Labor is billed in increments of 0.25 hours; any portion thereof shall be considered as 0.25 hours.
- For work performed off premises, labor hours are billed as time of departure - time of arrival from the office of Princeton Hydro.

Direct Charges:

Disbursements: All appropriate direct charges, authorized lodging and meals, field supplies, expendables, telecommunications, computer, GPS/GIS equipment, plan reproduction, report production will be marked up by 10% to cover administrative and handling expenses.

Internal Charges:

Blue Printing -	\$ 0.30 per square foot	
Photocopies - Letter	\$ 0.12 per page (BW)	\$0.50 per page (Color)
Legal	\$ 0.25 per page (BW)	\$0.75 per page (Color)
Tabloid	\$ 0.75 per page (BW)	\$1.50 per page (Color)
Auto Use -	\$ 0.56 per mile	
Plan Plotting -	\$ 5.00 per plot	
Color Plotting-	\$ 10.00 per plot	
Truck Usage	\$125.00 per day	

**CITY OF WOODBURY
CERTIFICATION AS TO THE AVAILABILITY OF FUNDS
CHIEF FINANCIAL OFFICER**

I CERTIFY AS CHIEF FINANCIAL OFFICER, THAT WITH RESPECT TO THE AWARD OF A CONTRACT OR EXPENDITURE OF FUNDS TO:

Princeton Hydro

FOR:

Professional hydrology services - Stewart Lake Improvements to shoreline & recreational area

RESOLUTION #	<u>16-133</u>	<u>9/13/2016</u>	AMOUNT:	<u>\$ 6,600.00</u>	Not-to-exceed
ORDINANCE #	<u> </u>				

THAT FUNDS ARE AVAILABLE, AS OF THE DATE OF THIS RESOLUTION, FROM THE FOLLOWING:

Amounts Funded

TEMPORARY BUDGET APPROPRIATION:

ADOPTED BUDGET APPROPRIATION:

DEDICATION BY RIDER:

RESERVE FOR FEDERAL & STATE GRANT:

CAPITAL ORDINANCE: C-04-16-249-070 \$ 6,600.00

Dated: September 13, 2016



ROBERT LAW
CHIEF FINANCIAL OFFICER