

RESOLUTION NO. 2014-313

A RESOLUTION AUTHORIZING AN AGREEMENT FOR PROFESSIONAL SERVICES WITH LIEBERMAN & BLECHER PC, PRINCETON, NJ, TO RESEARCH AND PURSUE LITIGATION REGARDING THE REMEDIATION OF BURNT MILL POND.

WHEREAS, there exists a need for professional services to Research and Pursue Litigation regarding the Remediation of Burnt Mill Pond; and

WHEREAS, the City of Vineland has a need to acquire such professional services as a Non-Fair and Open Contract pursuant to N.J.S.A. 19:44A-20.5; and

WHEREAS, the purchasing agent has determined and certified in writing that the value of said services will exceed \$17,500.00; and

WHEREAS, Lieberman & Blecher, PC, Princeton, NJ has submitted a proposal indicating they will provide the professional services in an amount not to exceed \$15,000.00 for the contract period August 13, 2014 to August 11, 2015;and

WHEREAS, Lieberman & Blecher has completed and submitted a Business Entity Disclosure Certification for Non-Fair and Open Contract which certifies that Lieberman & Blecher has not made any reportable contributions to a political or candidate committee in the City of Vineland in the previous one year and that the contract will prohibit Lieberman & Blecher from making any reportable contributions through the term of the contract to a political or candidate committee in the City of Vineland; and

WHEREAS, the availability of funds for said Professional Services Contract to be awarded herein have been certified by the City Comptroller; and

WHEREAS, the Local Public Contract Law (N.J.S.A. 40A:11-1, et seq) requires that the Resolution authorizing the award of contract for Professional Services without competitive bidding and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vineland as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute a Non-Fair and Open Agreement pursuant to N.J.S.A. 19:44A-20.5 with Lieberman & Blecher, PC, Princeton, NJ, for Professional Services to Research and Pursue Litigation regarding the Remediation of Burnt Mill Pond in an amount not to exceed \$15,000.00.
2. That this Agreement is awarded without competitive bidding as a Professional Services in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services to be rendered or performed require knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction distinguished from general academic instruction or apprenticeship and training.
3. That the Business Disclosure Entity Certification and the Political Contribution Disclosure Form be placed on file with the Resolution.
4. That a Notice of this action shall be printed once in the Daily Journal.

Adopted:

President of Council

ATTEST:

City Clerk

**REQUEST FOR RESOLUTION FOR CONTRACT AWARDS
UNDER 40A:11-5 EXCEPTIONS
(PROFESSIONAL SERVICES, EUS, SOFTWARE MAINTENANCE, ETC)**

July 22, 2014

(DATE)

1. Service (detailed description): Research and pursue litigation regarding the remediation of Burnt Mill Pond
 2. Amount to be Awarded: \$ Not to exceed \$15,000.00
 Encumber Total Award
 Encumber by Supplemental Release
 3. Amount Budgeted: \$ \$15,000.00
 4. Budgeted: By Ordinance No. 2012-9
Or Grant: Title & Year _____
 5. **Account Number to be Charged: _____
 6. Contract Period: August 13,2014 to August 11,2015
 7. Date To Be Awarded: August 12,2014
 8. Recommended Vendor and Address: Lieberman & Blecher, PC
10 Jefferson Plaza, Princeton NJ 08904
 9. Justification for Vendor Recommendation:(attach additional information for Council review)
This Law Firm specializes in Environmental issues and represented the City in past matters.

 Non-Fair & Open (Pay-to-Play documents required)
 Fair & Open: How was RFP advertised? _____
 10. Evaluation Performed by: Richard P. Tonetta
 11. Approved by: Richard P. Tonetta

 12. Attachments:
 Awarding Proposal
 Other: _____
 - Send copies to:
Purchasing Division
Business Administration
- ** If more than one account #, provide break down**



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ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
DO NOT DISTRIBUTE

July 30, 2014

Stuart J. Lieberman
Attorney at Law
SJL@LiebermanBlecher.com

Reply to Princeton Office

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Telephone 732.355.1311 Facsimile 732.355.1310

845 Third Avenue | 6th Floor | New York | NY | 10022
Telephone 646.290.5121 Facsimile 646.290.5001
BY APPOINTMENT ONLY

VIA E-MAIL AND NJ LAWYERS' SERVICE

Richard P. Tonetta, Esq.
Solicitor, City of Vineland
640 E. Wood Street
P.O. Box 1508
Vineland, NJ 08362-1508
rtonetta@vinelandcity.org

*RE: Shield Alloy Superfund Site, Newfield, NJ
Engagement Letter and Proposal for Legal Services*

Dear Mr. Tonetta:

Lieberman & Blecher, P.C. (the "Firm") is pleased to present the City of Vineland ("Vineland") with this engagement letter and proposal for legal services.

The Matter; Proposal. Pursuant to the terms of this engagement letter, and any amendments hereto (collectively, the "Agreement"), Vineland agrees to retain the Firm and the Firm agrees to serve as special environmental legal counsel to Vineland regarding its concerns over the Shield Alloy Superfund Site ("Site") located in Newfield, New Jersey and its impacts on the Hudson Branch stream and Burnt Mill Pond in Vineland (the "Matter"). The structure of this Agreement applies only to this Matter. Any other representation by the Firm arising out of or in the course of this Matter will be billed to Vineland at the Vineland-preferred rates described herein unless an alternative agreement is reached by the Firm and Vineland in writing.

Based on the information available at the time of this writing, the Firm proposes to first petition the New Jersey Department of Environmental Protection ("NJDEP") and United States Environmental Protection Agency ("USEPA") and seek to modify the Record of Decision ("ROD") developed for the Site. The Firm would begin by seeking to amend the ROD to reflect the resource value of the affected water body and the protective measures believed to be in order. More specifically, we would first review the applicable documents. Second, we would seek meetings with the USEPA and NJDEP regarding the ROD and seek an amendment to reflect the resource value of the water body, requiring a more protective remedy. If viable, the Firm would also file demands directly against the responsible parties seeking the same relief. If applicable, the Firm would file an Environmental Rights Act Notice to attempt to position the City to seek attorneys' fees from the responsible parties as part of any negotiation. If the stakeholders do not respond to these amicable efforts to resolve the dispute, the Firm would evaluate litigation options and present those options to Council. For this work, the Firm proposes a budget not to exceed fifteen thousand dollars (\$15,000.00) based on reduced hourly rates specific to Vineland.



Legal Services. The Firm will provide legal services at the request and direction of Vineland, which services may include, among other things, investigating relevant facts (such as interviewing individuals where and when appropriate, conducting file reviews and compiling data from local, state and/or federal agencies, as the circumstances may require), conducting legal research, reviewing and preparing documents and legal memoranda, engaging in legal strategy and planning, and making court or other appearances, as necessary. The Firm agrees to provide all litigation services requested by Vineland, if any, up to and including appearance at trial, alternative dispute resolution or other proceeding. It is understood that the scope of the Firm's representation of Vineland does not include any appellate services, nor is the Firm obligated to pursue an appeals on behalf of Vineland. Should Vineland wish to engage the Firm to pursue an appeal, the Firm and Vineland may agree to extend this Agreement or enter into a separate agreement as the circumstances may require.

Legal Fees. Vineland hereby agrees to compensate the Firm for the actual time spent by the Firm in providing the aforementioned legal services to Vineland. The Firm shall record all time spent on behalf of Vineland in at least six (6) minute increments, which shall be billed to Vineland pursuant to the Firm's prevailing hourly rates, as follows:

- a. Services performed by an Attorney..... \$225.00/hour
- c. Services performed by a Paralegal \$95.00/hour
- e. Secretarial/administrative overtime, if required in emergencies..... \$40.00/hour

Costs Associated with Legal Representation. All costs, disbursements and out-of-pocket expenses associated with the legal services provided by the Firm shall be the responsibility of Vineland. Such costs and expenses may include, but may not be limited to, postage and delivery, court and agency filing fees, photocopying, and Matter-related travel (including standard automobile mileage as dictated by the Internal Revenue Service, public transportation, airfare, parking, lodging and meals, as the circumstances may require). In a litigation setting, such costs and expenses may also include, but may not be limited to, document imaging and database maintenance costs, court reporting fees (*i.e.*, stenographers and videographers), expert witnesses, and other outside litigation support services as the circumstances may require.

On behalf of Vineland, the Firm shall advance individual costs and expenses that do not exceed \$250.00. Such disbursements will be included in Vineland's monthly invoices and will become due and owing as fees payable to the Firm in the time and manner described herein. Any individual cost or expense that exceeds \$250.00 shall be the direct and sole responsibility of Vineland. While the Firm may arrange for the underlying service resulting in said costs, Vineland shall make immediate payment to the Firm or directly to the Firm's vendor(s), as the circumstances may require. The Firm shall make all reasonable efforts to advise Vineland when individual costs or expenses exceeding \$250.00 are to be expected. Vineland understands and agrees that the Firm may elect to advance costs in excess of \$250.00 in certain circumstances. In those circumstances, the Firm shall include the disbursement with its invoices, and such disbursements will become due and owing as fees payable to the Firm in the time and manner described herein.

Payment of Legal Fees and Costs. The Firm shall provide Vineland with regular monthly invoices for fees and disbursements, which shall be payable upon receipt. Balances that



are not paid within thirty (30) days will be assessed interest at an annual percentage rate of 18%. Any and all interest shall become due and owing as fees. Vineland hereby agrees to raise any questions or concerns relating to an invoice issued by the Firm within thirty (30) days of the date of the invoice. Any such questions or concerns should be raised, in writing, to the Firm's Accounting Manager via e-mail to Accounts@LiebermanBlecher.com. Any and all fees and disbursements will be deemed final and accepted by Vineland if not questioned, in writing, within the aforementioned thirty (30) day period. Furthermore, Vineland understands and agrees that the Firm shall be entitled to withdraw as counsel to Vineland in the event of nonpayment of fees.

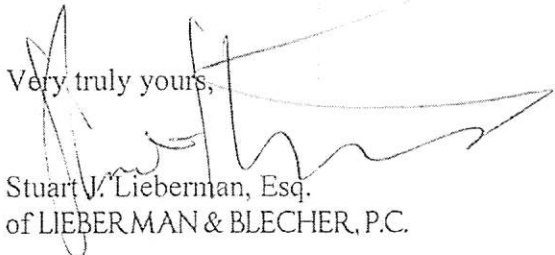
Payment of the Firm's invoices shall be made by check payable to Lieberman & Blecher, P.C. and mailed to the Firm at 10 Jefferson Plaza, Suite 400, Princeton, NJ 08540.

No Guarantee. The Firm agrees to provide conscientious, competent and diligent services and at all times will seek to achieve solutions which are just and reasonable for Vineland. However, because of the uncertainty of legal proceedings, the interpretation and changes in the law and many unknown factors, attorneys cannot and do not warrant, predict, or guarantee results or the final outcome of any case. Any communications between the Firm and Vineland regarding the potential outcomes of any claim or proceeding shall not rise to the level of predictions or outcomes.

Document Retention. During the course of its work for Vineland on this Matter, the Firm may maintain hard copy and/or electronic files relative to this matter. At the conclusion of this Matter, the Firm will provide Vineland with a copy of these files if Vineland makes a request for same. Thereafter, the Firm will maintain a copy of the files for a period of seven (7) years. At the conclusion of this seven (7) year period, the Firm may destroy all files relating to this Matter. Vineland understands and agrees to the aforementioned document retention policy.

Signatures. Vineland and the Firm have read and agreed to the terms of this Agreement. Vineland shall acknowledge its acceptance of this Agreement by signing where indicated below and returning this document to the Firm.

Very truly yours,


Stuart V. Lieberman, Esq.
of LIEBERMAN & BLECHER, P.C.

SJL/sml

Acknowledged and accepted by:

Signature

Printed Name and Title

Date