

CITY COUNCIL

The City of Orange Township, New Jersey

DATE May 2, 2023

NUMBER 205-2023

TITLE: A RESOLUTION AUTHORIZING THE AWARD OF A NON-FAIR AND NON-OPEN PROFESSIONAL SERVICE CONTRACT TO SCHWARTZ BARKIN & MITCHELL, ESQS. TO PROVIDE LEGAL COUNSEL TO THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF ORANGE TOWNSHIP FROM JANUARY 1, 2023, THROUGH DECEMBER 31, 2023, IN AN AMOUNT NOT TO EXCEED \$7,500.00.

WHEREAS, the Zoning Board of Adjustment (“Board of Adjustment”) of the City of Orange Township (“City”) selected the law firm of Schwartz Barkin & Mitchell, Esqs. to provide legal advice and legal representation at scheduled Board of Adjustment meetings for the period beginning January 1, 2023, and continuing through December 31, 2023; and,

WHEREAS, the Local Public Contract Law, *N.J.S.A. 40A:11-1 et seq.*, requires a resolution authorizing the award of contracts for the “Professional Services” without competitive bids and that the contract itself be available for public inspection as set forth herein; and,

WHEREAS, the City’s Chief Financial Officer has prepared the necessary Certificate of Availability of Funds, a copy of which is attached hereto, certifying that sufficient funds will be available to contract with Schwartz Barkin & Mitchell, Esqs. for this purpose in Account 3-01-21-185-000-519 contingent upon Municipal Council approval and inclusion of said item in the Temporary Budget and adopted 2023 Budget.

NOW, THEREFORE, BE IT RESOLVED, that a contract be awarded to Schwartz Barkin & Mitchell, Esqs. for the period beginning January 1, 2023, and continuing through December 31, 2023, in an amount not to exceed \$7,500.00, with additional fees paid separately from the budget and received from an escrow account established and solely funded by applicants for specific projects;


BE IT FUTHER RESOLVED, that the proper officers of the City of Orange Township are hereby authorized to enter into said contract with Schwartz Barkin & Mitchell, Esqs.; and,

BE IT FURTHER RESOLVED that notice of this action shall be published as required by law within 10 days of its passage.

Adopted:

Joyce L. Lanier
City Clerk

Tency A. Eason
Council President

 A-MERATH

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL LEGAL SERVICES ("Agreement") is made as of January 1, 2023, by and between:

City of Orange Township,
a New Jersey Municipal Corporation,
with offices at 29 North Day Street, Orange, New Jersey, 07050,
("City"); and,

Schwartz Barkin & Mitchell, Esqs.
with offices at 1110 Springfield Road, P.O. Box 1339, Union, New Jersey, 07083,
("Law Firm", together with the City, "Parties").

RECITALS

WHEREAS, the City's Municipal Council is required to retain qualified legal counsel to the City's Zoning Board of Adjustment ("Board of Adjustment") from outside of the Department of Law; and,

WHEREAS, the Law Firm demonstrated that it is qualified for appointment as legal counsel to the Board of Adjustment for the 2023 calendar year—January 1, 2023, through December 31, 2023 ("Agreement Term"); and,

WHEREAS, the Law Firm agrees to provide on-call legal services to the Board of Adjustment and its staff during the Agreement Term in exchange for a flat per-meeting fee paid by the City for meeting attendance and all general legal work, plus hourly fees paid by applicant-funded escrows for all project-related work; and,

WHEREAS, on May __, 2023, the Municipal Council voted to adopt Resolution No. ____-2023 appointing the Law Firm as legal counsel to the Board of Adjustment for the Agreement Term, and authorizing the Mayor to execute this Agreement.

NOW, THEREFORE, the Parties hereby agree to the terms and conditions as set forth in further detail herein.

TERMS

1. **Recitals.** All Recitals set forth above are hereby incorporated herein by reference.
2. **Scope of Services.** The Law Firm agrees to provide the following on-call legal services to the Board of Adjustment during the Agreement Term:
 - a. advising the HPC and its staff on legal issues relating to pending or new applications for development ("Applications"), and/or other general legal issues, such as changes in relevant law, and compliance with public records and sunshine laws;
 - b. attending technical review committee meetings and/or telephone conferences as needed to resolve legal questions relating to Applications;
 - c. advising the Board of Adjustment and its staff on issues of legal compliance with Federal and State statutes and regulations applicable to the Board of Adjustment;

d. attending regular and special public meetings of the Board of Adjustment to provide legal guidance during such proceedings; and,

e. researching and preparing resolutions and other legal documents for consideration by the Board of Adjustment.

3. Fees/Rates. The Law Firm shall be compensated as follows:

a. a flat fee of \$625.00 per public meeting of the Board of Adjustment during the Agreement Term for all general and non-Application-related legal services rendered to the Board of Adjustment before, during and after said meeting, which shall be paid by the City, subject to an annual hard cap of \$7,500.00;

b. an hourly fee of \$150.00 for all Application-related legal services performed by attorneys, which shall be paid entirely through applicant escrows.

4. Submission and Content of Invoices. The Law Firm shall be entitled to payment for services rendered upon submission of monthly invoices to the City. Invoices shall, at a minimum, provide the following: the name of the matter; date(s) of services rendered; the attorney's name, initials, or other such identification; a detailed description of the service rendered; the applicable rate; the time spent on the particular task; and, the total charge for the task. The Law Firm shall not block bill for any services rendered. For purposes of this Agreement, "block billing" shall refer to the practice of grouping together multiple activities or tasks under a single time entry.

5. Reimbursement for Expenses. The Law Firm may seek reimbursement for actual expenses reasonably incurred in accordance with the City's Outside Counsel Guidelines, as amended from time-to-time. The amounts for such expenses shall be itemized on the monthly invoices provided to the City in accordance with Paragraph 4 above.

6. Overhead Expenses; Multiple Attorney Billing. The Law Firm shall not bill the City for any office overhead expenses such as secretarial or administrative support staff time, internal conferences, or travel time/mileage. The Law Firm shall only bill for 1 attorney's attendance at any meeting or event where multiple attorneys attend.

7. Professional Liability Coverage Required. At all times during the Agreement Term, the Law Firm shall comply with the applicable requirements for professional liability coverage. The Law Firm shall maintain in good standing 1 or more policies of lawyers' professional liability insurance which shall insure the Law Firm and its attorneys against liability imposed upon them by law for damages resulting from any claim made against them by their clients arising out of their performance of professional services.

8. City Representations. The Law Firm is hereby placed on notice that no individual member of the Board of Adjustment, or any agent, servant or employee of the City possesses any lawful authority to: engage the provision of legal services on behalf of the City; authorize the continuation of services or work beyond the amount specifically approved in the authorizing Resolution and Certification of Availability of Funds; or represent that future funds will be available as compensation for current services. Any such acts shall be deemed *ultra vires* and beyond the scope of any authority that individual may possess.

9. Choice of Law. This agreement shall be governed by the laws of the State of New Jersey without regard to principles of conflict of laws. All contract claims under this Agreement shall be subject to and governed by the provisions of the New Jersey Contractual Liability Act, *N.J.S.A. 59:13-1 et seq.*

10. Entire Agreement; Severability; Waiver. This Agreement supersedes all previous understandings, agreements, statements and representations, whether oral or written, between the parties, and constitutes the complete and final expression of all understandings and agreements between the parties with respect to the subject matter hereof. This Agreement may not be changed orally, but only by an agreement in writing executed by the parties hereto.

If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court, governmental agency or arbitrator of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by such court, agency or arbitrator, or the validity or enforceability of this Agreement as a whole.

The Parties' respective rights and remedies under this Agreement are cumulative and not alternative. No exercise or waiver, in whole or in part, of any right or remedy provided for in this Agreement shall operate as a waiver of any other right or remedy, except as otherwise provided in this Agreement. No delay, forbearance, or neglect on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof. No waiver of any of the conditions of this Agreement by a party shall be effective unless expressly and affirmatively made and given by the party against whom enforcement of the waiver is sought.

11. Termination. This Agreement may be terminated by the Municipal Council with or without cause.

12. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of this date first written above.

For **CITY OF ORANGE TOWNSHIP**

Witness:

By: _____
Honorable Dwayne D. Warren, Esq.
Mayor

Joyce Lanier
City Clerk

For **SCHWARTZ BARKIN
& MITCHELL**

Approved as to form and legality:

By: _____
Gail Mitchell, Esq.
Partner

By: _____
Aaron Mizrahi, Esq.
Deputy City Attorney



City of Orange Township
ZONING BOARD OF ADJUSTMENT
29 NORTH DAY STREET
ORANGE, N.J. 07050

DATE: January 9, 2023

RESOLUTION: 1-2023

TITLE: A RESOLUTION AUTHORIZING THE APPOINTMENT OF GAIL MITCHELL, ESQ. OF SCHWARTZ, BARKIN AND MITCHELL 1110 SPRINGFIELD ROAD, UNION NJ 07083, TO PROVIDE LEGAL SERVICES TO THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF ORANGE TOWNSHIP IN MATTERS AS THEY RELATE TO ZONING AND LAND USE IN AN AMOUNT NOT TO EXCEED \$7,500.00 FOR THE CALENDAR YEAR 2023.

WHEREAS, Gail Mitchell, Esq., services are required to provide legal advice and legal representation for scheduled Zoning Board of Adjustment Meetings; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires a resolution authorizing the award of contracts for "Professional Services" without competitive bids and that the contract itself be available for public inspection as set forth herein; and

WHEREAS, the Chief Financial Officer of the City of Orange Township has prepared the necessary Certificate of Availability of Funds, contingent upon the passage of CY 2023 budget certifying that funds are available under the appropriate account - Account No. 3-01-21-185-000-519.

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment of the City of Orange Township, that a contract be awarded to Gail Mitchell, Esq., not to exceed an annual amount \$7,500.00 per year.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the City of Orange Township, New Jersey as follows:

1. The Zoning Board of Adjustment hereby approves and directed to execute the attached Contract with Gail Mitchell, Esq. specifically set forth in the attached contract for one year effective January 1, 2023 through to December 31, 2023.
2. Notice of this action shall be printed in the Orange Transcript as required by law within ten (10) days of its passage.

RESOLUTION #OZB-1-2023

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THEREFORE AGREED BY THE PARTIES AS FOLLOWS:

1. **CONTRACT AMOUNT:** The contract shall not exceed an annual amount of \$7,500 for Consultant Services to the Zoning Board of Adjustment for one year-January 1, 2023 through December 31, 2023.
2. **IN WITNESS WHEREOF** the City of Orange Zoning Board of Adjustment and Gail Mitchell, Esq. have this Agreement as of this date first herein written.

ADOPTED: January 9, 2023

Joyce L. Lanier

Joyce L. Lanier
Secretary

Murphy Wilson

Murphy Wilson
Chairperson

Approved by the following vote:

BOARD MEMBERS	IN FAVOR	NOT IN FAVOR	ABSENT
Ashanti Connor	X		
Cheryl Gayle			X
Mary L. Reed-Learmont, Vice Chairperson	X		
Gerard John Schubert			X
James Ward III	X		
JoAnne Ware	X		
Murphy Wilson , Chairperson	X		
Alternates			
Carl Fields (1 st Alt)	X		
Errica Quartey (2 nd Alt)			X
Vacant (3 rd Alt)			
Vacant (4 th Alt)			