



BOROUGH OF CALDWELL

Resolution No: 3-99
Date of Adoption: March 23, 2021

TITLE:

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICE CONTRACT WITH TOPOLOGY NJ LLC IN AN AMOUNT NO TO EXCEED \$50,000

Recommended for approval by:

Approved as to form and legality by:

Thomas Banker, Administrator

Title:

Whereas, the Local Public Contracts Law (N.J.S.A.11-1 et seq.) provides that contracts for professional services may be negotiated and awarded by the governing body without public advertising for bids; and

Whereas, the Borough of Caldwell (the "Borough") wishes to engage the services of Topology NJ LLC ("Topology") for the provision of professional planning services related to the Borough's implementation of its Redevelopment Plan, including without limitation the evaluation of proposals submitted by potential redevelopers; and

Whereas, the Borough Administrator has solicited a proposal from Topology for such services and has negotiated with Topology terms and conditions that are appropriate to the needs of the Borough;

Now Therefore Be It Resolved By The Mayor And Council Of The Borough Of Caldwell New Jersey That:

- 1. The proposal of Topology which is attached to and made part of this resolution are hereby accepted by the Borough as the basis of a contract for the provision of those services by Topology; and
2. The Borough Administrator is hereby authorized and directed to enter into an agreement with Topology for the provision of the services described in the attached proposals; and
3. The maximum amount authorized to be paid to Topology pursuant to such agreement is twenty-five thousand dollars (\$25,000); and
3. The Borough Attorney is hereby authorized and directed to prepare an appropriate form of contract to allow to perform the services and receive the compensation set forth in the attached proposals; and
4. The award of this contract is subject to and conditioned upon the provision by the Chief Financial Officer of the Borough of a certification of the availability of funds sufficient to provide for payment of the contract; and
5. The Borough Clerk is hereby authorized and directed to cause such notices as are required by statute to be provided in the form as required by such statutes for the award of contracts of this type.

RECORD OF COUNCIL VOTE

presented the following resolution - Seconded by:

COUNCIL MEMBER Yes No Absent Abstain COUNCIL MEMBER Yes No Absent Abstain

Table with 5 columns for council members and 5 columns for Yes/No/Absent/Abstain votes. Rows include Schmidt, Lace, Rodgers, DePalma-Iozzi, and Cole, Gates.

Brittany Heun, Deputy Clerk

John Kelley, Mayor



UNLOCKING POTENTIAL
IN PLACES YOU LOVE
60 Union Street, #1N
Newark, NJ 07105

March 18, 2021

Mr. Thomas Banker
Business Administrator, Borough of Caldwell
1 Provost Square
Caldwell, NJ 07006

Re: 2021 Proposal for On-Call Planning Services

Dear Mr. Banker,

We are very pleased to submit the following proposal for professional planning services for the Borough of Caldwell, to be provided on an "on-call" basis.

SCOPE OF SERVICES

Topology understands that the Borough may require on-call services to provide professional planning expertise, facilitate related decision-making, and manage public processes that yield positive outcomes. In this role, Topology will provide, on an on-call basis, planning services that could include, but are not necessarily limited to:

- Affordable housing matters and compliance with New Jersey regulations as requested and in collaboration with special affordable housing counsel.
- Redevelopment planning outside of the scope of the 2021 Redevelopment Plan Amendment scope of services, which may include:
 - Meetings with individual/prospective (re)developers, community stakeholders, or Borough's professional consulting team, staff, elected/appointed officials, and/or legal counsel.
 - Prepare policy and compliance reports, zoning analysis, and general guidance on implementing/modifying Redevelopment Plan(s).
 - Prepare and deliver reviews, via expert testimony, regarding Topology's review of, and recommendations to improve, redeveloper submissions. Among other things, reviews will confirm consistency and compliance with adopted redevelopment plan(s) in connection with redeveloper designation.
 - Analysis, attendance and expert testimony at Borough Planning Board Meetings for site plan application submissions of designated redevelopers.

- Existing zoning ordinance analysis and preparation of amendment(s), as may be requested.
- Other special assignments as may be identified by Borough officials.

FEES + PAYMENT TERMS

Topology will provide planning services as outlined above to address the Board's needs on the following hourly fee schedule:

- Principal: \$250
- Director: \$200
- Senior Planner: \$175
- Planner: \$150
- Junior Planner: \$125
- Graphic Designer: \$125

Topology will not proceed with any work under this proposal without first receiving written approval by the Borough Administrator. Said authorizations shall include an estimate of time/cost anticipated for completion of assigned tasks. The rate specifically excluded costs that would be billed as reimbursable including but not limited to:

- Costs associated with materials for public engagement sessions
- Procurement of data from third party vendors
- Printing and production of deliverables
- Courier or express mail
- Mileage travel costs

Topology will issue invoices monthly for services provided over the course of the previous month. Payment is due within thirty (30) days from receipt of Topology's invoice.

TERMS OF AGREEMENT

This agreement is effective as of the date of execution and will terminate no later than December 31, 2021. Any work requested to be performed under this contract after such date will be billed at prevailing rates, unless the work is not completed due to Topology's delays or inaction.

LEGAL TERMS + CONDITIONS

Topology has structured this Proposal as an Agreement for Services and by executing this Agreement, the parties are bound by the following terms and conditions:

Exclusive Agreement

This is the entire Agreement between Consultant and Client.

Client and Consultant recognize that (a) Consultant's original cost and time estimates may be too low due to unforeseen events, or to factors unknown to Consultant when this Agreement was made; (b) Client may desire a mid-stream -project change to Consultant's services that would add time and cost to the Project; or, (c) other provisions of this Agreement may be difficult to carry out due to unforeseen circumstances. If any intended changes or any other events beyond the parties' control require adjustments to this Agreement, the parties shall make a good faith effort to agree on all necessary matters. Such agreement shall be put in writing, signed by both parties and added to this Agreement.

Invoice + Payment

Topology will invoice by email monthly by the 15th of the month following the month during which fees and expense were incurred.

Consultant shall be paid at our standard hourly rates, as additional services, for time spent as a consultant or witness regarding concerns associated with this Agreement, including all time spent in assembling documentation, preparation for serving as a witness, or the like, in any litigation not arising from our own negligence or misconduct.

Ownership + Use of Work

Consultant owns or holds a license to use and sublicense various materials in existence before the start dates of this Agreement (Consultant's Materials), Consultant, may, at its option, include Consultant Materials in the work performed under this Agreement. Consultant retains the right, title, and interest, including copyrights, patent rights, and trade secret rights in Consultant Materials. Consultant grants to Client royalty-free non-exclusive license to use Consultant Materials and anything created or developed by Consultant, under this Agreement. The license shall have a perpetual term and may not be transferred by Client.

Client Obligations

Client shall make available to Consultant, at Client's expense, all available materials, information, agreement, and documents that may be critical to the furtherance of the services to be performed under this Agreement. Consultant agrees to use professional discretion and confidentiality in the use of said material.

Independent Contractor Status

Consultant is an independent contractor, not Client's employee. Consultant's employees or sub-contractors are not Client's employees. Consultant and Client agree to the following rights consistent with an independent contractor relationship.

Consultant has the right to perform services for others during the term of this Agreement.

Consultant has the sole right to control and direct the means, manner, and method by which the services required by the Agreement will be performed.

Consultant has the right to hire assistants as subcontractors, or to use employees to provide services required by this Agreement.

The Consultant or Consultant's employees or subcontractors shall perform the services requirement by this Agreement. Client shall not hire, supervise or pay any assistants to help Consultant.

Neither Consultant nor Consultant's employees or subcontractors shall receive any training from Client in the skills necessary to perform the services required by this Agreement.

Client shall not require Consultant or Consultant's employees or subcontractors to devote full time to performing the services required by this Agreement.

Neither Consultant nor Consultant's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit of Client.

Liability + Indemnification

Consultant is rendering only those consulting and advisory services that the Client requests, as generally described in this Agreement, and because said services may be implemented by the Client in part or in full, and because Consultant is not being paid based on how valuable our overall consulting services and advice may be to the Client, Client agrees that:

Under this Letter Agreement, Consultant shall not be liable in any way for any act or failure to act, unless it is established that our act or omission constitutes willful misconduct or gross negligence.

Nothing in this Agreement shall be deemed to require, or authorize, or permit Consultant to perform any act that would constitute professional design or

engineering services, testing, geotechnical or environmental assessments, or the licensed, or certified, practice of architecture, engineering, public accounting, law, construction or general contracting services, or other services requiring professional licensure or certification. The recommendations, advice, budgetary information and scheduling to be furnished by Consultant under this Agreement shall not be deemed to be representations, warranties, guarantees or constitute the performance of Licensed professional services.

Notices

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: (1) When delivered personally to the recipient's address as stated on this Agreement; (2) Three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement; (3) When sent by facsimile (fax) or e-mail to the last fax number or e-mail address of the recipient known to the person giving notice. Notice is effective upon receipt, provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt. All notices, submissions, requests or other communications must be in writing and shall be addressed as follows:

Consultant:

Attention: Phil Abramson, CEO
Topology NJ, LLC
60 Union Street, #1N
Newark, NJ 07105
T: 973-370-3000
E: Phil@topology.is

Client:

Attention: Thomas Banker
Business Administrator
Borough of Caldwell
1 Provost Square
Caldwell, NJ 07006
E: tabanker@aol.com

Invoice Copy:

Attention: Brittany Heun
Deputy Clerk
Borough of Caldwell
1 Provost Square
Caldwell, NJ 07006
E: bheun@caldwell-nj.com

Assignment + Delegation

These arrangements are binding on and benefit each party and each party's successors and permitted assigns, which shall be authorized in writing. This Agreement constitutes the totality of the arrangements between the parties, unless the parties agree in writing hereafter to any amendments.

Termination

Either party may terminate this Agreement at any time by giving the other party notice, in writing. In the event of the termination of this Agreement, Consultant will be paid all outstanding amounts previously billed and due in accordance with this Agreement plus any unbilled time, materials and expenses incurred up to the effective date of termination. At the point of termination, and provided Client pays for Consultant's time to collect the materials, Consultant will provide Client with documents and materials prepared for Client during the time Consultant provided services under this Agreement. Consultant may suspend the provision of services for non-payment of fees and expenses pursuant to this Agreement, until payment is brought current. The Client shall indemnify and hold Consultant harmless from any claim or liability to client resulting from such suspension. Topology holds itself and its clients to a high ethical standard and as such this contract may be cancelled immediately upon any request or insinuation for services which may in any way be construed as illegal in relation to the performance of the contract.

Applicable Law

Parties shall comply with all applicable laws, ordinances, and codes of the Federal Government, the State of New Jersey and any other applicable governmental entity having jurisdiction. If either party has violated or failed to comply with any of these applicable laws, ordinances and codes with respect to the performance of the services of this Agreement, the other party may withhold payments or discontinue services as may be the case and take such other action that it deems appropriate under the circumstances until compliance of remedial action has been accomplished by the other party to its satisfaction. In addition, either party shall also be responsible for, and pay the other for, any costs that a party may incur because of the failure to comply with the requirements of this paragraph.

Certification

Both parties warrant that the individual signing below has the authority to sign this Agreement and bind the Parties to the terms of this Agreement.

Approval of Agreement by and between the Parties

Philip Abramson
Principal
Topology NJ LLC

Thomas Banker
Business Administrator
Caldwell, NJ