


To: Marc Dashield, City Administrator

Copy: Laddie Wyatt, City Clerk

From: Daniel A. Williamson, Corporation Counsel 

Date: August 13, 2007

Re: **Resolution Designating the Law Offices of Miriam R. Rubin, Esq. as Special Counsel to Handle Designated Litigation by the Office of the Corporation Counsel Pursuant to N.J.S.A. 40A:11-2(6) and N.J.S.A. 19:44A-20.4 (Fair and Open Process) for the August 22, 2007 Regular Meeting**

The attached Resolution is being presented for the Council's review, consideration and approval of the designation of the Law Offices of Miriam R. Rubin, Esq. to handle certain litigation as assigned by the Corporation Counsel. As noted in the resolution, the dollar amount for legal services is limited an amount not to exceed \$10,000.00. This resolution and the attached contract allows the Corporation Counsel to assign matters to Ms. Rubin without the need to return to the Council unless, and until there are legal matters assigned to her office which may exceed the \$10,000.00 limit. Of course, all matters assigned, including those within the \$10,000.00 limit, will be subject to council review where, when and if there is a need to approve settlement(s), or certain other action(s).

It should be understood that Ms. Rubin's efforts will be scrutinized or otherwise monitored by the Corporation Counsel to ensure that all appropriate steps are being followed. Should you have any questions or comments, please advise.

Approved for placement on City Council Agenda


Marc Dashield, City Administrator

**RESOLUTION AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICES
CONTRACT PURSUANT TO N.J.S.A 40A:11-2(6) AND THE FAIR AND OPEN
PROCESS IN ACCORDANCE WITH N.J.S.A 19:44A-20.4 TO THE
LAW OFFICE OF MIRIAM R. RUBIN
AS LITIGATION/DEFENSE COUNSEL IN AN AMOUNT NOT TO EXCEED
\$10,000.00**

WHEREAS, in accordance with N.J.S.A. 40A:11-2(6), the City of Plainfield instituted a policy to negotiate agreements for Professional Services on the basis of demonstrated confidence and qualifications for types of Professional Services required by the City pursuant to a fair and open process in accordance with 19:44A-20.4; and

WHEREAS, MIRIAM S. RUBIN, ESQ., submitted a response to the City of Plainfield Request for Qualification ("RFQ") on or before the designated deadlines of June 6, 2007, by delivering same to Plainfield City Hall, 515 Watchung Avenue, Plainfield, New Jersey and has been deemed to be a qualified service provider as set forth in resolution R-272-07 adopted by the City Council of the City of Plainfield on June 20, 2007; and

WHEREAS, the Corporation Counsel for the City of Plainfield is frequently called upon to provide Special Counsel for the defense and/or representation of City Officials/Officers/Directors and employees. The subject matter of such litigation includes, but is not limited to, tort claims under N.J.S.A. 59:1-1 et seq., LAD claims, Federal Section 1983 actions, municipal court defense, personnel matters, labor matters and/or challenges to governmental actions; and

WHEREAS, Special Counsel would be assigned and required to provide representation in all aspects of litigation as requested/directed the Corporation Counsel for the City of Plainfield on a "as needed" basis and subject to the availability of funds; and

WHEREAS, Special Counsel as contemplated herein will be under the direction and supervision of the Corporation Counsel of the City of Plainfield; Now, therefore,

BE IT RESOLVED, that in accordance with N.J.S.A. 40A:11-2(6) the City Council of the City of Plainfield, hereby authorizes the Mayor and the City Clerk to execute an Agreement to Provide Legal Services with MIRIAM R. RUBIN, ESQ. as Special Counsel for Defense Litigation matters as described hereinabove for the fiscal year 2008 in an amount not to exceed \$ 10,000.00 as follows: Not to exceed Five Thousand Dollars (\$5,000.00) through the City's Self-Insurance FY 2008 Budget; and not to exceed Five Thousand Dollars (\$5,000.00) through the Corporation Counsel's FY 2008 Budget as set forth in the Chief Financial Officer's Certificate of Sufficient Funding annexed hereto and made a part hereof; Be it,

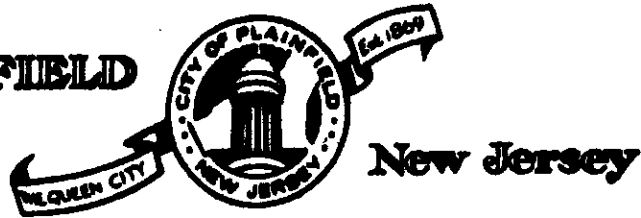
FURTHER RESOLVED, that a fully executed copy of this resolution shall be filed in the Office of the City Clerk.

Adopted by the City Council

August 22, 2007

Laddie Wyatt, City Clerk

CITY OF PLAINFIELD



P.O. Box 431
515 Watchung Avenue
Plainfield, N.J. 07061

CERTIFICATION AS TO AVAILABLE FUNDING

I, Peter P. Sepelya, Jr. Comptroller of the City of Plainfield, do hereby certify that funds in the amount not to exceed \$10,000.00 are available from the City of Plainfield Corporation Counsel Account Number 8-01-20-110-002-271 for Special Counsel with Miriam R. Rubin, Esq..

Dated: 8-10-07

Certified: *Peter P. Sepelya, Jr.*

**AGREEMENT TO PROVIDE LEGAL SERVICES
MIRIAM R. RUBIN, ESQ. - LITIGATION/DEFENSE COUNSEL**

THIS AGREEMENT, made as of August , 2007, by and between the CITY OF PLAINFIELD, a municipal corporation of the State of New Jersey, having its principal offices at 515 Watchung Avenue, Plainfield, New Jersey 07061 (hereinafter referred to as "City") and Law Offices of Miriam R. Rubin, 1835 Route 130 South, North Brunswick, New Jersey 08902 (hereinafter referred to as "Counsel");

WITNESSETH

WHEREAS, the City of Plainfield agrees to retain special counsel on behalf of the City and the Law Office of Miriam R. Rubin is agreeable to perform all the necessary legal matters pursuant to Resolution No. R -07; and

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, it is agreed as follows:

1. Miriam R. Rubin, Esq., is hereby retained as Special Counsel for the City from July 1, 2007 to June 30, 2008, serving at the pleasure of the Corporation Counsel for the following matters: Defense litigation and other matters as assigned. Counsel shall carry out all duties and responsibilities in regard to such matters. All services shall be performed at the pleasure of and under the supervision and direction of the Corporation Counsel.

2. The City of Plainfield agrees to compensate Counsel for such legal services as follows:

\$95.00 per hour, in an amount not to exceed Five Thousand Dollars (\$5,000.00) through the City's Self-Insurance FY 2008 Budget; and \$95.00 per hour, in an amount not to exceed Five Thousand Dollars (\$5,000.00) through the Corporation Counsel's FY 2008 Budget.

In addition, the City of Plainfield shall pay costs and disbursements incurred by Counsel in serving as Special Counsel according to the disbursement schedule attached hereto as Exhibit "C" and made a part hereof. No payment shall be allowed for staff, secretarial or paralegal services.

3. Payment for services rendered by Counsel shall be due upon presentation to the Corporation Counsel of an official voucher with attached, detailed itemization which shall include a description of services rendered, hours expended, as well as disbursements claimed. It is agreed that all vouchers must be accepted by the Corporation Counsel as to form and documentation before payment will be made. All statements for services rendered will be presented to the Corporation Counsel on a monthly basis and should be received by the Corporation Counsel no later than the last working day of the month following the month for which the services are rendered.

4. The total payments hereunder shall in no event exceed the lawful appropriations set forth herein. In the event an additional appropriation is required, Counsel may apply to the City Council through the Corporation for consideration of an additional appropriation, which request must be in writing stating the reasons therefore and must be requested and approved in advance. No bills for legal services that have not been authorized in advance will be allowed.

5. Counsel agrees to provide services to the City as an independent contractor. No services will be rendered to the City by Counsel unless authorized by the Corporation Counsel.

6. Counsel shall provide proof of professional liability insurance in a minimum amount of \$500,000 and shall maintain such insurance in effect during the term of this agreement. Counsel shall indemnify and hold the City harmless against any liability, claims or costs arising out of any claim for negligence, error or omission or wrongful conduct arising out of the performance of their duties hereunder.

7. The failure of the City at any time to insist upon a strict performance of any terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

8. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto.

9. The term of this Agreement shall be for a period not to exceed the City of Plainfield's Fiscal Year 2008 (June 30, 2008), *provided however*, that this agreement and the terms contained herein shall continue in full force and effect as to all matters assigned to Special Counsel until a successor is qualified and appointed.

10. Counsel shall serve under the supervision and direction and at the pleasure of the Corporation Counsel.

11. All notices given pursuant to this Agreement shall be in writing and delivered by mailing same, by regular mail, to the respective parties at the addresses set forth below:

Law Office of Miriam R. Rubin
1835 Route 130 South
North Brunswick, New Jersey 08902

Daniel A. Williamson, Esq.
Corporation Counsel
City of Plainfield
City Hall
515 Watchung Avenue
Plainfield, NJ 07061

Laddie Wyatt, City Clerk
City of Plainfield
City Hall
515 Watchung Avenue
Plainfield, NJ 07061

12. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and there are no other agreements, oral or otherwise, between the parties regarding the subject matter of this Agreement.

13. No alterations, changes, modification or variations of this Agreement or the terms thereof shall be valid unless in writing and signed by both of the parties hereto or their duly authorized representative.

14. This Agreement is made subject to and shall be construed and governed by the laws of the State of New Jersey.

15. During the performance of this contract, Counsel agrees as follows:

- a. Counsel, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional, sex or sexual orientation. The Counsel will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action 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. Counsel 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;

- b. Counsel, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the Counsel, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;
- c. Counsel, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the Counsel's commitments under this Act and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- d. Counsel, where applicable, agrees to comply with any regulations promulgated by the Treasurer of the State of New Jersey, pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, and the Americans with Disabilities Act.
- e. Counsel, where applicable, agrees to attempt to in good faith employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer of the State of New Jersey, pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time, or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to

N.J.A.C. 17:27-5.2 promulgated by the Treasurer of the State of New Jersey pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

- f. Counsel, where applicable, agrees to inform, in writing, appropriate recruitment agencies in the area, including 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, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- g. Counsel, where applicable, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing confirms 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.
- h. Counsel, where applicable, 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, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- i. Counsel, where applicable, shall furnish such reports or other documents to the Affirmative Action Office 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 Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

16. Americans with Disabilities Act

Counsel and the City do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990 ("ADA") (42 U.S.C.A. Sec. 12101 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 regulations promulgated pursuant thereto, are made a part of this Agreement.

17. Upon conclusion of Counsel's services to the City, Counsel shall immediately return to the City through the Corporation Counsel all files, papers and records in his/her possession, together with a written substitution of attorney in any pending actions or proceedings, without cost to the City.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have hereunto affixed their hands and seals the day and year first written above.

ATTEST:

CITY OF PLAINFIELD

Laddie Wyatt, City Clerk

Sharon Robinson-Briggs
Mayor

ATTEST:

Law Offices of Miriam R. Rubin

By: Miriam R. Rubin

STATE OF NEW JERSEY, COUNTY OF _____

SS.:

On this _____ day of _____, 200____, before me personally came **MIRIAM R. RUBIN**, to me known, who affirmed that he/she resides in _____, and that he/she is the _____ of the firm of **MIRIAM R. RUBIN**, the Corporation described in and which executed the foregoing instrument, that he/she knows the seal of the said Corporation, that the seal affixed by order of the Board of Directors of said Corporation and that he/she signed his/her name thereto by like order.

, Secretary

Subscribed and affirmed
before me this _____ day
of _____, 200____.

Notary Public

My Commission Expires:

STATE OF NEW JERSEY, COUNTY OF _____

SS.:

I CERTIFY that on _____, 200____,

LADDIE WYATT, personally came before me and stated under oath to my satisfaction that:

- (a) this person was the subscribing witness to the signing of the attached instrument; and
- (b) this instrument was signed by **SHARON ROBINSON-BRIGGS**, who is the *Mayor* of the **CITY OF PLAINFIELD**, the entity named in this instrument, and was fully authorized to and did execute this instrument on its behalf; and
- (c) the subscribing witness signed this proof under oath to attest to the truth of these facts.

(Print name of witness below signature)
LADDIE WYATT, CITY CLERK

Subscribed and affirmed
before me this _____ day
of _____, 200____.

EXHIBIT A

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27**

GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICES 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 or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not 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 or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act 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 employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2. or a binding determination of the applicable county employment goals determined by the Division, pursuant to 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, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation 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 personal 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 applicable 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, creed, color, national origin, ancestry, marital status, affectional or sexual orientation 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 and its subcontractor shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division 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 Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.

ACCEPTED BY:

Name: _____

Title: _____

Date: _____

EXHIBIT B

Business Registration Compliance

Goods and Services Contracts (including purchase orders)

N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that **knowingly** provide goods or perform services for a contractor fulfilling this contract: 1) the contractor shall provide written notice to its subcontractors to submit proof of business registration to the contractor; 2) prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors or attest that none was used; 3) during the term of this contract, the contractor and its affiliates shall collect and remit, and shall notify all subcontractors and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State.

A contractor, subcontractor or supplier who fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements is available by calling (609) 292-9292.

Construction Contracts (including public works related purchase orders)

N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that **knowingly** provide goods or perform services for a contractor fulfilling this contract:

- 1) the contractor shall provide written notice to its subcontractors and suppliers to submit proof of business registration to the contractor;
- 2) subcontractors through all tiers of a project must provide written notice to their subcontractors and suppliers to submit proof of business registration and subcontractors shall collect such proofs of business registration and maintain them on file;
- 3) prior to receipt of final payment from a contracting agency, a contractor must submit to the contacting agency an accurate list of all subcontractors and suppliers or attest that none was used; and,
- 4) during the term of this contract, the contractor and its affiliates shall collect and remit, and shall notify all subcontractors and their affiliates that they must collect and remit, to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State.

A contractor, subcontractor or supplier who fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements are available by calling (609) 292-9292.

EXHIBIT C

SCHEDULE OF ALLOWABLE COSTS FOR LEGAL MATTERS

(AS ADOPTED BY THE CITY COUNCIL OF THE CITY OF PLAINFIELD BY RESOLUTION DATED
JULY 19, 1999, BEARING RESOLUTION NO. R343-99)

| | |
|--|--|
| Telephone | Actual Costs or \$.50, whichever is greater |
| Postage | Actual Costs or \$.50 per letter, whichever is greater |
| FAX Transmission | Actual Costs or \$.50 per page, whichever is greater |
| Photocopies | \$.15 per copy |
| Messenger, Courier | Actual Cost |
| Travel – Mileage, Parking & tolls | \$.25 per mile Actual costs |
| Depositions | Actual Cost* |
| Other Expenses | Actual Cost* |
| Expert Witness Fees | Actual Cost* |

* Disbursements exceeding \$200.00 shall require the prior approval of Corporation Counsel.