

**THIS AGREEMENT**, made and entered by and between the **CITY OF ATLANTIC CITY**, a Municipal Corporation of the State of New Jersey, 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401, hereinafter "**CITY**", and the law offices of **BIRCHMEIER & POWELL, LLC**, located at 1891 State Highway 50, P.O. Box 582, Tuckahoe, New Jersey 08250-0582, hereinafter "**COUNSEL**".

**WHEREAS**, the City requires the services of **COUNSEL** to represent the **CITY** in such legal matters as shall be assigned by the City Solicitor including but not limited to the area of Municipal Defense matters; and

**WHEREAS**, **COUNSEL** has the necessary qualifications and expertise to perform such services for the **CITY**;

**NOW, THEREFORE**, pursuant to Resolution No. 777 duly approved on December 21, 2022, the parties agree as follows:

**SECTION ONE  
SCOPE OF SERVICES**

City employs Counsel to represent and advise City in matters assigned by the City Solicitor, in the area of Municipal Defense matters and other legal matters as directed.

Further, representation of the City shall include but not limited to claims filed by or against the City, its employees, officials and agencies in matters assigned by the City Solicitor.

**SECTION TWO  
CONTRACT PERIOD**

City retains the services of Counsel for a period of one (1) year commencing on January 1, 2023 to December 31, 2023. Services will be rendered as requested by the City Solicitor during the contract period.

**SECTION THREE  
ATTORNEY'S FEES**

Counsel agrees to provide such legal services at a rate of **ONE HUNDRED THIRTY DOLLARS (\$130.00)** for **EACH HOUR** expended by an attorney for civil actions and **THIRTY-FIVE DOLLARS (\$35.00)** for **EACH HOUR** expended by a paralegal on behalf of the City.

The aggregate amount of this contract shall not exceed **FIFTY THOUSAND DOLLARS (\$50,000.00)**. Existing cases assigned to Counsel from other law firms shall be subject to the fees set forth in those contracts unless amended by the City Solicitor.

**SECTION FOUR  
COSTS OF ACTION**

All costs in connection with the services to be provided by Counsel under this agreement shall be paid by the City. These costs shall include, but are not limited to out-of-pocket, filing fees, or investigation cost. Specifically excluded is mileage, travel, parking fees, tolls, telephone and meal reimbursement. Duplication costs (photocopying) will be at a rate of ten cents per page. Costs shall not be incurred without the prior approval of the City Solicitor.

Administrative support is considered part of the outside counsel's overhead and is built into the rate structure. Moreover, purely clerical or secretarial tasks should not be billed at a paralegal or attorney rate regardless of who performs them.

**SECTION FIVE  
ASSIGNMENT**

Counsel cannot assign its rights or obligations under this Agreement without the prior written consent of the City.

Counsel recognizes and agrees that this Contract is entered into in reliance upon the personal and professional skills of named Counsel, and agrees that all services to be rendered in fulfillment of this Contract shall be provided personally by Counsel or by such attorneys associated with Counsel as shall be approved by the City Solicitor. The City reserves the right to select trial

counsel on its behalf in any matter in which the City is a party, which selection shall be made by the City Solicitor.

## **SECTION SIX REPORTING REQUIREMENTS & BILLING PROCEDURE**

After the case has been assigned to the Defense Attorney, the attorney shall be required to provide an Initial 30 day report, quarterly supplemental reports and a post litigation report to the City Solicitor.

The initial report shall be provided at the 30 day mark and shall include a brief description of the facts; the potential defenses to be raised and a brief analysis of the likelihood of a successful defense; an initial opinion on the settlement value and jury verdict potential; a brief outline of what investigation and courses of action should be taken in defense of the litigation; an anticipated timetable for the various stages of the litigation; and an estimated defense budget, broken down into various phases of litigation; i.e., initial stages, summary judgment motions, discovery and trial preparation.

The supplemental reports should be submitted every 90 days and should update the previous report, not merely report information. This report should address whether anything has happened since the last report to change the attorney's assessment of the file, whether the attorney anticipates the need for any type of expert witness, and what remains to be done on the file.

It should be noted that whenever anything of significance occurs, that cannot wait until the next regularly scheduled report, the City Solicitor should be advised of that information via correspondence.

Counsel shall submit a post litigation report within five working days after completion of litigation, whether the case was settled, dismissed or tried to verdict. The Attorney shall set forth the final terms of resolution, and whether anyone will appeal, if a verdict, and his/her recommendations for handling.

Counsel shall submit to the City Solicitor itemized billing by the 15th of the month following the month in which any authorized services are rendered. Billings shall be paid by the City, upon the approval of the City Solicitor.

All billings shall be itemized form. The billings shall provide such detail as the City Solicitor shall require, including but not limited to the setting forth in detail of the date of the services provided, the nature of the services, the name of the attorney providing the service, the time expended in providing the service rounded off to the nearest tenth of an hour, and the name of the case or matter under which services were provided. Each bill shall include a recapitulation showing the total amount billed by case or matter for that billing period.

Each monthly billing shall include a brief statement showing the original amount of the Contract, any increases established by amendment to the Contract, the amount previously billed under the Contract, and the total amount of unbilled funds remaining available under the Contract, and the total amount of unbilled funds remaining available under the Contract after deduction of the most recent amount billed. Attorneys shall not bill for attending Council Meetings.

#### **SECTION SEVEN CONFIDENTIALITY**

All matters assigned to Counsel shall be handled in accordance with the usual standard of confidentiality under the Code of Professional Conduct. Counsel shall make no public comment on cases or matters in Counsel's care. Counsel shall report on the conduct, status, prospects, and recommended resolution of all matters directly and exclusively to the City Solicitor or his delegate, except as otherwise directed in writing by the Mayor, Business Administrator, City Solicitor or as required by the Code of Professional Conduct.

**SECTION EIGHT  
CONFLICT OF INTEREST**

Counsel shall not, while representing the City, file any suit on behalf of anyone against the City, nor represent anyone before the City on any of its boards or agencies.

**SECTION NINE  
TERMINATION**

The City Solicitor shall have the right to terminate this Agreement at any time in his sole discretion. In the event of said termination Counsel shall be entitled to the amount due for services rendered up to the date of termination.

**SECTION TEN  
CERTIFICATION OF COMPLIANCE**

Counsel represents that it is in compliance with all the laws of the State of New Jersey, all Ordinances of the City of Atlantic City, including Ordinance No. 24 of 1993, Executive Order No. 1 of 1993, and Exhibit "A" attached hereto and made a part hereof, involving Affirmative Action and minority business participation and will remain so for the term of this Agreement. Failure to continue in compliance shall be deemed a breach of this Agreement.

**SECTION ELEVEN  
LAW TO GOVERN CONTRACT**

It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Jersey and the City of Atlantic City. Any dispute arises under this agreement shall be initiated in courts of Atlantic County and no other.

**SECTION TWELVE  
ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind shall be binding only if in writing signed by each party or an authorized representative of each party.

**SECTION THIRTEEN  
MODIFICATION OF AGREEMENT**

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

Counsel acknowledges that he/she cannot commence or continue to represent the City or any named individual or incur any expenses that would cause the contract amount to be exceeded without first receiving prior written authorization from the City Solicitor. Additionally, the City requires a 30 day notice including a case status report setting forth an estimate of the fees and costs anticipated whenever a request is made for a Change Order that would cause the contract amount to be exceeded.

Further, the City will not accept invoices representing time and expenses that were performed or incurred outside or beyond the contract end date.

Any work not specifically authorized may be rejected for payment at the discretion of the City.

**SECTION FOURTEEN  
CONTRACT TITLES**

The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

**SECTION FIFTEEN  
CONTINGENCY**

It is understood that this agreement is contingent upon the availability of funds in the City's 2023 budget. In the event said funds are not appropriated for this agreement, said agreement shall become null and void. The Contract Request Form is hereby approved. However, this approval does not extend to any litigation contesting actions of the State of New Jersey or any of its agencies or authorities. Prior to participating in any such actions, prior written approval of the Director of the Division of Local Government Services shall first be obtained by the City. Additionally, please

be advised that the approved vendor must comply with the City of Atlantic City's ordinance prohibiting contributions exceeding \$300 from the firm or certain of its equity partners to any candidates for office in Atlantic City and to certain other campaign committees and organizations. A violation of this ordinance will result in the approval of this contract being rescinded.

**SECTION SIXTEEN  
EFFECT OF ILLEGALITY**

If any provision of this agreement is determined to be illegal or against public policy or to violate any provisions of law or code by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.

**SECTION SEVENTEEN  
INSURANCE**

Before commencing work, and as a condition precedent for payment, the Contractor shall purchase and maintain insurance, in conformance with the provisions contained in this Agreement. This insurance will provide a defense and indemnify the City of Atlantic City (City) against any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Contractor's operations under this agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to the Contractor, any of its Contractor's, officers, agents, subcontractors, employees, anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law and the City, unless, caused by the sole negligence of the City.

Proof of this insurance shall be provided to the City before the work commences as set forth below. In no event shall the failure to provide this proof, prior to the commencement of work, be deemed a waiver by the City of the Contractor's insurance obligations set forth herein.

In the event that the insurance company (ies) issuing the policy (ies) required by this section deny coverage to the City, the Contractor will defend and indemnify the City at the Contractor's expense.

The Contractor must obtain the required insurance with the carrier rated A-VIII or better by A. M. Best. In the event the Contractor subcontracts any part of this project, these insurance requirements must apply to all subcontractors.

The Contractor shall maintain at least the limits of liability as set forth below:

***Commercial General Liability Insurance***

\$ 1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)

\$ 2,000,000.00 General Aggregate

\$ 2,000,000.00 Products/Completed Operations Aggregate

\$ 1,000,000.00 Personal and Advertising Injury

Contractual liability that will respond to Indemnification shall be included in the policy. The General Liability and Umbrella/Excess Liability policy Aggregate Limits shall apply separately to the project/location as defined in Section Two, Scope of Services. As an alternative, the Contractor may provide Commercial General Liability Insurance with no aggregate.

***Comprehensive Automobile Liability Insurance***

\$ 1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. Coverage must include all owned, non-owned and hired vehicles used by the Contractor.

***Umbrella Liability Insurance***

\$ 4,000,000 per Occurrence

\$ 4,000,000 Aggregate.

Policy to apply excess of General Liability, Automobile Liability and Coverage B.

***Workers' Compensation and Employers' Liability Insurance***

\$ 500,000.00 Each Accident

\$ 500,000.00 Each Employee for Injury by Disease

\$ 500,000.00 Aggregate for Injury by Disease

If the Contractor is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by law.

***Other Conditions***

The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on the Contractor's Commercial General Liability Policy, Business Auto Liability and Excess Policy all of which must be primary and noncontributory with respect to the Additional Insureds.

It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, noncontributory and not co-primary in relation to the coverage (s) procured by the Contractor, any of its Contractor's, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operations of statute, government regulation or applicable case law.

A Waiver of Subrogation clause shall be added to the General Liability, Excess Liability, Automobile Liability and Professional Liability policies in favor of the City and this clause shall apply to the City's elected or appointed officials, officers, agents and employees. It should also apply to the Contractor's Worker's Compensation policy if allowed by state law.

Prior to commencement of work, Contractor shall submit a Certificate of Insurance in favor of the City and as an Additional Insured Endorsement (in a form acceptable to the City) as required hereunder.

In any and all claims against the Additional Insureds by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Contractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with a carrier(s) rated A-VIII or better by A. M. Best. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Contractor, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the insurance carrier(s) will provide 30 days advance notice of the cancellation or non-renewal.

#### **SECTION EIGHTEEN INDEMNIFICATION**

The COUNSEL shall indemnify, defend and hold harmless the CITY from and against any claim (including any claim brought by employees of COUNSEL), liability, damage or expense (including attorneys' fees) that such CITY may incur relating to, arising out of or existing by reason of (i) COUNSEL'S performance of this Agreement or the conditions created thereby (including the use, misuse or failure of any equipment used by COUNSEL or its subcontractors, servants or employees) or (ii) COUNSEL 's breach of this Agreement or the inadequate or improper performance of this Agreement by COUNSEL or its subcontractors, servants or employees.

**SECTION NINETEEN  
WAIVER AND RENUNCIATION**

No waiver or renunciation by either party to this agreement with respect to any breach or default or of any right or remedy consequent thereon shall be deemed to constitute a continuing waiver or renunciation or a waiver or renunciation of any other breach or default or any other right or remedy consequent thereon unless such waiver or renunciation be expressed in writing, signed by the party making such waiver or renunciation and specifying the nature and extent of such waiver or renunciation.

**SECTION TWENTY  
POLITICAL CONTRIBUTION DISCLOSURE**

This contract has been awarded to **BIRCHMEIER & POWELL, LLC** based on the merits and abilities of **BIRCHMEIER & POWELL, LLC** to provide the goods or services as described herein. This contract was awarded through a “fair and open process” pursuant to N.J.S.A. 19:44A-20.4 et seq. Nevertheless, the undersigned does hereby attest that **BIRCHMEIER & POWELL, LLC** their subsidiaries, assigns or principals controlling in excess of 10% of the company have neither made a contribution, that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would, pursuant to P.L. 2004, c.19, affect its eligibility to perform this contract, nor will it make a reportable contribution during the term of the contract to any political party committee in the City of Atlantic City if a member of that political party is serving in an elective public office of the City of Atlantic City when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the City of Atlantic City when the contract is awarded.

**SECTION TWENTY-ONE  
STATUS OF LAW OFFICES**

It is expressly understood and agreed by and between the parties hereto that the status of the Counsel and its employees, officers, and agents shall be that of independent Counsel. It is not intended, nor shall it be construed, that the Counsel or any of its employees, officers and agents is an employee or officer of the City for any purpose whatsoever.

This agreement is effective as of the date of the Mayor's signature.

**ATTEST:**

**CITY OF ATLANTIC CITY**

Paula Geletei  
Paula Geletei, City Clerk

BY: Marty Small, Sr.  
Marty Small, Sr., Mayor

DATE: 1/27/2023

DATE: 1-27-23

**WITNESS:**

**LAW OFFICE OF  
BIRCHMEIER & POWELL, LLC**

Magdalene Madden  
Dated: January 17, 2023

BY: James R. Birchmeier  
James R. Birchmeier

The within Agreement approved as to form and execution.

Date: 1/24/2023

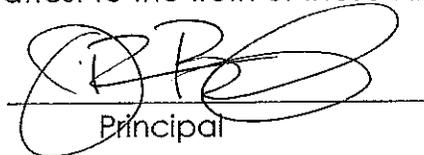
BY: Karl Timbers, Esq.  
Assistant City Solicitor

STATE OF NEW JERSEY )  
 ) ss.  
COUNTY OF CAPE MAY )

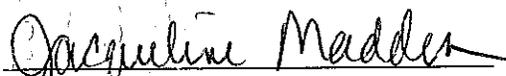
I CERTIFY that on January 17, 2023, personally came before me James R. Birchmeier, a principal of the Limited Liability Corporation, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is a principal of Birchmeier & Powell LLC  
(the limited liability corporation named in this document);
- (b) this person has the power and authority to sign this document on behalf of the limited liability corporation;
- (c) this document was signed and delivered by the limited liability corporation as its voluntary act duly authorized by a proper action of the principals of the limited liability corporation; and
- (d) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on

  
Principal

January 17, 2023

  
Notary Public of  
(Seal attached)

JACQUELINE MADDEN  
A NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES APRIL 17, 2026

# Resolution of the City of Atlantic City

No. 777

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

Michael J. Perugini/s/ City Solicitor

Prepared by City Solicitor's Office

Council Members SHABAZZ & RANDOLPH present the following Resolution:

**RESOLUTION TO AWARD A CONTRACT TO THE LAW OFFICE OF BIRCHMEIER & POWELL, LLC FOR MUNICIPAL DEFENSE MATTERS  
IN THE AMOUNT OF \$50,000.00**

**WHEREAS**, the City of Atlantic City has a need to retain legal counsel for Municipal Defense matters and the City has advertised for and received Qualifications for Municipal Defense matters under a fair and open process; and,

**WHEREAS**, the purchasing agent has determined and certified in writing that the value of the acquisition will exceed \$17,500; and,

**WHEREAS**, the anticipated term of this contract is one year from January 1, 2023, to December 31, 2023; and

**WHEREAS**, the **LAW OFFICE OF BIRCHMEIER & POWELL, LLC**, have indicated their firm will provide legal services for Municipal Defense matters and other legal matters as directed; and

**WHEREAS**, the vendor must comply with the New Jersey Campaign Contribution and Expenditures Reporting Act, codified at N.J.S.A. 19:44A-1 et seq., and N.J.S.A. 19:44A-20.5; and

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor is duly authorized to execute and the City Clerk to attest a contract to be approved as to form and execution by the City Solicitor, which contract shall provide for the purchase of legal services, including but not limited to matters in the area of Municipal Defense and liability matters, from the **LAW OFFICE OF BIRCHMEIER & POWELL, LLC**, at the rate of **ONE HUNDRED THIRTY DOLLARS (\$130.00)** for **EACH HOUR** expended by an attorney for civil actions pursuant to Resolution No. 225 of 2014, and **THIRTY-FIVE DOLLARS (\$35.00)** for **EACH HOUR** expended by a paralegal on behalf of the City, for a term not to exceed (1) year, commencing January 1, 2023 and ending December 31, 2023 and for a total amount not to exceed the sum of **FIFTY THOUSAND DOLLARS (\$50,000.00)**.

**BE IT FURTHER RESOLVED** that pursuant to N.J.A.C. 5:30-14.5, the award of the aforesaid Agreement is contingent upon the availability of sufficient funds in the 2023 Temporary and Permanent Budgets specifying the line-item appropriation and in the event said funds are not appropriated for this Agreement, this award will have no effect and will then be null and void.

**BE IT FURTHER RESOLVED** that Public Notice of this Resolution shall be published in THE PRESS at least once pursuant to the requirements of N.J.S.A. 40A:11-1, et seq., as amended.

January 27, 2023 12:00 PM

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DUNSTON	X						RANDOLPH	X					X
KURTZ	X						SHABAZZ	X				X	
MARSHALL	X						WEEKES	X					
MORSHED	X						ZIA	X					
TIBBITT, PRESIDENT								X					
X-Indicates Vote    NV-Not Voting    AB-Absent    MOT-Motion    SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: DECEMBER 21, 2022

*Paula Geletei*

/s/ Paula Geletei, City Clerk