

**RESOLUTION: 149-12**

**RESOLUTION AUTHORIZING AGREEMENT FOR CERTAIN  
PROFESSIONAL SERVICES ADOPTED BY THE BOROUGH OF  
CLAYTON**

*WHEREAS*, there exists a need for specialized services on behalf of the Borough of Clayton; and

*WHEREAS*, funds are or will be available for this purpose; and

*WHEREAS*, the Local Public Contracts Law, N.J.S.A. 40A:11-1 requires that notice with respect to contracts for Professional Services awarded without competitive bids must be publicly advertised.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That Sickels & Associates, Inc., of Woodbury, New Jersey is hereby hired to provide engineering services for preparation of Transportation Enhancement Program Application for Fiscal Year 2012 – Proposal No. 2012-81, for the Borough of Clayton in an amount not to exceed \$2,000.00.
2. The term of this contract shall be from July 12, 2012 to July 11, 2013.
3. The Contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-11-5(1)(a), and the Fair and Open Process because it is for services performed by persons authorized by law to practice a recognized profession.
4. A copy of this resolution as well as the Contract shall be placed on file with the Clerk of the Borough of Clayton.
5. A notice in accordance with the Local Public Contracts Law of New Jersey shall be published in The Sentinel or Gloucester County Times.
6. The Mayor and Clerk of the Borough of Clayton are hereby authorized to execute a Contract outlining the above on behalf of the Borough of Clayton.

**ADOPTED** at a meeting of the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey on July 12, 2012.

BOROUGH OF CLAYTON



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THOMAS BIANCO, Mayor

Attest:



\_\_\_\_\_  
CHRISTINE NEWCOMB, Borough Clerk

**CERTIFICATE OF AVAILABILITY OF FUNDS**

**From:** Donna Nestore, Chief Financial Officer, Borough of Clayton

**To:** Mayor and Council, Borough of Clayton

**Re:** Sickels & Associates – Proposal No. 2012-81 – Preparation of Transportation Enhancement Program Application for FY 2012

**AMOUNT OF CONTRACT:** \$2,000.00

Any expenditures required for the above referred contract are properly chargeable to The 2012 Municipal Budget, Engineering O&E.

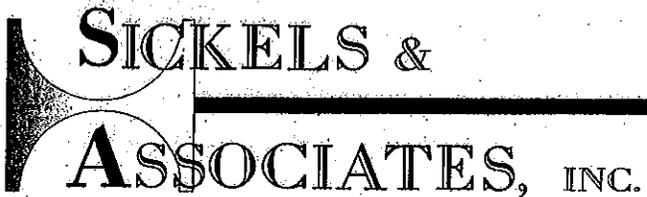
I hereby certify that, as of this date, adequate funds have been appropriated in said line and are available to satisfy the expenditure required for the above referenced contract.



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DONNA NESTORE  
Chief Financial Officer  
Borough of Clayton

Dated: July 12, 2012



July 10, 2012

Borough of Clayton  
125 N. Delsea Drive  
Clayton, N.J. 08312

Attention: Ms. Susan Miller, Administrator

**RE: PROPOSAL FOR PROFESSIONAL SERVICES  
EAST AVENUE BIKE PATH - PREPARATION OF TRANSPORTATION  
ENHANCEMENT PROGRAM APPLICATION FOR FY 2012  
S&A PROPOSAL NO. 2012-81**

Dear Ms. Miller:

In response to your request, Sickels & Associates, Inc. (herein referred to as S&A) would like to thank you for the opportunity to offer the services of our firm for the preparation of construction cost information for the above referenced project. Upon your acceptance of this proposal, Sickels & Associates will develop the necessary documents that will be needed to submit the TEA-21 application.

The application will be for East Avenue Bike Path and Sidewalk on County Route 606 and County Route 610.

Our office will field verify the quantities and prepare the cost estimate. Aerial location maps will also be developed to depict the location and extent of photos. Photos of the project site will be taken, labeled and included into the application package.

Our scope of work will also include preparing TEA-21 application report and assembling the submission packages to NJDOT for review and approval.

We will need authorization at the July 12, 2012 Council meeting in order to complete the above tasks and submit to the State by the July 17, 2012 deadline.

**CONSULTING FEE FOR SERVICES RENDERED**

Based on the understanding of the project and description of service, our total consulting fee to complete the various activities described herein is estimated at \$2,000.00 plus the cost of applicable reimbursable expenses, (estimated to be \$100.00), which will be invoiced separately.

July 10, 2012

Page 2

**RE: PROPOSAL FOR PROFESSIONAL SERVICES  
EAST AVENUE BIKE PATH - PREPARATION OF TRANSPORTATION  
ENHANCEMENT PROGRAM APPLICATION FOR FY 2012  
S&A PROPOSAL NO. 2012-81**

Sickels & Associates is prepared to commence work immediately upon receipt of authorization to proceed. This proposal assumes that said authorization will be issued on July 12, 2012. The terms and conditions of this proposal shall remain in effect for sixty (60) days.

We have enclosed two (2) signed copies of this proposal. If you concur with our Description of Services, Consulting Fee, Terms and Conditions and Annual Fee Schedule, please execute one copy as our formal authorization to proceed and return same with the retainer to our office.

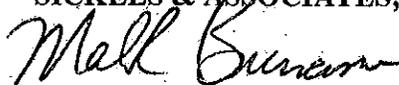
Based upon our past working relationship, a retainer will not be required prior to the Engineer initiating the work.

Once again, we would like to thank you for the opportunity to offer the services of our firm and we look forward to working with you on this venture.

If you have any questions regarding this matter, please contact our office at (856) 848-6800.

Very truly yours,

**SICKELS & ASSOCIATES, INC.**



Mark R. Brunermer, P.E., C.M.E.  
President

MRB:pao

Enclosures: Terms and Conditions  
Annual Fee Schedule

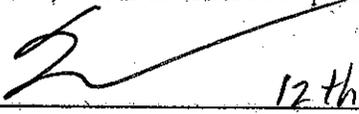
cc: Patricia Owens, S&A, Inc.

File: 2012-81

**RE: PROPOSAL FOR PROFESSIONAL SERVICES  
EAST AVENUE BIKE PATH - PREPARATION OF TRANSPORTATION  
ENHANCEMENT PROGRAM APPLICATION FOR FY 2012  
S&A PROPOSAL NO. 2012-81**

**PROPOSAL ACCEPTANCE & NOTICE TO PROCEED**

Having reviewed the proposal for the various planning, surveying and engineering services, including the Terms and Conditions of the Service Agreement, and all sections relating to payment for services, which is a part thereof, acceptance of the proposal is hereby confirmed by the signature below. Sickels & Associates, Inc. is authorized to proceed with the work.

Accepted this  12<sup>th</sup> day of July, 2012

By: Thomas Branco, Mayor  
SIGNATURE TITLE

NAME (PLEASE PRINT OR TYPE)

COMPANY

ADDRESS

PHONE NO.

FAX NO.

CLIENT'S E-MAIL ADDRESS

**RE: PROPOSAL FOR PROFESSIONAL SERVICES  
EAST AVENUE BIKE PATH - PREPARATION OF TRANSPORTATION  
ENHANCEMENT PROGRAM APPLICATION FOR FY 2012  
S&A PROPOSAL NO. 2012-81**

**TERMS AND CONDITIONS OF SERVICE AGREEMENT**

**ARTICLE 1.0 - AGREEMENT:**

1.1 The contents of the proposal including Our Understanding of the Project, Description of Services, Consulting Fee, Terms and Conditions of Service Agreement and Annual Fee Schedule, together with any addenda to same, constitutes the entire AGREEMENT between the **BOROUGH OF CLAYTON** hereinafter referred to as the **CLIENT** and **SICKELS & ASSOCIATES, INC.**, hereinafter referred to as the **ENGINEER**. Nothing herein is to be considered to be inferred or implied.

**ARTICLE 2.0 - CONSULTING FEES, REPRODUCTION COST & APPLICATION FEES**

- 2.1 **CONSULTING FEES:** CLIENT and ENGINEER agree that the fees quoted in Fees for Services Rendered Section of the Proposal for Professional Services are fair and reasonable and necessary to complete the project phases outlined in the Description of Services. Services requested and/or provided beyond said tasks shall be considered as extra and treated as Additional Services under Article 4.0.
- 2.2 **SPECIAL CONSULTANT FEES:** All consultant fees for special services such as Floodplain Determinations and Delineations; Environmental Assessment/Audits and Impact Statements, Natural Resource Inventories, Archaeological or Historical Investigation; Traffic Assessment/Impact Statements; Material Sampling, Coring and Testing; and Construction Management, Inspection, Monitoring and Observation shall be borne and paid directly by CLIENT.
- 2.3 **PRINTING AND REPRODUCTION COSTS:** All reproduction and printing costs will be invoiced to CLIENT according to the following rates: \$0.20 for each photo copy, \$2.70 for each 24 inch by 36 inch print and \$24.00 for each 24 inch by 36 inch mylar and cloth.

- 2.4 REIMBURSABLE EXPENSE: All expenses incurred in providing services to or on behalf of the CLIENT on the project, including, but not limited to mileage, travel, express and certified mail, certified owners list, photography, assessment maps, aerial maps and sampling, testing and laboratory fees shall be the responsibility of the CLIENT and shall be invoiced accordingly. A surcharge of twenty percent (20%) shall be added to all such invoices.
- 2.5 APPLICATION FEES: The payment of all application fees shall be the responsibility of the CLIENT and shall be paid directly by CLIENT to the applicable agency or Board.

**ARTICLE 3.0 - PRICE GUARANTEE:**

- 3.1 The proposal assumes that authorization to proceed and the required retainer amount will be received from the CLIENT, by ENGINEER, within thirty (30) calendar days from the date of the Proposal. The Terms and Conditions of the Proposal shall remain in effect and may be accepted by CLIENT for thirty (30) \*calendar days from said date.
- 3.2 If the PROPOSAL ACCEPTANCE AND NOTICE TO PROCEED is not executed and returned, along with the required retainer, to ENGINEER, within thirty (30) calendar days of the date of same, ENGINEER reserves the right of revise the Terms and Conditions including any and all fees and/or costs quoted herein.

**ARTICLE 4.0 - ADDITIONAL SERVICES:**

- 4.1 Any and all services provided by the ENGINEER on behalf of the CLIENT, other than that specifically outlined in the Description of Services, shall be invoiced to CLIENT on a time and material basis according to the prevailing hourly rates on our Annual Fee Schedule, as published or as attached hereto and made a part hereof.
- 4.2 A reasonable amount of revisions and/or modifications is anticipated to address comments of the reviewing agencies. Any revision and/or modification that are required due to omission or error by ENGINEER will be revised and/or modified under the terms of the Agreement. Any revision and/or modification that significantly affect and/or alter the original design when such revision and/or modification is due to causes beyond ENGINEER 's control shall be considered Additional Services and shall be invoiced as such.
- 4.3 Prior to increasing the original scope of services or initiating any major revision, modification or change, ENGINEER will submit a change order to CLIENT for authorization to proceed with the additional work. CLIENT shall furnish, or direct ENGINEER to provide the necessary Additional Services within a reasonable time so as not to delay the services of ENGINEER.

**ARTICLE 5.0 - RETAINER, PAYMENT OF FEES AND EXPENSES**

- 5.1 A retainer will not be required prior to ENGINEER initiating work.
- 5.2 The ENGINEER will submit to the CLIENT invoices for printing and reproduction costs and reimbursable expenses incurred. Invoices may be submitted monthly. CLIENT shall have sufficient available funds to pay all fees associated with the Agreement.
- 5.3 The CLIENT is financially responsible for all expenses incurred by the ENGINEER as a result of the ENGINEER'S providing service to the CLIENT or on behalf of the CLIENT, in accordance with the Proposal, Agreement, Description of Services, and services related thereto, or in accordance with any amendments or revisions to the Description of Services. These costs shall be included, but shall not be limited to, printing and reproduction costs, travel expenses, mileage expense, express and certified mailing costs, courier costs, the costs of obtaining any mailing list or other information from any agency or Board, photography costs, the costs to obtain any assessment maps, aerial maps and the costs of any sampling, testing and/or laboratory fees or any other costs incurred on behalf of the CLIENT.
- 5.4 Payment, in the full amount, must be received within thirty (30) calendar days from the date of the invoice. Thereafter, interest will be added to the outstanding balance at the rate of one and one half percent ( 1-1/2%) per month for a total of eighteen percent (18%) per annum. Payment of fees shall be made consistent with the terms of the Proposal for Professional Services. Interest at the rate set forth herein shall be added to any payment not made when due.
- 5.5 CLIENT must submit in writing to ENGINEER by certified mail all comments or discrepancies relative to any fee or expense being invoiced within ten (10) calendar days of the date of the invoice. If no discrepancy or errors is reported with said period, the account will be considered correct.
- 5.6 Invoices for costs and expenses will be considered delinquent if payment is not received within forty five (45) calendar days of the date of the invoice. Delinquency will constitute just cause for cessation of work and may at the option of ENGINEER be considered as termination of the Agreement by CLIENT.

- 5.7 In the event that any account remains delinquent more than forty five (45) calendar days, ENGINEER may turn the account over to an agency and/or legal counsel for collection. In such case, there shall be added to the amount due, minimum sum of fifteen percent (15%) of the outstanding balance. CLIENT agrees that this amount is a reasonable minimum amount for collection and legal fees. The CLIENT hereby agrees that CLIENT will be responsible to pay ALL costs incurred by ENGINEER to collect any delinquent or outstanding balances, which shall include, but not be limited to, legal fees and costs, expert fees, court costs, any and all other costs related to the collection of delinquent or outstanding balances owed by the CLIENT.
- 5.8 If CLIENT has not made payment of delinquent or outstanding amounts due in accordance with the provisions of this section, the ENGINEER, after providing written notice of it's intent to do so, may discontinue or terminate providing any and all engineering services to the CLIENT, solely at the discretion of the ENGINEER. CLIENT ACKNOWLEDGES NOTICE OF THIS PROVISION, BY INITIALING SAME BELOW, AND AGREES TO RELEASE THE ENGINEER FROM ANY LIABILITY RESULTING FROM THE ENGINEER TERMINATING SERVICES RESULTING FROM THE CLIENT'S FAILURE TO MAKE PAYMENT.

CLIENT INITIAL \_\_\_\_\_

#### **ARTICLE 6.0 - TERMINATION OF SERVICES**

- 6.1 This Agreement is subject to termination by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform or to meet their obligations in accordance with the terms and conditions hereof through no fault of the terminating party. In the event CLIENT terminates the Agreement, said notice must be submitted to ENGINEER by certified mail.
- 6.2 In the event of termination, CLIENT shall make payment to ENGINEER consistent with the terms and provisions of the Proposal for Professional Services.

#### **ARTICLE 7.0 - CLIENT'S RESPONSIBILITY:**

- 7.1 CLIENT shall provide full information as to his requirements for the project and shall assist ENGINEER by placing at his disposal all available information pertinent hereto prior to entering into the Agreement.
- 7.2 CLIENT shall furnish to ENGINEER, as required by him for performance of his Basic Services, data prepared by services of others, such as soil investigations and subsurface explorations, material and equipment requirements, appropriate professional interpretations of property, boundary, easement, right-of-way, topographic and utility surveys and property descriptions, zoning and deed restriction, and other special data or conciliation not covered in ENGINEER 'S Basic Services, all of which ENGINEER may rely upon in performing his services.

- 7.3 CLIENT shall examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER, obtain advice of legal and insurance council, and other consultant as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay or hinder the services of the ENGINEER.
- 7.4 CLIENT shall furnish approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for implementation and/or completion of the project.
- 7.5 CLIENT shall guarantee access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 7.6 CLIENT shall give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any defect in the project.

**ARTICLE 8.0 - REPORTS, DESIGNS, PLANS & RELATED DOCUMENTS**

- 8.1 All documents which are subject to the Agreement shall be prepared in a professional workmanlike manner and based on accepted, current Surveying and Planning practices and where not specifically directed otherwise by CLIENT, will conform to applicable requirements of current, published ordinances and regulations of the various review agencies.
- 8.2 No presentations and/or express or implied warranties are made to CLIENT by ENGINEER as to the success, approval or the issuance of permits or approvals on any application submitted by CLIENT, or on his behalf, based in whole or in part upon the reports, studies, designs, plans and/or related documents prepared by ENGINEER.
- 8.3 All documents prepared by ENGINEER pursuant to the Agreement shall be the sole property of ENGINEER until payment, on any unpaid balance, is made in full by the CLIENT. CLIENT agrees that until payment is made in full, he shall have no proprietary interest in any document prepared by ENGINEER. CLIENT hereby agrees that the ENGINEER shall have the absolute right to request return of any and all documents prepared by ENGINEER and submitted to Municipal, County, State and/or other parties on behalf of CLIENT in the event of non-payment of outstanding fees by CLIENT.

**ARTICLE 9.0 - COMPLIANCE WITH REGULATIONS; APPROVALS & PERMITS:**

- 9.1 All work will be performed in accordance with current applicable Municipal and County Ordinances and State Regulations relative to the work.

- 9.2 On request of CLIENT, ENGINEER may prepare an outline of various approvals and permits that may be required to implement construction of the improvements designed by ENGINEER. However, because of ever changing rules and regulations of the various approving agencies, the ENGINEER does not guaranty the completeness of same. The ENGINEER further advises the CLIENT to obtain legal counsel to guide the CLIENT in furtherance of the laws, rules, regulations, ordinances and other requirements related to it's project. Legal counsel should be obtained to review said outline and certify completeness.

**ARTICLE 10.0 - LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 10.1 CLIENT and ENGINEER have contemplated the risks, rewards and benefits of the Project. In view of this fact, the parties have arrived at an acceptable fee for the services to be rendered under the Agreement. In so doing, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, the ENGINEER 's liability to the CLIENT for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of the Agreement from any cause or causes shall not exceed the total fee received for the services rendered under the Agreement. Such causes include, but are not limited to the ENGINEER 's negligence, errors or omissions, strict liability, breach of contract or breach of warranty.
- 10.2 CLIENT shall indemnify and hold harmless, ENGINEER and their consultants, agents, directors, officers and employees from and against all claims, damages, losses and expenses, direct and indirect, and consequential damage, including but not limited to fees and charges of legal counsel and courts and arbitration costs, arising out of or resulting from work of others to the fullest extent permissible by law, regardless of any action or omission (active, passive or comparative negligence included) on the part of ENGINEER.