

**RESOLUTION: 63-17**

**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 Bishop & Smith, Registered Architects, of Laurel Springs, New Jersey is hereby hired to provide preliminary design services for commercial alteration and addition to an existing community building— for an amount not to exceed \$5,760.00.
2. The term of this contract shall be from February 9, 2017 to February 8, 2018.
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 South Jersey 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 February 9, 2017.

BOROUGH OF CLAYTON



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THOMAS BIANCO, Mayor

Attest:



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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: Bishop & Smith, Registered Architects, of Laurel Springs, NJ  
Preliminary Design services for Rec. Center

AMOUNT OF CONTRACT: \$5,760.00

Any expenditures required for the above referred contract are properly chargeable to The 2017 Municipal Budget - Engineering.

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.

  
DONNA NESTORE  
Chief Financial Officer  
Borough of Clayton

Dated: February 9, 2017

# BISHOP & SMITH

REGISTERED ARCHITECTS

1344 Chews Landing Road  
Laurel Springs, NJ 08021  
www.bishopandsmith-architects.com

Jack S. Smith, R.A.

856-227-1626  
FAX: 856-227-0733  
bishopsmith@comcast.net

January 4, 2017

Clayton Boro

## **PROPOSAL FOR ARCHITECTURAL SERVICES**

Thank you for giving us the opportunity to submit this proposal for *Preliminary Design Only* for a commercial alteration and addition to the existing community building located in Clayton. Based on the information you have provided we have estimated the fee as follows:

### **PROJECT DESCRIPTION:**

The project shall consist of providing the following:

1. Perform a survey of the existing community building as necessary to verify the existing as-built conditions, existing floor plans, elevation and appropriate details as required.
2. Provide Conceptual design drawings for owner's approval of the proposed commercial alteration/addition for the owner's approval.

**Our services will include the following:**

### **BUILDING SURVEY:**

1. Survey the existing structure affected by the addition or renovation.
2. Take photographs of site, existing structure, and areas to be affected.
3. Preparation of drawings of existing areas to be affected.

### **CONCEPTUAL DESIGN SERVICES:**

1. Design studies and the preparation of a conceptual design with possible alternatives.
2. Preparation of schematic drawings that may include preliminary floor plans, elevations and other non-technical drawings as required illustrating the building design.
3. Presentation of preliminary design documents to you or your designated personnel for approval.

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## **BASIC COMPENSATION FOR SERVICES:**

### **ARCHITECTURAL SERVICES: (Phase one)**

Building Survey Services:	\$960.00
Conceptual Design Services:	<u>\$4,800.00</u>
Architectural Services Phase One Fee:	<b>\$5,760.00</b>

**Deposit required shall be the sum of: \$2,400.00**

These fees are valid for ninety (90) days from the date of this proposal

**\*\*Final Payment due upon release of plans\*\***

**\*\*Please note that 3 sets of prints are included with your plans, if more are required there will be an additional charge.**

The percent of basic fee earned at the completion of each phase described above shall correspond to the following schedule:

1. Building Survey Services	50% (due at start of service)	: \$2,880.00
2. Conceptual Design Services	50% (due at final documents)	: \$2,880.00

*The above architectural fee includes three Sealed sets of prints. Additional prints shall be calculated in addition to the total cost above and included in the final invoice; see additional fees for print pricing.*

*The above architectural fee Does not include Mechanical Plans (HVAC, Electrical, or Plumbing). If the Township requires mechanical plans for the proposed addition/alteration the fees shall be calculated and added to the final invoice.*

## **ADDITIONAL SERVICES:**

1. A full color three dimensional elevation rendering and 24"x36" mounted print can be provided for the total fee of \$1,500. (Changes and adjustments to the final architectural rendering not including color changes shall be billed separately)

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## **ADDITIONAL FEES:**

1. Prints:

36"x 48" sheets:	\$5.75 each
30"x 42" sheets:	\$4.75 each
24"x 36" sheets:	\$3.75 each
11"x 17" sheets:	\$1.50 each
8½"x 11" sheets:	\$1.00 each
2. Site Visits and/or construction administration will be charged at our hourly rate.
3. Township meetings and any time associated with municipal approvals will be charged at our hourly rate.
4. Floor and/or truss review and letter to Code Official will be charged at our hourly rate.

## **PRICING OF SERVICES BEYOND BASIC SERVICES:**

Any services which are not enumerated as part of the Architect's basic services, whether specifically excluded from the scope of basic services or not, shall be considered to be additional services which will be paid at an hourly rate as follows:

Principal Architect	\$150.00 per hour
Senior Project Manager	\$125.00 per hour
Senior CAD Designer	\$115.00 per hour
CAD Technician	\$105.00 per hour
Secretarial	\$50.00 per hour

Please note, however, that these are the rates in effect at this time but they are subject to change in the normal course.

For services of consultants, including structural, electrical and mechanical engineering, the Architect shall be paid a multiple of 1.25 times the amounts billed to the Architect by the Consultant per such services.

## **REIMBURSABLE EXPENSES:**

Reimbursable expenses include and are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's employees and consultants directly related to the Project, including but not limited to the following: transportation in connection with the Project; authorized out of town travel and subsistence and electronic communication; fees paid for securing approval of authorities having jurisdiction over the Project; reproductions, plots, standard

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form documents, postage, handling and delivery of instruments of services; expense of overtime work required higher than regular rates if authorized in advance by the Owner; renderings, models and mockups requested by the Owner; expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants and other similar direct project related expenditures.

## **EXCLUDED SERVICES:**

The following services, which may be necessary for the execution of the project, are not included within the scope of this Proposal.

1. Site Engineering Services: Services normally furnished by a civil engineer in connection with site improvements such as storm drainage systems, site utilities, site lighting, paving, soil erosion control, etc., and retained by other.
2. Landscape design.
3. Test borings, soils testing, soils reports, and foundation report.
4. Legal and accounting services.
5. Permit and agency design review fees.
6. Interior Design Services
7. Planning or Zoning Board Services
8. MEP Engineering Services

## **TERMS AND CONDITIONS:**

### **1. SERVICES TO BE PROVIDED BY THE ARCHITECT FOR THE PROJECT**

The Architect will provide basic services consisting of the preparation of plans for the construction of the proposed project. These plans will be drawn prepared on a CAD system and will include floor plans, foundation plans, sections and elevations as needed. Mechanical, Electrical, Plumbing and HVAC plans will be provided by a Mechanical Engineer, if requested.

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The Architect's basic services will not include making revisions to the plans when such revisions are inconsistent with instructions or approvals previously given by the Owner (including revisions made necessary by adjustments to the Owners budget or program), or required by the enactment or revisions of codes, laws or regulations subsequent to the preparation of the plans, or due to changes required as a result of the Owner's failure to render decisions in a timely manner.

The Architect's basic services will not include obtaining necessary permits or filing documents required for the approval of governmental authorities having jurisdiction over the project.

The Architect's basic services will not include construction costs or estimates, or the preparation of bidding information, bidding forms, contract documents and/or Agreement between Owner and Contractor. The Architect's basic services will not include evaluation of bids and recommendations to the Owner.

The Architect's basic services will not include construction contract administration or construction supervision, observation or inspection. The Architect's responsibilities during construction of the project shall be limited to reasonable communication with the Owner and contractor in response to information and clarification requests. Site visits are not required and are not part of the architect's basic services.

The Architect will not be responsible for Owner's inability to construct the project due to site conditions unknown to Architect or due to zoning restrictions. Unless otherwise specifically provided in this Agreement, The Architect and the Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the project site.

The Architect shall be responsible for the Architect's negligent acts or omission and those of consultants retained by the Architect but the Architect shall not have control over or charge of and shall not be responsible for the acts or omissions of the Owner, Contractor, subcontractors, consultants or their agents or employees, or of any other persons or entities performing portions of the Work.

If the basic services covered by this Agreement have not been completed within 24 months of the date of this Agreement, through no fault of the Architect, extension of the Architect's service beyond that time shall be compensated as an additional service.



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## **2. OBLIGATIONS OF THE OWNER**

- A. The Owner shall furnish surveys to describe the physical characteristics, legal limitations and utility locations for the site of the Project and any written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.
- B. The Owner shall furnish the services of geotechnical engineers and other consultants when such services are requested by the Architect and/or may be necessary at any time for the Project to meet the Owner's needs and interests.
- C. The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests.
- D. The services, information, surveys and reports set forth above shall be furnished at the Owner's expense and the Architect shall be entitled to rely upon the accuracy and completeness thereof.
- E. The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault of defect in the Project, including any errors, omissions or inconsistencies in the plans or Instruments of Service.

## **3. USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

- A. Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are instruments of service to be used solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective instruments of service and shall retain all common law, statutory and other reserved rights including copyright.

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- B. Upon execution of Agreement, the Architect grants to the Owner a non-exclusive license to reproduce the Architect's instruments of service solely for the purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall retain similar nonexclusive license from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making any further reproduction of the instruments of service and shall return to the Architect within seven days of termination all original and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in Default of this Agreement by a court of competent jurisdiction, the foregoing license will be deemed terminated and replaced by a second nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and where permitted by law, to make changes, corrections or additions to the instruments of service solely for the purposes of completing, using and maintaining the Project.
- C. Except for the licenses granted in subparagraph B, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sub-license, pledge or otherwise transfer any license granted herein to any other party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the work by license granted in subparagraph B. Submission or distribution of instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication and derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations of this Project or other projects unless the Owner obtains a prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the instruments of service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## MISCELLANEOUS ITEMS

- A. This Agreement shall be governed by the Law of the State of New Jersey.

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- B. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations and/or statutes of repose shall commence to run not later than either the date of substantial completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after substantial completion. In no event shall such statutes commence to run any later than the date when the Architect's services are substantially completed.
- C. The Architect and Owner waive consequential damages for claims, disputes and other matters in question arising out of or relating to this Agreement. To the extent any damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, general conditions of the contract for construction, current as of the date of this Agreement. The Owner and the Architect, as appropriate, shall require of the contractors, sub-consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.
- D. The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.
- E. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect.
- F. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

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- G. Client and Architect have discussed the risks, rewards and benefits of the Project as well as the fact that the vast preponderance of the money to be paid for this Project will be paid to the others rather than to the Architect. In recognition of this reality, Client and Architect therefore agree that, to the fullest extent permitted by law, the total liability, in the aggregate, of the Architect, its consultants and their agents, servants and/or employees, for all injuries, claimed, including damages to the Project itself (losses, expenses or claims whatsoever related to services provided by the Architect or its consultants under this Agreement, including but not limited to negligence, errors or omissions, strict liability, breach of contract or any claim whatsoever) shall not exceed the lesser amount of either five times the fees paid or due the Architect under this Agreement, or the total amount of any available professional liability insurance for the Architect at the time that the claim is resolved either by settlement, arbitration award or final judgment.
- H. The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Owner agrees to make the project reasonably available to Architect to obtain such representations.
- I. Architect provides professional services on a periodic basis to Superior Wall Systems of South Jersey, located in Millville, New Jersey, but doing business in the tri-state area. Superior Wall Systems is a manufacturer and installer of prefabricated foundation wall systems, and Architect signs and seals foundation plans for Superior Wall Systems as needed. In the event that a Superior Wall Systems prefabricated foundation wall system is utilized on this project, we will be receiving compensation both from you and Superior Wall Systems on the same project, and we are now disclosing that to you pursuant to our understanding of New Jersey's rules and regulations governing the practice of architecture. Unless you indicate otherwise in writing your objection to a Superior Wall Systems product on this project, or our provision of architectural services to Superior Wall Systems, you acknowledge that we have fully disclosed a potential or actual conflict of interest, that you waive any such conflict, and agree that we may be compensated by both you or your company and Superior Wall Systems on this project.

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- J. At the option of the Architect, payments are due and payable either at delivery of plans and/or work product, or 30 days from the date of the Architect's invoice. Amounts unpaid 30 days after the invoice date shall bear interest at the rate of one and one-half percent per month. Nothing in this Agreement prevents the Architect from invoicing and recovering fees and expenses for the value of services completed at the time the project or services were either suspended, halted or discontinued, or the project or this agreement terminated at the option of either party. In the event we have to institute collection procedures and/or litigation arising from or related to the collection of payments, we will be entitled to recover all expenses of collection and/or litigation including but not limited to court costs, reasonable attorney's fees, and staff time expended for court appearances and depositions.
- K. This agreement may be terminated by either party upon not less than seven (7) days notice should the other party fail substantially to perform in accordance with the terms of this agreement through no fault of the party initiating the termination.

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We trust that the foregoing proposal will be satisfactory. If it is satisfactory, please sign below, return original with deposit.

We look forward to working with you on this project and should you have any questions please do not hesitate to contact us.

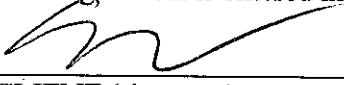
Sincerely,

*Jack S. Smith*

Jack S. Smith, RA

JSS/mjs  
Enc.

This Agreement is entered into as of February 9, 2017, ~~2015~~

  
\_\_\_\_\_  
CLIENT (signature)

Tom Bianco - Mayor  
\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
ARCHITECT

Jack S. Smith, RA  
\_\_\_\_\_  
Printed Name and Title

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Sincerely,

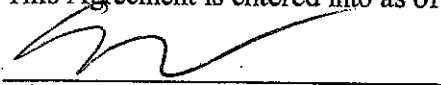
*Jack S. Smith*

Jack S. Smith, RA

JSS/mjs

Enc.

This Agreement is entered into as of February 9, 2017, 2015

  
CLIENT (signature)

Tom Bianco - Mayor  
Printed Name and Title

  
ARCHITECT

Jack S. Smith, RA  
Printed Name and Title