

**A RESOLUTION OF THE TOWNSHIP COUNCIL OF NORTH BRUNSWICK
AUTHORIZING A PROFESSIONAL SERVICE AGREEMENT WITH AMPHION
ANALYTICAL ENGINEERING TO PROVIDE A BUILDING ENVELOPE MOISTURE
INTRUSION INVESTIGATION OF THE MUNICIPAL COMPLEX**

WHEREAS, Hurricane Ida impacted New Jersey on Wednesday, September 1, 2021, bringing severe weather conditions including strong winds, reports of tornadoes, and heavy and sustained rainfall in some areas; and

WHEREAS, the storm caused severe damage to municipal facilities, infrastructure, vehicles and equipment, including the Municipal Complex which had extensive damage to the sections of the Police Department, exterior façade and basement where the mechanical room is located; and

WHEREAS, following the event professionals were engaged by the Insurance Company and excess carrier to review the municipal complex and provide a report on findings and issue an opinion to the carrier that is used as a basis for determination of coverage; and

WHEREAS, in the months following the initial report, municipal officials challenged the findings and requested areas not covered in the report that had also sustained damage be evaluated, which led to supplemental engagements by the insurance carrier to amend the findings, specifically addressing concerns with the exterior wall and façade; and

WHEREAS, Halliwell Engineering Associates that had been engaged on the side of the Insurance Company issued an investigation report in May of 2022, followed by MKA issuing a supplemental report in July of 2022, specifically to address concerns with the exterior façade; and

WHEREAS, in the fall of 2022, municipal officials and professionals working with the Township held meetings with the insurance carrier and their engaged professionals to discuss findings included within the reports; and

WHEREAS, in October and November of 2022, municipal officials working with legal counsel and the Risk Manager raised concerns with the findings to members of the Garden State Joint Insurance Fund and requested the carriers cover costs associated with an independent study of the exterior, that would be engaged directly by the Township; and

WHEREAS, in December of 2022, pursuant to Resolution 346-12.22, an agreement with BDO USA, LLP was authorized for claims administration services and for assistance with the reporting, documentation and submission requirements; and

WHEREAS, in January of 2023, representatives for BDO USA, LLP working with municipal officials, identified and met with professionals from Amphion Analytical Engineering, PA to provide a proposal to conduct a Building Envelope Moisture Intrusion Investigation that will determine the scope of damage to the cavity of the exterior wall, in addition to working together with Hillmann Consulting as the engaged environmental firm for a comprehensive study of the facility; and

WHEREAS, Amphion Analytical Engineering, PA has provided a proposal to conduct a Building Envelope Moisture Intrusion Investigation with a cost of \$16,300.00; and

WHEREAS, the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a)(i), provides for the award of professional services, without engaging in the bidding process, to a person(s) authorized by law to practice a recognized profession; and

WHEREAS, the Local Public Contracts Law, N.J.S.A. 40A:11-2 declares that a “professional service” means services performed by 1) a person authorized by law to practice a recognize profession, 2) whose practice is regulated by law, 3) and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study; and

WHEREAS, the Purchasing Agent and Legal Counsel have reviewed the qualifications and proposal submitted by Amphion Analytical Engineering, PA and determined they possess the expertise and proven reputation to assist with in the scope of work outlined herein above; and

WHEREAS, the proposal submitted by Amphion Analytical Engineering, PA for said work has been presented to the excess carrier for a determination of coverage as an eligible expense under the insurance claim(s); and

WHEREAS, in addition, the proposal submitted by Amphion Analytical Engineering, PA shall be presented to FEMA for approval as an eligible expense under the Hurricane Ida application; and

WHEREAS, Amphion Analytical Engineering, PA has completed and submitted a Business Entity Disclosure Certification which certifies that Amphion Analytical Engineering, PA has not made any reportable contributions to a political or candidate committee in the Township of North Brunswick in the previous one year, and that the contract will prohibit Meridian Strategic Services, Inc. from making any reportable contributions through the term of the contract; and

WHEREAS, in addition, Amphion Analytical Engineering, PA has completed and submitted a C.271 Political Contribution Disclosure Form pursuant to N.J.S.A. 19:44A-20.26 et seq.

NOW THEREFORE BE IT RESOLVED, on this 6th day of February 2023, that the Township Council of the Township of North Brunswick does hereby authorize the agreement with Amphion Analytical Engineering, PA as a professional service contract to conduct a Building Envelope Moisture Intrusion Investigation, with a cost of \$16,300.00 and a one-year contract term; and

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution; and

BE IT FURTHER RESOLVED notice of this action shall be published in the Home News & Tribune as required by law within 10 (ten) days after its passage.

CERTIFICATION

I, Cavel Gallimore, Chief Financial Officer, hereby certify that \$16,300.00 is available for this purpose in Storm Recovery Reserve Account D-33-56-850-005-001 contingent upon reimbursement under the insurance claim and FEMA application. Contract PRO23037

Cavel Gallimore
Chief Financial Officer

Justine Progebin
Business Administrator

Ronald Gordon, Esq.
Township Attorney
Approved as to legal form

RECORDED VOTE:

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
HUTCHINSON				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MEHTA				
MAYOR WOMACK				

I hereby certify that the above Resolution was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on February 6, 2023.

Lisa Russo
Township Clerk



Ms. Justine Progebin
Business Administrator
North Brunswick Township New Jersey
710 Hermann Road
North Brunswick, New Jersey 08902
Email: TWPNBadministration@northbrunswicknj.gov

Subject:
Building Envelope Moisture Intrusion Investigation
North Brunswick Administration Building
710 Hermann Road
North Brunswick, New Jersey 08902

Dear Ms. Progebin:

AMPHION ANALYTICAL ENGINEERING, P.A. (AMPHION) is pleased to provide this proposal to the Township of North Brunswick for a moisture intrusion survey of the building envelope for the subject facility. This proposal is based on the information provided by Mr. Elliott Ritter and Robert Storer of DBO. This proposal contains project background information, scope of services, compensation and scheduling, and authorization information.

Rev. 1 | This revision supersedes the previous proposal dated January 16, 2023, and addresses clarifications to the scope of work as discussed during a conference call meeting on January 25, 2023.

Project Background Information

The subject facility consists of two administration buildings that are connected with a low slope atrium style roof. One of the two buildings is a three-story and the second building is a two-story building. The façade of both buildings consists of brick and the roof for both buildings is a steep slope roof with a metal panel roof system. The gutter for the roof of both buildings is inset over the top of the brick façade. The subject facility reportedly sustained extensive moisture damage to the interior finishes during Hurricane Ida. The source of the moisture intrusion is not currently known.

The Township of North Brunswick has requested that AMPHION perform a site visit to perform a visual investigation of the building envelope for the facility in an attempt to determine the most likely source of the moisture intrusion that occurred during the recent storm event.

AMPHION ANALYTICAL
ENGINEERING, PA
14120 Ballantyne Corporate Place
Suite 475
Charlotte
North Carolina 28277
Tel 704 930 2424
Fax 704 930 2420
www.amphionae.com

NC BELS
Certificate of Licensure No.: C-3351

Date:
January 30, 2023

Contact:
David R. Porter

Phone:
704.930.2424

E-mail:
DPorter@
amphionae.com

Our ref:
AAE23-022_Revision 1

Scope of Services

AMPHION proposes to perform a site visit at the subject facility to perform a visual survey of the building envelope. The general intent of our survey will be to determine the most likely source of the moisture intrusion that occurred during a recent storm event. Our survey will be primarily performed from the grade level around the facility and from the interior of the facility.

In addition, AMPHION will provide a man lift to perform visual observations of the upper areas of the façade and gutters of both buildings. Based on our observations, openings in the interior wall finishes may be required for observations. If openings are required, the number of openings and locations will be based on our site observations. For the purposes of this proposal, we anticipate up to 20 wall openings. Samples of the wall sheathing will be retained and provided to Hillmann Environmental Group while on site. We understand that Hillmann Environmental Group will take custody of the samples and perform testing as directed by Township of North Brunswick. We understand that the site will provide a contractor to perform the openings and repair the openings following our observations.

Rev. 1

Following the completion of the site visit, we will issue a report that summarizes the results of our observations. The report will include general recommendations, conclusions, and photographs of the noted items. In addition, as part of our report we will review the Hillman Environmental report to be provided by the Township of North Brunswick and include comments in our report as deemed relative to our scope of work. Please note that our report will not include detailed repair documents. If requested, we can provide this under a separate scope of work and associated fee.

Please note that AMPHION is registered as an engineering corporation in multiple states and has registered Professional Engineers in several states but is currently not registered in New Jersey. We are prepared to obtain registration in New Jersey for future phases of the work if requested.

Compensation and Schedule

We can provide the scope of work outlined above for the lump sum fee of \$16,300. We can perform our site visit within two weeks from authorization to proceed and have budgeted for two 8-hour days on site. We anticipate that our report can be completed within one week of completion of our site visit.

Authorization

We appreciate the opportunity to provide this proposal and look forward to working with you. The attached Terms and Conditions are a part of this proposal. You may authorize AMPHION to begin work by signing in the space below and returning a signed copy of this proposal to us or by issuing a purchase order.

Sincerely,

AMPHION ANALYTICAL ENGINEERING, P.A.



David R. Porter
Senior Consultant



Lakshman Santanam
President

Cc: Mr. Elliott Ritter, eritter@bdo.com
Mr. Robert Storer, rstorer@bdo.com

Attachments:

- Fee Schedule
- Terms and Conditions

Accepted By:

Name: _____

Title: _____

Signature: _____

Date: _____



UNIT FEE SCHEDULE (LABOR & EXPENSES)

Effective: January 1, 2023 – December 31, 2023

Services of a Project Consultant/Director, per hour	\$245.00
Services of a Principal Professional, per hour	\$220.00
Services of a Senior Professional I, per hour	\$205.00
Services of a Senior Professional II, per hour	\$185.00
Services of a Project Engineer, per hour	\$175.00
Services of a Project Professional, per hour	\$165.00
Services of an ASNT Level III, per hour	\$165.00
Services of a Staff Professional, per hour	\$140.00
Services of a Senior ASNT Level II Technician, per hour	\$115.00
Services of a Draftsperson, per hour	\$115.00
Services of an ASNT Level II Technician, per hour	\$105.00
Services of a Technician, per hour	\$92.00
Services of an Project Assistant, per hour	\$92.00
Project Supplies or Rental Equipment, if required	Actual cost x \$1.25
NDT Equipment, per day / lab or field	\$600.00
Analysis Software, per use:	
▪ DesignCalcs	\$275.00
▪ SolidWorks	\$500.00
▪ Plotter Charge	\$4.00/sheet
Living and travel expenses:	
▪ Mileage, per mile	\$ 0.80
▪ Miscellaneous expenses (airfare, rental car, meals, lodging, freight, subcontractor, etc)	Actual cost x 1.25
▪ Per Diem	\$64.00

Deposition and Testimony: Time preparing for deposition and testimony will be billed hourly at 150% of our usual and customary hourly rates above. Deposition time, testimony before a court, mediations, arbitrations, panels or boards will be billed hourly at 200% of the usual and customary hourly rates above.

NOTE: These hourly rates apply for all inspection time as well as all travel, load-up, and report time. Overtime is charged at 1.5 times standard rate for more than 8 hours per day or Saturdays. Premium time charged at 2 times standard rate on Sundays and holidays. For out of office work, there will be minimum charge of 8.0 hours per day.

NOTE: Equipment and software rates should be added to technician and engineer rates to compute total hourly rates.



AMPHION ANALYTICAL ENGINEERING, P.A. GENERAL TERMS AND CONDITIONS

1. **SCOPE OF SERVICES.** AMPHION agrees to perform professional consulting services and provide the work product, described in this Agreement and in the attached exhibits hereto for the proper completion of the Scope of Services as described in the attached proposal. AMPHION shall have no obligation to commence the services as stipulated in this Agreement until this Agreement is fully executed and delivered to AMPHION. Any requirements applicable to AMPHION's services are described in this Agreement.
2. **STANDARD OF CARE.** AMPHION shall faithfully perform the services required under this Agreement in accordance with the standard of care, skill, training, diligence and judgment ordinarily provided by competent professionals who perform services of a similar nature to the work described in this Agreement, and in the same locality as the work being accomplished.
3. **DISCLAIMER OF WARRANTY.** AMPHION agrees to correct, at its own expense, any services provided under this Agreement that do not conform to the standard of care hereunder for a period of one (1) year following the completion of services. AMPHION makes no other guarantee or warranty, express or implied.
4. **CHANGES TO SERVICE AGREEMENT AFTER EXECUTION.** Client may request changes in AMPHION's services consisting of additions, deletions, and revisions within the general scope of services being performed by AMPHION under this Agreement. Whenever a change in the scope and/or time for performance of services occurs, or if Client has notified AMPHION of a change, AMPHION shall submit to Client an estimate of the changes in cost and/or schedule. Pricing shall be in accordance with the pricing of this Agreement, and payment by Client shall be in accordance with the payment terms of this Agreement.
5. **TERMINATION OF AGREEMENT.** Either Party may terminate this Agreement without cause and/or for convenience after giving five (5) days' written notice to the other Party. In the event Client terminates AMPHION services without cause and/or for Client's convenience, Client shall be liable to promptly pay AMPHION for all work performed through the date of termination, all of AMPHION expenses directly attributable to the termination, including fair and reasonable sums for overhead and profit for work performed, and costs incurred by AMPHION in terminating any contracts entered into in connection with the performance of its services.
6. **FORCE MAJEURE.** In the event of an Act of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war is declared or not), rebellion, revolution, terrorist activities, nationalization, government sanction, embargo, labor dispute, or strike, either Party may terminate this agreement upon notice to the other Party without fulfilling the five day notice requirement of the Termination of Agreement Clause in paragraph 5 of this Agreement.
7. **USE OF DOCUMENTS.** All documents provided by AMPHION pursuant to this Agreement are instruments of service of AMPHION, and AMPHION shall retain an ownership and property interest therein (including the right of reuse) until Client has made full payment to AMPHION. All documents generated by AMPHION pursuant to this Agreement are not intended or represented to be suitable for reuse by Client or others on any other project, or other purposes other than the specific project or purposes for which they were created. Client agrees not to reuse said reports or materials on any other project, or for any other purpose other than that for which they were created, without the prior written consent of AMPHION. Reuse of said reports or other material by Client for any other purpose



or on other projects without written permission or adaptation by AMPHION for the specific purposes then intended shall be at the Client's and user's sole risk, without liability on AMPHION's part, and Client agrees to indemnify and hold harmless AMPHION from all claims, damages and expenses, including attorneys' fees, arising out of such unauthorized reuse by Client.

8. **INDEMNIFICATION.** The Parties shall at all times remain entirely responsible for the results and consequences of their own negligence and agree to indemnify and hold harmless the other Party from and against any and all claims, losses, damages, costs and expenses, including attorneys' fees, which may arise or result from such Party's negligence.
9. **LIMITATION OF LIABILITY.** The total liability, in the aggregate, of AMPHION and its directors, officers, or employees, and any of them, to Client or anyone claiming by, under or through the Client for any and all injuries, claims, losses, expenses, and damages whatsoever arising out of or in any way related to AMPHION's services, shall be limited to the total fees paid to AMPHION under this Agreement. Provided further that, in no event shall any liability of AMPHION to Client exceed the amount of applicable insurance that AMPHION has procured for services under this Agreement.
10. **WAIVER OF CERTAIN DAMAGES.** Client waives incidental, indirect, or consequential damages, lost revenues or profits from claims, disputes or other matters in question arising out of or relating to this Agreement, whether such claims arise from negligence, breach of contract, or strict liability.
11. **PAYMENT TERMS.** AMPHION shall invoice Client for Services in accordance with AMPHION standard invoicing practices. Invoices are due and payable on receipt and will be remitted by check or wire transfer of immediately available funds as follows:

14120 Ballantyne Corporate Place
Suite 475
Charlotte, NC 28277

12. **LATE CHARGES.** If Client fails to make any payment due AMPHION for services and expenses within thirty (30) days after receipt of invoice, the amounts due AMPHION will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less than 1.5% per month) from accounts not paid within thirty (30) days.
13. **BILLING DISPUTES.** If Client reasonably objects to any portion of an invoice, Client shall provide written notification to AMPHION of Client's objection and the basis for such objection within fifteen (15) days of the date of receipt of the invoice, and the Parties immediately shall make every effort to settle the *disputed* portion of the invoice. The *undisputed* portion shall be paid immediately and Client shall not offset amounts due AMPHION for any credit or disputes arising under a different agreement or work authorization. Client shall waive any objections to AMPHION's invoice if it fails to timely provide such written notice to AMPHION. If payment of invoices by Client is not maintained on a current basis, AMPHION may, after giving seven (7) days' written notice to Client, suspend further performance until such payment is restored to a current basis. All suspensions shall extend the time for performance by a length of time equal to the duration of the suspension, and AMPHION shall be paid for services performed and charges incurred prior to the suspension date, plus suspension charges. Suspension charges shall include, without limitation, putting of documents and analyses in order, personnel and equipment rescheduling or reassignment adjustments, additional insurance/bonding coverage, extended overhead and costs, and all other related costs and charges incurred and attributable to suspension.
14. **ATTORNEY'S FEES.** In the event of litigation or other proceeding to enforce performance of this Agreement or any payment obligation under this Agreement, the prevailing Party shall be entitled to



recover from the other Party attorneys' fees and costs as may be reasonably incurred by reason of the litigation.

- 15. CONCEALED OR UNKNOWN CONDITIONS.** AMPHION shall not be liable for: (i) concealed conditions encountered in the performance of the services; (ii) concealed or unknown conditions in an existing structure at variance with the conditions indicated by the Scope of Services; or (iii) unknown physical conditions that differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided under this Agreement. Should said conditions be encountered or otherwise have an effect on the performance of the services provided for in this agreement, then the amount of this Agreement and/or time for performance shall be equitably adjusted by change order upon claim by either Party made within twenty (20) days after the first observance of the conditions.
- 16. ACCESS TO SITE.** During the term of this Agreement, Client shall grant to or cause to be made available to AMPHION reasonable and necessary nonexclusive access to Client's Site and other Sites, as necessary, for the purpose of allowing AMPHION to perform the services and fulfill its obligations under this Agreement. AMPHION shall comply with generally accepted safety procedures and all other safety procedures that have been communicated to AMPHION or its personnel by Client. Should AMPHION be obstructed or delayed in the commencement, performance or completion of the work, without fault on its part, by reason of not having full access to the Site, then AMPHION will be entitled to an adjustment in compensation and/or an extension in the completion time requirements.
- 17. CONFIDENTIAL INFORMATION.** Neither Party during the term of this Agreement with AMPHION or at any time thereafter, shall use (either for his own benefit or for the benefit of any other party) or divulge or disclose to any person, firm or entity, any confidential information, data, trade secrets, pricing information, or methods of operation unless required by law to make such disclosure.
- 18. DELAY OF PERFORMANCE.** If AMPHION's performance of any of its obligations is delayed by any event not resulting from AMPHION 's own conduct, AMPHION will be excused from performing until the effects of that event are remedied.
- 19. CLIENT'S LITIGATION.** Unless specifically agreed upon in advance and unless specifically set forth in the proposal attached to this Agreement, rendering professional consulting services or providing work products or opinions relating to third party litigation is not included in AMPHION's scope of work, and AMPHION and its officers and employees and agents will not give depositions or testify in court or before any mediation or arbitration or government or quasi-government panel or board. In the event AMPHION and its officers and employees and agents are required to give such depositions or testimony, then Client agrees that such depositions or testimony will be deemed additional services rendered to or product delivered to Client. Client agrees that it will pay to AMPHION: **(a)** all amounts for expenses and fees specified in the attached Exhibits, and **(b)** for deposition and testimony preparation which AMPHION deems necessary or advisable, an hourly rate which is 150% of the usual and customary hourly rate being then-charged by AMPHION's senior professionals, and **(c)** for testimony in court or before any mediation or arbitration or government or quasi-government panel or board, an hourly rate which is 200% of the usual and customary hourly rate being then-charged by AMPHION's senior professionals.
- 20. ASSIGNMENT.** Client shall not assign or transfer its rights, duties or obligations hereunder without the prior written authorization of AMPHION. Any purported assignment in violation of this provision shall be null and void until AMPHION has authorized the assignment in writing.



21. **SEVERABILITY**. Should any provision of this Agreement or part thereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or other part of such provision.

22. **GOVERNING LAW AND CHOICE OF VENUE**. This Agreement shall be deemed to have been made and entered into in the State of North Carolina, and the construction, validity and enforceability of this Agreement shall be governed by the internal laws of the State of North Carolina, without regard to conflict of laws principals. Any and all legal claims brought by Client regarding this contract or any related matter must be filed in Mecklenburg County, North Carolina or the Federal Courts of the Western District of North Carolina.