

**A RESOLUTION OF THE TOWNSHIP COUNCIL OF NORTH BRUNSWICK
AUTHORIZING A PROFESSIONAL SERVICE AGREEMENT WITH CTL GROUP 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 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, following the initial report, municipal officials challenged the findings and requested areas not addressed in the report that had sustained damage also be evaluated, which led to supplemental engagements by the insurance carrier to amend preliminary findings, specifically addressing concerns with the exterior wall and façade; and

WHEREAS, Halliwell Engineering Associates that had been engaged by 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 representative of 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, in February of 2023, pursuant to Resolution 74-2.23, a professional service contract was authorized with Amphion Analytical Engineering, PA to conduct a Building Envelope Moisture Intrusion Investigation; and

WHEREAS, in March of 2023, Amphion Analytical Engineering, PA notified the Township they were unable to secure state authorization to work in New Jersey as a registered engineering firm; and

WHEREAS, in March of 2023, representatives for BDO USA, LLP working with municipal officials, identified and met with professionals from CTL Group as a registered firm authorized to work in New Jersey 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, CTL Group has provided a proposal to conduct a Building Envelope Moisture Intrusion Investigation with a cost of \$27,500.00; 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 CTL Group 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 CTL Group 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 CTL Group shall be presented to FEMA for approval as an eligible expense under the Hurricane Ida application; and

WHEREAS, CTL Group has completed and submitted a Business Entity Disclosure Certification which certifies that CTL Group 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 CTL Group from making any reportable contributions through the term of the contract; and

WHEREAS, in addition, CTL Group 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 3rd day of April 2023, that the Township Council of the Township of North Brunswick does hereby authorize the agreement with CTL Group as a professional service contract to conduct a Building Envelope Moisture Intrusion Investigation, with a cost of \$27,500.00 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 \$27,500 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 April 3, 2023.

Lisa Russo
Township Clerk



March 10, 2023

Justine Progebin
Business Administrator
Township of North Brunswick
710 Hermann Road
North Brunswick, NJ 08902

c/o
Robert H. Storer
Senior Property Loss Director, Insurance Risk & Recovery
BDO
330 North Wabash, Suite 3200
Chicago, IL 60611

Via email to: rstorer@bdo.com

**Re: Hurricane Ida Building Damage Evaluation
North Brunswick Government and Community Complex
North Brunswick, New Jersey
CTLGroup Proposal No. 00PA23-006**

Dear Ms. Progebin:

Thank you for your interest in retaining CTLGroup for technical services related to the investigation of building damage at the North Brunswick Government and Community Complex resulting from passage of Hurricane Ida in late August 2021. This letter presents our current understanding of the scope of services sought and the terms of our engagement.

BACKGROUND

Based on information received from your insurance claim consultant, BDO, we understand that the North Brunswick Government and Community Complex, located at 710 Hermann Road in North Brunswick, New Jersey, sustained water damage throughout the building, which is believed to be associated, at least in part, with function of the gutter system installed on the roof. A particular concern is the condition of the exterior building envelope, which we understand to be composed of a brick masonry cavity wall system with gypsum board sheathing.

SCOPE OF WORK

Our scope of work is anticipated to involve an evaluation of the North Brunswick Government and Community Complex exterior building envelope to assess the nature, extent, and reparability of possible damage resulting from Hurricane Ida. Completion of this scope of work is anticipated to include review of available relevant documents related to building design and

construction, inspection(s) of the site, field and laboratory testing, engineering analysis, preparation of a report, and consultation with the Township of North Brunswick and BDO.

We will subdivide our investigation in phases given that the scope may evolve as the investigation progresses. Phase 1 is anticipated to consist of the following tasks:

Task 1 – Familiarization & Planning

CTLGroup will conduct a preliminary review of available building plans and specifications with a focus on the cladding and gutter systems to familiarize ourselves with the building design and construction. In parallel, we will communicate with Township personnel to gather additional background information about the loss, including information about areas in the building believed to have been most damaged. Based on this effort, we will develop an action plan for an initial site visit, coordinating with the Township and BDO.

Task 2 – Initial Site Visit

CTLGroup will deploy a team of two (2) technical staff to the site to conduct a visual examination of the building envelope system, as well as hands-on examination of accessible areas, over the course of two (2) days on site. It is anticipated that some limited-scope destructive openings in selected areas where water damage is believed to have occurred may be performed from the interior of the building to evaluate the condition of the exterior walls, including the back side of the gypsum sheathing. Details of the work plan for the site visit will be developed as part of Task 1.

Task 3 – Preliminary Report

Upon completion of the on-site assessment, we will prepare a preliminary report citing observations, initial findings, and recommended next steps.

Additional phases and tasks may include further destructive openings and in-situ testing, sample extraction, and laboratory testing, which will be conducted as needed, and based on the outcome of the on-site assessment and discussion with your office. Preparation of a final report detailing the condition of the building, including extent of damage and recommendations for repair will be prepared at the close of the investigation. Fees for these phases and tasks will be discussed with you following conclusion of Phase 1.

FEE BASIS

CTLGroup's services will be provided on a time-and-expense basis. Charges will include professional fees commensurate with the level of expertise of the personnel assigned to the project, equipment usage fees, and other out-of-pocket expenses according to our current rate schedule, a copy of which is enclosed and made a part hereof by reference.

Based on the requested services and our experience with similar investigations, we recommend an initial budget of \$27,500 to complete Phase 1 as described in the above Scope of Work. We

will pursue additional phases as needed, following the completion of Phase 1 and a discussion of its findings with the Township.

TERMS & CONDITIONS

CTLGroup's services will be provided in accordance with our Standard Terms and Conditions, a copy of which is enclosed and made a part hereof by reference. It is our understanding that CTLGroup's retention on this project is with the Township of North Brunswick and, as such, all charges (i.e., fees and expenses) incurred by CTLGroup on this project will be the responsibility of Township of North Brunswick, independent of other parties/payees involved. If this understanding is incorrect, please contact us immediately.

CONFLICT CHECK

We have run a conflict-of-interest check based on the following names provided to us:

- Township of North Brunswick, New Jersey
- North Brunswick Government and Community Complex
- Garden State Mutual Joint Insurance Fund

To date, we know of no conflict that would preclude our involvement in this matter. Please inform us as soon as possible if this list of parties is inaccurate or incomplete, or if other parties become involved as this matter proceeds.

ACCEPTANCE

Please indicate your acceptance of this agreement by having an authorized representative execute one copy and return it with attachments to my attention. A signed copy of this letter is required before our services can begin.

We appreciate the opportunity to be of service and look forward to working with you. Please contact me if you have any questions or require additional information.

Sincerely,



Dennis M. McCann, Ph.D., P.E.
(Licensed in New Jersey and 17 other U.S. states & jurisdictions)
President
DMcCann@CTLGroup.com
Phone: (847) 972-3266

Enclosures:
Rate Schedule
Terms and Conditions

Accepted by:

Name (print)*: _____

Title: _____

Signature: _____

Organization: _____

Date: _____

**The individual signing this agreement represents that he/she is duly authorized to accept this agreement for the firm responsible for payment for these services.*

CTLGROUP STANDARD TERMS AND CONDITIONS

SCOPE OF WORK. CTLGroup shall perform services in accordance with an Agreement with the Client, which may consist of CTLGroup's Proposal and these Standard Terms and Conditions. The scope of work, costs and time schedules, if any, defined in the Proposal are based on information provided by Client and shall be subject to the provisions of this Agreement. If this information is incomplete or inaccurate, or if Client directs change to the scope of work established by the Proposal, a written amendment to the Agreement equitably adjusting the costs and time schedules shall be executed by Client and CTLGroup as soon as practicable. Client is defined as the person or entity requesting and/or authorizing the work. In so doing, Client represents and warrants that he/she is duly authorized in this role, and is responsible for payment unless CTLGroup is notified in writing, before the charges are incurred, that the engagement is on behalf of another party. Acceptance of CTLGroup's Proposal signifies the acceptance of the terms of this Agreement.

PAYMENTS. Advance payment may be required before CTLGroup begins services. CTLGroup shall submit invoices monthly or upon completing services. Payment is past due thirty (30) days from the invoice date. Client shall notify CTLGroup in writing of any disputed charges and the reason therefor within 10 days of receiving the invoice. If by the due date the parties have not agreed on the disputed portion of the invoice, Client shall pay the undisputed portion. Client agrees to pay a late fee of one and one-half percent (1.5%) per month (or lower maximum legal rate) on all past due amounts. Client shall pay any collection expenses, reasonable attorney fees and court costs CTLGroup incurs to collect past due invoices. CTLGroup's rates may be increased annually.

STANDARD OF CARE. CTLGroup will perform its services under this Agreement in conformance with the care and skill ordinarily used by reputable members of its profession providing similar services under similar conditions at the same time. **NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, IS MADE OR INTENDED.**

SAFETY. CTLGroup is responsible solely for the safe conduct of its personnel in the performance of their duties. CTLGroup has no responsibility for the protection and safety of any other persons on and about the project site. Unless indicated otherwise in the Proposal, Client shall provide, at its expense, all facilities and labor necessary to afford CTLGroup personnel safe access to sampling, testing or observation locations in conformance with federal, state and local laws, ordinances and regulations. CTLGroup will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoring any resulting damage, or remedial work for patching sample areas. Unless access equipment is provided by CTLGroup, CTLGroup shall not be in charge of, and shall have no control or responsibility over, any aspect of the erection, construction or use of any scaffolds, hoists, cranes, stays, ladders, supports or other similar devices as defined and interpreted under any law, ordinance or regulation relating in any way to Project safety.

HAZARDOUS SUBSTANCES. If CTLGroup is to provide services in the general vicinity of a facility or area where any substance may exist which could be a potential hazard to human health, which Client knows of or reasonably suspects exists, Client shall immediately notify CTLGroup. Thereafter, CTLGroup is authorized by Client to take all reasonable measures, including suspending services or terminating the Agreement, if CTLGroup deems it necessary to protect its personnel. If samples collected or received by CTLGroup on behalf of Client contain any substance which may be hazardous to human health or the environment, CTLGroup will, at the completion of testing and at Client's sole expense and responsibility, return such samples to Client or, upon written request from Client, release them to a carrier for transport to a location selected by Client for disposal. CTLGroup's scope of services is confined to items described in the applicable proposal or statement of work. It does not include the identification, testing, removal, or remediation of any environmental pollutant, contaminant, hazard, toxin, condition, irritant, material or problem, including but not limited to molds, fungi, bacteria, mildew, mycotoxins, spores or other irritants of any kind (collectively "Contaminants"). If in the course of CTLGroup's services it observes any Contaminants, or fails to observe said conditions which were otherwise visually detectable, Client agrees CTLGroup shall have no liability to anyone relative to said conditions. Client agrees that CTLGroup will not be liable for the dispersal, discharge, release or saturation of any Contaminant into the atmosphere, or onto a surface in or around the area of CTLGroup's work.

HIDDEN CONDITIONS. If CTLGroup has reason to believe that a hidden condition may exist that adversely affects the performance of the structure, CTLGroup shall notify Client. Client shall authorize and pay for all costs associated with the investigation of such conditions. If Client fails to authorize such investigation, or if CTLGroup has no reason to believe that such a condition exists, Client shall be responsible for all risks associated with such condition. Client further agrees that if a claim, lawsuit, arbitration, mediation or other demand is made on CTLGroup directly or indirectly arising from or related to any Contaminant or hidden condition, Client shall indemnify and hold harmless CTLGroup from same.

DELAYS. CTLGroup shall not be considered in default under this Agreement if its performance is prevented or delayed by any cause which is beyond its reasonable control.

OWNERSHIP OF DOCUMENTS. With the exception of CTLGroup reports to Client, all documents, including field data, field notes, laboratory test data, calculations and analyses, prepared by CTLGroup as instruments of service shall

remain the property of CTLGroup. CTLGroup may discard such records according to its record retention policy unless other arrangements are requested and paid for by Client.

SAMPLE RETENTION. CTLGroup reserves the right to discard samples immediately after testing. Upon request and at Client's sole expense, samples will be stored or transferred.

SUBPOENAS OR COURT ORDERS. If any subpoena or court order is served on CTLGroup or its staff or subcontractors requiring production of documents or appearance at a deposition or trial, or for other discovery purposes, related to services under this Agreement, Client shall pay the charges for CTLGroup to comply. Charges will accrue on a time and expense basis under CTLGroup's standard rates then in effect. Invoices will include time and expenses gathering and duplicating documents, preparing for testimony, travel, and testifying in deposition or trial. If confidential information of Client is required to be disclosed by law or legal process, CTLGroup shall provide, unless prohibited by law, notice to Client of the information provided. Information about Client obtained from third parties is regarded as confidential. The source is to remain confidential to Client unless otherwise agreed to by the source.

OPINIONS OF COST. CTLGroup's opinions of probable costs, if any, provided as part of the services under this Agreement, are made on the basis of CTLGroup's knowledge, experience and qualifications, and represent CTLGroup's judgment as an experienced and qualified professional engineer familiar with the construction industry. CTLGroup cannot and does not guarantee that proposals, bids or actual costs will not vary from the opinions of probable costs provided by CTLGroup.

LIMITATION OF LIABILITY. THE LIABILITY OF CTLGROUP FOR ANY REASON WHATSOEVER ARISING UNDER OR RELATING TO THIS AGREEMENT WILL NOT EXCEED IN THE AGGREGATE \$50,000. IN ADDITION, IN NO EVENT WILL CTLGROUP BE LIABLE FOR ANY CLAIM OR DEMAND BY CLIENT, OR AGAINST CLIENT BY ANY THIRD PARTY, FOR ANY AMOUNTS REPRESENTING LOSS OF PROFIT, LOSS OF BUSINESS, DELAY DAMAGES OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES. THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE.

INDEMNIFICATION. If any claim, suit or legal action arising out of the services under this Agreement is asserted against CTLGroup by a person or entity who is not a party to this Agreement, Client agrees to indemnify and hold harmless CTLGroup from and against any such claim, suit or legal action, and any and all loss, liability, damage, costs and expenses associated therewith, except to the extent that the event and/or damages giving rise to such claim, suit or legal action is found to have been caused by the negligence of CTLGroup. The Client's obligation hereunder includes, but is not limited to, the payment of attorney's fees, court costs, and expert and consulting expenses required for the proper and vigorous defense of CTLGroup.

NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement shall create a contractual relationship with, or cause of action in favor of, a third party against Client or CTLGroup.

DISPUTE RESOLUTION. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof which cannot be resolved through negotiation shall be submitted to mediation before and as a condition precedent to any other remedy. Upon written request by either party for mediation of any dispute, Client and CTLGroup shall select by mutual agreement a neutral mediator. If the dispute cannot be settled through mediation, then such dispute shall be decided by the federal or state courts of Cook County, Illinois, which shall have sole and exclusive jurisdiction over the matter. The Parties hereto irrevocably waive any and all right to trial by jury in any legal proceedings. The Parties agree that the substantially prevailing party in the litigation shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party after a final judgment.

TERMINATION. This Agreement may be terminated by either party upon at least seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, CTLGroup shall be paid for services performed prior to the termination date set forth in the notice plus reasonable termination expenses.

MISCELLANEOUS. The status of CTLGroup shall be that of an independent contractor. Any void provision of these Standard Terms & Conditions is severable and in no way affects the validity or enforceability of any other provisions. In any litigation, Client shall inform CTLGroup immediately of any attempts to exclude or discredit a CTLGroup employee (i.e., *Daubert* motion), and CTLGroup shall be permitted to participate in the response.