

UNION COUNTY IMPROVEMENT AUTHORITY

1499 US Highway One, North, 3rd Floor
 Rahway, New Jersey, 07065
 www.ucimprovementauthority.org
 (732) 382-9400 (732) 382-5862 fax

Resolution No. 36-2016

Date: April 6, 2016

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
 AUTHORIZING THE EXECUTIVE DIRECTOR TO RETAIN WEBER
 DOWD LAW, LLC TO ASSESS THE EXTENT OF THE AUTHORITY'S
 DAMAGES RESULTING FROM THE CONTRACTOR'S FAILURE TO
 PERFORM IN CONNECTION WITH THE CONSTRUCTION OF THE
 NEW UNION COUNTY FAMILY COURT BUILDING AT CHERRY
 STREET, ELIZABETH, NEW JERSEY.**

APPROVED AS TO FORM:
 Lisa M. da Silva
 Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
 UNION COUNTY IMPROVEMENT AUTHORITY

Lisa M. da Silva

[Signature]

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Bornstad</i>	✓		✓			✓	
<i>D'Elia</i>	✓		✓				
<i>Hockaday</i>	✓		✓				
<i>Lattimore</i>	✓		✓				
<i>Salerno, Secretary</i>	✓		✓				
<i>Szpond</i>	✓		✓				✓
<i>Tomko, Treasurer</i>	✓		✓				
<i>Rountree, Vice Chair</i>	✓		✓				
<i>Scutari, Chairman</i>		✓					

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR TO RETAIN WEBER
DOWD LAW, LLC TO ASSESS THE EXTENT OF THE AUTHORITY'S
DAMAGES RESULTING FROM THE CONTRACTOR'S FAILURE TO
PERFORM IN CONNECTION WITH THE CONSTRUCTION OF THE
NEW UNION COUNTY FAMILY COURT BUILDING AT CHERRY
STREET, ELIZABETH, NEW JERSEY.**

WHEREAS, the Union County Improvement Authority (the "Authority") has been duly created by ordinance of the Union County Board of Chosen Freeholders as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, as amended and supplemented from time to time (the "Act"); and

WHEREAS, the Authority has entered into a Shared Services Agreement dated November 1, 2011 with the County of Union (the "County"), pursuant to the Uniformed Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, *et seq.*, in which the County has requested that the Authority assist it with the design, financing, management and construction of a new Family Court Building and Parking Deck for the Superior Court, County of Union (the "Project") in Elizabeth, New Jersey, and the Authority has agreed to undertake all actions necessary to implement the Project; and

WHEREAS, in or about February 2013, the Authority published a notice of bids pursuant to New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.* for the Construction of the Project (the "Project Services"), and on March 13, 2013, it received eleven (11) for the Project Services, all of which were over budget; and

WHEREAS, on June 12, 2013, the Authority awarded a contract (the "Contract") for the construction of the new Union County Family Court Building to APS Contracting Inc. as the lowest responsible bid, exclusive of the deduct alternate, in accordance with N.J.S.A. 40A: 11-1 *et seq.*; and

WHEREAS, APS Contracting Inc. failed to perform in accordance with the terms and conditions of the Contract documents; and

WHEREAS, on or about April 30, 2015, the Authority declared APS to be in default under the Contract and terminated APS's right to proceed with the work under the Contract; and

WHEREAS, on or about July 16, 2015, the Authority entered into a Takeover Agreement with Fidelity and Deposit Company of Maryland and Zurich American Insurance Company ("APS's Surety") to complete the work under the Contract; and

WHEREAS, the Authority believes it has and will continue to incur damages due to APS's failure to perform; and

WHEREAS, the Authority requires assistance to assess the extent to which it has suffered damages caused by APS's failure to perform; and

WHEREAS, on or about March 30, 2016, Weber Dowd Law, LLC (“Weber Dowd”) submitted a proposal to perform specialized consulting services of a legal and technical nature in connection with the assessment of damages that the Authority incurred due to APS’s failure to perform, a copy of which is attached hereto as **Exhibit A**; and

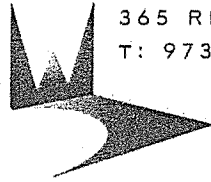
WHEREAS, the Authority has reviewed Weber Dowd’s proposal; and

WHEREAS, the Authority desires to authorize the Executive Director to retain Weber Dowd to assess the extent to which the Authority has and continues to be damaged resulting from APS’s failure to perform in accordance with the terms and conditions of the Contract documents.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Authority that:

1. The Executive Director is hereby formally authorized and directed to take any and all actions necessary to retain Weber Dowd Law, LLC in accordance with its proposal dated March 30, 2016, which is attached hereto as **Exhibit A**, to assess the extent of the Authority’s damages caused by APS’s failure to perform in accordance with the terms and conditions of the Contract documents.

2. This resolution shall take effect immediately.



March 30, 2016

Via fax (732) 382-5862 & regular mail

Daniel P. Sullivan, Executive Director
Union County Improvement Authority
1499 Routes 1&9 North
Rahway, New Jersey 07065

**Re: Union County Improvement Authority
Union County Family Court Building**

Dear Director Sullivan:

In lieu of a more formal submission, please accept this letter as our proposal in connection with the Union County Improvement Authority's ("UCIA") need for specialized consulting services of a legal and technical nature relating to the ongoing Union County Family Court Building construction project (the "Project"). More specifically, our firm has been made aware by the UCIA that it seeks experienced professionals to quantify and assess the viability of potential damages claims attributable to the Project's original general contractor, said contractor's surety, and any other potential third parties, arising out of Project-related agreements and the performance (or lack thereof) of said agreements.

As set forth more fully below, we believe we have the familiarity and insight necessary to provide thoughtful, thorough and cost-effective services required by the UCIA in connection with the Project based in part on our substantial experience in representing various parties in both public and private construction matters, ranging from the review and preparation of bid specifications, to the negotiation of disputes arising during the construction process and the prosecution and defense of claims in complex construction litigation venued in State and Federal Court. We were provided with a brief introduction into the nature of this assignment by General Counsel, DeCotiis, Fitzpatrick & Cole LLP, and based upon their information, we anticipate that our services would likely include, but not necessarily be limited to, closely engaging with the project manager, architect, General Counsel, UCIA staff and others as necessary to gain a complete understanding of the challenges faced by the UCIA in its efforts to complete the Project. If selected, we expect to compile, review and synthesize all pertinent project records, as supplemented by witness statements and testimony, and prepare an advisory report to the UCIA that details all findings made concerning potential claims and responsible parties. We would continually confer with the UCIA's designated point person(s), as well as General Counsel, to provide updates on witness and document accessibility needs, mitigation efforts and overall task progress.

The primary goal of this engagement will be to provide a comprehensive and detailed analysis following an exhaustive review of the facts and law concerning viability of damages claims, while doing so in a cost-effective and timely manner in order to prevent further exacerbation of any existing injuries suffered by the UCIA. If fortunate enough to be selected to provide our services to the UCIA, we propose to carry out our assignment in four general phases: (1) investigation; (2) synthesis, analysis and research; (3) preparation of a cohesive and detailed report of findings; and (4) (as required) presentation of findings and recommendations.

Firm Background and Qualifications.

The principal attorneys at Weber Dowd Law, Kraig M. Dowd, Esq., and Guido S. Weber, Esq., have each been admitted to the New Jersey Bar for more than fifteen (15) years and remain in good standing. Weber Dowd Law maintains a multidisciplinary practice servicing both public and private clients. Mr. Dowd and Mr. Weber have provided representation to New Jersey local and county governmental entities, as well as their respective employees, for a combined total of more than twenty (25) years, appearing before State and Federal administrative, trial, and appellate level courts and agencies in multiple jurisdictions during such time. Guido Weber, Esq., Partner, would be the principal attorney from the firm assigned to provide services to the UCIA under this proposal, and would function as supervising attorney should it be necessary that additional attorneys from the firm be utilized in the engagement.

As set forth in greater detail in our firm's December 28, 2015 response to the UCIA's Request for Qualifications for Special Counsel legal services, Mr. Dowd and the firm's other Partner Guido Weber, an experienced litigation and transactional attorney, formed the firm of Weber Dowd Law, LLC in 2008. Mr. Dowd was admitted to practice in 1998 and gained experience as an Assistant County Counsel at the Hudson County Counsel's Office, particularly with respect to defending actions initiated against the County. Mr. Dowd has dedicated much of his practice to serving governmental entities and their employees, including a substantial number of matters involving the NJLAD, CEPA, §1983, construction litigation and environmental law issues. Mr. Weber has extensive experience in the law of suretyship, which has included filing claims on behalf of owners against sureties arising out of construction projects. Thus, our law firm is uniquely qualified for the the task at hand.

Cost Proposal

We propose the following hourly rates for our services:

Partners/Of Counsel:	\$185.00/hr.
Associates:	\$165.00/hr.
Law Clerk/Paralegal:	\$120.00/hr.

To the extent that the UCIA prefers a different fee structure than the above proposal, Weber Dowd Law will abide by the UCIA's prevailing rates and/or fee structures for services of this kind. Based upon the nature and scope of the potential engagement, and the hourly rates set forth above, we propose an initial budget of \$20,000. It should be noted that this is an early estimate, which may need to be revisited at a later date, as the full nature and scope of the project becomes better known during the investigatory stage or should the UCIA significantly modify the scope of services.

We wish to express our gratitude for your consideration of this proposal to provide our services to the UCIA. Should you have any questions or require additional information about our qualifications, please do not hesitate to contact me.

Very truly yours,



Kraig M. Dowd, Esq.

cc: Jonathan Williams, Esq. (via email only)