

RESOLUTION NO. 2018- 62

A RESOLUTION AWARDING A PROFESSIONAL SERVICES CONTRACT TO McMANIMON, SCOTLAND & BAUMANN, LLC, ROSELAND, NJ TO PROVIDE BOND COUNSEL SERVICES.

WHEREAS, the City of Vineland has heretofore advertised for proposals for Professional Municipal Bond Counsel Services; and

WHEREAS, the Request was published in the City of Vineland's official newspaper and on the City's official website; and

WHEREAS, three (3) proposals were received and referred to the Chief Financial Officer for evaluation and recommendation; and

WHEREAS, it has been recommended that a contract be awarded to McManimon, Scotland & Baumann, LLC, Roseland, NJ as Bond Counsel to the City for the period February 1, 2018 through January 31, 2019 in accordance with the fee schedule submitted based upon the proposal received, pursuant to a fair and open process; and

WHEREAS, the availability of funds for said Professional Services Contract to be awarded herein have been certified by the Chief Financial Officer; and

WHEREAS, the Local Public Contract Law (N.J.S.A. 40A:11-1, et seq) requires that the Resolution authorizing the award of contract for Professional Services without competitive bidding and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vineland that said contract for Professional Municipal Bond Counsel Services, be awarded to McManimon, Scotland & Baumann, LLC, Roseland, NJ as Bond Counsel to the City for the period February 1, 2018 through January 31, 2019 in accordance with the fee schedule submitted, based upon the proposal received, pursuant to a fair and open process

Adopted:

President of Council

ATTEST:

City Clerk

Bond Counsel RFP Comparison

	<u>MS&B</u>	<u>Waters, McPherson, McNeill, P.C.</u>	<u>Parker McCay</u>
Bond Sale	\$3,500 + \$1 PER 1,000 of up to \$15,000,000 .75 per 1,000 greater than \$15,000,000	\$3,500 plus \$1.00 per \$1,000 of up to \$15,000,000 \$3,500 plus \$0.90 per \$1,000 greater than \$15,000,000 Additional \$1,000 for each additional series	\$5,000 to \$9,000 for amounts of \$1 to \$999,999 \$9,001 to \$13,000 for amounts of \$1,000,000 to \$4,999,999 \$13,001, plus \$1.10 per \$1,000 of bonds over \$5,000,000
Bond Ordinance	\$600	\$400 for single purpose / \$600 for multipurpose *plus additional time if out of the ordinary consults are necessary	
Note Sale	Greater of 1.) \$0.50 per \$1,000 of up to \$15,000,000 or 2.) \$1,000 \$0.40 per 1,000 greater than \$15,000,000 \$500 for more than one series of notes issued	\$1,750 plus \$0.60 per \$1,000 for up to \$15,000,000 \$1,750 plus \$0.50 per \$1,000 greater than \$15,000,000 plus \$500 for more than one series of notes issued	
Arbitrage Compliance	\$500		
Letter of Credit or Bond Insurance	\$1,000	\$1,000	
Refunding Issue with IRC Requirements	\$5,000	\$5,000	To be established by separate agreement
Hourly Rate for Various Services	\$215 per hour for Attorneys plus out of pocket costs \$135 per hour for Legal Assistants plus out of pocket costs \$0 for work provided by Secretarial Staff plus out of pocket costs	\$200 per hour for Attorney \$90 per hour for Legal Assistant	Shareholders (Partners) – \$275 - \$295 per hour plus out of pocket costs Counsel, of Counsel – \$250 - \$285 plus out of pocket costs Senior Associates – \$250 - \$285 plus out of pocket costs Associates – \$190 - \$245 plus out of pocket costs Paralegals/Law Clerks – \$95 plus out of pocket costs
General Legal Services Redevelopment, Environmental, Litigation, Non-Public Finance Serv	\$215 per hour for Attorneys plus out of pocket costs \$135 per hour for Legal Assistants plus out of pocket costs \$0 for work provided by Secretarial Staff plus out of pocket costs		
General Legal Services Developer-Funded Escrow Account	\$375 per hour for Attorneys plus out of pocket costs \$180 for Legal Assistants plus out of pocket costs		
Special Tax Counsel		Firm will submit a fee proposal	
Late Fees		After 60 Days - 1.5% per month overdue (APR 18%)	

**REQUEST FOR RESOLUTION FOR CONTRACT AWARDS
UNDER 40A:11-5 EXCEPTIONS
(PROFESSIONAL SERVICES, EUS, SOFTWARE MAINTENANCE, ETC)**



02/2/2018

(DATE)

1. Service (detailed description): Bond Counsel

2. Amount to be Awarded: \$ See cost proposal of RFP

- Encumber Total Award
- Encumber by Supplemental Release

3. Amount Budgeted: \$ _____

4. Budgeted: By Ordinance No. As needed
Or Grant: Title & Year _____

5. **Account Number to be Charged: Multiple

6. Contract Period: February 1, 2018 - January 31, 2019


7. Date To Be Awarded: 02/13/18

8. Recommended Vendor and Address: McManimon, Scotland & Baumann LLC
75 Livingston Avenue, Roseland, NJ 07068

9. Justification for Vendor Recommendation:(attach additional information for Council review)
The recommendation from the RFP evaluation is to award McManimon, Scotland & Baumann LLC as the City's Bond Counsel.

- Non-Fair & Open (Pay-to-Play documents required)
- Fair & Open: How was RFP advertised? Local paper and website

10. Evaluation Performed by: Susan Baldosaro

11. Approved by: Susan Baldosaro


12. Attachments:
 Awarding Proposal
 Other: Fee Schedule evaluation

- Send copies to:
**Purchasing Division
Business Administration**

**** If more than one account #, provide break down**

A G R E E M E N T

THIS AGREEMENT ("Agreement"), made as of this ____ day of _____, 2018 by and between the CITY OF VINELAND, in the County of Cumberland, a body politic of the State of New Jersey, herein designated as the "Client" and McMANIMON, SCOTLAND & BAUMANN, LLC, Attorneys at Law with offices at 75 Livingston Avenue, Roseland, New Jersey, 07068 hereinafter designated as "Counsel":

WITNESSETH:

The Client desires to engage the services of Counsel for one or more of the services described herein which may consist of (i) services related to public finance and (ii) services related to redevelopment, environmental, litigation or other non-public finance services. To the extent that the Client requests such services of Counsel for any of such services, they shall be billed as follows:

I. Public Finance

1. Counsel, in consideration of the making and the signing of this Agreement, agrees to render the following services:

A. Counsel will prepare or review all bond ordinances adopted or to be adopted by the governing body.

B. Counsel will assemble a certified record of proceedings to evidence the proper adoption of each bond ordinance in accordance with the provisions of the Local Bond Law and other applicable New Jersey statutes.

C. When the Client determines to issue bonds or notes, Counsel will prepare the necessary resolutions or other operative documents to set up the bond or note sale and will submit them to the Client's general counsel for review. Counsel will seek the advice of the Client's financial advisor and/or auditor in connection with the appropriate maturity schedule for the bonds or notes to be sold and will review legal issues relating to the structure of the bond or note issue. Counsel will assist the Client in seeking from other governmental authorities such approvals, permissions and exemptions as Counsel determines are necessary or appropriate in connection with the authorization, issuance and delivery of bonds or notes. Counsel will review those sections of the official statement, private placement memorandum or other form of offering or disclosure document to be disseminated in connection with the sale of the bonds or notes and will arrange for the printing and the distribution of such offering or disclosure document. Counsel will prepare and review the notice of sale pertaining to the competitive sale of the bonds or notes and will arrange for the printing of such notice of sale in The Bond Buyer, as applicable, and will answer inquiries made by the investment community concerning the bond or note sale. Counsel will assist the Client in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of bonds or notes. Counsel will render legal advice as necessary

concerning the submission of bids for the bonds or notes in accordance with the notice of sale and the requirements of law. After the bond or note sale, Counsel will prepare the bonds or notes for execution, will prepare and see to the execution of the necessary closing certificates, including the continuing disclosure undertaking of the Client, and will establish the time and the place for the delivery of the bonds or notes to the successful bidder. Counsel will coordinate the closing, at which time the bonds or notes will be delivered, payment will be made for the bonds or notes, and Counsel will issue a final approving legal opinion with respect to the validity and binding effect of the bonds or notes, the source of payment and security for the bonds or notes and the excludability of interest on the bonds or notes from gross income for federal and New Jersey income tax purposes, if applicable.

D. Counsel will provide basic advice in regard to the effect of the federal arbitrage regulations on the issuance of bonds or notes and the investment of the proceeds thereof.

E. Counsel will provide such other services as may be requested from time to time by the Client including any referendum, validation proceedings or other action relating to the Client or the authorization and issuance of a financing instrument by the Client.

2. The Client will make payment to Counsel for services rendered in accordance with the following schedule:

A. For services rendered in connection with each bond sale, a fee of \$3,500, plus \$1.00 per thousand dollars of bonds issued for the first \$15,000,000 of bonds issued and \$.75 per thousand dollars of bonds issued in excess of \$15,000,000. If there is more than 1 series of bonds issued, there will be an additional charge of \$1,000 for each such additional series.

B. For services rendered in connection with (i) the preparation or review of each bond ordinance and (ii) the compiling and review of a certified record of proceedings in connection therewith, an aggregate fee of \$600.

C. For services rendered in connection with each note sale, a fee equal to the greater of (i) \$.50 per thousand dollars of notes issued up to \$15,000,000 of notes issued and \$.40 per \$1,000 of notes in excess of \$15,000,000 or (ii) \$1,000. If more than one series of notes are issued, there will be an additional charge of \$500 for each such additional series.

D. For services rendered in connection with arbitrage compliance and related tax analysis, a fee of \$500.

E. In the event that a letter of credit, bond insurance, or similar credit enhancement facility is used in connection with either a bond or note issue, an additional fee of \$1,000 will be charged.

F. In the event of a refunding bond issue consistent with the provisions of the Internal Revenue Code to provide for the payment of a prior issue of bonds, there will be an additional fee of \$5,000 for each refunded issue.

G. Services rendered on an hourly basis, including preparation of an application to and an appearance before the Local Finance Board, attendance at meetings, litigation, continuing disclosure undertakings and preliminary and final official statement or other offering or disclosure document work, will be billed at the blended hourly rate of \$215 per hour for attorneys and \$135 per hour for legal assistants. Counsel shall not charge the Client for administrative work and services performed by secretarial staff.

H. Counsel's fee is usually paid at the closing of the bonds or notes, and Counsel customarily does not submit any statement until the closing unless there is a substantial delay in completing the financing. In the event that legal services described herein are provided in connection with a bond or note sale and the bond or note sale is not consummated or is completed without the delivery of Counsel's bond opinion as bond counsel, or this Agreement is terminated prior to the sale of bonds or notes, the fee for services to be charged shall be based on the hourly rates as set forth in paragraph I(2)(G).

I. Reasonable and customary out of pocket expenses and other charges, including but not limited to, photocopying, express delivery charges, travel expenses, telecommunications, telecopy, filing fees, computer-assisted research, book binding, messenger service or other costs advanced on behalf of the Client, shall be added to the fees referred to in this Agreement and shall be itemized in each invoice presented to the Client.

II. Redevelopment, Environmental, Litigation and Non-Public Finance Services

1. To the extent that the Client desires to engage Counsel for general legal services in connection with (i) redevelopment projects, (ii) environmental issues including the giving of advice or preparation of work product at the direction of the Client related to or concerning the identification, investigation, remediation or preparing of grant applications to assist the Client in responding to potential or actual environmental conditions, (iii) litigation, including representation in any and all action authorized by the Client and relating to a threatened, pending or actual legal proceeding or any condemnation or alternate dispute resolution matters or (iv) any other legal services, such services shall be billed as follows:

2. The Client will make payment to Counsel for such general legal services at the blended hourly rates set forth in paragraph I(2)(G). Services rendered to the Client the cost of which is reimbursed by a developer through a developer-funded escrow account pursuant to an escrow agreement between the developer and the Client shall be billed at the blended hourly rate of \$375 for attorneys and \$180 for legal assistants. In addition to the hourly time charges described above, Counsel will be reimbursed for out-of-pocket expenses as set forth in paragraph I(2)(I).

3. Services rendered in connection with the issuance of bonds or refunding bonds pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq., the New Jersey Economic Stimulus Act of 2009, or other applicable law, will be billed (i) if issued in the manner set forth in the Local Bond Law, in accordance with the fee schedule set forth in paragraph I(2) or (ii) in accordance with an agreed upon fee at the time of issuance if issued pursuant to a trust indenture or general bond resolution.

III. General Provisions

1. Upon execution of this Agreement, the Client will be Counsel's client and an attorney-client relationship will exist between Client and Counsel. Counsel assumes that all other parties will retain such counsel, as they deem necessary and appropriate to represent their interests in the transactions contemplated hereby. Counsel's services are limited to those contracted for in this Agreement; the Client's execution of this Agreement will constitute an acknowledgment of those limitations. Counsel's representation of the Client will not affect, however, our responsibility to render an objective bond opinion. Counsel's representation of the Client and the attorney-client relationship created by this Agreement will be concluded upon termination of this Agreement.

2. At the request of the Client, papers and property furnished by the Client will be returned promptly upon receipt of payment for outstanding fees and Client charges. Counsel's own files, including lawyer work product, pertaining to the transactions contemplated hereby will be retained by Counsel. For various reasons, including the minimization of unnecessary storage expenses, Counsel reserves the right to dispose of any documents or other materials retained by Counsel after the termination of this Agreement.

3. Counsel and the Client hereby incorporate into this contract the mandatory language of N.J.A.C. 17:27-3.4(a) and the mandatory language of N.J.A.C. 17:27-3.6(a) promulgated pursuant to N.J.S.A. 10:5-31 to 38 (P.L. 1975, c. 127, as amended and supplemented from time to time), and Counsel agrees to comply fully with the terms, the provisions and the conditions of N.J.A.C. 17:27-3.4(a) and N.J.A.C. 17:27-3.6(a), provided that N.J.A.C. 17:27-3.4(a) shall be applied.

4. Counsel and the Client hereby incorporate into this contract the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (42 USC §121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities, and the rules and regulations promulgated thereunder.

5. The primary contact attorney for services performed pursuant to this Agreement shall be Edward J. McManimon, III.

6. Counsel hereby represents that it has filed with the Client proof of professional liability insurance with coverage amounts acceptable to the Client.