

RESOLUTION NO. 2021- 85

A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH MCMANIMON, SCOTLAND AND BAUMANN, LLC, ROSELAND, NJ TO PROVIDE MUNICIPAL 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, five (5) proposals were received and referred to the City Solicitor and the Business Administrator for evaluation and recommendation; and

WHEREAS, it has been recommended that contracts be awarded to McManimon, Scotland and Baumann LLC, Roseland, NJ as Bond Counsel to the City for the period February 1, 2021 through January 31, 2022, in accordance with the fee agreements submitted, based upon the proposal received, pursuant to a fair and open process; and

WHEREAS, the availability of funds for said Professional Services Contracts 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 contracts for Professional Municipal Bond Counsel Services, be awarded to McManimon, Scotland and Baumann LLC, Roseland, NJ as Bond Counsel to the City for the period February 1, 2021 through January 31, 2022 in accordance with the fee agreements submitted, based upon the proposal received, pursuant to a fair and open process

Adopted:

President of Council

ATTEST:

City Clerk

**REQUEST FOR RESOLUTION FOR CONTRACT AWARDS
PROFESSIONAL SERVICE**

1. Service (detailed description): Bond Counsel

2. Amount to be Awarded: \$ _____

- Encumber Total Award
 Encumber by Supplemental Release



3. Amount Budgeted: \$ _____

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

5. **Account Number to be Charged: various

6. Contract Period: February 1, 2021 through January 31, 2022

7. Date To Be Awarded: _____

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

9. Justification for Vendor Recommendation: (attach add'l information for Council review)
Recommendation from the RFP evaluation is to
award McManimon, Scotland, & Baumann, LLC as
the City's Bond Counsel.
5 proposals rec'd

- Non-Fair & Open (Pay-to-Play documents required)
 Fair & Open: How was RFP advertised? _____

10. Evaluation Performed by: Susan Baldosaro

11. Approved by: [Signature]
Chief Financial Officer

12. Attachments:

- Awarding Proposal
 Other: _____

- Send Original to: Purchasing Department
- Send Copy to: 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 _____, 20__ 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. Services rendered in connection with any required filings with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access Dataport will be billed at a flat rate of \$250 per filing. 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 Matthew D. Jessup.

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

7. This Agreement shall be in full force and effect until such time as either party gives written notice to the other of termination.

IN WITNESS WHEREOF, the CITY OF VINELAND has caused this Agreement to be duly executed by its proper officers and has caused its corporate seal to be hereto affixed, and Counsel has caused this agreement to be duly executed by the proper party as of the day and year first above written.

CITY OF VINELAND

ATTEST:

By: _____

Clerk

McMANIMON, SCOTLAND & BAUMANN, LLC

By: _____