

RESOLUTION NO. 2019-48

A RESOLUTION AWARDED PROFESSIONAL SERVICES CONTRACTS TO FLEISHAM DANIELS LAW OFFICES, LLC, LINWOOD, NJ AND 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, four (4) proposals were received and referred to the City Solicitor for evaluation and recommendation; and

WHEREAS, it has been recommended that contracts be awarded to Fleisham Daniels Law Office LLC, Linwood, NJ and McManimon, Scotland & Baumann, LLC, Roseland, NJ as Bond Counsel to the City for the period February 1, 2019 through January 31, 2020, 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 Fleisham Daniels Law Office LLC, Linwood, NJ and McManimon, Scotland & Baumann, LLC, Roseland, NJ as Bond Counsel to the City for the period February 1, 2019 through January 31, 2020 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

Reid Wanda

From: Tonetta Richard
Sent: Wednesday, January 30, 2019 8:48 AM
To: Reid Wanda
Subject: FW: Professionals Reviewed RFP

From: Tonetta Richard
Sent: Tuesday, January 29, 2019 4:08 PM
To: Dickenson Bob <bdickenson@vinelandcity.org>; Mercado Miguel <mmercado@vinelandcity.org>; Fanucci Anthony R <afanucci@vinelandcity.org>; Paul Spinelli <pspinelli@vinelandcity.org>
Subject: Professionals Reviewed RFP

Bob,

I have reviewed the proposals received for the Legal Department. I would recommend the following:

Labor Attorney: Gruccio, Pepper

Environmental Attorney: DeCotiis, Fitzpatrick

NJ Public Power Attorney: DeCotiis, Fitzpatrick

Associate Solicitors (2): Jeffrey Medio and Buonadonna, Benson

Tax Attorney: Testa Heck Testa

Municipal Foreclosure attorney: Buonadonna Benson

Workers Comp:

Bankruptcy Attorney: Medio Law Firm

Bond Counsel: Fleishman, Daniels Law Firm and McManimon, Scotland

We are going out for new RFP's for Prosecutor and Energy and Capacity and FERC Support. I would like this on the next agenda if ok

Richard P. Tonetta, Esq.
Director Dept. of Law and Solicitor
City of Vineland
640 East Wood Street
Vineland, New Jersey 08360

FEE AGREEMENT

THIS AGREEMENT made on this ___ day of January, 2019, between the CITY OF VINELAND, CUMBERLAND COUNTY, a body politic of the State of New Jersey, herein designated as the “City”, party of the first part, and the FLEISHMAN-DANIELS LAW OFFICES, LLC, a New Jersey limited liability company, 646 Ocean Heights Avenue, Suite 103, Linwood, New Jersey 08221, attorney-at-law, hereinafter designated “Bond Counsel”, party of the second part:

WITNESSETH:

I. The City desires to authorize and issue its bonds for various capital projects and to provide for the terms and the security of such bonds in accordance with the laws of the State of New Jersey and to finance such capital projects through temporary and/or permanent obligations at the most advantageous terms available to it.

II. Bond Counsel, in connection of the making and the signing of the within agreement, agrees to render the following services:

1. Bond Counsel will prepare and/or review all bond ordinances adopted, or to be adopted, by the governing body, with respect to any 2019 bond issuance of the City;
2. Bond 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, with respect to any 2019 bond issuance of the City;
3. When the City determines to issue such bonds, Bond Counsel will prepare the necessary resolutions or other operative documents to set up the bond sale and will submit them to the City’s Solicitor for review. Bond Counsel will seek the advice of the City’s Auditor in connection with the appropriate maturity schedule for the bonds to be sold and will assist in the preparation of the Official Statement. Bond Counsel will see to the printing and the distribution of the Official Statement to those financial institutions that customarily submit bids for the new issues of New Jersey municipal bonds of this type. Bond Counsel will arrange for the printing of the notice of sale in The Bond Buyer and will answer any inquiries made by the investment community concerning this bond sale. Bond Counsel will attend the bond sale and will render legal advice, as necessary, concerning the submission of bids for the bonds in accordance with the notice of sale and the requirements of law. After the bond sale, Bond Counsel will prepare the bonds for execution, will prepare and see to the execution of the necessary closing

certificates and will establish the time and the place for the delivery of the bonds to the successful bidder. Bond Counsel will, further, attend the closing with the appropriate officials, at which time the bonds will be delivered, payment will be made for the bonds, and Bond Counsel will issue a final approving legal opinion with respect to the validity of the bonds;

4. When the City determines to issue bond anticipation notes or tax anticipation notes, Bond Counsel will prepare any necessary resolutions to authorize the sale of such notes and will submit them to the City's Solicitor for review. When the purchaser and the details of the notes have been determined, Bond Counsel will prepare the notes for execution and will prepare the appropriate closing certificates and an approving legal opinion with respect to the notes. Normally, it is not necessary for Bond Counsel to attend the closing for the notes. Unless requested otherwise, Bond Counsel will forward the notes, closing papers and approving legal opinion to the City's Solicitor for execution and delivery;
5. Bond Counsel will provide for basic advice in regard to the effect of the federal arbitrage regulations on the issuance of these bonds and the investment of the proceeds thereof; and
6. Bond Counsel will provide for basic advice in regard to the required contractual agreement between the City and the underwriter.

III. The City will make payments to Bond Counsel for services rendered in accordance with the following schedule:

- A. For services rendered in connection with each bond sale, a fee of \$3,000.00 plus \$1.00 per thousand dollars of bonds issued, with a minimum fee of \$8,500.00. For more complicated transactions involving refundings of outstanding bond issues, we will establish a fixed fee with the City to be determined based upon the type of transaction involved.
- B. For services rendered in connection with the preparation or review of each ordinance and the compiling of a certified record or proceedings in connection therewith, a fee of \$500.00 for each single purpose or multipurpose ordinance. If the preparation of the ordinance involves consultations, meetings or discussions that are out of the ordinary, there will be additional fees to be charged at a fixed hourly rate of \$160.00 per hour for attorney time and \$90.00 per hour for legal assistant time. The fees for services in connection with the ordinances will be charged periodically during the course of the year.
- C. The fee for any temporary financing involving a private placement and not involving numerous notes, preparation of an Official Statement, complicated arbitrage analysis, investment yield restrictions or attendance at the closing shall be \$500.00 plus an amount equal to \$.50 per thousand of bond anticipation notes or tax

anticipation notes issued, with a minimum fee of \$1,850.00. If additional services are required, such as with issues involving advance refunding or the combination of numerous ordinances, the additional time required will be billed at the fixed hourly rate of \$160.00 per hour for attorney time and \$90.00 per hour for legal assistant time.

- D. For serving as Bond Counsel to the City on New Jersey Infrastructure Bank Financing Program and related environmental financings, the City shall pay compensation to Bond Counsel based upon an hourly rate of \$160.00 per hour for attorney time and \$90 per hour for legal assistant time.
- E. Bill(s) will include fees and any disbursements made on your behalf, including telephone toll calls, photocopying, postage, traveling expenses (other than local), filing fees, advertising expenses relating to The Bond Buyer and other out-of-pocket expenses.

IV. During the performance of this Agreement, the following terms shall apply:

- 1. Bond Counsel will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex. Bond Counsel will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; rate of pay or other forms of compensation; and selection for training; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Bond Counsel agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;
- 2. Bond Counsel will, in all solicitations or advertisements for employees placed by or on behalf of Bond Counsel, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex;
- 3. Bond Counsel, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Public Agency Compliance Officer, advising the labor union or workers' representative of Bond Counsel's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- 4. Bond Counsel agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time;

5. Bond Counsel agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by Section 5.2 of the Regulations promulgated by the Treasurer pursuant to P.L. 1985, c. 127, as amended and supplemented from time to time in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to Section 5.2 of the Regulations promulgated by the Treasurer pursuant to P.L. 1985, c. 127, as amended and supplemented from time to time;
6. Bond Counsel agrees to inform in writing all recruitment agencies, including employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
7. Bond Counsel agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by statutes and the court decisions of the State of New Jersey and as established by applicable federal law and applicable federal court decisions; and
8. Bond Counsel agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.

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 Bond Counsel has executed this Agreement as of the date and year first above written.

ATTEST:

CITY OF VINELAND

By: _____
Anthony Fanucci, Mayor

WITNESS:

BOND COUNSEL:
FLEISHMAN-DANIELS LAW OFFICES, LLC

Ellen M. Edwards

By: _____
Joel M. Fleishman, Esquire

Summary of Fees

**SUMMARY OF FEES
CITY OF VINELAND
FOR THE PROVISION OF
2019 BOND COUNSEL SERVICES**

- A. For services rendered in connection with each bond sale, a fee of \$3,000.00 plus \$1.00 per thousand dollars of bonds issued, with a minimum fee of \$8,500.00. For more complicated transactions involving refundings of outstanding bond issues, we will establish a fixed fee with the Township to be determined based upon the type of transaction involved.
- B. For services rendered in connection with the preparation or review of each ordinance and the compiling of a certified record or proceedings in connection therewith, a fee of \$500.00 for each single purpose or multipurpose ordinance. If the preparation of the ordinance involves consultations, meetings or discussions that are out of the ordinary, there will be additional fees to be charged at a fixed hourly rate of \$160.00 per hour for attorney time and \$90.00 per hour for legal assistant time. The fees for services in connection with the ordinances will be charged periodically during the course of the year.
- C. The fee for any temporary financing involving a private placement and not involving numerous notes, preparation of an Official Statement, complicated arbitrage analysis, investment yield restrictions or attendance at the closing shall be \$500.00 plus an amount equal to \$.50 per thousand of bond anticipation notes or tax anticipation notes issued, with a minimum fee of \$1,850.00. If additional services are required, such as with issues involving advance refunding or the combination of numerous ordinances, the additional time required will be billed at the fixed hourly rate of \$160.00 per hour for attorney time and \$90.00 per hour for legal assistant time.
- D. For serving as Bond Counsel to the City on New Jersey Infrastructure Bank Financing Program and related environmental financings, the City shall pay compensation to Bond Counsel based upon an hourly rate of \$160.00 per hour for attorney time and \$90 per hour for legal assistant time.
- E. Bill(s) will include fees and any disbursements made on your behalf, including telephone toll calls, photocopying, postage, traveling expenses (other than local), filing fees, advertising expenses relating to The Bond Buyer and other out-of-pocket expenses.

A G R E E M E N T

THIS AGREEMENT ("Agreement"), made as of this ____ day of _____, 2019 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 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.

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: _____