

RESOLUTION NO. 2024-500

A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH THE LAW FIRM OF KELLER AND HECKMAN LLP FOR LEGAL SERVICES RELATED TO BROADBAND SERVICES.

WHEREAS, the Council of the City of Vineland determined that a need exists to retain the services of legal counsel with expertise related to the provision of broadband services by the City of Vineland; and

WHEREAS, the Law Firm of Keller and Heckman LLP, has agreed to accept the engagement, pending authorization by the governing body, in accordance with the terms and conditions set forth in the attached Agreement for Professional Services and the attachments thereto; and

WHEREAS, Stephen Barse, Esq. Associate City Solicitor, has determined that the anticipated value of the contract will not exceed \$50,000.00; and

WHEREAS, Susan Baldosaro, Chief Financial Officer further certifies that the referenced dollar amount is available through the 2024 budget. The maximum dollar value is based on a reasonable estimate of the goods and services required over the contract term, and the City of Vineland is not obligated to spend that amount.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Vineland that the Mayor is authorized to execute a Professional Services Agreement by and between the City of Vineland and the Law Firm of Keller and Heckman LLP in the form as attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that this contract be awarded as a professional services contract pursuant to the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.

BE IT FURTHER RESOLVED that Notice of this Resolution shall be published in the official newspaper of the City of Vineland as required by law within ten (10) days of passage and this Resolution and the Contract shall be available for review in the Clerk's Office.

Adopted: October 22, 2024

President of Council eaa

ATTEST:

City Clerk kp

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Suite 500 West
Washington, D.C. 20001
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September 12, 2024

Mayor Anthony Fanucci
City of Vineland
640 E. Wood St.
P. O. Box 1508
Vineland, NJ 08362-1508

Re: Engagement to Provide Legal Services

Dear Mayor Fanucci:

We are pleased that the City of Vineland (“the City” or “Client”) is engaging Keller and Heckman LLP (“K&H”) to provide legal services in connection with the City’s municipal broadband initiative. This letter and the terms and conditions in Attachments A and B reflect the understandings and agreements concerning this engagement between the City and K&H.

The legal services covered by this engage agreement (“the Subject Matter”) may include the following or similar services:

- Timely information and advice on significant developments across the US, at the federal, state, and local levels, that may affect the City’s broadband project
- Assistance with interpreting and addressing the state’s barrier to community broadband initiatives (including what’s worked in other states)
- Assistance with understanding, applying for, and complying with, federal funding programs
- Assistance with refuting attacks by the Taxpayers Protection Alliance, Jersey First, and other opponents of community broadband initiatives
- Assistance developing and negotiating agreements of many kinds, including design/build agreements; network operating agreements; dark fiber leases, IRUs, and swaps; interconnection agreements; agreements with vendors; wholesale and/or retail customer sales and service agreements; infrastructure access agreements; franchises, easements, and right-of-way agreements; public-private partnership agreements; etc.
- Assistance with identifying and complying with applicable federal and state regulatory requirements
- Representation and/or support in litigation, if and to the extent necessary

KELLER AND HECKMAN LLP

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In order to avoid K&H unintended assumption of obligations to affiliates of the City, we are at this time establishing an attorney/client relationship with regard to the Subject Matter only with the City, not with any of its parents, subsidiaries, or other affiliates.

K&H will try to keep its fees as low as reasonably possible by, among other things, allocating responsibilities within our firm so as to take advantage of the special expertise of particular lawyers, as needed, while minimizing duplication of efforts. Our hourly rates for attorneys and other members of the professional staff are based on their years of experience, specialization and training in practice, and level of professional attainment.

In order to provide the legal services that the City requires, K&H may at times need access to confidential engineering, business, financial, tax, and/or other technical expertise. With the City's prior approval, we will obtain this expertise and support from such other organizations as the City may designate. The City shall have the option of entering into direct agreements with these organizations or having our firm treat them as subcontractors and bill their fees and expenses as line items on our firm's monthly invoices, to be passed through to the City without markup. In either case, the parties intend that communications between or among our firm, the City, and any such designated organization shall be treated as confidential and covered by the attorney/client privilege to the maximum extent covered by law.

If you find this engagement letter and the enclosed Terms and Conditions of Engagement acceptable, please countersign the signature block below and return an executed copy to my attention by mail or e-mail. Upon receipt of the countersigned engagement letter, we will be pleased to begin work on your behalf.

If you have any questions or need additional information, please feel free to contact me. We look forward to working with you.

Sincerely,



James Baller
Senior Counsel

Accepted on behalf of the City of Vineland, NJ:

Mayor Anthony Fanucci

Date

ATTACHMENT A
KELLER AND HECKMAN LLP
TERMS AND CONDITIONS OF ENGAGEMENT
WITH THE CITY OF VINELAND, NJ

Hourly Rates & Fee Estimates

Keller Heckman LLP (K&H) bills monthly for the work we perform, which is described in detail in each monthly invoice. This practice helps ensure that you have a current understanding of charges and expenses incurred to date. All statements are reviewed before they are issued to ensure that the amount charged is appropriate. Bills are payable upon receipt.

Unless we agree otherwise, all statements for our services are the product of the hours worked multiplied by the hourly rates for the attorneys, legal assistants and other professionals who performed the work. We bill on a quarterly hour basis for our services.

Our hourly billing rates for each professional participating in this engagement shall be \$800 for James Baller, \$700 for Sean Stokes, \$700 for Casey Lide, and \$400 for associates. These rates reflect substantial discounts off our standard K&H rates, as set forth in Attachments B. These rates will remain in effect through the end of 2025. Afterward, they will be subject to periodic review and adjustment.

In addition to our hourly rates, we charge for expenses incurred in handling a given matter, such as photocopying, filing fees, and computerized legal research. We do not charge for long-distance telephone calls placed from our offices; fees for other telecommunications services, including dial-in conferences, are charged to clients. Any out-of-pocket expenses for travel, including hotel accommodations, airfare, and meals are charged to the client. We also collect for amounts due for any applicable value-added or service taxes imposed by the jurisdiction in which the services are provided. All such expenses appear on the monthly invoice.

To the extent you deposit funds with K&H to cover future fees that have not yet been earned or billed, or future expenses that have not yet been incurred on your behalf, you agree that such funds may be deposited in K&H's general operating account without interest (as opposed to being placed in a separate client trust account). At the conclusion of K&H's provision of the Services, any excess funds deposited with K&H (funds in excess of earned fees and incurred expenses) will be refunded to you in a timely manner without interest.

For multiple reasons, we cannot at this time provide a meaningful estimate of all the fees and charges that this engagement may ultimately entail. Upon request from the City in the future, we will provide good faith estimates of fees and the expenses we reasonably expect to incur for a particular phase or aspect of the project, based on our understanding of the project at the time the estimate is provided. Such estimates are not a commitment to complete a project at a fixed cost. Any special arrangements deviating from our customary billing practices must be mutually agreed to and conveyed in writing. Absent such agreement, hourly billing will apply.

Interest

If you do not provide payment for the total amount due on monthly statements within sixty (60) days from the date on the invoice, an interest charge at a rate of 1.5% per month may be applied to the balance. If interest is applied due to non-payment after sixty (60) days from the date on the invoice, you will be notified of interest charges on reminder statements every thirty (30) days thereafter. The interest will continue to accrue on a monthly basis until full payment is received.

Potential Conflicts

We are not aware of any current conflict of interest that would preclude our entry into this engagement. We will not accept representation of any party with interests that are legally adverse to a client without the client's prior consent and only to the extent that the conflict may be waived under applicable law. However, we often represent clients with competing commercial interests, particularly before government agencies, provided that this does not create any actual legal conflict. In this regard, please be assured that any information that we obtain from you will be treated as client-confidential and will not be disclosed, except as you direct. It is understood that we will continue to represent existing and new clients on matters that may be related to your business interests.

K&H is a relatively large law firm that represents many other companies and individuals. It is possible that during the time we are representing the City in this matter, other present or future clients may ask us to represent them in disputes or transactions adverse to the City that are unrelated to this representation. If this occurs, our representation of the City in this matter shall not automatically preclude our firm from participating in any such other engagements. Should such a situation arise, we will promptly notify the City and attempt to develop a solution that works for all concerned. If that fails, we may withdraw from this engagement on 30-days written notice without incurring any liability to the City.

Local Counsel

K&H has substantial expertise and experience with federal communications and related laws, and it has participated in dozens of broadband development projects in numerous states. K&H is not licensed to practice New Jersey state and local law, so, on matters in which federal, state, and local laws interact in New Jersey, K&H will have to work with the City's choice of in-house or outside New Jersey counsel, on whose advice the City must rely on matters of New Jersey state or local law.

Reliance on Information Provided by the City

In order to enable us effectively to render these services, the City will fully and accurately disclose all facts and keep us advised of all developments relating to the matter. The City will otherwise fully cooperate with us and will be available to attend meetings, telephone conferences and any other proceedings necessary to our representation in this matter.

No Guarantee of Outcome

We cannot, and do not, guarantee the outcome of this matter. Either at the commencement or during the course of our representation, we may express our opinions, views, or beliefs concerning claims

or courses of action and the results that might be anticipated. Any such statement made by any representative of K&H is intended to be an expression of opinion, view, and belief only, based on information available to us at the time, and should not be construed by you as a guarantee of any type.

Sarbanes-Oxley Compliance

You are retaining us to provide legal services, but we are not acting as your securities lawyers. We will not be advising you about disclosure obligations under federal and state securities laws with respect to any of the matters on which you have engaged us unless you specifically ask us, and we agree in writing, to do so by modifying this engagement letter. We are required to comply with the Sarbanes-Oxley Act of 2002 (“SOA”) and, to that end, we have in place a written SOA policy. Our undertakings shall be consistent at all times with the SOA, its applicable rules, and our policies. Furthermore, in the event we are asked to respond to an auditor’s request for information, we will comply strictly with the terms of the “American Bar Association-American Institute of Certified Public Accountants Treaty.”

E-Mail Communications

During the course of our engagement, we may exchange electronic versions of documents and e-mails with you or on your behalf using commercially available software. Unfortunately, such communications are occasionally victimized by the creation and dissemination of so-called viruses, destructive electronic programs or invasions of expected privacy. Our virus scanning software also may occasionally reject a communication that you send to us, or we in turn may send you something that is rejected by your systems. We believe these infrequent occurrences are to be expected as part of the ordinary course of business, although they do affect the security and reliability of these communications.

Despite our reasonable efforts, we cannot guarantee that our communications and documents will always be virus free or immune from invasions of expected privacy. If you would prefer, or require, that we not use electronic communications or that we follow special instructions or use encryptions on e-mail or other communications, you should promptly advise in writing those working on your matters of this preference or requirement.

Termination of Representation

You may terminate our services at any time upon written notice that will become effective upon receipt. Upon termination, you must pay for all services rendered and expenses incurred on your behalf before the termination or are reasonably necessary thereafter. K&H also may withdraw from this representation at any time subject to applicable law and rules of professional conduct.

Unless terminated earlier, our attorney-client relationship will expire automatically if we have not performed any legal services billed to you during a two-year period. Of course, we appreciate the opportunity to work with you and hope you will remain an active client of ours for many years.

Non-Disclosure of Certain Confidential Information

Our representation of Client does not give rise to an attorney-client relationship between us and any of Client’s affiliates or constituents, including but not limited to officers, directors or employees.

Client therefore agrees that Client will not give us confidential information regarding Client's affiliates or constituents during the course of our representation of Client. Accordingly, our representation of Client in this matter will not give rise to any conflict of interest in the event one of our other clients is adverse to any of Client's affiliates or constituents.

Document Retention and Destruction

In the course of our representation of you, we may come into possession of electronic or hard copies or originals of documents or other materials belonging to you or otherwise constituting client records, such as scientific data, product formulations, business strategy, correspondence, pleadings, transcripts, exhibits, physical evidence, and other items reasonably necessary to your representation (collectively, "Client Materials"). Once the particular matter to which those Client Materials relate has been concluded, you may request the return of the Client Materials to you. If you request their return, we may choose to make an electronic or hard copy of all or a portion of the Client Materials before returning them. If you do not request their return, and in the absence of any other specific arrangements with you or legal requirements to the contrary, you agree that after notifying you and receiving no objection within sixty (60) days, we may dispose of those Client Materials consistent with any reasonable records retention policy that we may have in effect from time to time. You agree that our firm owns and controls its files including, but not limited to, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records. You agree that our files remain our property and for various reasons, including the minimization of unnecessary storage expenses, or for no reason, we may destroy or otherwise dispose of our files at a reasonable time after the conclusion of the matter.

Entire Agreement and Amendment

These Terms and Conditions of Engagement and the engagement letter constitute the entire agreement between K&H and the City and supersede all prior communications, understandings, and agreements relating to your engagement with K&H, whether oral or written. Except as otherwise provided in these Terms and Conditions of Engagement or the engagement letter, neither can be amended or modified, in whole or in part, except with the written consent of both you and K&H; provided, however, that the Services provided under this engagement may include other matters that you and K&H agree to from time to time whether through oral or written means.



Telecommunications Practice Group

Professional Staffing Principles and Current Hourly Billing Rates - 2024-

Keller and Heckman LLP strives to deliver expert, cost-effective, and timely legal services. Accordingly, we staff client projects with several principles in mind. First, the professionals having the requisite level of expertise and the lowest billing rates for a particular project or task will provide the service, subject to appropriate review and oversight. Second, to the extent possible, the professionals starting work on a project will see the matter through to successful conclusion. And third, to the extent possible, we staff each client's matters with the same professionals to maximize the value of the services we provide each client.

The current hourly rates for the professionals in our Telecommunications Practice Group are set forth in the chart below. Mindful of our clients' budgetary considerations, we will provide estimates of total fees and costs for projects, as requested, and will quote fixed fees for certain projects upon request.

Professional	Position	Rate
Jim Baller	Partner	\$1,005
Tom Magee	Partner	\$870
Greg Kunkle	Partner	\$815
Tracy Marshall	Partner	\$815
Sean Stokes	Partner	\$815
Wes Wright	Partner	\$755
Casey Lide	Partner	\$755
Tim Doughty	Partner	\$515
Liam Fulling	Associate	\$395
Jackson Cherner	Associate	\$395
Sindy Alarcon	Licensing Specialist	\$290

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into on _____, 2024, between the CITY OF VINELAND, a Municipal Corporation, with its principal offices located at 640 East Wood Street, Vineland, New Jersey (“Client”) and the Law Firm of KELLER AND HECKMAN LLP (K&H), 1001 G Street NW, Suite 500 West, Washington, DC 20001 (“Professional”).

Recitals

WHEREAS, the Client is a municipality and desires to engage the services of the Professional to provide legal services in connection with the City’s municipal broadband initiative (the “Project”); and

WHEREAS, the Professional is a law firm with members and associates duly licensed to practice law in various states and desires to render professional services for the Client as provided in this Agreement, but not in the State of New Jersey; and

WHEREAS, the Professional will provide services hereunder in conjunction with a law firm licenses to practice law in New Jersey.

NOW, THEREFORE, the Client hereby engages the services of the Professional, and in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

Services

1. Upon request by the City, the Professional shall provide legal services as set forth in the engagement agreement provided by the Professional dated September 12, 2024 (the “Engagement Agreement”). The Engagement Agreement is incorporated herein by reference.

Fee

2. In consideration for the services to be rendered by the Professional, the Client shall pay the Professional for any and all time incurred by the Professional for the Client, inclusive of travel time, at the rates set forth in Attachment A of the Engagement Agreement, entitled Terms and Conditions of Engagement With the City of Vineland. The Professional shall provide the Client with a monthly invoice setting forth the time incurred and the amount due, and the Client shall pay the Professional within 30 days of receipt of such invoice. The invoice shall also set forth the expenses incurred by the Professional in the performance of services under this Agreement, which expenses shall be paid by the Client in the same manner.

Term

3. This Agreement shall be for a period of one year, commencing on _____, 2024, and ending on _____, 2025 or upon the completion of the Services, whichever is sooner. This Agreement shall terminate earlier by either party giving 30 days’ written notice to the other party.

Use of Experts

4. To the extent reasonably necessary to enable the Professional to perform the duties under this Agreement, upon notice and approval of Client, the Professional shall be authorized to engage or retain the services of any other persons or corporations to aid or assist in the proper performance of the duties. The cost of the services shall be the sole responsibility of the Client.

Devotion of Time

5. The Professional shall devote such time to the performance of the duties under this Agreement as is reasonably necessary for a satisfactory performance of its obligations hereunder.

Insurance and Indemnification

6. The Professional shall be an independent contractor and not an employee of the Client under this Agreement and shall maintain a policy of professional errors and omissions liability insurance in the minimum amount of \$1,000,000.00 to cover any claims caused by the performance of services under this Agreement and shall indemnify, hold harmless, and defend the Client from any claims, costs, expenses or liabilities caused by any act or omission of the Professional or the Professional's agents, servants or employees.

Non-Discrimination

7. During the performance of this contract, the Professional agrees as follows:

The Professional or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Professional will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional 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.

The Professional or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Professional, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Professional or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer advising the labor union of the Professional's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Professional or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time and the Americans with Disabilities Act.

The Professional or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The Professional or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Professional or subcontractor 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 the statutes and court

decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions,

In conforming with the targeted employment goals, the Professional or subcontractor 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Professional shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

Employment Information Report AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract/compliance).

The Professional and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as March be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as March be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.

Political Contribution Disclosure.

This contract has been awarded to K&H based on the merits and abilities to provide the goods or services as described herein. As such, the undersigned does hereby attest that K&H its subsidiaries, assigns or principals controlling in excess of 10% of the company has neither made any contribution of money or any other thing of value, including in-kind contributions that are reportable pursuant to City Ordinance and the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would, pursuant to P.L. 2004,c.19, affect its eligibility to perform this contract, nor will it make a reportable contribution during the term of the contract to any political party committee in the County of Cumberland, City of Vineland, NJ; if a member of that political party is serving in an elective public office of the City of Vineland, County of Cumberland, NJ the contract is awarded, or to any candidate committee of any person serving in an elective public office of the City of Vineland, County of Cumberland, NJ when the contract is awarded.

Entire Agreement

8. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained in this Agreement, or incorporated herein by reference, shall be valid or binding.

Assignment

9. Neither this Agreement nor any duties or obligations under this Agreement shall be assignable by the Professional without the prior written consent of the Client. In the event of an assignment by the Professional to which the Client has consented, the assignee or a legal representative shall agree in writing with the Client to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

Successors and Assigns

10. Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties.

Attorney's Fees

11. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which they may be entitled.

Governing Law

12. The validity of this Agreement and of any of its terms or provisions as well as the rights and duties of the parties under this Agreement, shall be governed by the laws of the State of New Jersey.

Amendment

13. This Agreement may be amended by the mutual agreement of the parties in a writing to be attached to and incorporated into this Agreement.

Legal Construction

14. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Agreement.

IN WITNESS WHEREOF, the parties named herein have hereunto set their hands and seals and the day and year first above written, pursuant to attached resolution.

Executed as of the day and year first above written.

WITNESS

CITY OF VINELAND, Client

By _____ [signature]
ANTHONY R. FANUCCI, MAYOR

WITNESS

KELLER HECKMAN LLP, Professional

By _____ [signature]
JAMES BALLER, Senior Counsel, For the Firm