

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2019-022

Council Meeting Date: 01-03-2019

Date Adopted: 01-03-2019

TITLE           RESOLUTION APPOINTING MATHEW JESSUP OF MCMANIMON AND SCOTLAND AS BOROUGH REDEVELOPMENT COUNSEL FOR THE BOROUGH OF NEW PROVIDENCE COUNTY OF UNION AND STATE OF NEW JERSEY FOR THE YEAR 2019

Councilperson Muñoz submitted the following resolution, which was duly seconded by Councilperson Geoffroy.

WHEREAS, the Borough of New Providence has deemed it is in the best interest of the Borough to appoint a Municipal Redevelopment Counsel; and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Mathew Jessup of McManimon and Scotland has submitted a proposal, indicating he will provide professional redevelopment counsel services for an amount not to exceed \$50,000.00 per year; and

WHEREAS McManimon and Scotland, has completed and submitted a Business Entity Disclosure Certificate which certifies that McManimon and Scotland has not made any reportable contributions to a political or candidate committee in the Borough of New Providence in the previous one year, and that the contract will prohibit McManimon and Scotland from making any reportable contributions through the term of the contract, and

WHEREAS, funds are available and have been certified by the Chief Financial Officer; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-5) requires that the resolution authorizing and awarding of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of New Providence that they hereby agree as follows:

1. The Mayor and Borough Clerk are hereby authorized and directed to execute the attached agreement with Mathew Jessup of McManimon and Scotland, for professional redevelopment counsel services.
2. Such contract is awarded without competitive bids as a "professional service" in accordance with N.J.S.A. 40A:11-5(1) (a) of the Local Public Contracts Law, because the services to be rendered are professional in nature and are unspecifiable as to requirements for performance. Such services must be rendered by a person particularly trained and licensed in this area, which requires extensive specific education and long experience in both the Federal and State procedural requirements.
3. A notice of this action shall be published once in the Courier News.

APPROVED, this 3<sup>rd</sup> day of January, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GENNARO	X			
GEOFFROY	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 3<sup>rd</sup> day of January, 2019.

Wendi B. Barry, Borough Clerk

## **A G R E E M E N T**

THIS AGREEMENT (“Agreement”), made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the BOROUGH OF NEW PROVIDENCE, in the County of Union, a public body corporate and 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 “Special Counsel”:

WITNESSETH:

### A. GENERAL SERVICES

1. The Client desires to engage Special Counsel for general legal services in connection with its various redevelopment projects (the “Redevelopment Projects”).

2. Services rendered to the Client shall be billed at the blended hourly rate of \$215 for attorneys and \$135 for legal assistants. In the event that Special Counsel is required to represent the Client in litigation/dispute resolution matters, the blended hourly rate shall be the same.

3. 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 B(3)(g).

### B. SERVICES RELATING TO FINANCINGS

1. The Client is authorized by law to undertake a variety of financings in connection with its Redevelopment Projects. In addition to the services to be provided in connection with paragraph A, the Client desires to engage Special Counsel for specialized legal services in connection with the negotiation and authorization of a financial agreement with respect to payments in lieu of tax, the authorization and issuance of bonds or other obligations for the various Redevelopment Projects it determines to undertake, 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.

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

a. Special Counsel will meet with the members of the Client and its representatives and advisors, including its planning consultants, engineers, financial advisors, underwriters or others, as often as necessary for the development of the financing plan. Special Counsel will review or draft all documents necessary to effectuate the financing plan, including the ordinance or the resolution establishing the Client, if applicable, the general bond resolution, any supplemental bond resolutions or trust indentures and other operative documents. In developing the financial plan, Special Counsel will give advice with respect to tax law, securities law and state law consequences and will review the proposed use of bond proceeds in light of the Internal Revenue Code and the Regulations promulgated by the Treasury with regard to “Arbitrage Bonds” in order to ensure the Client's ability to issue tax-exempt bonds, if applicable.

b. Special Counsel will assemble a certified record of proceedings to evidence the establishment of the Client, if applicable, the appointment and the validity of its membership, the effectiveness of the general bond resolution, any supplemental resolutions, trust indentures or other operative documents, the proper authorization and the effectiveness of the subsidy agreement, if any, and the bond purchase agreement, the enforceability of any covenants undertaken by the Client for the protection of bondholders and the proper authorization and issuance of the bonds or other obligations of the Client.

c. Special Counsel will supervise the legal aspects of the sale of the bonds or other obligations, whether at competitive or negotiated sale. Special Counsel will meet with the members of the Client, the financial advisors and the underwriters and will review such documents as underwriting agreements, bond purchase agreements and similar documents relating to the sale of the bonds or other obligations. Special Counsel will review those portions of the official statement relating to the legal proceedings required to issue the bonds or other obligations and will review drafts of the official statement in order to ensure compliance with law and substantial adherence to generally accepted financial disclosure guidelines issued by the Municipal Finance Officers Association. Special Counsel services in this regard would not include a due diligence inquiry or the rendering of an opinion with respect to due diligence, which is generally provided by counsel to the underwriter. Special Counsel will attend meetings with the rating agencies as necessary to assist in obtaining a favorable credit rating for bond issues of the Client. If requested, Special Counsel will attend and participate in information meetings deemed appropriate by the financial advisor or underwriter to acquaint the municipal bond market with new issues of bonds or other obligations of the Client.

d. Special Counsel will prepare or arrange for the preparation of the bonds or other obligations for execution, will prepare and see to the execution of the necessary closing certificates and will establish the time and the place for delivery of the bonds or other obligations to the purchaser. Special Counsel will attend the closing with the appropriate officials, at which time the bonds or other obligations will be delivered, payment will be made for the bonds or other obligations, and Special Counsel will issue a final approving legal opinion with respect to the validity of the bonds or other obligations and the various covenants undertaken by the Client for the protection of its bondholders. This opinion will be in a form acceptable to the financial community and will be printed on the bonds or other obligations.

e. Throughout the course of these services, Special Counsel will be available for meetings and conversations with the members of the Client, its planning consultants, engineers, financial advisors and underwriters and its other representatives, officials or professionals, and Special Counsel will be available to answer questions raised by members of the investment community with respect to the obligations of the Client.

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

a. Services rendered in connection with the issuance of 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 3(h) 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.

b. Services rendered in connection with the preparation of any disclosure documents or other similar documents will be billed at hourly rates set forth in paragraph A(2) or (3), as applicable.

c. Financing related services rendered beyond the scope of those described above will be billed at the hourly rates set forth in paragraph A(2) or (3), as applicable.

d. 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 issued pursuant to paragraph 3(a)(i), an additional fee of \$5,000 will be charged. 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 issued pursuant to paragraph 3(a)(ii), an additional fee of \$15,000 will be charged.

e. In the event that a letter of credit or other credit enhancement (not including a standard insurance policy), is issued in connection with either a bond or temporary financing, an additional fee of \$25,000 will be charged.

f. 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, Counsel services will be billed at the hourly rates set forth in paragraph A(2) or (3), as applicable.

g. Customary disbursements shall be added to the fees referred to in this Agreement. These may include 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.

h. For services rendered in connection with bonds issued pursuant to paragraph 3(a)(i), 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.

i. For services rendered in connection with each temporary financing, a fee equal to the greater of (i) the aggregate hourly rates reflected in paragraph A(2) or (3), as applicable, with a minimum fee of \$.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) \$10,000. If more than one series of notes are issued, there will be an additional charge of \$500 for each such additional series.

j. Complex financings in connection with redevelopment projects, including securitizations of payments-in-lieu of taxes, may include an additional fixed fee component to be determined at the time of issuance of such bond issue.

## C. GENERAL PROVISIONS

1. Upon execution of this Agreement, the Client will be Special Counsel's client and an attorney-client relationship will exist between Client and Special Counsel. Special 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. Special 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. Special Counsel's representation of the Client will not affect, however, our responsibility to render an objective bond opinion. Special 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. Special Counsel's own files, including lawyer work product, pertaining to the transactions contemplated hereby will be retained by Special Counsel. For various reasons, including the minimization of unnecessary storage expenses, Special Counsel reserves the right to dispose of any documents or other materials retained by Special Counsel after the termination of this Agreement.

3. Special 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 Special 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. Special Counsel and the Client hereby incorporate into this contract the provisions of Title 11 of the Americans With Disabilities Act of 1990 (42 USC S121 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. Special 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.

**POLITICAL CONTRIBUTION DISCLOSURE**

This contract has been awarded to McManimon, Scotland & Baumann, LLC based on the merits and abilities of McManimon, Scotland & Baumann, LLC to provide the goods or services as described herein. This contract was not awarded through a “fair and open process” pursuant to N.J.S.A. 19:44A-20.4 *et seq.* As such, the undersigned does hereby attest that the principals of McManimon, Scotland & Baumann, LLC controlling in excess of 10% of the company have neither made a contribution, that is reportable pursuant to 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 municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded, or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded.

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

BOROUGH OF NEW PROVIDENCE

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_

McMANIMON, SCOTLAND & BAUMANN, LLC

By: \_\_\_\_\_