

RESOLUTION

RESOLUTION RETAINING GIBBONS PC TO PROVIDE BOND COUNSEL SERVICES TO THE MONMOUTH COUNTY IMPROVEMENT AUTHORITY

Commissioner offered the following resolution and moved its adoption:

WHEREAS, Gibbons PC has offered to provide bond counsel services for The Monmouth County Improvement Authority at the rate of \$495.00 per hour, and

WHEREAS, this Commission is permitted by law (N.J.S.A. 19:44A-20.4, et seq) to authorize a contract without publicly advertised competition if the contract is likely to exceed \$17,500 or if the contract, when combined with other contracts entered into during the year with the same contractor, is likely to exceed \$17,500 in the aggregate, so long as (a) the contractor, as defined in the law, (i) has not made certain political contributions for one year preceding the award of a contract, (ii) will not make any such political contributions during the term of the contract and (iii) has filed a disclosure of certain political contributions made during the past 12 months; and

WHEREAS, Gibbons PC has provided a written certification that it has not made and will not make any prohibited political contributions and it has also filed the required Business Entity Disclosure Form; and

WHEREAS, Gibbons PC has filed an acceptable Public Disclosure Statement/Business Entity Disclosure Form with The Monmouth County Improvement Authority.

NOW, THEREFORE, BE IT RESOLVED by The Monmouth County Improvement Authority that the Chairman and Secretary be and they are hereby

authorized to execute a contract with Gibbons PC to provide the services at a cost stated above.

BE IT FURTHER RESOLVED that this action is taken without competitive bidding because the services to be rendered are professional services, exempt from bidding under N.J.S.A. 40A:11-5(1)(a)(i).

BE IT FURTHER RESOLVED that Gibbons PC shall comply with the Special Pay-to-Play restrictions contained in Resolution No. 08-397 of the County of Monmouth.

BE IT FURTHER RESOLVED that the Secretary cause notice of this action to be printed in an official newspaper of the County of Monmouth.

Seconded by Commissioner and adopted on the following roll call vote:

AYES: Commissioners

NAYS:

ABSTAIN:

ABSENT:

CERTIFICATION

I hereby certify the above to be a true copy of a Resolution adopted by the Monmouth County Improvement Authority at a meeting held on February 3, 2022.

PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT, made this 3rd day of February, 2022, between **THE MONMOUTH COUNTY IMPROVEMENT AUTHORITY**, a public body corporate and politic of the State of New Jersey (“Authority”) and GIBBONS P.C. organized under the laws of the State of New Jersey and duly authorized to engage in the practice of law in the State of New Jersey (“Gibbons” or “Bond Counsel”).

WHEREAS, the Authority may finance various capital projects during the term of this contract through the issuance of bonds and temporary notes and desires to enter into this contract with Gibbons for the providing of professional services to the Authority as bond counsel in connection with the issuance of said bonds and notes during the term of this contract; and

WHEREAS, this Professional Service Agreement is authorized to be entered into by the Authority without public advertising or bidding therefor pursuant to Section 40A:11-5(1) (a)(i) of the Local Public Contracts Law.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the Authority and Gibbons do hereby covenant and agree as follows:

1. Gibbons be and hereby is specifically retained as bond counsel to the Authority in connection with the issuance and sale of bonds and notes for the Authority, for a period beginning February 2, 2022 and ending February 2, 2023, including all legal services related to or necessary in connection therewith, including:

(a) Bond Counsel will prepare a timetable for the steps to be taken prior to the bond or note issue and when the Authority determines to issue bonds, Bond Counsel will prepare the necessary resolutions or other operative documents to set up the transaction. 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. Bond Counsel will attend the closing 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;

(b) Should the Authority determine to engage in short-term financing through the issuance of temporary notes, Bond Counsel will prepare the necessary resolutions or other operative documents to authorize the sale of notes. 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 papers and an approving legal opinion with respect to the notes. Although it is not always necessary for Bond Counsel to attend the closing for the notes, Bond Counsel will do so, if requested by the Authority. Otherwise, the Authority will be authorized to release the approving legal opinion of Bond Counsel when the appropriate closing documents are executed and delivered and payment for the notes has been received. Unless requested otherwise, Bond Counsel will forward the notes, closing papers and approving legal opinion to the Authority for execution and delivery; and

(c) Bond Counsel will provide advice in regard to the effect of arbitrage regulations on the issuance of bonds or notes and the investment of the proceeds thereof.

2. Gibbons shall be paid for services rendered pursuant to this Professional Service Agreement in accordance with the following terms:

Traditional Note/Bond Issue

Stand Alone Financing

For work done and responsibilities assumed in connection with rendering the type of opinions anticipated in any financings (which are competitively bid or negotiated), we would charge a base fee of \$35,000, plus \$1 per \$1,000 of debt issued, plus out-of-pocket disbursements. With respect to any financing involving an advance or current refunding, an additional fee of \$10,000 would be charged for each refunded issue.

Pooled Financing

For work done and responsibilities assumed in connection with rendering the type of opinions anticipated in any financings (which are competitively bid or negotiated), we would charge a base fee of \$35,000, plus \$1 per \$1,000 of debt issued, with an additional fee of \$3,500 per participant, plus out-of-pocket disbursements. With respect to any financing involving an advance or current refunding, an additional fee of \$10,000 would be charged.

Hourly Rates

The fee for additional (which includes attendance at meetings in connection with financings) or non-transactional services would be at an hourly (time charge) basis. This fee would be calculated by multiplying the number of hours expended by each attorney and paralegal by their respective billing rate in effect at the time the work is performed. Each billing rate is based on experience and expertise and is reviewed and revised by the firm periodically. Services rendered in connection with the Municipalities Continuing Disclosure Cooperation Initiative requiring the services of a securities or litigation attorney will also be based upon the experience and expertise of said attorneys. In this connection, we will furnish a schedule of hourly rates for those individuals who work on the matter and an accounting of the aggregate amount of time expended. The present hourly rates of those attorneys and paralegals anticipated to work on your matters are as follows:

John D. Draikiwicz	\$495
Steven Sholk	485
Scott A. Galano	375
Karl Teo Molin, III	325
Paralegal	160

In addition to time charges, the firm will include in its billing statement out-of-pocket costs incurred in connection with the matter, including, without limitation, expenses of travel,

word processing (computerized document preparation), telephone, document reproduction, postage and air freight and stenographic overtime, if required. We anticipate presenting a statement for services rendered subsequent to each note and bond issue.

3. The Authority will publish or cause to be published the notice required to be published pursuant to and in accordance with Section 40A:11-5(1)(a)(i) of the Local Public Contracts Law.

4. In order that the Authority may comply with the State of New Jersey Affirmative Action employment goals prescribed by N.J.A.C. 17:27 and promulgated by the Treasurer of the State of New Jersey, the following is made a part of the contract terms:

During the performance of this contract, Bond Counsel, as contractor, agrees as follows:

The contractor 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 or sex. The contractor 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; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and a selection training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicant for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex;

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

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, 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.

The contractor 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.

The contractor 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, 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.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may 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 may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

5. The within Professional Service Agreement has been awarded to the contractor based upon the merits and abilities of the contractor to provide the services as described herein. This Professional Service Agreement 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 contractor, his/her firm, his/her firm's subsidiaries and assigns, and any principals controlling in excess often present (10%) of his/her firm, 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 this Professional Service Agreement that would, pursuant to P.L. 2004, c. 19, affect the contractor's eligibility to perform this Professional Service Agreement, nor will the contractor or his/her firm make a reportable contribution during the term of the within Professional Service Agreement as may be prohibited.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and the Authority has affixed its seal as of this 4th day of February, 2022.

ATTEST:

**THE MONMOUTH COUNTY
IMPROVEMENT AUTHORITY**

[seal]

By: _____

GIBBONS P.C.

By: _____
John D. Draikiwicz