

16269

DATE: December 15, 2010

TO: Honorable Members of the Board of Acquisition & Contract

FROM: Robert F. Meehan
County Attorney

RE: Authorization to enter into an agreement with Harris Beach PLLC, pursuant to which Harris Beach PLLC will represent the County Executive in two Article 78 proceedings, as authorized by the Westchester County Board of Legislators

Authority is hereby requested for the County of Westchester (the "County") to enter into an agreement with Harris Beach PLLC ("Harris Beach"), pursuant to which Harris Beach will represent the County Executive in the Article 78 proceedings entitled In the Matter of the Application of the Westchester County Board of Legislators Seeking a Judgment and Order Pursuant to Article 78 of the New York State Civil Practice Law and Rules against Robert Astorino, in his capacity as County Executive, Westchester County (the "BOL Matter") and Nakia Simmons, on behalf of herself and all those similarly situated, and Lakin Perkins, on behalf of herself, her family, and all those similarly situated against Robert P. Astorino, in his official capacity as the County Executive of Westchester County (the "Simmons and Perkins Matter"), for a term from September 7, 2010 through September 6, 2011, for an amount not-to-exceed \$35,000, to be paid at the following hourly rates:

- | | |
|---------------------|--------|
| 1. Partner | \$ 225 |
| 2. Of Counsel | \$ 180 |
| 3. Associate | \$ 165 |
| 4. Paraprofessional | \$ 85 |

The petitioners in the Simmons and Perkins Matter are represented by the National Center for Law and Economic Justice. The petitioner in the BOL Matter is represented by the Law Office of Robert David Goodstein. The petitioner filed the BOL Matter on August 31, 2010 as a related case to the Simmons and Perkins Matter. Because the BOL Matter was filed as a related case and seeks the same relief as the Simmons and Perkins Matter, we anticipated that the two actions will be consolidated together before the Hon. Nicholas Colabella.

According to the Rules of Professional Conduct governing the conduct of attorneys, a lawyer may not represent a client where there is the assertion of a claim by one client against another

client in the same litigation. Rule 1.7. Consequently, the County Attorney determined that it would be inappropriate for his office to represent the County Executive in the BOL Matter.

Although there is no conflict with the County Attorney's office representing the County Executive in the Simmons and Perkins Matter, if the BOL Matter and the Simmons and Perkins Matter are consolidated, it would be inappropriate for the County Attorney to continue to represent the interests of the County Executive, as he would thereby take a position adverse to his client, the Board of Legislators, in the same proceeding.

Pursuant to Section 297.31(2)(b)(i) of the Laws of Westchester County, the County Attorney sought authorization from the County's Board of Legislators to retain conflict counsel to represent the County Executive in the aforementioned matters. The County's Board of Legislators provided such authorization, and authorized the proposed agreement, by Act No. 2010-126.

The proposed agreement will serve a public purpose by providing the County Executive with counsel to represent him in the two aforementioned Article 78 proceedings in which the County Attorney cannot represent him, due to the above-described conflict of interests.

The goal and objective of the proposed agreement is to provide the County Executive with counsel to represent him in the two aforementioned Article 78 proceedings.

The goal and objective of the proposed agreement is in the best interests of the County in terms of fiscal responsibility, as the County Executive will be provided with the counsel he requires at hourly rates below the typical hourly rates for similar legal services in Westchester County.

The goal and objective of the proposed agreement will be tracked and monitored by the Office of the County Attorney.

This procurement is exempt from the requirements of the County Procurement Policy pursuant to Section 3(a)(xv) thereof.

Accordingly, I recommend adoption of the proposed resolution.

RFM/JMR/bdm/nn

RESOLUTION

Upon a communication from the County Attorney, be it hereby:

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to enter into an agreement with Harris Beach PLLC (“Harris Beach”), pursuant to which Harris Beach will represent the County Executive in the Article 78 proceedings entitled In the Matter of the Application of the Westchester County Board of Legislators Seeking a Judgment and Order Pursuant to Article 78 of the New York State Civil Practice Law and Rules against Robert Astorino, in his capacity as County Executive, Westchester County and Nakia Simmons, on behalf of herself and all those similarly situated, and Lokia Perkins, on behalf of herself, her family, and all those similarly situated against Robert P. Astorino, in his official capacity as the County Executive of Westchester County, for a term from September 7, 2010 through September 6, 2011, for an amount not-to-exceed \$35,000, to be paid at the following hourly rates:

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| 4. Paraprofessional | \$ 85 |

; and be it further

RESOLVED, that this Agreement is subject to County appropriations; and be it further

RESOLVED, that this Agreement is also subject to further financial analysis of the impact of any New York State Budget (the “State Budget”) proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Contractor, then the Contractor shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Executive or his duly authorized designee be, and hereby is, authorized to take such actions and execute such documents as may be necessary and appropriate to effectuate the purposes hereof.

Account to be
Charged/Credited

Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
101	18	1000	4923		\$35,000

Budget Funding Years 2010-2011 Start Date 9/7/10 End Date 9/6/11
(must match resolution)

Funding Source Tax Dollars \$35,000
\$35,000 State Aid _____
(must match resolution) Federal Aid _____
Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 12-30-2010 - JOMARY VIEIRA, SECRETARY