

**65696**

Date: October 26, 2018

To: Honorable Members of the Board of Acquisition and Contract

From: Ann Marie Berg  
Commissioner of Finance

RE: Request amendment to Resolution which authorized the County to enter into an agreements for the operation and administration of the Westchester County Deferred Compensation Plan, for the period December 17, 2018 through December 16, 2023

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On October 11, 2018, Your Honorable Board authorized the County of Westchester (the "County"), acting by and through the Westchester County Employees Deferred Compensation Board (the "Board") to enter into agreements with

- (i.) Prudential Retirement Insurance and Annuity Company, as the administrative service agency and as the financial organization for the Westchester County Deferred Compensation Plan (the "Plan"),
- (ii.) Prudential Bank & Trust Company as trustee for the Plan,
- (iii.) Morningstar Investment Management LLC for the provision of investment advisory services to those participants in the Plan who elect to have managed account services,

The term of these Agreements will be for the period December 17, 2018 through December 16, 2023, with the County having the sole option to renew the agreements for two (2) one (1) year renewal terms.

Prudential Bank & Trust Company has provided its standard Trust Agreement which requires the following provisions regarding indemnification (the County is referred to as "the Employer"):

- (c) "The Trustee shall be fully protected and shall incur no liability in acting in reliance upon the instructions or directions of the Employer, or any delegate of the Employer. In addition, the Trustee shall be entitled to rely on directions given by a Plan participant, where the Plan provisions permit such direction. Any reference herein to directions or instructions from the Employer shall include directions or instructions

from any delegate of the Employer or from a Plan participant, where the Plan provisions permit such direction.

- (d) The Employer shall indemnify and hold harmless the Trustee from and against any and all claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act done or omitted to be done by the Employer in connection with this Agreement or the administration of the Trust Fund, except where the same is due to the negligence and/ or willful misconduct of the Trustee.
- (e) In addition to and in no way in limitation of the indemnification provisions contained in paragraph (d), the Employer hereby agrees to indemnify and hold harmless the Trustee from and against any claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act or omission of any prior, subsequent or existing trustee of the Plan.”

An amendment to the October 11, 2018 Resolution of Your Honorable Board is therefore respectfully requested to authorize the County to include the above indemnification provisions in the agreement with Prudential Bank & Trust Company

I recommend approval of the attached proposed amendment to the resolution.

AMB/lb/jrc

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION  
10/10/2018 - LISA M. JONES, SECRETARY

## RESOLUTION

Upon a communication from the Commissioner of Finance, be it hereby

**RESOLVED**, that the resolution approved on October 11, 2018, which authorized the County of Westchester (the "County"), acting by and through the Westchester County Employees Deferred Compensation Board (the "Board") to enter into agreements with

- (i.) Prudential Retirement Insurance and Annuity Company, ,
- (ii.) Prudential Bank & Trust Company,
- (iii.) Morningstar Investment Management LLC

is hereby amended to allow the County to include in the agreement with Prudential Bank & Trust Company the following indemnification provisions (the County is referred to as "the Employer"):

- (c) "The Trustee shall be fully protected and shall incur no liability in acting in reliance upon the instructions or directions of the Employer, or any delegate of the Employer. In addition, the Trustee shall be entitled to rely on directions given by a Plan participant, where the Plan provisions permit such direction. Any reference herein to directions or instructions from the Employer shall include directions or instructions from any delegate of the Employer or from a Plan participant, where the Plan provisions permit such direction.
- (d) The Employer shall indemnify and hold harmless the Trustee from and against any and all claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act done or omitted to be done by the Employer in connection with this Agreement or the administration of the Trust Fund, except where the same is due to the negligence and/ or willful misconduct of the Trustee.
- (e) In addition to and in no way in limitation of the indemnification provisions contained in paragraph (d), the Employer hereby agrees to indemnify and hold harmless the Trustee from and against any claims, losses, damages, expenses (including reasonable counsel fees) and liability to which the Trustee may be subject by reason of any act or omission of any prior, subsequent or existing trustee of the Plan."; and be it further

**RESOLVED**, that except as specifically amended hereby, all remaining terms and conditions contained in the October 11, 2018 Resolution shall remain in full force and effect; and be it further

**RESOLVED**, that the County Executive or his duly authorized designee is hereby empowered to execute any and all instruments and take such actions as may reasonably be necessary to effectuate the purposes thereof.