

72036

Date: October 10, 2019

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to further amend a retainer agreement with the law firm of Pepper Hamilton, LLP, Attorneys at Law, to defend the County of Westchester against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *Yonkers Contracting Company, Inc. v. The County of Westchester; Engineers Consortium LLP; Savin Engineers, P.S.; Stearns & Wheler, LLC; GHD Consulting Engineers, LLC; Malcolm Pirnie, Inc.; Arcadis U.S., Inc.; CDM Smith Inc., formerly known as Camp Dresser & McKee Inc., Black & Veatch New York LLP; and KJM Construction Management, Inc.* for a term commencing retroactive to January 11, 2018 and continuing through January 10, 2021 payable at approved hourly rates not-to-exceed the aggregate sum of \$350,000.00, by increasing the not-to-exceed cap by an additional \$265,000.00, from \$350,000.00 to \$615,000.00, to compensate the Firm for services previously rendered and for services to be rendered during the balance of the contract term.

By resolution approved on March 29, 2018 (the "March 29th Resolution"), your Honorable Board authorized the County of Westchester (the "County") to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Pepper Hamilton, LLP, Attorneys at Law (the "Firm"), to defend the County against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *Yonkers Contracting Company, Inc. v. The County of Westchester; Engineers Consortium LLP; Savin Engineers, P.S.; Stearns & Wheler, LLC; GHD Consulting Engineers, LLC; Malcolm Pirnie, Inc.; Arcadis U.S., Inc.; CDM Smith Inc., formerly known as Camp Dresser & McKee Inc., Black & Veatch New York LLP; and KJM Construction Management, Inc.*, for a term commencing retroactive to January 11, 2018 and continuing through January 10, 2021 for a total amount not-to-exceed \$150,000.00, payable at the following rates: \$520.00 per hour for the services of Ira M. Schulman, Esq.; \$412.00 per hour for Vincent Torna, Esq.; \$312.00 per hour for Alex Corey, Esq., and \$150.00 per hour for paralegal Erin Tornabene; or personnel within the Firm with comparable experience and ability as those mentioned at the same rate of pay (the "Agreement"). The Agreement was subsequently executed.

Thereafter, by resolution approved on July 11, 2019 (the "July 11th Resolution"), your Honorable Board authorized the County to amend the Agreement with the Firm for the limited purpose of increasing the not-to-exceed cap thereunder by an additional \$200,000.00, from \$150,000.00 to \$350,000.00 (the "First Amendment"). The First Amendment was subsequently executed.

Due to the complex nature of this litigation, the Firm has submitted invoices for legal services rendered in excess of the \$350,000.00 not-to-exceed cap authorized by the July 11th Resolution and by the First Amendment. Due to the existing NTE cap, these invoices have not been paid. In order to be able to compensate the Firm for services previously rendered and for services to be rendered during the balance of the contract term, authority is respectfully requested to further amend the Agreement with the Firm for the limited purpose of increasing the not-to-exceed cap thereunder by an additional \$265,000.00, from \$350,000.00 to \$615,000.00.

Except as otherwise specifically amended hereby, all remaining terms and conditions set forth in the Agreement shall remain in full force and effect upon the parties.

It should be noted that on October 7, 2019 by Act No. 2019 - 198, the County Board of Legislators authorized the County to increase the not-to-exceed cap under the Agreement by an additional \$265,000.00.

The proposed Agreement will serve a public purpose by providing the County with the specialized knowledge and expertise necessary to defend the County in this litigation.

The goal and objective of the proposed Agreement is in the best interests of the County in terms of fiscal responsibility, as ensuring the County's proper handling of this lawsuit is expected to ultimately result in a cost savings to the County.

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

I respectfully recommend the adoption of the attached Resolution.

JMN/jpg/nm

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is hereby authorized to further amend an agreement (the "Agreement") with the law firm of Pepper Hamilton, LLP, Attorneys at Law (the "Firm"), to defend the County against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *Yonkers Contracting Company, Inc. v. The County of Westchester; Engineers Consortium LLP; Savin Engineers, P.S.; Stearns & Wheeler, LLC; GHD Consulting Engineers, LLC; Malcolm Pirnie, Inc.; Arcadis U.S., Inc.; CDM Smith Inc., formerly known as Camp Dresser & McKee Inc., Black & Veatch New York LLP; and KJM Construction Management, Inc.* for a term commencing retroactive to January 11, 2018 and continuing through January 10, 2021 in an amount not-to-exceed \$350,000.00, payable at approved hourly rates, by increasing the not-to-exceed cap by an additional \$265,000.00, from \$350,000.00 to \$615,000.00, in order to enable the County to compensate the Firm for services previously rendered and for services to be rendered during the balance of the contract term; and be it further

RESOLVED, that except as otherwise specifically amended hereby, all remaining terms and conditions set forth in the Agreement, as previously amended, shall remain in full force and effect upon the parties; 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 is hereby authorized to execute and deliver any and all documents and to take all action 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
221	60	0110:0110	4420		\$265,000.00

Budget Funding Year(s): 2018-19
(must match resolution)

Start Date: 01/11/2018 End Date: 01/10/2021

Funding Source

Tax Dollars: \$265,000.00

State Aid: _____

\$265,000.00

Federal Aid: _____

(must match resolution)

Other: _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/17/2019 - LISA M. JAMES SECRETARY