

Office of the County Attorney

76798

Date: May 19, 2020

To: Honorable Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority to retroactively amend a retainer agreement with the West Group Law PLLC for the provision of outside counsel services in connection with an amendment to the solid waste disposal agreement between the County of Westchester, on behalf of Refuse Disposal District No. 1, and Wheelabrator Westchester, L.P., by (1) extending the term thereof through October 31, 2019; and (2) increasing the not-to-exceed amount thereunder by an additional \$31,353.00.

By resolution approved on May 2, 2019, your Honorable Board authorized the County of Westchester (the "County") to enter into a retainer agreement (the "Agreement") with the West Group Law PLLC (the "West Group") for the provision of outside counsel services in connection with an amendment to the solid waste disposal agreement between the County, on behalf of Refuse Disposal District No. 1 (the "District"), and Wheelabrator Westchester, L.P. ("RESCO"), for a term commencing upon execution of the Agreement and continuing through October 21, 2019 for an amount not-to-exceed \$75,000, payable at approved hourly rates. The Agreement was subsequently executed.

The West Group has billed the County a total amount of \$106,353.00 for the legal work it performed under the Agreement, which is \$31,353.00 above the not-to-exceed amount of \$75,000.00 set forth therein. The additional amount billed was attributable to the extensive legal services necessary to ensure that RESCO's Guarantor had the financial ability and contractual requirements necessary to guaranty RESCO's contractual performance obligations. Such additional legal services were also necessary to ensure that the County received the benefit of the business deal and risk posture that was set forth and agreed to in the original Term Sheet. In addition, some of the services were performed through the end of October of 2019, after the expiration date of the Agreement.

In order for the County to pay the West Group the total amount invoiced, it will be necessary to retroactively amend the Agreement to extend the term thereof through October 31, 2019 and increase the not-to-exceed cap thereunder by \$31,353.00. Accordingly, authority is respectfully requested to retroactively amend the Agreement with the West Group for the provision of outside counsel services in connection with an amendment to the solid waste

disposal agreement between the County, on behalf of the District, and RESCO, by (1) extending the term of the Agreement through October 31, 2019; and (2) increasing the not-to-exceed amount thereunder by \$31,353.00, from an amount not-to-exceed \$75,000.00 to a new amount not-to-exceed \$106,353.00.

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

It should be noted that on May 18, 2020, the Westchester County Board of Legislators authorized the County to retroactively amend the Agreement with the West Group in order to extend the term thereof through October 31, 2019 and increase the not-to-exceed amount thereunder by \$31,353.00.

The goals and objectives of this Agreement are to ensure that in drafting the SWDA amendment, the County is represented by a firm with expertise in an area that is not otherwise available in-house. The goals and objectives will be tracked and monitored through monthly reports from the firm detailing the services rendered.

Accordingly, your favorable action on the annexed Resolution is most respectfully urged and recommended.

JMN/JPG/jg
Attachment

APPROVED BOARD OF ACQUISITION CONTRACT 05/28/2020 LEGA MRJ/JL SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester (“County”) is authorized to retroactively amend a retainer agreement (the “Agreement”) with the West Group Law PLLC (the “West Group”) for the provision of outside counsel services in connection with an amendment to the solid waste disposal agreement (“SWDA”) between the County, on behalf of Refuse Disposal District No. 1 (the “District”), and Wheelabrator Westchester, L.P., (“RESCO”), for a term commencing upon execution of the Agreement and expiring on October 21, 2019, by (1) extending the term thereof through October 31, 2019; and (2) increasing the not-to-exceed amount authorized thereunder by an additional \$31,353.00, from an amount not-to-exceed \$75,000.00, to a new amount not-to-exceed \$106,353.00, in order to compensate the West Group for additional legal services rendered to the County; and it is further

RESOLVED, that except as specifically amended hereby, all remaining terms and conditions set forth in the Agreement shall remain in full force and effect; and be it further

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

Account to be Charged/credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	251	60	7100	4420		NTE \$31,353

Budget Funding Year(s) 2020 Start Date upon execution End Date 10/31/19
 (must match resolution)

Funding Source Tax Dollars 100%
 State Aid _____
\$31,353 Federal Aid _____
 (must match resolution) Other _____