

76800

Date: May 19, 2020

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to 1) further amend a retainer agreement with the law firm of Pepper Hamilton, LLP (“Pepper Hamilton”) for the provision of outside counsel legal services in connection with the civil matter *Yonkers Contracting Company, Inc. v. The County of Westchester, et al* /Index Number: 63929/2015, by increasing the not-to-exceed cap thereunder by an additional \$69,100 to compensate Pepper Hamilton for legal services rendered through April 1, 2020; 2) consent to the assignment of the retainer agreement with Pepper Hamilton to the law firm of Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin”), effective April 2, 2020; and 3) amend the retainer agreement, as assigned to Sheppard Mullin, to increase the not-to-exceed amount thereunder by \$175,000.00 for services to be rendered during the period from April 2, 2020 through January 10, 2021.

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 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 et al* /Index Number: 63929/2015, 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 Pepper Hamilton with comparable experience and ability as those mentioned at the same rate of pay. 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 Pepper Hamilton 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.

Thereafter, by resolution approved on October 17, 2019 (the "October 17th Resolution"), your Honorable Board authorized the County to further amend the Agreement with Pepper Hamilton 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 (the "Second Amendment"). The Second Amendment was subsequently executed.

Pepper Hamilton has submitted invoices to the County for services rendered through April 1, 2020 that exceed the existing not-to-exceed amount of \$615,000.00. In order to be able to compensate Pepper Hamilton for such services, it will be necessary to further amend the Agreement to increase the amount not-to-exceed thereunder by an additional \$69,100 from \$615,000.00 to \$684,100.

In addition, I was recently notified by Ira Schulman, Esq., the lead attorney in this matter, that he has left the firm of Pepper Hamilton and has accepted a partnership position with the law firm of Sheppard Mullin, effective April 2, 2020. As your Honorable Board may know, Mr. Schulman is a nationally recognized construction law attorney with over 40 years of experience in this field and was the reason Pepper Hamilton was selected to represent the County in this matter. Because of his expertise in this area of the law and his familiarity with this case in particular, it is imperative that Mr. Schulman continue to represent the County's interests in this matter. Accordingly, authority is respectfully requested to authorize the County to consent to the assignment of the retainer agreement from Pepper Hamilton to Sheppard Mullin, effective April 2, 2020.

It should be noted that this litigation has not yet been resolved and is on-going. In order to have sufficient funds available to compensate Sheppard Mullin for services to be rendered going forward, it will be necessary to further amend the retainer agreement to increase the not-to-exceed amount thereunder by an additional \$175,000.00 for services to be rendered during the period from April 2, 2020 through January 10, 2021. For the aforesaid services rendered to the County, Sheppard Mullin will be paid at the following rates: \$520.00 per hour for the services of Ira M. Schulman, Esq.; \$412.00 per hour for Sophia Cahill, Esq.; \$312.00 per hour for Michelle Cooper, Esq., and \$150.00 per hour for paralegal Leigh Ann Tencza; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay.

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 May 18, 2020, the County Board of Legislators authorized the County to 1) increase the not-to-exceed cap under the Agreement with Pepper Hamilton by an additional \$69,100.00; 2) consent to the assignment of the Agreement from Pepper Hamilton to Sheppard Mullin effective April 2, 2020; and 3) increase the not to exceed cap under the Agreement, as assigned to Sheppard Mullin, by an additional \$175,000, for services to be rendered going forward.

The Agreement will continue to 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 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 Agreement will be tracked and monitored by the Office of the County Attorney.

I respectfully recommend the adoption of the attached Resolution.

JMN/jpg/nn

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/28/2020 - USA MRSAJ, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is hereby authorized to 1) further amend a retainer agreement with the law firm of Pepper Hamilton, LLP ("Pepper Hamilton") for the provision of outside counsel legal services in connection with the civil matter *Yonkers Contracting Company, Inc. v. The County of Westchester, et al* /Index Number: 63929/2015, by increasing the not-to-exceed cap thereunder by an additional \$69,100 to compensate Pepper Hamilton for legal services rendered through April 1, 2020; 2) consent to the assignment of the retainer agreement with Pepper Hamilton to the law firm of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin"), effective April 2, 2020; and 3) amend the retainer agreement, as assigned to Sheppard Mullin, to increase the not-to-exceed amount thereunder by \$175,000.00 for services to be rendered during the period from April 2, 2020 through January 10, 2021.; 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		\$244,100.00

Budget Funding Year(s): 2020-21
(must match resolution)

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

Funding Source

Tax Dollars: \$244,100.00

State Aid: _____

\$244,100.00

Federal Aid: _____

(must match resolution)

Other: _____

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