

George Latimer
County Executive

#95654

Date: August 16, 2022

To: Board of Acquisition and Contract

From: Karin Hablow
Commissioner of Finance

Re: Request for authority to enter into an agreement with U.S. Bank National Association for the provision of certain banking services for a term of three years, with an automatic renewal provision.

Transmitted herewith is a resolution which, if approved by your Honorable Board, will authorize the County of Westchester (the "County") to enter into an agreement with US Bank National Association ("US Bank") pursuant to which US Bank will provide certain banking services (the "Services") for a term of three (3) years commencing upon the date the first disbursement is made onto a prepaid card (the "Program Launch Date"), and renewing automatically on the anniversary of the Program Launch Date until cancelled with at least 90 days' prior written notice (the "Agreement").

Pursuant to the Agreement, US Bank will provide certain prepaid card services to the County. These services are used as a method of paying County employees, primarily seasonal workers, and are currently being provided to the County by Bank of America. Bank of America informed the Department of Finance ("Department") that it will be discontinuing its Paycard business, and, accordingly, the Department has procured the services from a new vendor. The current agreement with Bank of America expires on December 31, 2022.

Pursuant to the Agreement, US Bank will be compensated through a combination of fees being paid by paycard balances. Therefore, this proposed Agreement is at no cost to the County. However, the proposed agreement contains the following indemnification terms, which require the County to indemnify US Bank:

8.1 Indemnification Obligations. Except to the extent the Losses (as defined below) result from the gross negligence or willful misconduct of the other party or its agents or employees, each party (the "Indemnifying Party") shall defend the other party (the "Indemnified Party"), its Affiliates, and their employees, Subcontractors, agents, officers, directors and shareholders ("Related Parties") from any Third Party Claim (as defined below) asserted by a third party (other than an Affiliate of the Indemnified Party) against the Indemnified Party, and shall

indemnify and hold the Indemnified Party and its Related Parties harmless against any and all assessments, losses, liabilities, damages, costs or expenses, including attorneys' fees, consultant's fees, or court costs incident thereto ("Losses") awarded against the Indemnified Party by a final court judgment or an agreement settling such Third Party Claims in accordance with section 8.2. For purposes of this Agreement, the term "Third Party Claim" means any action, suit, proceeding, demand, litigation, or claim by a third party directly related or attributable to (a) the Indemnifying Party's or its agent's or employee's violation (or act causing the other party to be in violation) of any Applicable Law or Network Rule; (b) the Indemnifying Party's breach of any covenant or warranty made by the Indemnifying Party in this Agreement; (c) any material misrepresentation of Indemnifying Party in this Agreement or any material misrepresentation in or omission from any document, certificate or information furnished or to be furnished by Indemnifying Party under this Agreement; (d) any products or services offered, provided, manufactured, marketed, distributed, advertised, promoted or issued by or on behalf of Indemnifying Party (including the Cards); (e) the use of the licensed marks by or on behalf of Indemnifying Party; (f) the willful misconduct or fraudulent activity on the part of any employee or agent of Indemnifying Party; and (g) the Indemnifying Party's failure to make any payment to a customer, employee or other third party.

8.2 Indemnification Procedures. The Indemnified Party will notify the Indemnifying Party in a reasonably prompt manner of any Third Party Claim that is asserted for which the Indemnified Party is seeking indemnification pursuant to this Article 8. The Indemnifying Party may thereafter assume control of such Third Party Claim, provided that the Indemnified Party will have the right to participate in the defense or settlement of such Third Party Claim. The Indemnified Party will provide the Indemnifying Party with a reasonable amount of assistance in connection with defending or settling any such Third Party Claim. Neither the Indemnifying Party nor the Indemnified Party may settle such Third Party Claim or consent to any judgment with respect thereto without the consent of the other party (which consent may not be unreasonably withheld or delayed).

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

The goal and objective of this agreement is to receive cost efficient delivery of banking services necessary for the operation of the County. The Department will monitor US Bank's performance through regular reports and bank statements.

Accordingly, I recommend that your Honorable Board approve the attached resolution authorizing the Agreement with US Bank for banking services.

RESOLUTION

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

RESOLVED, that the County of Westchester (“County”) is authorized to enter into an agreement with U.S. Bank National Association (“US Bank”) pursuant to which US Bank will provide of certain banking services (“Services”) for a term of three (3) years commencing upon the date the first disbursement is made onto a prepaid card (the “Program Launch Date”) and renewing automatically on the anniversary of the Program Launch Date until cancelled with at least 90 days’ prior written notice (“Agreement”); and be it further

RESOLVED, that pursuant to the terms of the Agreement, US Bank will be compensated through a combination of fees being paid by paycard balances and there will be no cost to the County; and be it further

RESOLVED, that the County is authorized to indemnify US Bank in accordance with the terms of the Agreement, as follows:

8.1 Indemnification Obligations. Except to the extent the Losses (as defined below) result from the gross negligence or willful misconduct of the other party or its agents or employees, each party (the “Indemnifying Party”) shall defend the other party (the “Indemnified Party”), its Affiliates, and their employees, Subcontractors, agents, officers, directors and shareholders (“Related Parties”) from any Third Party Claim (as defined below) asserted by a third party (other than an Affiliate of the Indemnified Party) against the Indemnified Party, and shall indemnify and hold the Indemnified Party and its Related Parties harmless against any and all assessments, losses, liabilities, damages, costs or expenses, including attorneys’ fees, consultant’s fees, or court costs incident thereto (“Losses”) awarded against the Indemnified Party by a final court judgment or an agreement settling such Third Party Claims in accordance with section 8.2. For purposes of this Agreement, the term "Third Party Claim" means any action, suit, proceeding, demand, litigation, or claim by a third party directly related or attributable to (a) the Indemnifying Party’s or its agent’s or employee’s violation (or act causing the other party to be in violation) of any Applicable Law or Network Rule; (b) the Indemnifying Party’s breach of any covenant or warranty made by the Indemnifying Party in this Agreement; (c) any material misrepresentation of Indemnifying Party in this Agreement or any material misrepresentation in or omission from any document, certificate or information furnished or to be furnished by Indemnifying Party under this Agreement; (d) any products or services offered, provided, manufactured, marketed, distributed, advertised, promoted or issued by or on behalf of Indemnifying Party (including the Cards); (e) the use of the licensed marks by or on behalf of Indemnifying Party; (f) the willful misconduct or fraudulent activity on the part of any employee or agent of Indemnifying Party; and (g) the Indemnifying Party’s failure to make any payment to a customer, employee or other third party.

8.2 Indemnification Procedures. The Indemnified Party will notify the Indemnifying Party in a reasonably prompt manner of any Third Party Claim that

is asserted for which the Indemnified Party is seeking indemnification pursuant to this Article 8. The Indemnifying Party may thereafter assume control of such Third-Party Claim, provided, that the Indemnified Party will have the right to participate in the defense or settlement of such Third-Party Claim. The Indemnified Party will provide the Indemnifying Party with a reasonable amount of assistance in connection with defending or settling any such Third-Party Claim. Neither the Indemnifying Party nor the Indemnified Party may settle such Third-Party Claim or consent to any judgment with respect thereto without the consent of the other party (which consent may not be unreasonably withheld or delayed).

; 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 authorized designee is hereby authorized to execute any documents and take any actions reasonably necessary and appropriate to effectuate the purposes of this Resolution.

Account to be Charged/credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars

Budget Funding Year(s) _____ Start Date _____ End Date _____
 (must match resolution)

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