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Date: March 24, 2015

To: Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority for the County of Westchester to amend its agreement with the law firm of Duncan, Weinberg, Genzer & Pembroke, P.C. for the provision of all legal services and representation, and related technical, consulting, and expert witness services, that are necessary for administrative proceedings before the New York State Public Service Commission, by:

- 1.) exercising its first and second options and thereby extending the term of the agreement by two years, to a new termination date of April 22, 2016;
- 2.) increasing the authorized not-to-exceed amount by \$425,000.00, to a new not-to-exceed amount of \$952,313.00; and
- 3.) authorizing the firm to subcontract with Whitfield Russell Associates as a replacement for Snavelly King Majoros & Associates, Inc.

By Act No. 2013-66, the County Board of Legislators authorized the County of Westchester (the "County") to enter into an agreement with Duncan, Weinberg, Genzer & Pembroke, P.C. ("DWGP"), pursuant to which DWGP was to provide all legal services and representation, and related technical, consulting, and expert witness services (the "Related Services"), that are necessary for administrative proceedings before the New York State Public Service Commission ("NYS PSC"), for an amount not-to-exceed \$198,500.00, payable at various hourly rates for different personnel, ranging from \$145.00 per hour to \$360.00 per hour; for a term of one (1) year, with the County having the option to extend the term of the agreement for three (3) one (1) year periods thereafter, utilizing all of the same pricing, terms and conditions; and with DWGP having authority to enter into a subcontract with Snavelly King Majoros & Associates, Inc. ("Snavelly") for such portion of the Related Services as DWGP may find to be necessary and appropriate to properly represent the County in administrative proceedings before the NYS PSC (the "Original Agreement"). By a resolution approved on May 9, 2013, your Honorable Board authorized the County to enter into the Original Agreement. The Original Agreement was subsequently executed and commenced on April 23, 2013.

By Act No. 2013-153, the County Board of Legislators authorized the County to amend the Original Agreement by increasing the authorized not-to-exceed amount by \$328,813.00, from the previously-authorized not-to-exceed amount of \$198,500.00 to a new not-to-exceed amount

of \$527,313.00 (the "First Amendment"). By a resolution approved on August 15, 2013, your Honorable Board authorized the County to enter into the First Amendment. The First Amendment was subsequently executed.

Timothy S. Carey, Executive Director of the County of Westchester Public Utility Service Agency, has advised my office that on January 30, 2015, Consolidated Edison Company of New York, Inc. ("Con Ed") submitted a 2016 electric services rate plan for New York City ("NYC") and Westchester County customers (the "New Rate Case"). Mr. Carey has advised my office that Con Ed is seeking an increase in revenues for electric delivery of approximately \$368,000,000, which would result in an overall customer bill increase of approximately 3.2% (7.2% on a delivery revenue basis). Mr. Carey has advised my office that Con Ed also states in its proposal that it intends to explore a multi-year rate plan settlement discussion with NYS PSC staff and interested parties. In addition, Mr. Carey has advised my office that there are, embedded in the proposed 2016 rate plan, plans to shift costs from one class of customer to another: shifting costs from Low Voltage users to High Voltage users (e.g., from the Metropolitan Transportation Authority to the County and other municipal governments in the county), transferring the cost and cost of cleanup of unused former steam plant property at Hudson Yards in NYC to electric customers¹, tariff shifts, and more.

Mr. Carey has advised my office that the New Rate Case presents the same types of issues that DWGP successfully helped the County deal with during the Previous Rate Cases (i.e., the rate cases filed simultaneously by Con Ed for increases in electric, gas, and steam rates, under cases 13-E-0030, 13-G-0031, and 13-S-0032, respectively) and that DWGP's expertise is needed in order to best represent the interests of the County before the NYS PSC in this matter.

My office has been advised that Snavelly underwent organizational changes since the work was completed for the Previous Rate Cases. Accordingly, DWGP has instead proposed to subcontract with Whitfield Russell Associates ("WRA") to provide the Related Services. DWGP has advised my office that WRA is nationally-recognized as a leader in electric utility regulatory issues, emerging electric utility competition, transmission access, and the unbundling of traditional electric utility services, with whom DWGP has collaborated in the past with respect to similar work. WRA will provide the Related Services at rates not to exceed the rates charged by Snavelly when it provided the Related Services.

By Act No. 2015-46, the County Board of Legislators authorized the County to amend the Original Agreement, as amended by the First Amendment, (the "Agreement") by:

- 1.) exercising its first and second options under the Agreement and thereby extending the term of the Agreement by two (2) years, to a new termination date of April 22, 2016;
- 2.) increasing the authorized not-to-exceed amount by \$425,000.00, from the previously-authorized not-to-exceed amount of \$527,313.00 to a new not-to-exceed amount of \$952,313.00; and
- 3.) authorizing DWGP to subcontract with WRA as a replacement for Snavelly.

¹ Mr. Carey has advised my office that Con Ed has filed a separate proposal with the NYS PSC to turn the unused former steam plant property at Hudson Yard into an Distributed Generation Demonstration site, which would get Con Ed back into the electric generation business.

Accordingly, the County now respectfully requests that your Honorable Board authorize the County to amend the Agreement (the "Second Amendment") by:

- 1.) exercising its first and second options under the Agreement and thereby extending the term of the Agreement by two (2) years, to a new termination date of April 22, 2016;
- 2.) increasing the authorized not-to-exceed amount by \$425,000.00, from the previously-authorized not-to-exceed amount of \$527,313.00 to a new not-to-exceed amount of \$952,313.00; and
- 3.) authorizing DWGP to subcontract with WRA as a replacement for Snavelly.

Except as described above, all other terms and conditions of the Agreement will remain the same.

The proposed Second Amendment will serve a public purpose by ensuring that the County continues to have access to the specialized knowledge and expertise necessary to ensure the best possible handling of administrative proceedings before the NYS PSC.

The goal and objective of the proposed Second Amendment is to ensure that the County continues to have access to the specialized knowledge and expertise necessary to ensure the best possible handling of administrative proceedings before the NYS PSC.

The goal and objective of the proposed Second Amendment is in the best interests of the County in terms of fiscal responsibility, as ensuring the best possible handling of administrative proceedings before the NYS PSC is expected to ultimately result in cost savings to the County and its residents, such as in rates paid to Con Ed.

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

I respectfully recommend the adoption of the attached Resolution.

RFM/bdm/nn

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is hereby authorized to amend an agreement with Duncan, Weinberg, Genzer & Pembroke, P.C. ("DWGP"), pursuant to which DWGP was to provide all legal services and representation, and related technical, consulting, and expert witness services (the "Related Services"), that are necessary for administrative proceedings before the New York State Public Service Commission ("NYS PSC"), for an amount not-to-exceed \$527,313.00, payable at various hourly rates for different personnel, ranging from \$145.00 per hour to \$360.00 per hour; for a term of one (1) year, commencing on April 23, 2013, with the County having the option to extend the term of the agreement for three (3) one (1) year periods thereafter, utilizing all of the same pricing, terms and conditions; and with DWGP having authority to enter into a subcontract with Snavelly King Majoros & Associates, Inc. ("Snavelly") for such portion of the Related Services as DWGP may find to be necessary and appropriate to properly represent the County in administrative proceedings before the NYS PSC (the "Agreement"), by:

- 1.) exercising its first and second options under the Agreement and thereby extending the term of the Agreement by two (2) years, to a new termination date of April 22, 2016;
- 2.) increasing the authorized not-to-exceed amount by \$425,000.00, from the previously-authorized not-to-exceed amount of \$527,313.00 to a new not-to-exceed amount of \$952,313.00; and
- 3.) authorizing DWGP to subcontract with Whitfield Russell Associates as a replacement for Snavelly.

; and be it further

RESOLVED, that except as specifically amended hereby, all terms and conditions of the Agreement shall remain the same and in full force and effect; 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.

Original Agreement: \$ 198,500.00
 First Amendment: \$ 328,813.00
 This Amendment: \$ 425,000.00
Total: \$ 952,313.00

Account to be
 Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	52	2110			\$425,000.00

Budget Funding Year(s): 2014 Start Date: 4/23/14 End Date: 4/22/16
 (must match resolution)

Funding Source Tax Dollars: _____
 State Aid: _____
\$425,000.00 Federal Aid: _____
 (must match resolution) Other: COWPUSA

APPROVED BOARD OF ACQUISITION & CONTRACT - 03/26/2015 - JOHANNY WEIRA, SECRETARY