

56453

Date: April 7, 2017

To: Honorable Board of Acquisition and Contract

From: Kevin Cheverko
Commissioner of Correction

Re: Authority to amend an Agreement with David M. Bogard, to act as the Monitor to implement a separate voluntary agreement between the United States of America and the County of Westchester, acting by and through its Department of Correction ("DOC") in order to: 1) increase the not-to-exceed amount by \$735,000.00; 2) reflect new rates payable in accordance with an approved budget, without annual not-to-exceed limitations; and 3) reflect that the Monitor's corporate legal name is Pulitzer/Bogard & Associates, LLC.

On November 24, 2015, your Honorable Board authorized the County of Westchester (the "County"), acting by and through its Department of Correction ("DOC") to enter into an agreement (the "Agreement") with David M. Bogard (the "Monitor") to act as the Monitor to implement a separate voluntary agreement between the United States of America and the County, acting by and through DOC for the purpose of clearly articulating and further complying with DOC's duties under the United States Constitution, in particular the Civil Rights of Institutionalized Persons Act (the "U.S. Agreement"), and to approve Michael Gatling and Judith Regina-Whitely as subcontractors for an amount not to exceed \$665,000.00. The Agreement commenced on January 1, 2016 (the Effective Date of the U.S. Agreement), has a term of three (3) years and contained a budget which authorized an annual not-to-exceed amount to be payable by DOC to the Monitor. The Agreement was subsequently executed.

Transmitted herewith is a resolution which, if approved by your Honorable Board, would authorize the County to amend the Agreement in order to: 1) increase the not-to-exceed amount by \$735,000.00 for a new not-to-exceed amount of

\$1,400,000.00; 2) reflect new rates payable in accordance with an approved budget, without annual not-to-exceed limitations; and 3) reflect that the Monitor's corporate legal name is Pulitzer/Bogard & Associates, LLC.

On November 24, 2015, your Honorable Board also authorized the County, acting by and through the DOC, to enter into the U.S. Agreement with the United States of America for the purpose of clearly articulating and further complying with DOC's duties under the United States Constitution, in particular the Civil Rights of Institutionalized Persons Act. Section IV of the U.S. Agreement requires the mutual selection of a Monitor who, among other things, "is ultimately responsible" for the findings regarding the County's compliance with the U.S. Agreement. The U.S. Agreement also requires the County to bear the Monitor's fees and expenses. In order to legally pay those fees and expenses, the County had to enter into a contract with the Monitor.

This amendment is necessary for various reasons, including an ongoing need for compliance monitoring. The U.S. Agreement requires the Monitor to determine DOC 'substantially compliant' in 44 operational recommendations/subparts thereof and his related recommendations, and to maintain such compliance for a minimum of 24 months each. During the first year of the Agreement (2016) and continuing to date, DOC collaborated closely with the Monitor to issue and/or substantially revise a wide range of security policies and to develop associated training curriculum for its 900+ member workforce. In 2016, many of the recommendations were determined to be 'partially compliant' by the Monitor. In 2017, DOC will issue such policies and begin the process of training its workforce staff on the same. Accordingly, it is necessary to amend the Agreement to allow for additional review of associated action.

The goals and objectives of the Agreement and this proposed amendment are in the County's best interest and will serve a public purpose by enabling the County to continue its full compliance with the U.S. Agreement. The performance of the Agreement and amendment will be tracked and monitored by DOC personnel.

It should be noted that on November 24, 2015, your Honorable Board authorized an exemption of this Agreement from the procedures of the County Procurement Policy and Procedures in accordance with section 3(a)xxi of said policy.

For the reasons stated herein and in order to continue implementing the U.S. Agreement, I recommend approval of the annexed Resolution.

KC/jpi

RESOLUTION

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

RESOLVED, that the County is authorized to amend an Agreement with David M. Bogard to Act as the Monitor under a separate voluntary agreement between the United States of America and the County of Westchester, acting by and through its Department of Correction (“DOC”) for the purpose of clearly articulating and further complying with DOC’s duties under the United States Constitution, in particular the Civil Rights of Institutionalized Persons Act, in order to: 1) increase the not-to-exceed amount by \$735,000.00 for a new not-to-exceed amount of \$1,400,000.00; 2) reflect new rates payable to the Monitor in accordance with an approved budget, without annual not-to-exceed limitations; and 3) reflect that the Monitor’s corporate name is Pulitzer/Bogard & Associates, LLC; and be it further

RESOLVED, that all other terms and conditions of the Agreement shall remain unchanged; and be it further

RESOLVED, that the County Executive or his duly 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
101	35	1000	4380		\$735,000

Budget Funding Year(s) 2016-2018 Start Date 1/1/2016 End Date 12/31/2018
(must match resolution)

Funding Source Tax Dollars \$ 735,000

State Aid _____

\$ 735,000 Federal Aid _____

_(must match resolution)

Other _____