

69872

Date: May 22, 2019

To: Honorable Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: **Authority to enter into an agreement with Steven G. Leventhal pursuant to which Mr. Leventhal will serve as both an Independent Consultant and Special Counsel to the Westchester County Board of Ethics, for a term commencing on August 1, 2019 and continuing through July 31, 2022 at a cost not-to-exceed \$150,000 payable at the rate of \$275 per hour plus expenses.**

On May 20, 2019 by Act No. 2019- 98, the Westchester County Board of Legislators (the "BOL") authorized the County of Westchester (the "County") to enter into an agreement with Steven G. Leventhal ("Mr. Leventhal") to serve as both an independent consultant and special counsel to the Westchester County Board of Ethics ("BOE"), in an "of Counsel" capacity to the County Attorney, for a term commencing on August 1, 2019 and continuing through July 31, 2022 for an amount not-to-exceed \$150,000 payable at the rate of \$275 per hour plus expenses. Under section 161.11(1) of the Laws of Westchester County, the authority of your Honorable Board is also required.

By way of background, in 2010 the Office of the New York State Comptroller (the "Comptroller") recommended that the County undertake certain actions to improve the administration of its Code of Ethics (the "Code"), such as verifying that all reporting individuals file completed financial disclosure statements and reviewing such financial disclosure statements to detect and prevent conflicts of interest.

In an effort to effectuate the Comptroller's recommendations, on September 6, 2011 the BOL adopted Local Law 10-2011, which was codified in Section 883.91 of the Laws of Westchester County (the "Local Law"). The Local Law requires, *inter alia*, that the BOE hire an "independent consultant" to (1) review all annual financial disclosure statements to consider whether County officers and employees are in compliance with the Code, or have any financial involvement or outside employment in a business or organization that may impair their ability to fairly and impartially perform their duties as County officers or employees; (2) create a draft intra-agency report for the BOE regarding any potential non-compliance or conflicts of interest; and (3) create a draft master list of County vendors, contractors, and consultants (the "Services").

Thereafter, on April 11, 2014, the BOE issued a Request for Quotes and Qualifications (“RFQ”) inviting qualified candidates to submit their qualifications and a price proposal to provide the Services of the independent consultant as required by the Local Law. By letter dated May 8, 2014, Mr. Leventhal submitted his qualifications and a price proposal to the BOE to perform the Services (the “Proposal Letter”). Following a review of the Proposal Letter by the BOE, Mr. Leventhal was selected to perform the Services under a “short form” contract for the period from August 1, 2014 through July 31, 2015 for an amount not-to-exceed \$20,000.

Thereafter, a second “short form” contract was entered into between the County and Mr. Leventhal for the provision of Services for the period from August 1, 2015 through July 31, 2016, followed by two (2) additional “short form” contracts for the periods August 1, 2016 through July 31, 2017 and August 1, 2017 through July 31, 2018, respectively. It should be noted that an exemption from procurement pursuant Section 3(a) xxi of the County Procurement Policy was granted by your Honorable Board for each successive short form contract, as the exemption was deemed to be in the best interest of the County.

Most recently, by resolution approved on November 1, 2018, your Honorable Board authorized the County to enter into an Agreement with Mr. Leventhal to serve as both an independent consultant and special counsel to the BOE for a term commencing on August 1, 2018 and continuing through July 31, 2019 for an amount not-to-exceed \$60,000 payable at the rate of \$275 per hour plus expenses.

In anticipation of the expiration of the current agreement with Mr. Leventhal on July 31, 2019, the BOE now seeks the authority of your Honorable Board to enter into a new three (3) year agreement with Mr. Leventhal to serve as both independent consultant and special counsel to the BOE for a term commencing on August 1, 2019 and continuing through July 31, 2022.

In his capacity as independent consultant to the BOE, Mr. Leventhal will continue to perform the Services required by the Local Law. In his capacity as special counsel to the BOE, Mr. Leventhal will continue to perform the following additional services: assist the BOE in exploring the feasibility of electronic filing of Annual Statements of Financial Disclosure; develop a draft revision of the Code for review and consideration for adoption by the County Board of Legislators; prepare a *Plain Language Guide to the County Code of Ethics* to be printed and available for use in the annual ethics training session and for distribution to all employees and posted on the County website; conduct an annual ethics training session for department heads and members of boards or commissions; coordinate the development of a link to a BOE page on the County website, and assist the BOE’s Secretary in posting information and materials to the webpage; attend meetings of the BOE and provide ethics advice and guidance to the BOE and to County officers and employees, as requested; draft advisory opinions for the BOE and the Office of the County Attorney; develop due process procedures for investigations conducted by the BOE; assist the BOE in conducting investigations and administrative hearings; assist the Chair of the BOE at the conclusion of investigations conducted by the BOE, with drafting findings of fact and conclusions of law for consideration and adoption by the BOE; advise on records access for the BOE and serve as records access officer for the BOE (the “Additional Services”).

In consideration for performing the Services and the Additional Services under the Agreement, Mr. Leventhal shall be paid at the hourly rate of \$275.00, plus reasonable and necessary out-of-pocket expenses (including but not limited to mailing costs, copying and tolls, but excluding mileage, lodging and meals), not-to-exceed the aggregate sum of \$150,000.00, payable monthly upon receipt of an invoice.

Authority to exempt the procurement of this Agreement from the requirements of the Westchester County Procurement Policy and Procedures pursuant to Section 3(a)xxi thereof, has been submitted to your Honorable Board in accordance with a separate resolution of even date herewith.

This Agreement will serve a public purpose by helping to improve the administration of the Code.

The goals and objectives of this Agreement are to ensure that County officers and employees are in compliance with the Code.

The goals and objectives will be tracked and monitored by the BOE.

Accordingly, a resolution to enter into the Agreement with Steven G. Leventhal is hereby submitted for your consideration.

JMN/jpg

APPROVED BOARD OF ACQUISITION & CONTRACT - 06/20/2019
LEAH MARIJAJ, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester is hereby authorized to enter into an Agreement with Steven G. Leventhal (“Mr. Leventhal”), pursuant to which Mr. Leventhal will serve as both an independent consultant and special counsel to the Westchester County Board of Ethics, in an “of Counsel” capacity to the County Attorney, for a term commencing on August 1, 2019 and continuing through July 31, 2022 (the “Agreement”); and be it further

RESOLVED, that in consideration for services to be rendered under the Agreement, Mr. Leventhal shall be paid at the hourly rate of \$275.00, plus reasonable and necessary out-of-pocket expenses (including but not limited to mailing costs, copying and tolls, but excluding mileage, lodging and meals), not-to-exceed the aggregate sum of \$150,000.00, payable monthly upon receipt of an invoice; 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 Consultant, then the Consultant 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 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
101	18	1000	4923		\$150,000

Budget Funding Year(s) 2019 -2022 Start Date 8/1/19 End Date 07/31/22
(must match resolution)

Funding Source Tax Dollars \$150,000
State Aid _____
\$ 150,000 Federal Aid _____
(must match resolution) Other _____