

79666

Date: September 23, 2020

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to exercise its second one-year renewal option under an agreement with the law firm of Bank, Sheer, Seymour & Hashmall for legal services and representation in connection with civil litigation in which the County is or may become involved pursuant to the County's liability and casualty self-insurance program and to increase the hourly rates payable to the firm's attorneys.

The County of Westchester's (the "County's") Casualty Insurance Program with Bayly, Martin & Fay expired in December, 1985. Since then, the County has entered into agreements with various law firms and practitioners ("Attorneys"), pursuant to which the Attorneys provide the County with legal services and representation to the County, in an "of counsel" capacity to the County Attorney, as needed, in connection with civil litigation in which the County is or may become involved pursuant to the County's liability and casualty self-insurance program ("6-n Counsel Services"), which was established, under Chapter 295 of the Laws of Westchester County, in accordance with New York State General Municipal Law §6-n. The County has entered into such agreements because it is prudent for the County to have access to experienced Attorneys to serve as additional resources in cases under the County's 6-n Program that involve the potential for significant liability.

By a resolution approved by your Honorable Board on December 14, 2017 (the "December 14th Resolution"), the County was authorized to enter into an agreement with each of the twenty-eight (28) Attorneys listed in the December 14th Resolution (each an "Agreement"; collectively, the "Agreements"), pursuant to which the Attorneys would provide 6-n Counsel Services, for a term from January 1, 2018 through December 31, 2018, with the County having the option to extend each Agreement for up to three (3) one-year periods thereafter, utilizing the same pricing, for a total aggregate amount not-to-exceed Two Million Seven Hundred Thousand (\$2,700,000.00) Dollars for the year 2018 for the Agreements.

Of the twenty-eight (28) Attorneys that were authorized by the December 14th Resolution to enter into Agreements with the County for 6-n Counsel Services, only five (5) firms returned executed contracts. These five firms were:

1. Bank, Sheer, Seymour & Hashmall
2. Harriton & Furrer, LLP
3. Harris Beach PLLC
4. Gaines, Novick, Ponzini, Cossu & Venditti, LLP
5. Gordon Rees Scully Mansukhani, LLP

Of the five (5) firms that returned executed contracts, all were used by the County Attorney to perform 6-n Counsel Services in 2018, except for Gordon Rees Scully Mansukhani, LLP.

Of the four (4) firms that were used by the County Attorney in 2018, only Bank Sheer Seymour & Hashmall (“Bank Sheer”) was needed to handle several ongoing matters in 2019. Accordingly, by resolution approved on February 14, 2019, your Honorable Board authorized the County to exercise its first one-year renewal option under the Agreement with Bank Sheer, and thereby extend the termination date of the Agreement with Bank Sheer from December 31, 2018 to December 31, 2019.

Bank Sheer also performed legal services for the County in 2020. However, due to an administrative oversight, the approval of your Honorable Board for the County to exercise its second one-year renewal option was never obtained.

The County’s Office of Risk Management recently received an invoice from Bank Sheer for services rendered in 2020 in the amount of \$10,163.00. In order for Risk Management to be able to pay this invoice, it will be necessary for the County to retroactively exercise its second one-year renewal option. Accordingly, authority is hereby requested from your Honorable Board for the County to retroactively exercise its second one-year renewal option under the Agreement with Bank Sheer, and thereby extend the termination date of the Agreement with Bank Sheer from December 31, 2019 to December 31, 2020. In addition, for the year 2020, the total aggregate amount to be expended under the renewal term of the foregoing Agreement shall not exceed Ten Thousand One Hundred Sixty-Three (\$10,163.00) dollars.

Further, in accordance with paragraph SIXTH of the original Agreement, Bank Sheer has made a written request to the County Attorney seeking a change to the hourly rates in the Fee Schedule attached to the original Agreement. The County Attorney has consented to such change. The changes to the hourly rates for 2020 shall be as follows and shall become effective as of January 1, 2020:

Original Fee Schedule

Partner (in court) \$275/hour
 Partner (out of court) \$250/hour
 Of Counsel/Associate \$200/hour
 Paralegal \$100/hour

Amended Fee Schedule

Partner (in court) \$350/hour
 Partner (out of court) \$300/hour
 Of Counsel/Associate \$250/hour
 Paralegal \$100/hour

Except as specifically amended hereby, all remaining terms and conditions set forth in the Agreement with Bank Sheer shall remain in full force and effect.

It should be noted that Section 295.31(2)(c) of the Laws of Westchester County permits expenditures from the County's Liability and Casualty Reserve Fund for, "Expert or professional services rendered in connection with investigation, adjustments, settlement or defense of claims actions or judgments". Accordingly, all costs incurred under the Agreement with Bank Sheer for the year 2020 will be charged to the County's Liability and Casualty Reserve Fund.

The Agreement will serve a public purpose by providing the County with access to experienced Attorneys to serve as additional resources in cases under the County's 6-n Program that involve the potential for significant liability.

The goal and objective of the Agreement is to provide the County with access to experienced Attorneys to serve as additional resources in cases under the County's 6-n Program that involve the potential for significant liability.

The goal and objective of the Agreement is in the best interests of the County in terms of fiscal responsibility, as the County having access to experienced Attorneys who can serve as additional resources in cases under the County's 6-n Program that involve the potential for significant liability can help the County avoid or limit such liability.

The goal and objective of the Agreements will be tracked and monitored by the Office of the County Attorney.

I respectfully recommend the adoption of the attached Resolution.

JMN/jpg
Attachment

RESOLUTION

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

RESOLVED, that the County of Westchester (the “County”) is retroactively authorized to exercise its second one-year renewal option under an agreement with the law firm of Bank, Sheer, Seymour & Hashmall (the “Bank Sheer”), pursuant to which Bank Sheer agreed to provide legal services and representation to the County, in an “of counsel” capacity to the County Attorney, as needed, in connection with civil litigation in which the County is or may become involved pursuant to the County’s liability and casualty self-insurance program, for a term from January 1, 2018 through December 31, 2019, with the County having the option to extend the term of the Agreement for up to two (2) additional one-year periods thereafter (the “Agreement”) and thereby extend the termination date of the Agreement from December 31, 2019 to December 31, 2020; and be it further

RESOLVED, that for the year 2020, the total aggregate amount to be expended under the renewal term of the foregoing Agreement shall not exceed Ten Thousand One Hundred Sixty-Three (\$10,163.00) dollars, and the costs incurred under the Agreement shall be charged against the County’s Liability and Casualty Reserve Fund; and be it further

RESOLVED, that effective January 1, 2020, the Fee Schedule attached to the original Agreement shall be revised as follows:

<u>Original Fee Schedule</u>	<u>Amended Fee Schedule</u>
Partner (in court) \$275/hour	Partner (in court) \$350/hour
Partner (out of court) \$250/hour	Partner (out of court) \$300/hour
Of Counsel/Associate \$200/hour	Of Counsel/Associate \$250/hour
Paralegal \$100/hour	Paralegal \$100/hour

RESOLVED, that the Agreement is subject to County appropriations; and be it further

RESOLVED, that the Agreement is also subject to further financial analysis of the impact of the New York State Budget (“State Budget”) proposed and adopted during the term of the contract. The Agreement shall contain a provision that 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 the 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 State Budget on County finances. After such analysis, the County shall retain the right to either terminate the Agreement or to renegotiate the amounts and rates approved therein. If the County subsequently offers to pay a reduced amount to Bank Sheer, then Bank Sheer shall have the right to terminate its 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
615	59	0694	4923		\$10,163

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

Start Date: 1/1/20 End Date: 12/31/20

Funding Source

Tax Dollars: _____

State Aid: _____

\$10,163

Federal Aid: _____

(must match resolution)

Other: _____

6N