

82900

Date: February 24, 2021

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to amend a retainer agreement with the law firm of Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin”), for the provision of outside counsel legal services in connection with the civil matter *Yonkers Contracting Company, Inc. v. County of Westchester, et al* /Index Number: 63929/2015 (“*Yonkers Contracting*”), by extending the term thereof through December 31, 2021.

By resolution approved on March 29, 2018 (the “March 29th Resolution”), your Honorable Board authorized the County of Westchester (the “County”) to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of Pepper Hamilton to defend the County against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *Yonkers Contracting Company, Inc. v. The County of Westchester et al* /Index Number: 63929/2015, for a term commencing retroactive to January 11, 2018 and continuing through January 10, 2021 for a total amount not-to-exceed \$150,000.00, payable at the following rates: \$520.00 per hour for the services of Ira M. Schulman, Esq.; \$412.00 per hour for Vincent Torna, Esq.; \$312.00 per hour for Alex Corey, Esq., and \$150.00 per hour for paralegal Erin Tornabene; or personnel within Pepper Hamilton with comparable experience and ability as those mentioned at the same rate of pay. The Agreement was subsequently executed.

Thereafter, by resolution approved on July 11, 2019, your Honorable Board authorized the County to amend the Agreement with Pepper Hamilton for the limited purpose of increasing the not-to-exceed cap thereunder by an additional \$200,000.00, from \$150,000.00 to \$350,000.00 (the “First Amendment”). The First Amendment was subsequently executed.

Thereafter, by resolution approved on October 17, 2019, your Honorable Board authorized the County to further amend the Agreement with Pepper Hamilton for the limited purpose of increasing the not-to-exceed cap thereunder by an additional \$265,000.00, from \$350,000.00 to \$615,000.00 (the “Second Amendment”). The Second Amendment was subsequently executed.

Thereafter, by resolution approved on May 28, 2020, your Honorable Board authorized the County to: 1) further amend the Agreement with Pepper Hamilton by increasing the not-to-exceed cap thereunder by an additional \$69,100 to compensate Pepper Hamilton for legal services rendered through April 1, 2020; 2) consent to the assignment of the Agreement with Pepper Hamilton to the law firm of Sheppard Mullin, effective April 2, 2020; and 3) amend the Agreement, as assigned to Sheppard Mullin, to increase the not-to-exceed amount thereunder by an additional \$175,000.00 for services to be rendered by Sheppard Mullin during the period from April 2, 2020 through January 10, 2021.

The Agreement with Sheppard Mullin expired on January 10, 2021. However, since this litigation is ongoing, the County will continue to require the services of the firm at least through the end of this year. Accordingly, authority is requested to amend the Agreement with Sheppard Mullin by retroactively extending the term thereof from January 11, 2021 through December 31, 2021. For the aforesaid services rendered to the County by Sheppard Mullin, the firm will continue to be paid at the following rates: \$520.00 per hour for the services of Ira M. Schulman, Esq.; \$412.00 per hour for Sophia Cahill, Esq.; \$312.00 per hour for Michelle Cooper, Esq., and \$150.00 per hour for paralegal Leigh Ann Tencza; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event will the total amount payable by the County to Sheppard Mullin during the term of the proposed amendment to the Agreement exceed the sum of One Hundred Seventy-Five Thousand (\$175,000.00) Dollars.

Except as otherwise specifically amended hereby, all remaining terms and conditions set forth in the Agreement shall remain in full force and effect upon the parties.

It should be noted that on February 22, 2021, by Act No. 2021- 27, the County Board of Legislators authorized the County to extend the term of the Agreement with Sheppard Mullin through December 31, 2021.

The Agreement will continue to serve a public purpose by providing the County with the specialized knowledge and expertise necessary to defend the County in this litigation.

The goal and objective of the Agreement is in the best interests of the County in terms of fiscal responsibility, as ensuring the County's proper handling of this lawsuit is expected to ultimately result in a cost savings to the County.

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

I respectfully recommend the adoption of the attached Resolution.

JMN/jpg/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 a retainer agreement with the law firm of Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin”), as previously amended and assigned, for the provision of outside counsel legal services in connection with the civil matter *Yonkers Contracting Company, Inc. v. County of Westchester, et al* /Index Number: 63929/2015, for a term commencing on April 2, 2020 and continuing through January 10, 2021 in an amount not-to-exceed \$175,000, by retroactively extending the term thereof for the period from January 11, 2021 through December 31, 2021; and be it further

RESOLVED, that except as otherwise specifically amended hereby, all remaining terms and conditions set forth in the Agreement, as previously amended and assigned, shall remain in full force and effect upon the parties; 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 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 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.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
N/A					\$0

Budget Funding Year(s): 2021 Start Date: 01/11/2021 End Date: 12/31/2021
(must match resolution)

Funding Source Tax Dollars: \$ _____
State Aid: _____
\$0 Federal Aid: _____
(must match resolution) Other: _____