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Date: April 19, 2022

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to further amend 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, by extending the term thereof for the period from January 1, 2022 through December 31, 2023.

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 (the “First Amendment”). The First Amendment was subsequently executed

Thereafter, by resolution approved on October 22, 2020 (the “October 22nd Resolution”), your Honorable Board authorized the County to exercise its second one-year renewal option under the Agreement with Bank Sheer, and thereby extend the termination date of the Agreement from December 31, 2019 to December 31, 2020 (the “Second Amendment”). It should be noted that the October 22nd Resolution further authorized the County to amend Bank Sheer’s fee schedule effective January 1, 2020 as follows:

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

The Second Amendment was subsequently executed.

Thereafter, by resolution approved on April 22, 2021 (the “April 22nd Resolution”), your Honorable Board authorized the County to exercise its third and final one-year renewal option under the Agreement with Bank Sheer, and thereby extend the termination date of the Agreement from December 31, 2020 to December 31, 2021 (the “Third Amendment”).

The Third Amendment was subsequently executed.

Although the County has exercised all three (3) of its renewal options under the Agreement with Bank Sheer, the County continues to require 6-n Counsel Services from Bank Sheer during 2022 and 2023 in connection with an on-going civil matter, M.C. v. County of Westchester et al, as it is expected that this matter will be going to trial sometime in 2023. Accordingly, authority is respectfully requested from your Honorable Board for the County to amend the Agreement with Bank Sheer in order to further extend the termination date of the Agreement from December 31, 2021 to December 31, 2023. In addition, for the years 2022-2023, the total aggregate amount to be expended under the extended term shall not exceed Two Hundred Thousand (\$200,000.00) dollars.

Except as specifically amended hereby, all remaining terms and conditions set forth in the Agreement with Bank Sheer, as previously amended, 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 years 2022 and 2023 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

APPROVED BOARD OF ACQUISITION & CONTRACT - 25181002 - RAYMOND SCULLA (SECRETARY)

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is authorized to further amend an agreement with the law firm of Bank, Sheer, Seymour & Hashmall ("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, 2021 (the "Agreement"), by extending the termination date of the Agreement from December 31, 2021 to December 31, 2023; and be it further

RESOLVED, that for the years 2022 - 2023, the total aggregate amount to be expended under the renewal term of the foregoing Agreement shall not exceed Two Hundred Thousand (\$200,000.00) 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 except as specifically amended hereby, all remaining terms and conditions set forth in the Agreement with Bank Sheer, as previously amended, shall remain in full force and effect.

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	0702	4923		\$200,000

Budget Funding Year(s): 2022-2023
(must match resolution)

Start Date: 1/1/22 End Date: 12/31/23

Funding Source

Tax Dollars:

State Aid:

Federal Aid:

Other:

\$200,000

(must match resolution)

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APPROVED BOARD OF ACQUISITION & CONTRACT - 05/19/2022 - RAYMOND SCULKY, SECRETARY