

REMOVED FROM AGENDA

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2015-344

Council Meeting Date:

Date Adopted:

TITLE: RESOLUTION AMENDING RESOLUTION 2015-236 "RESOLUTION AUTHORIZING THE PARTICIPATION OF THE BOROUGH OF NEW PROVIDENCE IN THE PREPARATION OF THE BURCHELL FAIR SHARE ANALYSIS" ADOPTED JUNE 22, 2015

Councilperson _____ submitted the following resolution, which was duly seconded by Councilperson _____.

WHEREAS, the Borough of New Providence, County of Union, State of New Jersey entered into the Municipal Shared Services Defense Agreement ("MSSDA") for the purpose as set forth therein, which included retaining a common expert in the Declaratory Judgment action ("Litigation") that was filed in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Decision"); and

WHEREAS, the MSSDA identified Dr. Robert Burchell, a distinguished professor at Rutgers University as the expert to be retained; and

WHEREAS, Dr. Burchell became ill and has been unable to complete the obligations under the Research Agreement as set forth in the MSSDA; and

WHEREAS, the MSSDA requires modification to allow the members to retain one or more alternative experts, consultants or other professionals for the Litigation; and

WHEREAS, an Amendment to the MSSDA ("Amendment") has been prepared to effectuate the modification; and

WHEREAS, the Mayor and Council recognize that the Litigation requires immediate action and may require further expedited actions by its counsel determined to be necessary and appropriate; and

WHEREAS, the Mayor and Council have determined that it is in the best interests of the citizens of the Borough of New Providence to approve the Amendment, and/or to affirm and ratify the Amendment;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey, as follows:

REMOVED FROM AGENDA

1. The terms and conditions of the Amendment to MSSDA attached hereto are hereby approved, and/or ratified and confirmed.
2. The Mayor and Borough Clerk be and are hereby authorized to execute the aforesaid Amendment.
3. The Mayor and Council hereby authorize Jeffrey R. Surenian, Esq., with the approval of the Borough's designated counsel, to execute an agreement on behalf of the Borough of South Plainfield with Econsult Solutions, Inc.

The Mayor and Council hereby authorize Jeffrey R. Surenian, Esq. to execute on behalf of the Borough with the approval of the Borough's designated counsel such other agreement(s) as are advisable to effectuate the purposes of the MSSDA as amended.

4. The Mayor and Council further authorize its designated counsel to approve such other changes to the MSSDA as may be necessary to effectuate its purposes, and to take action on behalf of the municipality with regard to the multiplicity of issues raised and associated with the implementation of the MSSDA provided that the action will not require the Borough to appropriate and commit any additional funding for the MSSDA.

In the event such changes and actions require the Borough to appropriate and commit any additional funding for the MSSDA, the Borough of New Providence shall only be responsible for such funding if it authorizes same.

5. If additional monies are needed to effectuate the intent and purpose of the MSSDA, no such services shall be authorized by designated counsel without further action from the Borough.
6. This Resolution shall take effect immediately.

REMOVED FROM AGENDA

AMENDMENT TO THE

MUNICIPAL SHARED SERVICES DEFENSE AGREEMENT

This Amendment to the Municipal Shared Services Defense Agreement ("MSSDA") previously entered into in by the Members of the MSSDA in or after June, 2015,

WHEREAS several municipalities have previously entered into a MSSDA authorizing the retention of Rutgers University and its Principal Investigator, Dr. Robert Burchell to perform certain tasks as outlined therein, including, without limitation, the development of a reasonable position consistent with applicable law as the means by which the fair share of municipalities may be detennined; and

WHEREAS, Dr. Burchell had a serious health event on or about July 27, 2015 that has impeded the goal of the MG to obtain such a report; and

WHEREAS, more specifically, Rutgers University (hereinafter "Rutgers") has indicated that Dr. Burchell is the only one at the University that could perform the work contemplated by the contract between the Municipal Group ("MG") and Rutgers, dated July 201 5 (hereinafter "Rutgers Agreement"); and

WHEREAS, as result of the foregoing, Rutgers is not able to complete the work required by the Rutgers Agreement; and

WHEREAS, on September 11, 2015, Rutgers sent the representative of the MG a letter tenninating the Rutgers Agreement; and

WHEREAS, even before receipt of the termination letter, vigorous efforts have been made to find an expert that can perform the services that Rutgers is no longer able to provide; and

WHEREAS, it has been determined that Econsult Solutions, Inc. ("Econsult") has the interest and capability to perform the services as expeditiously as possible; and

WHEREAS, it has been further determined that the MSSDA, as presently written, does not permit the MG to enter into an agreement with any other expert than Rutgers; and

WHEREAS, because of the foregoing, it has been determined that an amendment to the MSSDA is necessary to empower the MG to enter into an agreement with Econsult.

Now, therefore, in consideration of the mutual benefits that will be derived, the Members of the MG hereby agree as follows:

REMOVED FROM AGENDA

1. Section 1 of the MSSDA, titled "Purpose" is hereby amended as follows:

Section 1(b)-(d) shall be replaced with:

(b) collectively retain such experts and/or consultants, including but not limited to Econsult Solutions, Inc. as may be necessary,

(c) collectively work with experts or consultants that have been retained, including but not limited to Econsult, to conduct an analysis and report of the housing need for each region and the allocation of that need to the individual municipalities in the region;

(d) may elect, at the exclusive expense of any Member or group of Members, to rely upon and present such experts or consultants as a witness in the Litigation, including for any mediation, Alternative Dispute Resolution or other proceeding involving a determination of a Member's Affordable Housing Obligation;
2. Section 3 of the MMSDA titled "Retention of Burchell" is hereby amended and is titled as "Retention of Experts and/or Consultants." This section is amended to provide that the administrators of the MMSDA, shall retain such experts and/or consultants, including but not limited to Econsult, as may be necessary and to communicate with such experts and/or consultants in the method and manner as set forth.
3. Section 5, titled "Shared Costs" is hereby amended to provide that shared costs shall include payment to any expert or consultant, including but not limited to Econsult, and such other professionals, and/or common counsel, as shall be agreed upon by the Members in accordance with the terms and procedures of the MSSDA.
4. Section 6, titled "Expenses Not Covered by This Agreement" shall be amended to allow any member or group of Members of the MMSDA to retain Econsult or any other commonly retained expert and/or consultant for the purposes as set forth in the MSSDA; however, it shall be in accordance with the rate schedule as set forth in any agreement between the MSSDA and such expert and/or consultant; it shall not be based upon the rates as set forth for Dr. Burchell nor shall payment be made to Rutgers except to the extent that representatives of the MG may pay the remainder of the 70,000 in expense allocated for the provision of a final report in accordance with the underlying agreement and/or for the purposes of securing rights to information that otherwise would not be available. Any amounts in excess of the \$70,000 that may be needed to secure the right to use the underlying data that Rutgers has assembled may only be paid if authorized at a meeting held in accordance with paragraph 2 of the underlying agreement.
5. Section 7, titled "Liaison Counselor Committee" is hereby amended to allow Jeffrey R. Surenian, Esq. to pay an administrative assistant to administer this MSSDA and the consortium at a rate not to exceed \$70 per hour and to pay out of pocket expenses.

6. Section 11, titled "Common Interest" is amended by removing any reference to Dr. Burchell and shall refer to any expert and/or consultant, including but not limited to Econsult, that have been retained by the MSSDA.
7. Section 15, titled "Conflict of Interest" is amended by removing any reference to Dr. Burchell and shall refer to any expert and/or consultant, including but not limited to Econsult, that have been retained by the MSSDA.
8. Section 16, titled "Effective Date" is amended removing the reference to "Rutgers" and replacing it with "such experts and/or consultants, including but not limited to Econsult, that have been retained by the MSSDA
9. Section 17, titled "Subsequent Agreement" , shall be amended to include paragraph 17 c as follows: Since the Agreement between Econsult and the MG may not have been finalized at the point of execution of this amendment, the designated attorney for the municipality shall have 10 business days from receipt of the Econsult Agreement by electronic mail to withdraw from the consortium and secure a rebate of the 2,000 paid minus the pro rata share of all costs and expenses incurred to the date of such withdrawal.
10. All other provisions in the MSSDA that refer to or may be interpreted to relate or refer to dealings with Rutgers or Burchell are removed and amended to provide that the MSSDA permits the retaining of such experts and/or consultants, including but not limited to Econsult, as may be agreed upon by the Members in accordance with the terms and provisions of the MSSDA. All other tenns and provisions remain unchanged and in effect.

TN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

ATTEST:

Borough Clerk

By: _____
Mayor