



**City of Rochester, NY
Rochester City Council**

City Hall Room 301A • 30 Church Street • Rochester, New York 14614-1290

INTRODUCTORY NO.

Loretta C. Scott Council President, Councilmember At-Large
Email: Loretta.Scott@cityofrochester.gov

349

September 14, 2020

TO THE COUNCIL

Ladies and Gentlemen:

Re: Statement of Necessity

I am submitting this Statement of Necessity so that action may be taken during the September 15, 2020 Council Meeting on the attached legislation. This legislation would fund an independent investigation into the internal communications, processes, and procedures that took place related to the death of Daniel Prude while in police custody. The public safety crisis in the City demands that the investigation begin immediately so that answers can be provided to the public in an expeditious manner.

Respectfully submitted,

Loretta C. Scott
Council President

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Loretta C. Scott, President
Councilmember At-Large

Willie J. Lightfoot, Vice-President
Councilmember At-Large

Malik D. Evans
Councilmember At-Large

Mitch Gruber
Councilmember At-Large

LaShay D. Harris
Councilmember
South District

Mary Lupien
Councilmember
East District

Michael A. Patterson
Councilmember
Northeast District

Jose Peo
Councilmember
Northwest District

September 14, 2020

INTRODUCTORY NO.

349

TO THE COUNCIL

Ladies and Gentlemen:

Re: Independent Investigation and
Legal Services for City Council

Transmitted herewith for your approval is legislation establishing \$100,000 as maximum compensation for an agreement with Emery, Celli, Brinkerhoff, Abady, Ward & Maazel LLP, New York, NY (principal: Andrew G. Celli, Jr.) to fund an independent investigation into the internal communications, processes, and procedures that took place related to the death of Daniel Prude while in police custody, including both the Administration and the City Council. These funds will be taken from the FY 2020-21 Contingency Budget, but will not be taken from the funds set aside by the Council during the budgeting process.

Mr. Celli and his firm have a current contract with the City Council, serving as outside legal counsel for an ongoing lawsuit related to the Police Accountability Board. The City Council has selected to engaged Emery, Celli, Brinkerhoff, Abady, Ward & Maazel LLP, because of the firm's familiarity with the City and its operations as well as the City Council's confidence in their integrity and independence. In addition, the public safety crisis in the City demands that the investigation begin immediately so that answers can be provided to the public in an expeditious manner. Mr. Celli and his team will act wholly independent of the City Council, the Council has not and will not instruct Mr. Celli as to what to find nor conclude, and at the conclusion of this investigation, Mr. Celli will issue a report that the Council will make public.

After preliminary discussions, Mr. Celli has outlined that he and his team will look into approach this investigation with three goals:

- To establish a comprehensive timeline of events beginning with the initial 911 call placed on March 23, 2020 and continuing through and beyond the FOIL request for and the public release of police body cam footage, investigations by the Rochester Police Department, the Monroe County Medical Examiner's Office, and the Office of the New York Attorney General (OAG), and the public statements by Rochester officials in the wake of these events.
- To determine whether officials or employees of the City of Rochester, including City Council, were accurate and forthright in their *non-public* (i.e., internal) statements to one another concerning information related to the death of Daniel Prude based on the state of their knowledge when such statements were made, and where not, why not. Including whether internal notification protocols were in place and were followed in this case; and whether decision-making about next steps, public notification, cooperation with the Office of the Attorney General (OAG), and related matters occurred at the appropriate level and with notice to all relevant stakeholders within City Government.

- To determine whether officials or employees of the City of Rochester, including City Council, were accurate and forthright in their *public* statements concerning the Prude Incident based on the state of their knowledge when such statements were made - and where not, why not. Including identifying if there was an effort by anyone to suppress the facts surrounding Mr. Prude's death and/or any other aspect of the Prude Incident and, if so, by whom, for what purpose, and with whose knowledge.

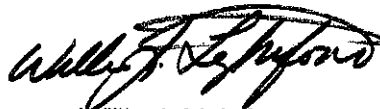
Emery, Celli, Brinkerhoff, Abady, Ward & Maazel LLP, will begin their work immediately upon the passage of this legislation and will aim to have a fully developed report issued to the City Council within three months. The duration of this investigation is dependent upon multiple factors including a willingness of all parties to participate openly in the process. Mr. Celli has agreed to inform the Council if time delays have occurred during the investigation.

The City Council will also engage Linda Kingsley, former City of Rochester Corporation Counsel and current Albany Law professor, to provide temporary pro-bono guidance and advice to the Rochester City Council relating to the legislative duties of the Council in accordance with Rochester City Charter Section 5-21(D). This engagement will require no compensation, and the term of the agreement will expire at the discretion of the two parties.

Respectfully Submitted,



Loretta C. Scott



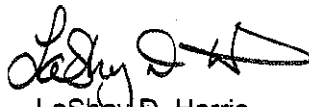
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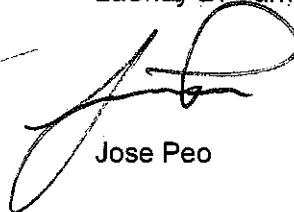
LaShay D. Harris



Mary Lupien



Michael A. Patterson



Jose Peo

NO RFP JUSTIFICATION STATEMENT

Awarding a Professional Services Agreement Without a Request for Proposals

The Procurement of Professional Services Policy (Ord. No. 2012-318) requires an RFP to be issued under most circumstances. If it is determined that an RFP will not be issued, this form must be completed, signed by the Department Head, and kept on file (electronically or hard copy). It must also be submitted:

1. To City Council as an attachment to the transmittal letter for any PSA that exceeds \$10,000, and
2. To the contract record when entered in Munis.

Department: *City Council*

Services(s): *Legal Counsel*

Vendor/Consultant selected: *Emery, Celli, Brinkerhoff, Abady, Ward & Maazel LLP, New York, NY*

How was the vendor selected? *There is not adequate time to launch an RFP Process, and the selected vendor has provided the City Council with excellent representation and services on previous matters.*

Why was no RFP issued for this service?

(Your rationale should include the following information when applicable)

- Is there **previous experience** with the vendor? Describe why it is in the City's best interest to continue with them and not solicit others.

Yes. City Council is currently using this vendor to represent the Council on the Police Accountability Board case, the Council has been incredibly impressed with the thoughtfulness and thoroughness of the firms work, and believes that this firm understanding of our City and City Government while also providing an outsider perspective that we would not have from a firm within the City of Rochester.

- Are there unique or **emergency circumstances**? Describe how an RFP process would jeopardize the success of the project.

Yes. The public safety crisis in the City demands that the investigation begin immediately so that answers can be provided to the public in the most expeditious manner. The Council feels it imperative to start an immediate investigation into the events outlined in this proposal. An RFP would only serve to extend the timeline by which this investigation could be conducted, completed, and the results made available to the public.

- Is the service **specialized and unique**? Is the number of **qualified providers limited**? Describe the Department's experience with and knowledge of the market and why an RFP would not produce additional qualified consultants.

N/A

- Does the project include **multi-year State or Federal funding**? Explain why it is in the best interest of the project and the City to continue with the same consultant (e.g. where the design consultant on a project is retained for resident project representation services).

No, there is not multi-year state or federal funding.


Compensation

Amount: *\$100,000 maximum compensation*

How was this determined? Explain how it is a reasonable and best value for the City.

This firm provided an estimate based on hours and usage, and provided a commitment to not exceed \$100,000 regardless of time spent.

The MWBE Officer has reviewed the proposed Agreement for MWBE and Workforce goals. MWBE Officer Initials: *amy* **Date:** *9/14/20*



Signature: Department Head

Form date 1/4/19

September 14, 2020

Date

INTRODUCTORY NO.

349

Ordinance No.

Authorizing funding and agreements to retain independent legal counsel for the City Council

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. Ordinance No. 2020-161, the 2020-21 Budget of the City of Rochester, as amended, is hereby further amended by transferring \$100,000 from the Budget of Contingency to the Budget of City Council and Clerk.

Section 2. Pursuant to City Charter § 5-21(D), the Council President is hereby authorized to enter into a professional services agreement with the law firm of Emery, Celli, Brinkerhoff, Abady, Ward & Maazel LLP to conduct an independent investigation into the City's communications, processes, and procedures that took place related to the death of Daniel Prude in police custody. The law firm shall produce an investigation report that addresses the three goals of the investigation, which are: to establish a comprehensive timeline of events; to assess the nature of non-public internal statements made by City of Rochester officials and employees relating to the death of Daniel Prude; and to evaluate the public statements of City officials and employees relating to the death of Daniel Prude. The maximum compensation for the agreement shall be \$100,000, which shall be reimbursed from the funds transferred to the 2020-21 Budget of City Council and Clerk in Section 1 herein. The term of the agreement shall continue until the law firm submits its final report.

Section 3. The Council President is hereby authorized to enter into a professional services agreement with Linda Kingsley, Esq. to provide temporary *pro-bono* counsel and advice to the Rochester City Council relating to the legislative duties of the Council in accordance with Rochester City Charter Section 5-21(D). This engagement shall require no compensation, and the term of the agreement shall expire at a time or event agreed upon by the parties.

Section 4. This ordinance shall take effect immediately.