

RESOLUTION

(Regarding the Appointment of Special Counsel regarding certain litigation)

A regular meeting of the City of Mount Vernon Industrial Development Agency was convened on May 14, 2020.

The following resolution was duly offered and seconded, to wit:

Resolution No. 5/2020-2

**RESOLUTION OF THE CITY OF MOUNT VERNON
INDUSTRIAL DEVELOPMENT AGENCY
REGARDING THE APPOINTMENT OF SPECIAL
COUNSEL TO HANDLE CERTAIN LITIGATION**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 786 of the Laws of 1976 of the State of New York, as amended (hereinafter collectively called the “Act”), the **CITY OF MOUNT VERNON INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called “Agency”) was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Agency is presently represented by Harris Beach PLLC (“Agency Counsel”); and

WHEREAS, there are three litigation matters currently pending against the Agency where it is in the best interest of the Agency to retain other counsel; and

WHEREAS, there is presently pending in New York State Supreme Court two matters, entitled (x) *Board of Education of the Mount Vernon City School District (“BOE”) v City of Mount Vernon Industrial Development Agency (“Agency”) et. al.*, Index No. 69595/2016 (Cacace, J.) and (y) *Board of Education of the Mount Vernon City School District (“BOE”) et. al. v City of Mount Vernon Industrial Development Agency (“Agency”) et. al.*, Index No. 50790/2018 (collectively the “School District Litigations”); and

WHEREAS, the School District Litigations involve certain alleged procedural infirmities to the Agency’s granting of certain “financial assistance” to “projects”, as those terms are defined in the Act; and

WHEREAS, Agency Counsel was initially assigned the School District Litigations but later discovered a conflict; and

WHEREAS, Oxman Law Group, PLLC (“OLG”) currently assists Agency Counsel in an “of counsel” capacity and represents the City of Mount Vernon in a variety of legal matters; and

WHEREAS, the Agency, with the consent of the municipality, may use agents, employees and facilities of the municipality (General Municipal Law, §858[6]); and

WHEREAS, it is in the best interest of the Agency to use OLG defend the School District Litigations; and

WHEREAS, there is presently pending in the United States District Court (“District Court”) for the Southern District of New York (Halpern, J.) a case entitled *LTTR Home Care v City of Mount Vernon Industrial Development Agency et. al.*, 17-civ-9885 (“LTTR Litigation”); and

WHEREAS, Smith Buss & Jacobs LLP (“SBJ”) previously represented the defendants until their dismissal by former Acting Mayor Wallace; and

WHEREAS, on September 10, 2019, the District Court granted in part defendants’ motion to dismiss by dismissing all claims except for the plaintiff’s First Amendment and New York State constitutional claim for retaliation; and

WHEREAS, a responsive pleading is due in connection with the LTTR Litigation on May 12, 2020; and

WHEREAS, due to their familiarity with the LTTR Litigation, it is in the best economic interest of the Agency to re-engage SBJ to defend the LTTR Litigation; and

NOW, THEREFORE, BE IT RESOLVED by the Agency as follows:

Section 1. OLG is appointed to defend the Agency in the School District Litigations and SBJ is appointed to defend the Agency in the LTTR Litigation and shall coordinate such defense with the Secretary of the Agency.

Section 2. The Agency is hereby authorized to enter into an agreement with OLG and SBJ, at the rates set forth in their respective proposed retainer agreement, Agency Counsel’s retainer agreement, or OLG’s retainer agreement with the City, whichever is more advantageous to the Agency.

Section 3. The Agency shall only pay for such services which relate to the defense of the Agency or its directors, officers, and employees.

Section 4. The Agency is hereby authorized to do all things necessary or appropriate for the accomplishment of the purposes of this resolution, and all acts heretofore taken by the Agency with respect to such activities are hereby approved, ratified and confirmed.

Section 5. The directors, officers, employees and agents, including, without limitation Agency Counsel and the Secretary, of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and

expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 6. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Hon. Shawyn Patterson-Howard	[X]	[]	[]	[]
Hon. Marcus A. Griffith	[X]	[]	[]	[]
Brian G. Johnson	[X]	[]	[]	[]
Darren M. Morton, Ed.D.	[X]	[]	[]	[]
Stephanie G. Vanderpool	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

