

51192

Date: February 23, 2016

To: Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority to enter into a retainer agreement with the law firm of Saretsky Katz & Dranoff, LLP pursuant to which the firm will serve as outside counsel to represent the County of Westchester in the legal action entitled Connecticut Fund for the Environment, Inc. (Save the Sound), et al. v. Westchester County, et al. 15-CV-06323-CS, for a term commencing on February 23, 2016 and continuing through February 22, 2021, in an amount not-to-exceed \$100,000.00.

On February 22, 2021, the Westchester County Board of Legislators authorized the County to designate and retain the law firm of Saretsky Katz & Dranoff, LLP (“Saretsky Katz”) as outside counsel to represent the County of Westchester in the legal action entitled Connecticut Fund for the Environment, Inc. (Save the Sound), et al. v. Westchester County, et al. 15-CV-06323-CS, and to pay the firm an hourly rate not to exceed \$280.00 plus costs and disbursements, with an aggregate amount not to exceed \$100,000.00. Under section 161.11(1) of the Westchester County Administrative Code, the authority of your Honorable Board is also required.

In this citizen suit under the Clean Water Act, Plaintiffs claim that the acts and omissions of the defendant municipalities cause or contribute to pollution levels that, among other things, risk public health, harm the environment, and adversely impact commercial activities.

The instant action was commenced on August 11, 2015, and served on the County on August 13, 2015. Subsequent to the filing of this action, on or about August 7, 2015, Plaintiff Connecticut Fund for the Environment, Inc. served a “Notice of Violation and Intent to File Suit under the Clean Water Act” (“August Notice”) on the County and the eleven local municipalities named in the lawsuit. Pursuant to 33 U.S.C. § 1365(b)(1)(A), Plaintiff could not file an action regarding the alleged violations in the August Notice until sixty days after service of the August Notice. As a result of the August Notice, Plaintiff and the County entered into a stipulation, with the Court’s approval, that extended the County’s time to respond until the date that the eleven municipalities were required to respond to a lawsuit filed pursuant to that notice.

On November 4, 2015, Connecticut Fund For the Environment, Inc., d/b/a Save the Sound, joined by Soundkeeper, Inc. and Atlantic Clam Farms of Connecticut, Inc. filed an Amended Complaint, which named the County and added eleven local municipalities as defendants. A copy of the Amended Complaint is attached. After service of the Amended Complaint, the date to file an answer or pre-motion letter had been set as November 27, 2015 ("Response Date") for each of the local municipalities, and for the County in accordance with the previous stipulation.

Defendants jointly requested, and the Court consented, to extending the Response Date by sixty (60) days to January 26, 2016. A further extension was granted to April 25, 2016. This request for an enlargement of time to respond was premised, in part, upon the time required to research and examine the complex factual and legal issues and for the local municipal defendants to obtain the requisite approvals to retain outside counsel.

After a review of the facts and circumstances of this action, the current caseloads of the attorneys in this Office and the expected demands of this case, I respectfully request authorization to enter into a retainer agreement with Saretsky Katz to represent the County in this matter. The term of the retainer agreement will commence on February 23, 2016 and continue through February 22, 2021. In consideration for services to be rendered, Saretsky Katz shall be paid at an hourly rate not to exceed \$280.00 plus costs and disbursements. In addition to the payment of fees at this rate, Saretsky Katz will be reimbursed for costs and disbursements. In no event shall the total amount payable to the firm exceed \$100,000, inclusive of all costs and disbursements.

The goals and objectives of the proposed Agreement are to provide legal representation to the County in regard to this lawsuit.

The goals and objectives are in the best interests of the County because without the expertise and resources of the firm, the County would not be able to effectively defend itself.

The goals and objectives will be tracked and monitored through regular consultation with the firm.

Accordingly, your favorable action on the annexed resolution is most respectfully urged and recommended.

RFM/JPG/ml

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is authorized to enter into an outside counsel retainer agreement (the "Agreement") with the law firm of Saretsky Katz & Dranoff, LLP pursuant to which the firm will serve as outside counsel, to represent the County of Westchester in the legal action entitled Connecticut Fund for the Environment, Inc. (Save the Sound), et al. v. Westchester County, et al. 15-CV-06323-CS, for a term commencing on February 23, 2016 and continuing through February 22, 2021, in an amount not-to-exceed \$100,000.00, payable at an hourly rate not-to-exceed \$280.00, plus reimbursement for costs and disbursements; 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 Firm, then the Firm shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Attorney 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
221	60	0110	4420		\$100,000

Budget Funding Year(s) 2016 - 2021 Start Date February 23, 2016 End Date February 22, 2021
(must match resolution)

Funding Source Tax Dollars \$100,000
State Aid _____
\$100,000 Federal Aid _____
(must match resolution) Other _____