

70364

DATE: June 25, 2019

TO: Board of Acquisition and Contract

FROM: John M. Nonna
County Attorney

SUBJECT: Authority for the County of Westchester to enter into an agreement with the law firm of Motley Rice LLC, pursuant to which it will serve in an “of counsel” capacity to the County Attorney, as needed, in connection with litigation concerning per-and polyfluoralkyl substances (PFAS) present on County lands.

Authority is respectfully requested for the County of Westchester (the “County”) to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of Motley Rice LLC (“Motley Rice”), pursuant to which Motley Rice will serve in an “of counsel” capacity to the County Attorney, as needed, in connection with litigation (the “Litigation”) concerning per-and polyfluoralkyl substances present on County lands (the “Services”).

The term of the proposed Agreement will commence upon Motley Rice starting to provide the Services and continue until the Services are completed or the Agreement is sooner terminated by Motley Rice or the County.

Under the proposed Agreement, Motley Rice will be paid solely on a contingency fee basis, as follows:

- For any recovery up to \$10 million, a 22% contingency fee;
- For any recovery over \$10 million, up to \$20 million, a 20% contingency fee;
- For any recovery over \$20 million, up to \$40 million, a 15% contingency fee; and
- For any recovery over \$40 million, a 10% contingency fee.

Authority to initiate the Litigation was granted by the County’s Board of Legislators by Act 22-2019. Authority to enter into the proposed Agreement for outside counsel for the Litigation, pursuant to Section 158.11(2) of the Laws of Westchester County, is currently being sought from the BOL. Accordingly, use of any authority granted by your Honorable Board regarding the proposed Agreement will be contingent upon the requisite legislation being adopted by the BOL and approved by the County Executive.

The proposed Agreement will serve a public purpose by providing the County with the specialized knowledge and expertise necessary to ensure the County's proper handling of the Litigation.

The goal and objective of the proposed Agreement is to provide the County with the specialized knowledge and expertise necessary to ensure the County's proper handling of the Litigation.

The goal and objective of the proposed Agreement is in the best interests of the County in terms of fiscal responsibility, as ensuring the County's proper handling of the Case is expected to ultimately protect the financial interests of the County.

The goal and objective of the proposed Agreement will be tracked and monitored by the Office of the County Attorney.

Authority to exempt the proposed Agreement from the requirements of the Westchester County Procurement Policy, pursuant to Section 3(a)(xxi) thereof, has been submitted to your Honorable Board in accordance with a separate resolution of even date herewith.

I respectfully recommend the adoption of the attached Resolution.

JMN/bdm/nn

APPROVED BOARD OF ACQUISITION & CONTRACT - 06/27/2018 - LISA MARIAS SECRETARY

RESOLUTION

Upon a communication from the County Attorney, be it hereby

RESOLVED, that the County of Westchester (the "County") is hereby authorized to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Motley Rice LLC ("Motley Rice"), pursuant to which Motley Rice will serve in an "of counsel" capacity to the County Attorney, as needed, in connection with litigation concerning per-and polyfluoralkyl substances present on County lands (the "Services"); and be it further

RESOLVED, that the term of the Agreement will commence upon Motley Rice starting to provide the Services and continue until the Services are completed or the Agreement is sooner terminated by Motley Rice or the County; and be it further

RESOLVED, that, under the Agreement, Motley Rice will be paid solely on a contingency fee basis, as follows:

- For any recovery up to \$10 million, a 22% contingency fee;
- For any recovery over \$10 million, up to \$20 million, a 20% contingency fee;
- For any recovery over \$20 million, up to \$40 million, a 15% contingency fee; and
- For any recovery over \$40 million, a 10% contingency fee.

; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute and deliver any and all documents and to take all action necessary and appropriate to effectuate the purposes hereof.

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
					N/A

Budget Funding Year(s): _____ Start Date: Start of Services
(must match resolution)

End Date: Until the Services are
completed or the Agreement is
sooner terminated by Motley Rice or
the County

Funding Source

N/A
(must match resolution)

Tax Dollars: _____
State Aid: _____
Federal Aid: _____
Other: _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 06/27/2019 - LISA MARIJAL SECRETARY