

74663

Date: February 13, 2020

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to enter into an agreement to retain the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, to defend the County of Westchester against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *105 Mount Kisco Associates LLC, et al. v. Carozza et al., 15 Civ. 05346 (S.D.N.Y.)* for a Three-year term commencing upon execution, in an amount not-to-exceed \$200,000.00, payable at approved hourly rates.

Authority is respectfully requested for the County of Westchester (the "County") to enter into an agreement (the "Agreement") to retain, the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (the "Firm"), to defend the County of Westchester against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *105 Mount Kisco Associates LLC, et al. v. Carozza et al., 15 Civ. 05346 (S.D.N.Y.)*, for a three-year term commencing upon execution and in an amount not-to-exceed \$200,000, payable pursuant to an approved budget that includes specified hourly rates (the "Agreement").

By way of background, this case, which was brought under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. §9601 *et. seq.*, involves property in Mount Kisco that was used for uranium recovery in connection with the Manhattan Project from 1943 to 1966. Following enforcement actions brought by the State to halt exposure of employees to radioactivity, the dismantling of the facility and the decontamination of the Premises began in 1958. The New York State Department of Health issued a "Permit to Dispose of Radioactive Wastes by Burial" to Canadian Radium and Uranium Corporation and its assigns for burial at Croton Point Park of materials removed from the premises. The complaint alleges that the County was involved in the clean-up and is therefore, responsible for the costs of additional remediation.

It should be noted that the proposed legal services relate to the County's liability and casualty self-insurance program, which was established pursuant to Chapter 295 of the Laws of Westchester County and in accordance with the New York State General Municipal Law §6-n.

Due to the complex and specialized nature of litigation arising under CERCLA, and the evaluation and analysis of damages related to such claims, I have determined that it is in the best interests of the County to retain separate, outside counsel to defend against this matter.

A resolution requesting to exempt the proposed Agreement from the requirements of the Westchester County Procurement Policy and Procedures pursuant to Section 3(a) xxi has been submitted separately for your Honorable Board's approval.

The proposed Agreement will serve a public purpose by providing the County with the specialized knowledge and expertise necessary to defend the County in this 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 this lawsuit is expected to ultimately result in a cost savings to the County.

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

I respectfully recommend the adoption of the attached Resolution.

JMN/di

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION
01/27/2020 USA MR/AS/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 to retain the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (the “Firm”), to defend the County against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *105 Mount Kisco Associates LLC, et al. v. Carozza et al., 15 Civ. 05346 (S.D.N.Y.)*, for a three-year term commencing upon execution and in an amount not-to-exceed \$200,000, payable pursuant to an approved budget that includes specified hourly rates (the “Agreement”); 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 Contractor, then the Contractor shall have the right to terminate this Agreement upon reasonable prior written notice; 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 |
|------|------|--|--------------------|---------------|--------------|
| 615 | 59 | 0695-3910 | 4923 | | \$200,000.00 |
| | | | | | |

Budget Funding Year(s): 2020-23 Start Date: 2020 End Date: 2023
(must match resolution)

Funding Source Tax Dollars: \$200,000.00
 State Aid: _____
\$200,000.00 Federal Aid: _____
 (must match resolution) Other: _____