

March 8, 2010

To: Honorable Members of the  
Board of Acquisition and Contract

From: Robert F. Meehan  
County Attorney

Re: Request for Authorization to Settle the Lawsuit of Town of Eastchester, et al. v. Shawn's Lawns Inc., et al. v. The Port Authority of NY, et al. in the amount of \$625,700.00 with the County of Westchester contributing \$25,000.00

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Attached for your consideration is a resolution, which, if approved by your Honorable Board, would authorize settlement of the lawsuit of Town of Eastchester, et al. v. Shawn's Lawns Inc., et al. v. The Port Authority of NY, et al in the amount of \$625,700 with the County contributing \$25,000.00.

The plaintiff alleges that from January 2003 through December 2003 multiple entities, both private and governmental, either generated and/or transported contaminated fill onto Haindl Field located at 1 Rescigno Drive, Eastchester, New York, in violation of New York State Department of Environmental Conservation (hereinafter "NYSDEC") standards. Haindl Field (hereinafter the "Property") is a recreational and athletic field owned by the Town of Eastchester (hereinafter "Town") but also utilized by the Villages of Bronxville and Tuckahoe.

In or about April 2004, the Town commissioned an investigation that concluded in August 2004 that contaminated fill in violation of NYSDEC rules and standards was deposited onto the Property. Specifically, pesticides, metals, semi-volatile organic compounds, polyaromatic hydrocarbons and volatile organic compounds were detected at the Property in concentrations that exceeded the site specific recommended objectives for such a location. The testing also disclosed that sampling results may be indicative of a negative impact to groundwater quality.

The Town ultimately encapsulated the Property with an impermeable material to prohibit further leaching of the contaminants into the groundwater and placed a layer of sod on top of the

land to allow its use as an athletic and recreational field. The cost of the remediation is the foundation of the Town's action against the defendants.

Shawn's Lawns, Inc. (hereinafter "SLI") eventually impleaded numerous additional parties, including the County, as third-party defendants claiming contribution for damages that SLI would be liable for in connection with the Town's claims.

SLI alleges that contaminated fill was taken from Playland and transported to and deposited on the Property. It is alleged that the County contributed approximately 1,085 cubic yards of fill to the site.

The Plaintiff and SLI will argue that the County, as a generator of contaminated fill, is liable for contribution for monetary damages sustained in connection with the remediation of the Property. The County will argue that SLI cannot prove what fill the County deposited onto the Property let alone prove it was contaminated. A proper defense of this action would require the defendants/third-party defendants to retain engineers to extract fill from the Property and evaluate its composition. Due to the nature of the allegations, the number of parties involved in this litigation, the necessary expert witness fees, and the expenses to complete the discovery process would be significantly higher than the cost of settlement.

As a result, and in consideration of the significant costs associated with such actions the County Attorney believes it is in the best interest of the County to settle with the plaintiff by contributing to the Town's reduced demand. There are a total of twenty-one (21) settling parties. Accordingly, it was agreed that the Town would settle all claims for \$625,700 and that the County would contribute \$25,000 to that settlement.

RFM:jaf

APPROVED BOARD OF ACQUISITION & CONSTRUCTION 2010 COUNTY CLERK'S OFFICE SECRETARY

RESOLUTION

Upon the communication of the County Attorney; it is hereby

RESOLVED, that the County Attorney is hereby authorized to settle the lawsuit Town of Eastchester, et al. v. Shawn's Lawns Inc., et al. v. The Port Authority of NY, et al. in the amount of \$625,700.00 with the County paying \$25,000.00.

RESOLVED, that the County Attorney or her designee is authorized to execute any documents necessary to implement this resolution.

Account to be Charged/credited	Fund	Agency	Unit / Sub-unit Or Org	Object/ Sub Object	Trust Account	Activity	Dollars
\$25,000.00	615	59	0684 / 2710	4280 / 04			
<b>TOTAL</b>							

Budget Funding Year(s) 2010 Start Date 1/1/2010 End Date 12/31/2010

(must match resolution)  
Funding Source

Tax Dollars	
State Aid	
Federal Aid	
Other - 6N Fund	\$25,000.00

\$25,000.00 - 6N Fund

(must match resolution)