

85368

Date: May 27, 2021

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Resolution to exempt the procurement of an amendment to an agreement with 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.)* from the application of the Westchester County Procurement Policy and Procedures pursuant to Section 3(a) xxi thereof.

Authorization is requested to exempt from the application of the Westchester County Procurement Policy and Procedures the procurement of an amendment to an agreement with 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 the term March 2, 2020 through March 1, 2023 (the "Agreement") in order to increase the not to exceed amount of the Agreement.

As your Honorable Board is aware, 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 Mt. Kisco ("Premises") 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 it 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 legal services that the firm has been providing 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, we previously determined that it is in the best interests of the County to retain separate, outside counsel to defend against this matter. The Firm has the requisite experience and knowledge in defending CERCLA claims to represent the County and the Firm has capably represented the County in this matter. It would not be cost effective nor expedient to conduct a new procurement and it is therefore in the County's best interests to enter into the proposed amendment to the Agreement. .

Therefore, pursuant to Section 3(a) xxi, the Westchester County Procurement Policy and Procedures, it is recommended that your Honorable Board determine, by resolution passed prior to commencing the procurement of the amendment to the Agreement for the Firm's services that compliance with procedural requirements of the Policy would not be in the best interest of the County.

Accordingly, a resolution to exempt this procurement is hereby submitted for your Honorable Board's consideration. A separate resolution has been submitted requesting authority to enter into this Agreement.

JMN/di

RESOLUTION

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

RESOLVED, that pursuant to Section 3(a).xxi of the Westchester County Procurement Policy and Procedures, it is hereby determined that application of the procedural requirements contained therein, including the necessity of soliciting proposals, is neither cost effective nor expedient, and accordingly, not in the best interest of the County of Westchester in connection with the procurement of an amendment to an agreement dated March 2, 2020 to retain the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 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 the term March 2, 2020 through March 1, 2023.