

85369

Date: May 27, 2021

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to amend its 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.)* for the term March 2, 2020 through March 1, 2023 in an amount not to exceed \$200,000.00, payable at approved hourly rates, in order to increase the amount of the agreement by \$200,000.

Authority is respectfully requested for the County of Westchester (the "County") to amend its agreement with 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 the term March 2, 2020 through March 1, 2023 in an amount not to exceed \$200,000, payable pursuant to an approved budget that includes approved hourly rates (the "Agreement"), in order to increase the amount of the Agreement by \$200,000 for a new total amount not to exceed \$400,000. The proposed amendment is required in order to continue to retain the Firm to represent the County in this matter. There are over a dozen named parties to this case and discovery is proving to be very time consuming, necessitating an increase in the not to exceed amount for this Agreement.

As your Honorable Board is aware, this case, was brought under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. §9601 *et. seq.*, involves property in Mount Kisco (the "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 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 these 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.

A resolution to exempt the procurement of the proposed amendment 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 amendment to the Agreement will serve a public purpose by continuing to provide the County with the specialized knowledge and expertise necessary to defend the County in this litigation.

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

I respectfully recommend the adoption of the attached Resolution.

JMN/di
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 06/24/2021 - U.S. AIR FORCE, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to amend its agreement dated March 2, 2020 with 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 the term March 2, 2020 through March 1, 2023 in an amount not to exceed \$200,000, payable pursuant to an approved budget that includes approved hourly rates (the “Agreement”), in order to increase the amount of the Agreement by \$200,000 for a total not to exceed amount of \$400,000; and be it further

RESOLVED, that all other terms and conditions of the Agreement shall remain in full force and effect; 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.

Original Agreement:	\$200,000
This Amendment:	<u>\$200,000</u>
TOTAL:	\$400,000

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
221	60	0110	4420		\$200,000.00

Budget Funding Year(s): 2021-23 Start Date: 2021 End Date: 2023
(must match resolution)

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

APPROVED BOARD OF ACQUISITION & CONTRACT - 06/24/2021 LISA MARIJA SECRETARY