

Law & Major Contracts Meeting Agenda



Committee Chair: Nancy Barr

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Monday, October 4, 2021

10:00 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations and Environment & Health committees

MINUTES APPROVAL

August 25, 2021 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

[2021-529](#) ACT - Retention of Law Firm re: ARCO Environmental Remediation LLC

AN ACT authorizing the County of Westchester to retain, at County expense, the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP to serve in an "Of Counsel" capacity to the County Attorney in connection with the portion of the County Trunk Sanitary Sewer System located on the real property owned by ARCO Environmental Remediation LLC, classified by the NYSDEC as Inactive Hazardous Waste Disposal Site Number 3-60-022, identified as Tax Map Parcel Nos. 4.70-47.1, 4.70-47.2, 4.70-47.3 and 4.30-19-1 on the Tax Assessment Maps for the Town of Greenburgh and having an address of River Street, Village of Hastings-on-Hudson.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS, LAW & MAJOR CONTRACTS AND ENVIRONMENT & HEALTH

Guests: County Attorney John Nonna and Associate County Attorney Rachel Noe

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

September 16, 2021

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith is an Act which, if adopted by your Honorable Board, would authorize the County of Westchester ("County") to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (the "Firm") to serve in an "Of Counsel" capacity to the County Attorney, as needed, in connection with various legal issues relating to the portion of the County Trunk Sanitary Sewer System located on the real property owned by ARCO Environmental Remediation LLC ("ARCO") and classified as Inactive Hazardous Waste Disposal Site Number 3-60-022 by the New York State Department of Environmental Conservation ("NYSDEC"). The real property is located on River Street in the Village of Hastings-on-Hudson and identified as Tax Map Parcel Nos. 4.70-47-1, 4.70-47-2, 4.70-47-3 and 4.30-19-1 on the Tax Assessment Maps for the Town of Greenburgh (the "Superfund Site").

The term of the proposed Agreement would commence upon execution and continue for one (1) year thereafter, unless sooner terminated as specified in the Agreement. In addition, the proposed Agreement would be for an amount not-to-exceed of Seventy-Five Thousand (\$75,000.00) Dollars at various hourly rates for various personnel.

The County's sanitary sewers and the pumping station are located on the Superfund Site. The County constructed the sanitary sewers and pumping station on or about 1939. The Anaconda Wire and Cable Company ("Anaconda") owned and operated a wire and cable manufacturing facility on the Superfund Site from approximately 1929 until approximately 1975. After Anaconda, subsequent owners and operators used the Superfund Site for a variety of purposes. Hazardous substance contamination was discovered on the Superfund Site in the late 1980s. The Superfund Site is comprised of approximately 28 acres of land located along the Hudson River and approximately 3-4 acres of submerged land in the Hudson River. As per the NYSDEC, the

contamination at the Superfund Site includes lead, base neutrals, PCB (B007), polychlorinated biphenyls (PCB), beryllium, zinc, copper, heavy metals and PCB aroclor 1260.

The County needs to perform various sanitary sewer projects on the Superfund Site, including the rehabilitation of the pumping station and the relocation of the force main. As a result of these projects and recent inspections performed by the County on its sanitary sewers, environmental issues have been identified for which the County needs the expertise of environmental counsel. The environmental issues include ARCO's potential responsibility to perform or bear the cost of contamination removal associated with the County projects under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.* ("CERCLA").

The proposed Agreement will allow the County to avail itself of the Firm's expertise in the area of environmental law and, thereby, protect the County's rights under CERCLA and other environmental laws with respect to the sanitary sewers and pumping station located on the Superfund Site.

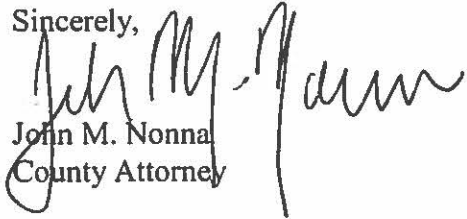
The proposed Agreement does not meet the definition of an action under the New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning, dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

Pursuant to Section 7(a) of the County's Procurement Policy, my office obtained three (3) written quotations, statements and information from three (3) environmental law firms that customarily perform such services. Based upon a review of the written quotations, statements and information, my office determined that the offer from the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLC is the most advantageous to the County.

The law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLC has extensive experience in the area of environmental law, including CERCLA cases. Edward A. Smith, Esq. is the firm's lead environmental attorney. Mr. Smith served as an Assistant United States Attorney for the Southern District of New York for ten years, from 1990-2000. In addition to serving as a "line Assistant," Senior Litigation Counsel and Chief of the Tax Unit in the Office, Mr. Smith served as the Chief of the Environmental Protection Unit. In that capacity, Mr. Smith litigated CERCLA cases, as well as cases under other federal environmental statutes. In addition, Mr. Smith supervised all environmental civil investigations and litigation in the counties comprising the Southern District of New York and served as principal liaison with the "Main Justice," the Environmental Protection Agency, and other federal agencies. Mr. Smith currently represents the County in a CERCLA cost recovery case, 105 Mt. Kisco Associates LLC v. Carozza, et al, 15 Civ. 05346 (NSR) (JCM), in which he negotiated a favorable settlement for the County with the plaintiffs that is subject to Court approval.

Accordingly, I respectfully recommend your Honorable Board's approval of the attached Act.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Nonna". The signature is written in a cursive style with a large initial "J" and "M".

John M. Nonna
County Attorney

JMN/RAN

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the enactment of an Act which, if adopted by this Honorable Board, would authorize the County of Westchester ("County") to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (the "Firm") to serve in an "Of Counsel" capacity to the County Attorney, as needed, in connection with various issues relating to the portion of the County Trunk Sewer System located on real property owned by ARCO Environmental Remediation LLC ("ARCO") and classified as Inactive Hazardous Waste Disposal Site Number 3-60-022 by the New York State Department of Environmental Conservation ("NYSDEC"). The real property is located on River Street in the Village of Hastings-on-Hudson and identified as Tax Map Parcel Nos. 4.70-47-1, 4.70-47-2, 4.70-47-3 and 4.30-19-1 on the Tax Assessment Maps for the Town of Greenburgh.

The County Attorney has advised that the term of the proposed Agreement would commence upon execution and continue for one (1) year thereafter, unless sooner terminated as specified in the Agreement. In addition, the proposed Agreement would be for an amount not-to-exceed of Seventy-Five Thousand (\$75,000.00) Dollars at various hourly rates for various personnel.

The County Attorney has advised that the County's sanitary sewers and pumping station are located on the Superfund Site. The County constructed the sewers and pumping station on or about 1939. The Anaconda Wire and Cable Company ("Anaconda") owned and operated a wire and cable manufacturing facility on the Superfund Site from approximately 1929 until approximately 1975. After Anaconda, subsequent owners and operators used the Superfund Site for a variety of purposes. Hazardous substance contamination was discovered on the Superfund Site in the late 1980s. The Superfund Site is comprised of approximately 28 acres of land located along the Hudson River and approximately 3-4 acres of submerged land in the Hudson River. As per the NYSDEC, the contamination at the Superfund Site includes lead, base

neutrals, PCB (B007), polychlorinated biphenyls (PCB), beryllium, zinc, copper, heavy metals and PCB aroclor 1260.

The County Attorney has advised that the County needs to perform various sanitary sewer projects on the Superfund Site, including the rehabilitation of the pumping station and the relocation of the force main. As a result of these projects and recent inspections performed by the County on its sanitary sewers, environmental issues have been identified for which the County needs the expertise of environmental counsel. The environmental issues include ARCO's potential responsibility to perform or bear the cost of contamination removal associated with the County projects under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.* ("CERCLA").

The County Attorney has advised that the proposed Agreement will allow the County to avail itself of the Firm's expertise in the area of environmental law and, thereby, protect the County's rights under CERCLA and other environmental laws with respect to the sanitary sewers and pumping station located on the Superfund Site.

The proposed Agreement does not meet the definition of an action under the New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning, dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

The County Attorney has advised that, pursuant to Section 7(a) of the County's Procurement Policy, the County Attorney's Office obtained three (3) written quotations, statements and information from three (3) environmental law firms that customarily perform such services. Based upon a review of the written quotations, statements and information, the County Attorney's Office has determined that the offer from the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLC is the most advantageous to the County.

The law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLC has extensive experience in the area of environmental law, including CERCLA cases. Edward A. Smith, Esq. is the firm's lead environmental attorney. Mr. Smith served as an Assistant United States Attorney for the Southern District of New York for ten years, from 1990-2000. In addition to serving as a "line Assistant," Senior Litigation Counsel and Chief of the Tax Unit in the Office, Mr. Smith served as the Chief of the Environmental Protection Unit. In that capacity, Mr. Smith litigated CERCLA cases, as well as cases under other federal environmental statutes. In addition, Mr. Smith supervised all environmental civil investigations and litigation in the counties comprising the Southern District of New York and served as principal liaison with the "Main Justice," the Environmental Protection Agency, and other federal agencies. Mr. Smith currently represents the County in a CERCLA cost recovery case, 105 Mt. Kisco Associates LLC v. Carozza, et al, 15 Civ. 05346 (NSR) (JCM), in which he negotiated a favorable settlement for the County with the plaintiffs that is subject to Court approval.

An affirmative vote of a majority of the voting strength of the Board is required for approval of the attached Act.

Accordingly, your Committee concurs with the County Attorney's recommendation that it would be in the best interests of the County to retain the Firm and requests approval of the attached Act.

Dated: _____, 2021
White Plains, New York

COMMITTEE ON

c:ran

ACT NO. 2021 - _____

AN ACT authorizing the County of Westchester to retain, at County expense, the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP to serve in an “Of Counsel” capacity to the County Attorney in connection with the portion of the County Trunk Sanitary Sewer System located on the real property owned by ARCO Environmental Remediation LLC, classified by the NYSDEC as Inactive Hazardous Waste Disposal Site Number 3-60-022, identified as Tax Map Parcel Nos. 4.70-47-1, 4.70-47-2, 4.70-47-3 and 4.30-19-1 on the Tax Assessment Maps for the Town of Greenburgh and having an address of River Street, Village of Hastings-on-Hudson.

BE IT ENACTED by the Board of Legislators of the County of Westchester, as follows:

Section 1. The County of Westchester (“County”) is hereby authorized to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (the “Firm”), to serve in an “Of Counsel” capacity to the County Attorney, as needed, in connection with the portion of the County Trunk Sanitary Sewer System located on the real property owned by ARCO Environmental Remediation LLC, classified as Inactive Hazardous Waste Disposal Site Number 3-60-022 by the New York State Department of Environmental Conservation, identified as Tax Map Parcel Nos. 4.70-47-1, 4.70-47-2, 4.70-47-3 and 4.30-19-1 on the Tax Assessment Maps for the Town of Greenburgh and having an address of River Street, Village of Hastings-on-Hudson (the “Services”).

§2. The Agreement shall be for a term commencing upon execution and continuing for one (1) year thereafter, unless sooner terminated as specified in the Agreement, and for an amount not-to-exceed of Seventy-Five Thousand (\$75,000.00) Dollars at various hourly rates for various personnel.

§3. The Firm is hereby authorized to take any and all steps that are reasonably necessary to represent the County in matters concerning the Services, in accordance with the terms to be specified in the Agreement.

§4. The County Executive or his authorized designee, be and hereby is authorized to execute all instruments and to take all actions reasonably necessary to carry out the purposes of this Act.

§5. This Act shall take effect immediately.