



Memorandum
Office of the County Attorney

OnBase ID#112788

DATE: January 5, 2025

TO: Honorable Board of Acquisition and Contract

FROM: John M. Nonna
County Attorney

SUBJECT: Authority for the County of Westchester to enter into an outside counsel agreement with the law firm of Broadfield US LLP, pursuant to which Broadfield US LLP will serve in an "of counsel" capacity to the County Attorney, as needed, in connection with the following two matters: (i) a claim asserted by the United States Environmental Protection Agency for response costs incurred while investigating contamination levels on real property located in the Village of Mount Kisco; and (ii) legal issues relating to the portion of the County Trunk Sanitary Sewer System located on real property currently owned by ARCO Environmental Remediation LLC on River Street in the Village of Hastings-on-Hudson, for a term commencing retroactive to September 11, 2025 and continuing until the two matters are fully resolved

Authority is requested for the County of Westchester (the "County") to enter into an outside counsel agreement (the "Agreement") with the law firm of Broadfield US LLP (the "Firm"), pursuant to which the Firm will serve in an "of counsel" capacity to the County Attorney, as needed, in connection with the following two matters: (i) a claim asserted by the United States Environmental Protection Agency (the "EPA") for response costs incurred while investigating contamination levels on real property located in the Village of Mount Kisco (the "Kisco Ave Matter"); and (ii) legal issues relating to the portion of the County Trunk Sanitary Sewer System located on a portion of real property currently owned by ARCO Environmental Remediation LLC ("ARCO") on River Street in the Village of Hastings-on-Hudson (the "River Street Matter" and together with the Kisco Ave Matter, collectively, the "Environmental Matters"). The term of the proposed Agreement will commence retroactive to September 11, 2025 and will continue until the Environmental Matters have been resolved.

By way of background with respect to the Kisco Ave Matter, during World War II, the Canadian Radium & Uranium Corp. participated in the Manhattan Project by operating a uranium refinery on real property located at 105 Kisco Avenue in the Village of Mount Kisco, identified as Tax Map Parcel Nos. 69.65-2-4 (with a parcel address of 107 Kisco Avenue, Mount Kisco, New York) and 69.65-2-5 (with a parcel address of 95 Kisco Avenue, Mount Kisco, New York) on the Tax Assessment Maps for the Village/Town of Mount Kisco (the "Mount Kisco Property"). Hazardous substances, including but not limited to radioactive materials, were later

found on the Mount Kisco Property. In 2015, the current owner of the Mount Kisco Property, 105 Mt. Kisco Associates LLC (“105 LLC”), filed a complaint entitled 105 Mt. Kisco Associates LLC et al v. Paul Carozza et al (the “Action”) alleging, among other things, causes of action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.* More specifically, 105 LLC alleged that the Westchester County Department of Health (“DOH”) participated in an attempt to remediate the Mount Kisco Property by arranging for and/or transporting for disposal hazardous substances resulting in the contamination of soil, groundwater, and/or soil vapor associated with spills, discharges, releases and threatened releases of hazardous substances, including but not limited to radioactive materials in and around the Mount Kisco Property. The Action was subsequently settled pursuant to that certain Stipulation and Order Approving Settlement Agreements on Third Parties, Dismissing All Claims, and Dismissing This Action, dated April 14, 2022 (the “Stipulation”). Notably, the Stipulation stated that, notwithstanding anything to the contrary contained therein or contained in any settlement agreement entered into in accordance therewith, the EPA would retain its right to assert any claim or cause of action relating to the Mount Kisco Property in any subsequent action or administrative proceeding. Accordingly, the EPA has now asserted a claim against DOH alleging that, pursuant to CERCLA, DOH is responsible for the reimbursement of response costs incurred by the EPA while investigating the contamination levels of the Mount Kisco Property. As such, the County needs the expertise of environmental counsel to resolve this claim.

Additionally, with respect to the River Street Matter, on or about 1939, the County constructed sanitary sewers and the Hastings Pumping Station on a portion of the real property currently owned by ARCO and located on River Street in the Village of Hastings-on-Hudson, 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 “ARCO Property”). The Anaconda Wire and Cable Company and subsequent owners used the site for a variety of industrial purposes, including a wire and cable manufacturing facility. Hazardous substance contamination was discovered on the ARCO Property in the late 1980s and the ARCO Property was classified as an Inactive Hazardous Waste Disposal Site, Number 3-60-022 by the New York State Department of Environmental Conservation (“NYSDEC”). The County needs to perform various sanitary sewer projects on the sanitary sewers and the Hastings Pump Station located on the ARCO Property. As a result of these projects, environmental issues have been identified for which the County needs the expertise of environmental counsel.

The Firm’s lead environmental attorney, Edward A. Smith, Esq., has extensive experience in the area of environmental law, including CERCLA cases, serving as an Assistant United States Attorney for the Southern District of New York for ten years, from 1990-2000. In addition, Mr. Smith previously provided similar legal services to the County in connection with each of the Environmental Matters, pursuant to two (2) agreements between the County and Mr. Smith’s former law firm, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferra, Wolf & Carone, LLP, dated February 23, 2020 and November 29, 2021, respectively (the “Prior Agreements”), both of which are now expired. As there were no additional issues necessitating Mr. Smith’s services at the time, the County did not extend either of the Prior Agreements. However, now that new issues have arisen in connection with the Environmental Matters, the County once again requires his services.

Under the proposed Agreement, the Firm will be paid a total amount not-to-exceed \$20,000.00, payable at various hourly rates for various personnel. In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements.

Act No. 2025-276, which authorized the County to enter into the Agreement with the Firm, was adopted by the County's Board of Legislators on December 8, 2025 and approved by the County Executive on December 15, 2025.

The proposed Agreement is exempt from the Westchester County Procurement Policy and Procedures pursuant to Section 3(a) x thereof which exempts "procurements for the services of lawyers . . .".

The proposed Agreement will serve a public purpose by providing the County with the specialized knowledge and expertise necessary to ensure its proper handling of the Environmental Matters.

For the reasons set forth above, I most respectfully recommend the adoption of the attached resolution.

JMN/sjc/nn
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 01/15/2026 RAYMOND SCULKA 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 (the “Agreement”) to retain, at County expense, the law firm of Broadfield US LLP (the “Firm”), to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with the following two matters: (i) a claim asserted by the United States Environmental Protection Agency for response costs incurred while investigating contamination levels on real property located at 105 Kisco Avenue in the Village of Mount Kisco (the “Kisco Ave Matter”); and (ii) legal issues relating to 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 “River Street Matter” and together with the Kisco Ave Matter, collectively, the “Environmental Matters”), for a term commencing retroactive to September 11, 2025 and continuing until the Environmental Matters are fully resolved; and be it further

RESOLVED, that in consideration for services rendered, the County shall pay the Firm a total amount not-to-exceed \$20,000.00, payable at various hourly rates for various personnel. In addition, the Firm will be reimbursed, at cost, for reasonable and necessary out of pocket expenses and disbursements; 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
101	18	1000	4923		\$20,000.00

Budget Funding Year(s): 2025 Start Date: 09/11/25 End Date: When the matter is resolved.

Funding Source Tax Dollars: \$20,000.00
 State Aid: _____
\$20,000.00 Federal Aid: _____
 (must match resolution) Other: _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 01/15/2026 - RAYMOND SCUKY, SECRETARY