

# **WALLACE & WALLACE, LLP**

*Attorneys and Counselors at Law*

**85 Civic Center Plaza, LL3**

**Poughkeepsie, NY 12601**

**845 473-0900**

**FAX: 845 473-5548**

## **RETAINER AGREEMENT**

THIS AGREEMENT FOR LEGAL SERVICES is made by and between **WALLACE & WALLACE, LLP**, 85 Civic Center Plaza, LL3, Poughkeepsie, New York, 12601 (the “Firm”) and the **POUGHKEEPSIES’ JOINT WATER BOARD PROJECT** (the “Board”), having its principal offices at 20 Middlebush Road, Wappinger Falls, New York, 12590.

### **1. Nature of Services to be Provided by the Firm**

This Agreement confirms that the Board has retained the Firm as the attorney to the Board to render Basic Legal Services and Litigation Services. The Firm shall serve and be compensated as provided by this Agreement.

A. Basic Legal Services provided under this Agreement include, but are not limited to:

- i. General advice to the Board and its Staff as required;
- ii. Attendance at Board meetings;
- iii. The issuance of written legal opinions regarding legal questions;
- iv. Drafting contracts, intermunicipal agreements, deeds, easements and other legal documents as required;
- v. Issuing statements to auditors regarding pending and threatened litigation;
- vi. Representing the Board in claims brought against it, including coordination with counsel appointed by the Board’s insurance carrier;
- vii. Attending meetings with Water Project staff, officials of the Town and City and outside agencies as required;
- viii. Corresponding and interacting with other municipalities as well as County, State and Federal representatives and agencies as needed;
- ix. Consulting with other counsel retained by the Board, such as bond counsel or insurance counsel as required;

B. Litigation Services shall include all matters commenced or pending in a court of competent jurisdiction, such as county, state or federal court.

The Firm acknowledges that the Board has reserved the right to retain, at its sole option, other legal counsel for certain specialized legal matters. This reservation of rights does not preclude the Board from assigning any of these matters to the Firm.

## **2. Handling and Status of Matters**

James P. Horan, Esq. will be the primary attorney representing the Board. The Board understands that no one particular member of the Firm is being retained but rather, the Firm, as an entity, is undertaking the legal representation of the Board pursuant to this Agreement. The Firm reserves the right to assign and delegate tasks to competent attorneys within the Firm, in its sole discretion, deems appropriate. The Firm shall keep the Board informed of the status of any litigation matters and notify the Board promptly of any developments. Copies of all court papers will be supplied to the Board as they are prepared, unless the Board requests to the contrary. Attorneys of the Firm will be available for meetings and telephone conversations with Board personnel at mutually convenient times.

## **3. Hourly Rates and Billing**

The Firm's legal services shall be billed at the following rates:

- The rate for all non-litigation, non-escrow legal services provided by attorneys would be \$195 per hour.
- The rate for legal services on litigation matters provided by attorneys with five or more years of experience would be \$225 per hour.
- If the assistance of a paralegal is warranted on a particular project, that work would be billed at a rate of \$135 per hour.

The Firm will not bill for travel time between the Firm and the Board. The Firm will bill for travel time for any court appearances or meetings which may be required outside of the City or Town of Poughkeepsie.

The Firm agrees not to bill for the services of more than one attorney who attend the same meeting, conference or event unless approved in advance.

The Firm shall submit statements of all payments due under this Agreement on a monthly basis to the Chairman of the Board for review and approval as required by law. All work performed by the Firm shall be billed in increments of tenths of an hour. The monthly statement shall set forth a description of all work performed, the hours worked, the identity of each person performing the work, the rate charged, and any costs or expenses eligible for reimbursement. If the Board has any questions or concerns about a bill, please promptly so advise. The Board will not be charged for time expended in discussing with the Firm any aspect of a bill.

## **4. Expenses**

The Firm will not bill for routine copying of papers, postage or telephone charges. The Firm shall pay all overhead incurred in providing legal services to the Board including, but not

limited to, reasonable and necessary office facilities, equipment, books, supplies, secretarial services, word processing, faxes, telephone usage, insurance, office supplies, copying and telephone charges. The Firm reserves the right to employ a copy service for large copying projects and to bill the actual cost of such copying to the Board. The Firm does not bill for mileage. The Firm does not charge the Board for the costs it incurs for legal research providers such as Lexis and Westlaw, however it may bill the actual cost of specialized legal research if required.

In addition to the hourly rates set forth in the previous section, the Board agrees to reimburse the Firm for any filing fees, recording fees, court costs, process server costs, overnight mail expenses, transcripts and the customary fees of stenographers, or other expenses actually incurred by or billed to the Firm.

The Firm shall seek prior permission from the Board for any expenses anticipated to exceed \$500.00. The Firm also shall seek prior permission from the Board for the retention of any experts or investigators, such as accountants, appraisers. Following such permission, the Board agrees to reimburse the Firm for such expenditures.

During the term of this Agreement, the Firm will not represent any new client, including but not limited to a municipality, county, local or state government agency or other person or entity in matters which the Firm determines to be directly adverse to the Board, nor will the Firm represent the Board in matters which the Firm determines to be directly adverse to the interests of any other client of the Firm.

## **5. Conflicts of Interest**

The Board recognizes that the Firm represents other clients. The Firm shall at all times avoid conflicts of interest in the performance of this Agreement. In the event that a conflict arises, the Firm shall immediately notify the Board. When possible and in the interest of the Board, the Firm may advise the Board as to under what circumstances joint representation of parties may take place and may waivers appropriate to the situation.

## **6. Independent Contractor**

The Firm shall perform all services required under this Agreement as an independent contractor of the Board and shall remain at all times a wholly independent contractor with only such obligations as are consistent with that role. Neither the Firm, nor any of its employees, shall be deemed employees of the Board or employees of the Town or City.

## **7. Insurance Coverage**

The Firm shall procure and maintain, at its cost, errors and omissions/professional liability insurance coverage in the amount of not less than \$1,000,000 per occurrence. Such insurance shall be kept in effect during the term of this Agreement and shall not be canceled without thirty (30) days' advance written notice of any proposed cancellation to the Board. The Firm shall provide certificates evidencing such insurance as may be requested by the Board.

## **8. Dispute Resolution**

This Retainer Agreement shall be governed by and construed in accordance with the laws of the State of New York. If any dispute or disagreement arises between the Board and the Firm as to any matter relating to this Agreement, including but not limited to the scope of services, the performance of the respective responsibilities of the Board and the Firm, the quality of the services rendered, and the billing of such services, the Board and the Firm agree to confer and attempt to resolve the matter informally. If the parties cannot agree, they agree that they will refer the dispute for resolution to mediation to the fullest extent permitted by law. The parties are aware that mediation is a voluntary process and pledge to cooperate fully and fairly with the mediator in an attempt to reach a mutually-satisfactory compromise of any dispute or disagreement. The mediator shall be chosen by mutual agreement of the parties, and mediation shall commence within thirty (30) days of either party's written request to the other for mediation. Any agreement reached by the mediation shall be reduced to writing, be signed by the parties, and be binding on them. This provision for mediation is an effort to protect, preserve, and respect the requisites of a productive attorney-client relationship, but shall be without prejudice to either party pursuing its other lawful remedies.

## **9. Records and Reports**

The Firm shall keep such books and records as shall be necessary to perform the services required by this Agreement and to enable the Board to evaluate the performance of the required services. The Board shall have full and free access to such books and records that deal specifically with the services performed by the Firm at all reasonable times, including the right to inspect, copy, audit, and make summaries and transcripts from such records. All reports, records, documents, and other materials prepared by the Firm, its employees and agents in the performance of this Agreement shall be the property of the Board and shall be delivered to the Board upon request by the Board or upon termination of this Agreement. The Firm shall have no claim for further or additional compensation as a result of the exercise by the Board of its full rights of ownership of the documents and material hereunder. The Firm may retain copies of such documents for its/own use.

## **10. Nondiscrimination**

The Firm pledges there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, or ancestry in the performance of services under this Agreement.

## **11. Termination**

The Firm shall at all times serve under the terms of this Agreement at the pleasure of the Board, and the Board hereby reserves the right to terminate this Agreement at will, with or without cause, by providing written notice to the Firm. Upon receipt of any notice of termination, the Firm shall cease all services under this Agreement except as may be specifically authorized by the Board. At that time, all further obligations of the Board to pay the Firm for services rendered under this Agreement shall thereupon cease, provided, however, that the Board shall be

obliged to pay for all services, costs, and expenditures lawfully incurred by the Firm to the effective date of such termination, or subsequent to the date of termination at the direction of the Board.

The Firm reserves the right to terminate this Agreement by giving ninety (90) days' advance written notice to the Board.

In the event of a termination of this Agreement by either party, the Firm shall cooperate with the Board in transferring the files and assignments to the Board Clerk or other person designated by Board pending the hiring of another firm by the Board. The Firm shall be compensated at the hourly rates set forth in this Agreement should it be called upon to perform any services after the effective date of termination, including the transfer of files and assignments.

Upon the Termination of representation of the Board and there is no transfer of the files that are possessed by the Firm, the Firm agrees to assert a diligent effort, subject to casualties beyond our control, to retain and maintain all major and significant components of your file relative to this matter for a period of seven (7) year.

## **12. Notices**

Notices regarding this Agreement shall be given in writing to the parties at the following addresses:

If to the Board:

Poughkeepsies' Joint Water Project Board  
3431 North Road,  
Poughkeepsie, New York 12601  
Attn: Chairman

If to the Firm:

Wallace & Wallace, LLP  
85 Civic Center Plaza, Suite LL3  
Poughkeepsie, NY 12601

## **13. Amendment, Assignment, Severability of Agreement**

This Agreement contains all of the terms and conditions agreed to between the Board and the Firm. This Agreement may be amended at any time by mutual consent of the parties by an instrument in writing signed by both parties. This Agreement may not be assigned by either party without the written consent of the other party. If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of

no effect and shall, upon agreement by the parties, be deemed stricken from the Agreement without affecting the binding force of the remainder.

**14. Representations**

Each signatory hereto represents that he has the authority to bind the party for which he signs.

**15. Effective Date**

This Agreement will govern all legal services performed by the Firm on behalf of the Board. The term of this Agreement shall commence on February 5, 2019, and shall continue in effect until amended or terminated.

Please sign this letter to confirm that you have read this letter and that you understand and agree to its provisions and return the same to my attention. You can sign this letter by scan and email or faxing it back to my attention. An electronic signature shall have the same effect as an original signature, and each of us agree to be bound by the terms of this agreement by the electronic signatures of all parties.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement in duplicate on the \_\_\_\_ day of February 2019.

**POUGHKEEPSIES' JOINT WATER BOARD PROJECT**

\_\_\_\_\_  
By: Marc Nelson

**Wallace & Wallace, LLP**

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By: Craig M. Wallace, Esq.