

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

March 26, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, NY 10601

Re: Legislation authorizing the County of Westchester (the "County"), acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle a legal action titled *Clean Air Quality Service, Inc. v. The County of Westchester*, in the amount of \$255,000.00.

Dear Honorable Members of the Board:

This request, if enacted, would authorize the County, acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle a legal action commenced in the Supreme Court of the State of New York, County of Westchester, titled *Clean Air Quality Service, Inc. v. County of Westchester*, bearing Index No. 57837 / 2023 (the "legal action"), for the amount of \$255,000.00.

On or about July 14, 2017, the County, acting by and through its Department of Public Works and Transportation (the "Department"), and Clean Air Quality Service, Inc. ("CAQS"), entered into Department Contract No. 11-560 (the "Contract"), whereby CAQS agreed to provide all labor, services, and material in connection with the boiler and generator replacement at the Ossining Wastewater Treatment Plant in Ossining, New York (the "Project"). The base contract value was for the sum of \$5,983,000. Pursuant to the Contract, the County issued CAQS a Notice to Proceed with the work, dated July 24, 2017. Under the Contract, CAQS was required to complete all work by March 26, 2019.

On March 1, 2023, CAQS commenced the legal action against the County, claiming that the County owed it no less than \$1,200,000. CAQS claimed that the County breached the Contract, alleging that it: (1) delayed, disrupted, and actively interfered with CAQS' performance; (2) hindered and prevented the normal, orderly, efficient and profitable performance of the Project on CAQS' part; (3) failed to recognize and promptly pay for the legitimate claims of the contractor for extra and additional work performed by CAQS at the

Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914- 995-3132*

*Please be advised that service by facsimile is not accepted.



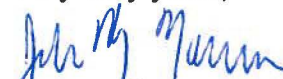
Project; (4) failed to properly coordinate and schedule the work of others at the Project; (5) forced CAQS to perform extra and additional work at the Project without compensation; (6) failed to promptly and properly review and approve requisitions for payment for the work at the Project; (7) forced CAQS to accelerate its work at the Project; (8) failed to provide CAQS with access to the site; and (9) forced CAQS to completely revise its construction methods and labor scheduling at the Project from that contemplated under the agreement between the parties. CAQS also claimed that the County was unjustly enriched, alleging that the County failed to pay it for the work it performed.

Commencing on or about October 2023, the County and CAQS engaged in settlement negotiations. The negotiations resulted in a proposed agreement, subject to your Honorable Board's approval, to settle all claims by CAQS against the County with respect to the Contract. Pursuant to the proposed agreement, the County would pay CAQS the sum of \$255,000.00, and CAQS would release the County from all of its claims.

Approval of the settlement is recommended for several reasons. First, as the litigation is in its infancy, both the County and CAQS will avoid extended legal fees as a result of discovery, the exchange of documents, depositions, and motion practice and potentially trial. Additionally, there are still some MAW funds remaining to assist in funding the settlement. Accordingly, there are already funds allocated to this Project. Further, the settlement amount is less than 25% of the overall amount sought by CAQS as set forth in its pleadings and during mediation. For example, in its complaint, CAQS claims it is entitled to damages not less than \$1,200,000.00. As a result, the settlement amount is approximately 21% of the overall damages sought by CAQS. This is a reasonable outcome because a jury could otherwise find that the County breached its written agreement with CAQS by failing to pay complete costs for certain work performed during the course of the Project. Accordingly, approval of the settlement of \$255,000.00 is recommended.

To protect the County's legal interests, and upon recommendation of Hugh J. Greechan, Commissioner of the Department of Public Work and Transportation, authority to enter into a stipulation of settlement with CAQS, to settle the legal action, is requested.

Very truly yours,


John M. Norina
County Attorney

JMN/cji

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize the County of Westchester (the “County”), acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle a legal action commenced in the Supreme Court of the State of New York, County of Westchester, titled *Clean Air Quality Service, Inc. v. County of Westchester*, bearing Index No. 57837 / 2023 (the “legal action”), for the amount of \$255,000.00.

On or about July 14, 2017, the County, acting by and through the Department of Public Works and Transportation (the “Department”), and Clean Air Quality Service, Inc., (“CAQS”), entered into Department Contract No. 11-560 (the “Contract”), whereby CAQS agreed to provide all labor, services, and material in connection with the boiler and generator replacement at the Ossining Wastewater Treatment Plant in Ossining, New York (the “Project”). The base contract value was for the sum of \$5,983,000. Pursuant to the Contract, the County issued CAQS a Notice to Proceed with the work, dated July 24, 2017. Under the Contract, CAQS was required to complete all work by March 26, 2019.

On March 1, 2023, CAQS commenced legal action against the County claiming the County owed it no less than \$1,200,000. CAQS claimed that the County breached the contract, alleging that it: (1) delayed, disrupted, and actively interfered with CAQS’ performance; (2) hindered and prevented the normal, orderly, efficient and profitable performance of the Project on CAQS’ part; (3) failed to recognize and promptly pay for the legitimate claims of the contractor for extra and additional work performed by CAQS at the Project; (4) failed to properly coordinate and schedule the work of others at the Project; (5) forced CAQS to perform extra and additional work at the Project without compensation; (6) failed to promptly and properly review

and approve requisitions for payment for the work at the Project; (7) forced CAQS to accelerate its work at the Project; (8) failed to provide CAQS with access to the site; and (9) forced CAQS to completely revise its construction methods and labor scheduling at the Project from that contemplated under the agreement between the parties. CAQS also claimed that the County was unjustly enriched, alleging that the County failed to pay it for work it performed.

Commencing on or about October 2023, the County and CAQS engaged in settlement negotiations. The negotiations resulted in a proposed agreement, subject to your Honorable Board's approval, to settle all claims by CAQS against the County with respect to the Contract. Pursuant to the proposed agreement, the County would pay CAQS the sum of \$255,000.00, and CAQS would release the County from all of its claims.

Approval of the settlement is recommended for several reasons. First, as the litigation is in its infancy, both the County and CAQS will avoid extended legal fees as a result of discovery, the exchange of documents, depositions, and motion practice and potentially trial. Additionally, there are still some MAW funds remaining to assist in funding the settlement. Accordingly, there are already funds allocated to this Project. Further, the settlement amount is less than 25% of the overall amount sought by CAQS as set forth in its pleadings and during mediation. For example, in its complaint, CAQS claims it is entitled to damages not less than \$1,200,000.00. As a result, the settlement amount is approximately 21% of the overall damages sought by CAQS. This is a reasonable outcome because a jury could otherwise find that the County breached its written agreement with CAQS by failing to pay complete costs for certain work performed during the course of the Project. Accordingly, approval of the settlement of \$255,000.00 is recommended.

Your Committee has carefully considered the subject matter and the accompanying Act, and recommends authorizing the County, acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle the legal action titled *Clean Air Quality Service, Inc. v. County of Westchester*, for the amount of \$255,000.00.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
March , 2024

l:cji

COMMITTEE ON

ACT NO. - 2024

AN ACT authorizing the County of Westchester, acting by and through the Commissioner of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle the legal action titled *Clean Air Quality Service, Inc. v. The County of Westchester*, for the amount of \$255,000.00.

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

Section 1. The County is hereby authorized by and through the Commissioner of Public Works and Transportation, or his designee, to enter into a stipulation of settlement to settle the legal action commenced in the Supreme Court of the State of New York, County of Westchester, titled, *Clean Air Quality Service, Inc. v. The County of Westchester*, bearing Index No. 57837 / 2023, for the amount of \$255,000.00.

Section 2. The County Attorney or his duly designated representative is hereby authorized to prepare and execute all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Settlement of Clean Air Quality Serv. Inc. NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 255,000.00

Total Current Year Revenue \$ 0

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: Capital Contract #SOS09-00 C

322-60-0000-0000-CAPP-6120

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four years: _____

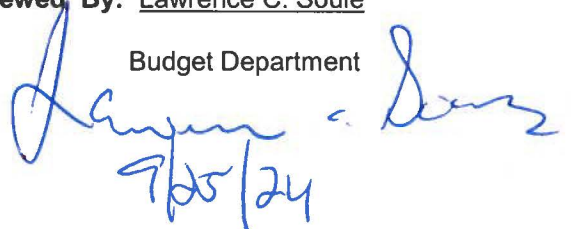
Prepared by: Christopher J. Inzero

Title: Associate County Attorney

Department: Law

Reviewed By: Lawrence C. Soule

Budget Department


9/25/24

If you need more space, please attach additional sheets.