

**81039**

Date: November 30, 2020

To: The Honorable Board of Acquisition and Contract

From: John M. Nonna  
County Attorney

Re: Authority to enter into an agreement with FTI Consulting, Inc. for the provision of consulting and expert witness services in connection with the lawsuit entitled 105 Mt. Kisco Assoc's., LLC, et al v. Carozza, for a term commencing on December 1, 2020 and continuing through December 31, 2021 for an amount not-to-exceed \$75,000, payable at approved hourly rates.

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Authority is requested for the County of Westchester ("County") to enter into an agreement with FTI Consulting, Inc. ("FTI"), pursuant to which FTI will provide consulting and expert witness services to the County in connection with the lawsuit entitled 105 Mount Kisco Associates LLC, et al. v. Carozza, et al.; Docket No.: 7:15-cv-05346 (NSR) (JCM), for a term commencing on December 1, 2020 and continuing through December 31, 2021 for an amount not-to-exceed \$75,000, payable at the following hourly rates:

Senior Managing Director \$425  
Senior Director \$270  
Director \$225  
Senior Consultant \$180  
Consultant \$165.

The County will also compensate FTI for all reasonable and necessary out-of-pocket costs and disbursements at no markup

By way of background, this case, which was brought under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. §9601 et. seq., involves property in Mt. Kisco that was used for uranium recovery in connection with the Manhattan Project from 1943 to 1966. Following enforcement actions brought by the State of New York to halt exposure of employees to radioactivity, the dismantling of the facility and the decontamination of the Mt. Kisco property 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.

This agreement with FTI is exempt from the requirements of the Westchester County Procurement Policy and Procedures pursuant to section 3(a)vii thereof, which exempts “contracts for the services of expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation.”

The goals and objectives of this agreement are to retain the services of an expert to assist the County with reviewing claims for recovery under CERCLA, as well as evaluating whether cost expenditures and remedial response actions were performed consistent with the National Contingency Plan (NCP) or state regulations.

The goals and objectives are in the best interests of the County in terms of fiscal responsibility because without the assistance of the expert witness, it will be more difficult for the County to defend itself in the lawsuit which could result in a significant monetary judgment against the County.

The agreement will be tracked and monitored by the County Attorney’s Office.

Accordingly, your favorable action on the annexed Resolution is most respectfully urged and recommended.

JMN/JPG/nm

APPROVED BOARD OF ACQUISITION & CONTRACT - 12/10/2019 - LISA M. DEANE, SECRETARY

## RESOLUTION

Upon a communication from the County Attorney, be it hereby

**RESOLVED**, that the County of Westchester (“County”) is hereby authorized to enter into an agreement with FTI Consulting, Inc. (“FTI”) for the provision of consulting and expert witness services in connection with the lawsuit entitled 105 Mt. Kisco Assoc’s, LLC, et al v. Carozza, for a term commencing on December 1, 2020 and continuing through December 31, 2021; and be it further

**RESOLVED**, that in consideration for services to be rendered, the County shall pay FTI and amount not-to exceed \$75,000, payable at the following hourly rates:

Senior Managing Director \$425  
Senior Director \$270  
Director \$225  
Senior Consultant \$180  
Consultant \$165;

and be it further

**RESOLVED**, that the County shall also compensate FTI for all reasonable and necessary out-of-pocket costs and disbursements at no markup; 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 Attorney or his duly appointed designee be, and hereby is, authorized to take such action and execute such documents as may be necessary and proper to effect the purposes hereof.

Account to be  
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
615	59	0695-3910	4923		\$75,000

Budget Funding Year(s) 2020 -2021 Start Date December 1, 2020 End Date December 31, 2021  
(must match resolution)

Funding Source Tax Dollars \$75,000  
State Aid \_\_\_\_\_  
**\$75,000** Federal Aid \_\_\_\_\_  
(must match resolution) Other \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACT - 12/10/2020 - LISA MARIJA, SECRETARY