

Office of the County Attorney

ID# 90290

TO: Honorable Board of Acquisition and Contract

FROM: John M. Nonna
County Attorney

DATE: January 19, 2022

RE: Resolution authorizing the County of Westchester to enter into an agreement with The Legal Aid Society of Westchester County and the Westchester County Bar Association; for the provision of indigent legal services for persons charged with a felony in an amount not to exceed \$14,588,458, payable in monthly installments in advance, for a term commencing January 1, 2022 through December 31, 2022; for the provision of administering the 18-B Panel, in an amount not to exceed \$292,000, payable in monthly installments in advance, for a term commencing January 1, 2022 through April 30, 2022 with the County having the sole option to extend the termination date upon thirty (30) days notice; for cash advances for services performed in connection with approved grant agreements with the NYS Office of Indigent Legal Services in an amount not to exceed \$2,051,377 for a term commencing January 1, 2022 through December 31, 2022; and for the preparation and certification for the 18-B Panel in an amount not to exceed \$40,000 for a term commencing January 1, 2022 through December 31, 2022, payable in a lump sum within thirty (30) days of full execution of the agreement, will all parties having the right to terminate the agreement upon sixty (60) days notice.

Article 18-B of the County Law requires each county in the State of New York to establish a plan for providing counsel to certain indigent persons. Such a plan may be established by agreement with a legal aid society and/or bar association. The Legal Aid Society of Westchester County (the "Legal Aid Society") and the Westchester County Bar Association have been providing these services for many years pursuant to agreements with the County of Westchester (the "County"). The Legal Aid Society has been the administrator of the County's plan.

Recently, the New York State Office of Indigent Legal Services (“ILS”), in order to aid counties and to ensure quality representation, promulgated new Standards for establishing and Administering Assigned Counsel Programs (“Standards”). In order to comply with the Standards, the County has prepared a new plan for the provision of indigent legal services which includes creating an Independent Office of Assigned Counsel (“Office”). On February 25, 2021, ILS formally approved the County’s new plan for the creation of the Office. On September 20, 2021, the County Board of Legislators enacted Local Law Intro No. 307-2021 amending the Laws of Westchester County by adding a new Chapter 186 relating to the creation of the Office.

It is anticipated that the Office will be operational on or before April 30, 2022. In the interim, there will be a transition period. In order to address this period of transition, and to provide for the uninterrupted provision of indigent legal services, the Agreement for the provision of indigent legal services for calendar year 2022 has been structured to address this transition.

Under the terms of the proposed Agreement, the County will pay to the Legal Aid Society an amount not to exceed \$14,588,458 payable in monthly installments in advance, upon receipt of appropriate vouchers for their services, for a term commencing January 1, 2022 and terminating on December 31, 2022 for services to furnish trained qualified personnel and office space to provide persons charged with a felony who are entitled to counsel pursuant to Chapter 878, representation in all courts located in Westchester County, unless such representation involves a conflict of interest, perform investigations, expert and other services necessary for an adequate defense of such persons.

Further under the Agreement, the County will pay to the Legal Aid Society an amount not to exceed \$292,000 payable in monthly installments in advance, upon receipt of appropriate vouchers for their services, for a term commencing January 1, 2022 and terminating on April 30, 2022, with the County having the sole option to extend the termination date upon thirty (30) days notice to the Legal Aid Society, for services to furnish qualified, trained personnel and office space, at its own cost and expense, to administer a plan for the rotation and coordination of a panel of private assigned counsel (“18-B Panel”), whose names shall be provided by the Bar Association in accordance with the plan and the terms herein, and who shall be paid by the County.

For services in the preparation and certification of the 18-B Panel to the County and the Legal Aid Society, for assignment during the year ending December 31, 2022, the County will pay to the Bar Association an amount not to exceed \$40,000 payable in a lump sum within thirty (30) days after full execution of the Agreement.

Further under the terms of the proposed Agreement, the County will advance on a monthly basis certain approved, yet not received, grant funds that are anticipated to be

received by the County from ILS during the calendar year 2022, under approved grant agreements, in an amount not-to-exceed \$2,051,377. The monthly requests shall require proper documentation and approval by the Departments of Budget and Finance. The reason for these monthly advances is that the grant funds approved and anticipated to be received from ILS are often delayed which then impacts the operations of the Legal Aid Society and its ability to provide the important services that are required under the grant agreements. A list of these grant agreements is attached hereto as "Exhibit A" (the Grant Agreements"). Under the terms of the proposed Agreement, any and all grant funds advanced by the County to the Legal Aid Society that are not received by the County from ILS will be repaid by the Legal Aid Society to the County immediately upon notice.

This Agreement serves a public purpose in that it enables the County to fulfill its lawful obligation of providing counsel to certain indigent persons pursuant to Article 18-B of the County Law and to improve those services pursuant to the Grant Agreements. The goals and objectives are to ensure that effective and improved counsel is provided in a cost efficient manner. The cost effectiveness of the Legal Aid Society's performance under the Agreement is reviewed on a recurring basis by the Department of Budget.

This Agreement is exempt from the Westchester County Procurement Policy and Procedures pursuant to Sections 3(a)xi and 3(a)xiv thereto.

Approval of the attached resolution is respectfully requested.

JMN/LAC
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACTS - 01/20/22 - RAYMOND GUILLOT, SECRETARY

RESOLUTION

Upon a communication from the County Attorney, be it

RESOLVED, that the County of Westchester (the "County") be and is hereby authorized to enter into an agreement with The Legal Aid Society of Westchester County and the Westchester County Bar Association; for the provision of indigent legal services for persons charged with a felony in an amount not to exceed \$14,588,458, payable in monthly installments in advance, for a term commencing January 1, 2022 through December 31, 2022; for the provision of administering the 18-B Panel, in an amount not to exceed \$292,000, payable in monthly installments in advance for a term commencing January 1, 2022 through April 30, 2022, with the County having the sole option to extend the termination date upon thirty (30) days notice; for cash advances for services performed in connection with approved grant agreements with the NYS Office of Indigent Legal Services in an amount not to exceed \$2,051,377 for a term commencing January 1, 2022 through December 31, 2022; and for the preparation and certification of the 18-B Panel, an amount not to exceed \$40,000, payable in a lump sum within thirty (30) days of full execution of the agreement for a term commencing January 1, 2022 through December 31, 2022 (the "Agreement"); and be it further

RESOLVED, that the Agreement may be cancelled upon sixty (60) days prior written notice; and be it further

RESOLVED, that the Agreement is subject to County appropriations; and be it further

RESOLVED, that the 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 the 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 the Agreement upon reasonable prior written notice, and be it further

RESOLVED, that the County Executive, or his duly authorized designee, is empowered to execute all documents necessary 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	52	2085	5100		\$14,880,458
	101	52	1000	9734		\$ 4,667,897
	101	43	1000	4420		\$ 40,000

Budget Funding Year(s) 2022 Start Date 1/1/22 End Date 12/31/22
 (must match resolution)

Funding Source Tax Dollars \$10,252,561
 State Aid \$ 4,667,897
 Federal Aid _____
 (must match resolution Other _____)

APPROVED BOARD OF ACQUISITION & CONTRACT - 01/20/2022 - RAYMOND SCULKY SECRETARY

EXHIBIT "A"

List of Grant Agreements

Distribution #6/Contract #C600055

Distribution #7/Contract #C700055

Distribution #8/Contract #C800055

Distribution #9/Contract #C900055

Distribution #10/Contract #C100055

3rd Counsel at First Appearance/Contract #CAFA355

Hurrell-Harring #CSTWIDEHH51

2nd Upstate Quality Improvement and Caseload Reduction/Contract #C2ND655

2nd Regional Immigration Assistance Center /#C2ND855

APPROVED BOARD OF ACQUISITION & CONTRACT - 01/20/2022 - RAYMOND SCULKY, SECRETARY