

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

November 8, 2022

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

Re: Request for Authorization to Settle the Lawsuit of *Yonkers Contracting v. County of Westchester, et al.*, pending in the Appellate Division of the Supreme Court of the State of New York Docket No. 2023-04276

Dear Honorable Members of the Board:

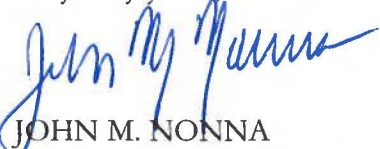
Attached for your consideration is an Act which, if enacted by your Board, would authorize the settlement of the lawsuit entitled *Yonkers Contracting v. County of Westchester, et al.*, for \$250,000.00, as set forth below.

Yonkers Contracting Corporation (“YCC”) was engaged by the County to perform general construction in connection with the development and construction of a Composite Performance Implementation and Plant Expansion at the New Rochelle Waste Water Treatment Plant (Contract No. 08-540) and the construction of a new building known as the Biological Nutrient Removal Facility at the New Rochelle Waste Water Treatment Plant (Contract No. 09-514) (collectively, the “Projects”). During the course of construction, various disputes arose between YCC and the County regarding the Projects. Ultimately, in 2015, YCC commenced litigation against the County and others, seeking in excess of \$37,000,000 from the County.

During the course of litigation, various settlement discussions were held. On May 26, 2020, a settlement proposal was submitted to your Board, proposing to settle the matter for \$7,000,000. At that time, motions for summary judgment were outstanding. Subsequent to the submission of that legislation, and before your Board voted on it, summary judgment was granted in favor of the County.

YCC moved to renew and reargue before the Supreme Court, arguing both that the summary judgment decision was wrong, and that there was an intervening settlement with the County. Following additional motion practice, discovery, and briefing on those issues, the Supreme Court issued a decision on April 13, 2023 which adhered to its prior decision on summary judgment, and found that there was no enforceable settlement. YCC has filed a notice of appeal from that decision.

Since then, YCC and the County have negotiated a proposed settlement in the amount of \$250,000.00, which would resolve all outstanding issues from this litigation, and would result in withdrawing the notice of appeal. I, together with our outside counsel Ira Schulman, recommend this settlement. Therefore, I am requesting that this Board approve the accompanying Act authorizing the settlement of all remaining claims in the action through the payment of \$250,000.00 to YCC.

Very truly yours,

JOHN M. NONNA
Westchester County Attorney

JMN/jra
Enclosure

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of “AN ACT authorizing the County Attorney to Settle the Lawsuit of *Yonkers Contracting v. County of Westchester, et al.*, pending in the Appellate Division of the Supreme Court of the State of New York Docket No. 2023-04276.”

Your Committee is informed that Yonkers Contracting Corporation (“YCC”) was engaged by the County to perform general construction in connection with the development and construction of a Composite Performance Implementation and Plant Expansion at the New Rochelle Waste Water Treatment Plant (Contract No. 08-540) and the construction of a new building known as the Biological Nutrient Removal Facility at the New Rochelle Waste Water Treatment Plant (Contract No. 09-514) (collectively, the “Projects”). During the course of construction, various disputes arose between YCC and the County regarding the Projects. Ultimately, in 2015, YCC commenced litigation against the County and others, seeking in excess of \$37,000,000 from the County.

Your Committee is further informed that during the course of litigation, various settlement discussions were held. On May 26, 2020, a settlement proposal was submitted to your Board, and then referred to committee, proposing to settle the matter for \$7,000,000. At that time, motions for summary judgment were outstanding. Subsequent to the submission of that legislation, and before the item was moved out of committee, summary judgment was granted in favor of the County.

Your Committee is aware that YCC moved to renew and reargue before the Supreme Court, arguing both that the summary judgment decision was wrong, and that there was an intervening

ACT NO.

2023

AN ACT authorizing the County Attorney to Settle the Lawsuit of *Yonkers Contracting v. County of Westchester, et al.*, pending in the Appellate Division of the Supreme Court of the State of New York Docket No. 2023-04276

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

Section 1. The County Attorney is hereby authorized to settle the lawsuit of *Yonkers Contracting Corp. v. County of Westchester, et al.*, by payment from the County in an amount of \$250,000.00.

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.