

Westchester County

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

March 7, 2024

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

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved by your Honorable Board, would authorize the County of Westchester (the "County") to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin" or the "Firm") to provide outside counsel legal services to the County in connection with a dispute the County is having with Nuco Painting Corporation ("Nuco), and Nuco's subcontractor, Unique Scaffolding Systems ("USS"), under Department of Public Works & Transportation (the "Department") Contract No. 17-534 (the "Contract").

By way of background, pursuant to an Administrative Order issued by the EPA on April 11, 2023 (the "Order"), the County was directed to "rehabilitate" one of its water storage towers located in the Town of Mount Pleasant (the "Tower"). The Order contained a deadline of September 11, 2024. In an effort to comply with the Order, the County, through the Department, entered into the Contract with Nuco, pursuant to which Nuco agreed to paint both the exterior and interior of the Tower. In order to complete the work, Nuco subcontracted with USS to erect scaffolding around the Tower. USS alleges that Nuco has failed to pay it for the scaffolding, and, on January 10, 2024, filed a Public Improvement Lien with the County against Nuco for \$282,177.09. Moreover, USS is now seeking to remove the scaffolding from the Tower. These actions are disrupting the County's ability to complete the project by the deadline. The County now requires the services of the Firm to provide it with legal guidance on this matter.

Due to the complex and specialty nature of construction law litigation, and the evaluation and analysis of damages related to such claims, it is in the best interests of the County to retain counsel qualified to handle such litigation. Sheppard Mullin is a firm that specializes in this type of litigation. Moreover, its lead attorney, Ira M. Schulman, Esq. is a nationally-recognized construction law attorney with over 38 years of experience in the field and has successfully represented the County in the past on similar matters. The Firm will be retained

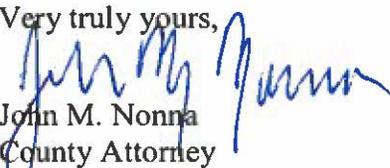
to provide legal advice to the County concerning the Contract dispute, and will represent the County in prosecuting any legal actions commenced by it regarding the dispute. Additionally, the Firm will be retained to defend the County in any legal action commenced by USS or Nuco against it, and, if necessary, prosecute on the County's behalf, any appropriate counterclaims, cross claims, and/or the impleader of third parties (the "Services").

For the Services rendered to the County by Sheppard Mullin, the Firm will be paid at the agreed upon rates as follows: \$630.00 per hour for the services of Ira M. Schulman, Esq.; \$525.00 per hour for Sophia Cahill, Esq.; and \$200.00 per hour for paralegal services; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable to the Firm under the retainer exceed the sum of One Hundred Thousand Dollars (\$100,000.00). In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements. The term of the Agreement will commence retroactive to March 6, 2024 and will continue until the matter has been resolved.

The Planning Department has advised that the proposed retainer agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 12, 2023, which is on file with the Clerk of the Board of Legislators.

Accordingly, your Honorable Board's approval of the attached Act is most respectfully requested.

Very truly yours,


John M. Nonna
County Attorney

JMN/MG/jpg/nn

**HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER**

Your Committee is in receipt of a proposed Act transmitted by the County Attorney which, if adopted, would authorize the County of Westchester (the “County”) to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin” or the “Firm”) to provide outside counsel legal services to the County in connection with a dispute the County is having with Nuco Painting Corporation (“Nuco), and Nuco’s subcontractor, Unique Scaffolding Systems (“USS”), under Department of Public Works & Transportation (the Department”) Contract No. 17-534 (the “Contract”).

The County Attorney has advised your Committee that pursuant to an Administrative Order issued by the EPA on April 11, 2023 (the “Order”), the County was directed to “rehabilitate” one of its water storage towers located in the Town of Mount Pleasant (the “Tower”). The Order contained a deadline of September 11, 2024. In an effort to comply with the Order, the County, through the Department, entered into the Contract with Nuco, pursuant to which Nuco agreed to paint both the exterior and interior of the Tower. In order to complete the work, Nuco subcontracted with USS to erect scaffolding around the Tower. USS alleges that Nuco has failed to pay it for the scaffolding, and, on January 10, 2024, filed a Public Improvement Lien with the County against Nuco for \$282,177.09. Moreover, USS is now seeking to remove the scaffolding from the Tower. These actions are disrupting the County’s ability to complete the project by the deadline. The County now requires the services of the Firm to provide it with legal guidance on this matter.

Your Committee is advised that due to the complex and specialty nature of construction law litigation, and the evaluation and analysis of damages related to such claims, it is in the best interests of the County to retain counsel qualified to handle such litigation. Sheppard Mullin is a firm that specializes in this type of litigation. Moreover, its lead attorney, Ira M. Schulman, Esq. is a nationally-recognized construction law attorney with over 38 years of experience in the field and has successfully represented the County in the past on similar matters. The Firm will be retained to provide legal advice to the County concerning the Contract dispute, and will represent the County in prosecuting any legal actions commenced by it regarding the dispute. Additionally, the Firm will be retained to defend the County in any

legal action commenced by USS or Nuco against it, and, if necessary, prosecute on the County's behalf, any appropriate counterclaims, cross claims, and/or the impleader of third parties (the "Services").

For the services rendered to the County by Sheppard Mullin, the Firm will be paid at the agreed upon rates as follows: \$630.00 per hour for the services of Ira M. Schulman, Esq.; \$525.00 per hour for Sophia Cahill, Esq.; and \$200.00 per hour for paralegal services; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable to the Firm under the retainer exceed the sum of One Hundred Thousand Dollars (\$100,000.00). In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements. The term of the Agreement will commence retroactive to March 6, 2024 and will continue until the matter has been resolved.

The Planning Department has advised that the proposed retainer agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 8, 2024, which is on file with the Clerk of the Board of Legislators.

An affirmative vote of a majority of the voting strength of the Board is required for approval of the attached Act.

Your Committee recommends approval of the attached Act.

Dated: _____, 2024
White Plains, New York

COMMITTEE ON

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FISCAL IMPACT STATEMENT

SUBJECT: Sheppard, Mullen CT#17-534 NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND AIRPORT FUND SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 100,000

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: 243_60_5310_4923. The term of the agreement will commence retroactive to

March 6, 2024 and will continue until the matter has been resolved.

Potential Related Operating Budget Expenses: Annual Amount \$100,000

Describe: An Act authorizing the the County to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP in connection with a dispute the County is having with Nuco Painting Corp and its subcontractor, Unique Scaffolding Systems under CT#17-534

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

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

Current Year: _____

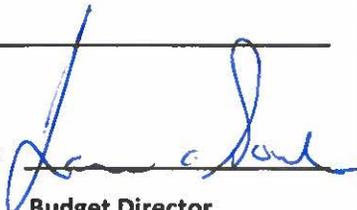
Next Four Years: _____

Prepared by: Mark Medwid

Title: Associate Budget Director

Department: Budget

Date: March 7, 2024

Reviewed By: 
Budget Director

Date: 3/8/24

ACT NO. 2024 - _____

AN ACT authorizing the County of Westchester to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP, for the provision of outside counsel legal services in connection with a dispute concerning Department of Public Works & Transportation Contract No. 17-534

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

Section 1. The County of Westchester (the “County”) is hereby authorized to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP (the “Firm”) for the provision of outside counsel legal services in connection with a dispute the County is having with Nuco Painting Corporation (“Nuco), and Nuco’s subcontractor, Unique Scaffolding Systems (“USS”), under Department of Public Works & Transportation (the “Department”) Contract No. 17-534 (the “Contract”).

§2. The Firm shall be retained to provide legal advice to the County concerning the Contract dispute, and will represent the County in prosecuting any legal actions commenced by it regarding the dispute. Additionally, the Firm will be retained to defend the County in any legal action commenced by USS or Nuco against it, and, if necessary, prosecute on the County’s behalf, any appropriate counterclaims, cross claims, and/or the impleader of third parties (the “Services”).

§3. For the aforesaid Services rendered to the County by Sheppard Mullin, the County is authorized to pay the Firm at the following rates: \$630.00 per hour for the services of Ira M. Schulman, Esq.; \$525.00 per hour for Sophia Cahill, Esq.; and \$200.00 per hour for paralegal services; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable by the County to the Firm exceed the sum of One Hundred Thousand

