

Law & Major Contracts Meeting Agenda



Committee Chair: Damon Maher

800 Michaelian Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Monday, April 3, 2023

10:00 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations committee.

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website: <https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

Chairwoman Catherine Borgia will be participating remotely from Clear View School and Day Treatment Center, 480 Albany Post Road, Briarcliff, NY 10510.

Legislator Catherine Parker will be participating remotely from 96 Purchase Street, Rye, NY 10583.

Committee Chairman Damon Maher will be participating remotely from Joe Coffee, 10 Lecount Place, New Rochelle, NY 10801.

MINUTES APPROVAL

Monday, March 27, 2023 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

Guest: Law Dept.: County Attorney John Nonna

[2023-126](#) ACT - Enter into Agreement with Cuti Hecker Wang LLP re: Guzman v. Westchester County

AN ACT authorizing the County to retain, at County expense, the law firm of Cuti, Hecker Wang LLP to serve in an "of counsel" capacity to the County Attorney, as needed, in connection with the matter Guzman v. Westchester County.

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

March 28, 2023

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

Dear Honorable Members of the Board of Legislators:

Transmitted herewith is an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Cuti Hecker Wang LLP (the "Firm") to serve in an "of counsel" capacity to the County Attorney, as needed (the "Services"), in connection with the matter, *Guzman v. Westchester County*, Index No. 58258/2023 (the "Case"). The term of the proposed Agreement will commence retroactive to March 21, 2023 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement.

By way of background, this lawsuit challenges the 2022 Redistricting performed by the Board of Legislators, alleging that the adopted districts violate various NYS statutory and constitutional provisions. The lawsuit seeks to invalidate the adopted districts and to have a special master appointed to draw new districts.

The defense of this case will require unusual expertise with respect to complex election law issues, constitutional law, and trial and appellate procedure. Therefore, it is in the best interests of the County to retain counsel qualified to handle such matters. Each of the Firm's partners who will be representing the County in this matter, have extensive experience in election law matters, graduated in the top tier of their classes from top law schools, clerked for federal judges, and have considerable experience litigating complex constitutional claims involving government defendants, including election law cases.

Under the proposed Agreement, the Firm will be paid a total amount not-to-exceed Two Hundred Thousand Dollars (\$200,000.00), payable at the rate of Five Hundred Fifty Dollars (\$550.00) per hour for senior partners; Four Hundred Fifty Dollars (\$450.00) per hour for partners; Three Hundred Fifty Dollars (\$350.00) per hour for associates; and One Hundred

Twenty-Five Dollars (\$125.00) per hour for paralegals. In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements.

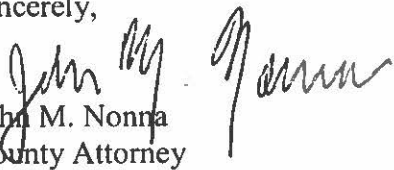
Procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County Procurement Policy and Procedures (“Section 7”). Under Section 7, if the procurement is expected to cost more than \$75,000 “a request for qualifications or a request for proposals shall be issued and qualification statements or proposals shall be received.” However, due to the time-sensitive nature of the Case, and the need to take immediate steps to ensure that the County’s interests are protected, there was insufficient time to follow the normal solicitation procedure.

In lieu of that longer process, my office determined that the Firm, which has years of experience in redistricting law, can competently and readily provide the Services, and that the hourly rate proposed is reasonable in light of my office’s knowledge of the overall marketplace for legal services. Since this means that the County will not be able to rely upon Section 7 as the procurement basis for the proposed Agreement, my office will seek authority from the Board of Acquisition and Contract to exempt this procurement from compliance with the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof.

The Planning Department has advised that the proposed Agreement does not meet the definition of an “action” under the State Environmental Quality Review Act, 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.

I respectfully recommend your Honorable Board’s approval of the attached Act.

Sincerely,


John M. Nonna
County Attorney

JMN/jpg/nn

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the approval of an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the “County”) to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of Cuti Hecker Wang LLP (the “Firm”) to serve in an “of counsel” capacity to the County Attorney, as needed, (the “Services”) in connection with the matter *Guzman v. Westchester County*, Index No. 58258/2023 (the “Case”). Your Committee is advised that the term of the proposed Agreement will commence retroactive to March 21, 2023 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement.

By way of background, your Committee is advised that this lawsuit challenges the 2022 Redistricting performed by the Board of Legislators, alleging that the adopted districts violate various NYS statutory and constitutional provisions. The lawsuit seeks to invalidate the adopted districts and to have a special master appointed to draw new districts.

The County Attorney has advised your Committee that the defense of this case will require unusual expertise with respect to complex election law issues, constitutional law, and trial and appellate procedure. Therefore, it is in the best interests of the County to retain counsel qualified to handle such matters. Each of the Firm’s partners who will be representing the County in this matter, have extensive experience in election law matters, graduated in the top tier of their classes from top law schools, clerked for federal judges, and have considerable experience litigating complex constitutional claims involving government defendants, including election law cases.

The County Attorney has advised your Committee that, under the proposed Agreement, the Firm will be paid a total amount not-to-exceed Two Hundred Thousand Dollars (\$200,000.00), payable at the rate of Five Hundred Fifty Dollars (\$550.00) per hour for senior partners; Four Hundred Fifty Dollars (\$450.00) per hour for partners; Three Hundred Fifty Dollars (\$350.00) per hour for associates; and One Hundred Twenty-Five Dollars (\$125.00) per

hour for paralegals. In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements.

The County Attorney has further advised your Committee that procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County Procurement Policy and Procedures (“Section 7”). Under Section 7, if the procurement is expected to cost more than \$75,000 “a request for qualifications or a request for proposals shall be issued and qualification statements or proposals shall be received.” However, due to the time-sensitive nature of the Case, and the need to take immediate steps to ensure that the County’s interests are protected, there was insufficient time to follow the normal solicitation procedure.

The County Attorney has advised your Committee that, in lieu of that longer process, his office determined that the Firm, which has years of expertise in redistricting law, can competently and readily provide the Services, and that the hourly rates proposed are reasonable in light of his office’s knowledge of the overall marketplace for legal services. The County Attorney has advised your Committee that, since this means that the County will not be able to rely upon Section 7 as the procurement basis for the proposed Agreement, his office will seek authority from the Board of Acquisition and Contract to exempt this procurement from compliance with the Westchester County Procurement Policy and Procedures, pursuant to Section 3(a)(xxi) thereof.

The Planning Department has advised that the proposed Agreement does not meet the definition of an “action” under the State Environmental Quality Review Act, 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.

Your Committee has been advised that the adoption of the proposed Act requires an affirmative vote of a majority of the members of your Honorable Board.

After due consideration, your Committee recommends adoption of the proposed Act.

Dated: _____, 2023
White Plains, New York

COMMITTEE ON

C:JPG-03/28/23

FISCAL IMPACT STATEMENT

SUBJECT: Cuti Hecker Wang LLP -Guzman 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 \$ 200,000

Total Current Year Revenue \$ -

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

Additional Appropriations Other (explain)

Identify Accounts: 101_18_1000_4923 Term will commence retroactive to March 21, 2023

and continue until the County no longer has an interest in the case.

Potential Related Operating Budget Expenses: Annual Amount \$0

Describe: An Act to authorizing the County to retain, at County expense, the law firm of Cuti Hecker Wang LLP to serve in an "of counsel" capacity to the County Attorney, as needed, in connection with the matter Guzman v. Westchester County, Index No 58258/2023.

Potential Related Operating Budget Revenues: Annual Amount \$0

Describe: _____

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

Current Year: \$0

Next Four Years: \$0

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: March 30, 2023

Reviewed By: 
PH Budget Director

Date: 3/30/23

ACT NO. 2023 - _____

AN ACT authorizing the County to retain, at County expense, the law firm of Cuti Hecker Wang LLP to serve in an “of counsel” capacity to the County Attorney, as needed, in connection with the matter *Guzman v. Westchester County*, Index No. 58258/2023.

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

Section 1. The County of Westchester (the “County”) is hereby authorized to enter into an agreement (the “Agreement”) to retain, at County expense, the law firm of Cuti Hecker Wang LLP (the “Firm”) to serve in an “of counsel” capacity to the County Attorney, as needed, (the “Services”) in connection with the matter, *Guzman v. Westchester County*, Index No. 58258/2023 (the “Case”).

§2. The Agreement shall be for a term that will commence retroactive to March 21, 2023 and continue until the County no longer has an interest in the Case, as the County may determine in its sole discretion, or the County otherwise terminates the Agreement. For the Services rendered, the Firm shall be paid a total amount not-to-exceed Two Hundred Thousand Dollars (\$200,000.00), payable at a rate of Five Hundred Fifty Dollars (\$550.00) per hour for senior partners; Four Hundred Fifty Dollars (\$450.00) per hour for partners; Three Hundred Fifty Dollars (\$350.00) per hour for associates; and One Hundred Twenty-Five Dollars (\$125.00) per hour for paralegals. In addition, the Firm will be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements.

§3. The Firm is hereby authorized to take any and all steps that are reasonably necessary to represent the County in matters concerning the Case and the Services, in accordance with the terms to be specified in the Agreement.

§4. The County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to carry out the purposes of this Act.

§5. This Act shall take effect immediately.