

# 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](http://www.westchesterlegislators.com)

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**Monday, April 17, 2023**

**10:00 AM**

**Committee Room**

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## CALL TO ORDER

Meeting jointly with the Committee on Budget & Appropriations

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

## MINUTES APPROVAL

Monday, April 3, 2023 at 10:00 a.m.

### I. ITEMS FOR DISCUSSION

1. [2023-163](#) ACT - Enter into Agreement with Sheppard Mullin re: Custom Marine, Inc.

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 default by Custom Marine, Inc. under Department of Public Works & Transportation Contract No. 12-517-REV.

Guests: Law Dept.: County Attorney John Nonna and Assistant Chief Deputy County Attorney Fred Sullivan

2. [2023-170](#) ACT - Enter into Agreement with Sheppard Mullin re: Clean Air Quality Services

AN ACT authorizing the County of Westchester to retain, at County expense, the law firm of Sheppard, Mullin, Richter and Hampton LLP, for the provision of outside counsel legal services in connection with the civil matter Clean Air Quality Services, Inc. v. County of Westchester.

Guests: Law Dept.: County Attorney John Nonna

3. [2023-152](#) ACT - Enter into Agreement with Wilson, Elser, Moskowitz, Edelman & Dicker LLP for Board of Elections re: Guzman v. Westchester County  
AN ACT authorizing the designation and retention of the law firm of Wilson Elser Moskowitz Edelman & Dicker LLP to represent the Westchester County Board of Elections and Commissioners Colety and Nelson in their official capacity, pursuant to the Laws of Westchester County in connection with the matter Guzman v. Westchester County.  
**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS**

Guest: Law Dept: County Attorney John Nonna

## II. OTHER BUSINESS

## III. RECEIVE & FILE

## ADJOURNMENT

George Latimer  
County Executive

Office of the County Attorney

John M. Nonna  
County Attorney

April 11, 2023

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 default by Custom Marine, Inc. ("Custom") under Department of Public Works & Transportation (the "Department") Contract No. 12-517-REV (the "Contract").

By way of background, this matter stems from a default by Custom under a contract for Cellular Bulkhead Rehabilitation Phase III & IV at the Yonkers Joint Wastewater Treatment Plant (the "Project"). By letter dated March 3, 2023, the County sent Custom a Notice of Default under the Contract regarding Custom's obligation under Executive Law Article 15-A to seek 20% participation of the contracted work on the Project for a combination of Minority Business Enterprises and/or Women Business Enterprises (the "Participation Goal"). The County alleged in the Notice of Default that Custom misrepresented the participation in the Project of its subcontractor, Empire State Commercial Diving Services, LLC, as a Minority Business Enterprise, as well as Custom's efforts to attain the Participation Goal. The County may therefore be required to commence legal action against Custom, and any other necessary party, to protect its rights regarding the default. Such parties include, but are not limited to, Sompo International Holdings, Ltd. as successor in interest to Endurance American Insurance Company, the Surety for Custom under the Contract, who issued a Performance and Payment Bond dated September 20, 2020, and identified by Bond No. EAIC4008030. Further, it is anticipated that Custom may pursue legal action against the County in response to the Notice of Default.

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 37 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 default, and represent the County in prosecuting any legal actions commenced by it regarding the default. Additionally, the Firm will be retained to defend the County in any legal action commenced by Custom against it regarding the default, 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.; \$500.00 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 13, 2023 and will continue until the matter has been resolved.

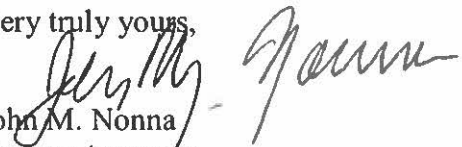
Procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County Procurement Policy and Procedures ("Section 7"). Under Section 7, if the procurement is expected to cost more than \$75,000 "a request for qualifications or a request for proposals shall be issued and qualification statements or proposals shall be received." However, due to the time-sensitive nature of this matter, 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 Sheppard Mullin, as a firm expert in construction 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 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

**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 in connection with a default by Custom Marine, Inc. (“Custom”) under Department of Public Works & Transportation (the “Department”) Contract No. 12-517-REV (the “Contract”).

The County Attorney has advised your Committee that this matter stems from a default by Custom under a contract for Cellular Bulkhead Rehabilitation Phase III & IV at the Yonkers Joint Wastewater Treatment Plant (the “Project”). By letter dated March 3, 2023, the County sent Custom a Notice of Default under the Contract regarding Custom’s obligation under Executive Law Article 15-A to seek 20% participation of the contracted work on the Project for a combination of Minority Business Enterprises and/or Women Business Enterprises (the “Participation Goal”). The County alleged in the Notice of Default that Custom misrepresented the participation in the Project of its subcontractor, Empire State Commercial Diving Services, LLC, as a Minority Business Enterprise, as well as Custom’s efforts to attain the Participation Goal. The County may therefore be required to commence legal action against Custom, and any other necessary party, to protect its rights regarding the default. Such parties include, but are not limited to, Sompo International Holdings, Ltd. as successor in interest to Endurance American Insurance Company, the Surety for Custom under the Contract, who issued a Performance and Payment Bond dated September 20, 2020, and identified by Bond No. EAIC4008030. Further, it is anticipated that Custom may pursue legal action against the County in response to the Notice of Default.

The County Attorney has further advised your Committee 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 37 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 default, and represent the County in prosecuting any legal actions commenced by it regarding the default. Additionally, the Firm will be retained to defend the County in any legal action commenced by Custom against it regarding the default, and, if necessary, prosecute on the County's behalf, any appropriate counterclaims, cross claims and/or the impleader of third parties (the "Services").

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The County Attorney has 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"). The County Attorney has advised your Committee that, 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." The County Attorney has advised your Committee that, however, due to the time-sensitive nature of this matter, 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 further advised your Committee that, in lieu of that longer process, his office determined that Sheppard Mullin, as a firm expert in construction 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 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.

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: \_\_\_\_\_, 2023  
White Plains, New York

**COMMITTEE ON**

c:JPG 04.10.23



# FISCAL IMPACT STATEMENT

SUBJECT: Sheppard, Mullin, Richter 12-517-REV  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: 101\_18\_1000\_4923 The term of the agreement will commence retroactive to March 13, 2023 and will continue until the matter has been resolved.

Potential Related Operating Budget Expenses:      Annual Amount \$0

Describe: An act authorizing the County of Westchester to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP in connection with a default by Custom Marine, Inc. under Department of Public Works & Transportation Contract No. 12-517-REV.

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: April 13, 2023

Reviewed By: 

PH  
Budget Director

Date: 4/13/23



ACT NO. 2023 - \_\_\_\_\_

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 a default by Custom Marine, Inc. under Department of Public Works & Transportation Contract No. 12-517-REV.

**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 (“Sheppard Mullin” or the “Firm”) for the provision of outside counsel legal services in connection with a default by Custom Marine, Inc. (“Custom”) under Department of Public Works & Transportation (the “Department”) Contract No. 12-517-REV (the “Contract”).

**§2.** The Firm shall be retained to provide legal advice to the County concerning the default, and represent the County in prosecuting any legal actions commenced by it against any necessary parties regarding the default, including but not limited to, Custom, and Sompo International Holdings, Ltd., as successor in interest to Endurance American Insurance Company, the Surety for Custom under the Contract. The Firm shall also be retained to defend the County in any legal action commenced by Custom against it regarding the default, including prosecuting 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.; \$500.00 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

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 13, 2023 and will continue until the matter has been resolved.

**§4.** This Act shall take effect immediately.

George Latimer  
County Executive

Office of the County Attorney

John M. Nonna  
County Attorney

April 13, 2023

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 the civil matter entitled *Clean Air Quality Service, Inc. v. County of Westchester*, Index No. 57837/2023 (the "Case") for a term commencing on April 13, 2023 and continuing until a final disposition and/or order of the Case or until the County determines, in its sole discretion, to terminate the agreement with Sheppard Mullin.

By way of background, Plaintiff Clean Air Quality Service, Inc. has commenced legal action against the County regarding Contract No. 11-560 for the Boiler and Generator Replacement Project at the Ossining Wastewater Treatment Plant located in Ossining (the "Project"). Plaintiff makes claims against the County for breach of contract and unjust enrichment.

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 37 years of experience in the field and has represented the County successfully in the past on similar matters. The Firm will be retained to, *inter alia*, defend the County against claims commenced against it, and, if necessary, prosecute appropriate counterclaims and/or cross claims and/or implead 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.; \$500.00 per hour for Sophia Cahill, Esq.; and \$200.00 per hour for paralegal services; or personnel within

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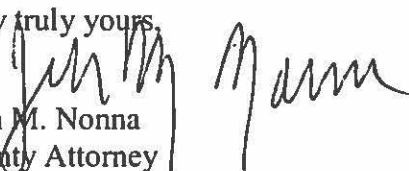
Procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County Procurement Policy and Procedures (“Section 7”). Under Section 7, if the procurement is expected to cost more than \$75,000 “a request for qualifications or a request for proposals shall be 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 Sheppard Mullin, as a firm expert in construction 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 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/jpg  
Attachments

**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 in connection with the civil matter entitled *Clean Air Quality Service, Inc. v. County of Westchester*, Index No. 57837/2023 (the “Case”), for a term commencing on April 13, 2023 and continuing until a final disposition and/or order of the Case or until the County determines, in its sole discretion, to terminate the agreement with Sheppard Mullin.

The County Attorney has advised your Committee that Plaintiff Clean Air Quality Service, Inc. has commenced legal action against the County regarding Contract No. 11-560 for the Boiler and Generator Replacement Project at the Ossining Wastewater Treatment Plant located in Ossining (the “Project”). Plaintiff makes claims against the County for breach of contract and unjust enrichment.

The County Attorney has further advised your Committee 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 37 years of experience in the field and has represented the County successfully in the past on similar matters. The Firm will be retained to, *inter alia*, defend the County against claims commenced against it, and, if necessary, prosecute appropriate counterclaims and/or cross claims and/or implead third parties (the “Services”).

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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 County Attorney has 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”). The County Attorney has advised your Committee that, 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.” The County Attorney has advised your Committee that, 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 further advised your Committee that, in lieu of that longer process, his office determined that Sheppard Mullin, as a firm expert in construction 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.

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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: \_\_\_\_\_, 2023  
White Plains, New York

c.JPG 04.13.23

**COMMITTEE ON**



# FISCAL IMPACT STATEMENT

SUBJECT: Sheppard, Mullin, No. 57837/2023  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: 101\_18\_1000\_4923 The term of the agreement will commence on April 13, 2023 and will continue until a final disposition or until the County terminates the agreement.

Potential Related Operating Budget Expenses:      Annual Amount \$0

Describe: An act authorizing the County of Westchester to retain, at County expense, the law firm of Sheppard, Mullin, Richter & Hampton LLP in connection with the civil matter Clean Air Quality Service, Inc. v. County of Westchester, Index No. 57837/2023.

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: April 14, 2023

Reviewed By:   
Budget Director

Date: 4/14/23

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 the civil matter *Clean Air Quality Service, Inc. v. County of Westchester*, Index No. 57837/2023.

**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 (“Sheppard Mullin” or the “Firm”) for the provision of outside counsel legal services in connection with the civil matter entitled *Clean Air Quality Service, Inc. v. County of Westchester*, Index No. 57837/2023 (the “Case”) for a term commencing on April 13, 2023 and continuing until a final disposition and/or order of the Case or until the County determines, in its sole discretion, to terminate the agreement with Sheppard Mullin.

§2. The Firm shall be retained to, *inter alia*, defend the County against claims commenced against it, and, if necessary, prosecute appropriate counterclaims and/or cross claims and/or implead third parties.

§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.; \$500.00 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 Dollars (\$100,000.00). In addition, the Firm shall be reimbursed, at cost, for *reasonable and necessary* out of pocket expenses and disbursements.

§4. This Act shall take effect immediately.



**George Latimer**  
County Executive

Office of the County Attorney

**John M. Nonna**  
County Attorney

April 6, 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 Wilson Elser Moskowitz Edelman & Dicker LLP (the "Firm") to represent the Westchester County Board of Elections (the "BOE") and Commissioners Colety and Nelson in their official capacity, 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 BOE, and Commissioners Colety and Nelson in their official capacity ("the BOE Respondents"), have indicated that they are not taking a position in this proceeding. As such, it is appropriate for the BOE Respondents to have separately retained counsel.

I would specifically note that the BOE is entitled to representation, as it is an independent Board of the County, pursuant to the Laws of Westchester County § 158.11(2), and that Commissioners Colety and Nelson are entitled to defense and indemnification as they have confirmed that they shall cooperate in the defense of the action against the County, and are not seeking to take a position adverse to the County.

Therefore, pursuant to the Laws of Westchester County § 297.31(2)(b)(i), I determine that representation of the BOE Respondents by the Office of the County Attorney would be inappropriate, and I recommend that your Honorable Board approve the attached Act to authorize the retention of independent counsel for the BOE Respondents in this matter.

Under the proposed Agreement, the Firm will be paid a total amount not-to-exceed Twenty-Five Thousand Dollars (\$25,000.00), payable at the rate of Three Hundred Dollars (\$300.00) per hour for John Flannery; Two Hundred Fifty Dollars (\$250.00) per hour for senior 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.

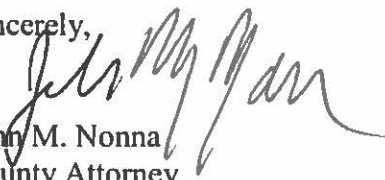
Procurement of the Services would, normally, be conducted in accordance with Section 7 of the Westchester County Procurement Policy and Procedures (“Section 7”). Under Section 7, the County is required to “solicit quotations, statements or other information regarding [the] experience, qualifications and capability to perform the proposed services” of “no fewer than three persons customarily performing such services.” However, due to the time-sensitive nature of the Case, and the need to take immediate steps to ensure that the BOE’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 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 Wilson Elser Moskowitz Edelman & Dicker LLP (the “Firm”) to represent the Westchester County Board of Elections (the “BOE”) and Commissioners Colety and Nelson in their official capacity, 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 BOE, and Commissioners Colety and Nelson in their official capacity (“the BOE Respondents”), have indicated that they are not taking a position in this proceeding. As such, it is appropriate for the BOE Respondents to have separately retained counsel.

The County Attorney has further advised your Committee that the BOE is entitled to representation, as it is an independent Board of the County, pursuant to the Laws of Westchester County § 158.11(2), and that Commissioners Colety and Nelson are entitled to defense and indemnification as they have confirmed that they shall cooperate in the defense of the action against the County, and are not seeking to take a position adverse to the County.

Therefore, pursuant to the Laws of Westchester County § 297.31(2)(b)(i), the County Attorney has determined that representation of the BOE Respondents by the Office of the County Attorney would be inappropriate, and therefore recommends that your Honorable Board approve the attached Act to authorize the retention of independent counsel for the BOE Respondents in this matter.

The County Attorney has further advised your Committee that, under the proposed Agreement, the Firm will be paid a total amount not-to-exceed Twenty-Five Thousand Dollars (\$25,000.00), payable at the rate of Three Hundred Dollars (\$300.00) per hour for John Flannery; Two Hundred Fifty Dollars (\$250.00) per hour for senior 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 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, the County is required to “solicit quotations, statements or other information regarding [the] experience, qualifications and capability to perform the proposed services” of “no fewer than three persons customarily performing such services.” However, due to the time-sensitive nature of the Case, and the need to take immediate steps to ensure that the BOE’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 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-04/05/23



# FISCAL IMPACT STATEMENT

SUBJECT: Wilson Elser Index No. 58258/2023  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      \$ 25,000

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 The term will commence retroactive to March 21, 2023 and continue until the County no longer has an interest in the case or the County terminates the agreement.

Potential Related Operating Budget Expenses:      Annual Amount \$0

Describe: An act authorizing the designation and retention of the law firm of Wilson Elser Moskowitz, Edelman & Dicker LLP to represent the County BOE and Commissioners Colety and Nelson in connection with the matter of 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: April 14, 2023

Reviewed By:   
Budget Director  
Date: 4/14/23

ACT NO. 2023 - \_\_\_\_\_

AN ACT authorizing the designation and retention of the law firm of Wilson Elser Moskowitz Edelman & Dicker LLP to represent the Westchester County Board of Elections, and Commissioners Colety and Nelson in their official capacity, pursuant to the Laws of Westchester County § 297.31(2)(b)(i), 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 Wilson Elser Moskowitz Edelman & Dicker LLP (the “Firm”) to represent the Westchester County Board of Elections (the “BOE”), and Commissioners Colety and Nelson in their official capacity (“the BOE Respondents”), as needed, pursuant to the Laws of Westchester County § 297.31(2)(b)(i), (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 Twenty-Five Thousand Dollars (\$25,000.00), payable at the rate of Three Hundred Dollars (\$300.00) per hour for John Flannery; Two Hundred Fifty Dollars (\$250.00) per hour for senior 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 BOE Respondents 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.