

ACT 256 - 2023

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

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.

Your Committee is informed that 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. The County Attorney, and the County's outside counsel Ira Schulman, have recommended that the County accept this settlement as a fair and equitable resolution of this action. Your Committee concurs with this recommendation and recommends that this Honorable Board adopt the proposed Act.

Dated: White Plains, New York  
November 27<sup>th</sup>, 2023

*Jessie Zeller Johns*  
*Wendy M*  
*David Brown*  
*Cathy Park*  
*MJ*  
*Marcy Barr*  
*Sydney Brant*

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COMMITTEE ON

Budget & Appropriations

Law & Major Contracts

Dated: November 27, 2023  
White Plains, New York

*The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.*



Colin J. Amato



Colin J. Amato

**COMMITTEES ON**

Budget & Appropriations

Law & Major Contracts

# FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: SLI01  NO FISCAL IMPACT PROJECTED

**SECTION A - CAPITAL BUDGET IMPACT**  
To Be Completed by Budget

GENERAL FUND     
  AIRPORT FUND     
  SPECIAL DISTRICTS FUND

Source of County Funds (check one):     
  Current Appropriations  
   
  Capital Budget Amendment

**Settlement Yonkers Contracting v. County of Westchester et al., Bond Act 195-14**

**SECTION B - BONDING AUTHORIZATIONS**  
To Be Completed by Finance

Total Principal	\$	250,000	PPU	15	Anticipated Interest Rate	3.48%
Anticipated Annual Cost (Principal and Interest):	\$	21,597				
Total Debt Service (Annual Cost x Term):	\$	323,955				

Finance Department:      maab 11-13 rates

**SECTION C - IMPACT ON OPERATING BUDGET** (exclusive of debt service)  
To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual):      \$      -

Potential Related Revenues (Annual):      \$      -

**Anticipated savings to County and/or impact of department operations**  
(describe in detail for current and next four years):

\_\_\_\_\_

\_\_\_\_\_

**SECTION D - EMPLOYMENT**  
As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded:      N/A

**SECTION E - EXPECTED DESIGN WORK PROVIDER**

County Staff     
  Consultant     
  Not Applicable

Prepared by:	<u>Dianne Vanadia</u>		
Title:	<u>Associate Budget Director</u>	Reviewed By:	<u><i>Christine Raynor</i></u>
Department:	<u>Budget</u>	Budget Director	
Date:	<u>11/21/23</u>	Date:	<u>11/22/23</u>

ACT NO. 256 - 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.

STATE OF NEW YORK            )  
  )    ss.  
WESTCHESTER COUNTY        )

**I HEREBY CERTIFY** that I have compared the foregoing Act, Act No. 256 - 2023, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Act, which was duly adopted by the County Board of Legislators, of the County of Westchester on December 11, 2023, and approved by the County Executive on December 13, 2023.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 14<sup>th</sup> day of December, 2023.



Malika Vanderberg

The Clerk of the Westchester County  
Board of Legislators

County of Westchester, New York

