

Law & Major Contracts Meeting Agenda



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

Committee Chair: David Imamura

Monday, May 6, 2024

10:00 AM

Committee Room

CALL TO ORDER

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.

Joint with Budget & Appropriations committee.

Legislator Colin Smith will be participating remotely from 132 Main Street, Suite 1, Peekskill, NY 10566.

MINUTES APPROVAL

Monday, April 29, 2024

I. ITEMS FOR DISCUSSION

1. [2024-251](#) ACT-Approval for Payment of Legal Services-Lewis

AN ACT of the Westchester County Board of Legislators approving payment of the bill for legal services rendered by appointed Special District Attorney Stephen R. Lewis.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

Guests: Law Dept.: County Attorney John Nonna and Chief Deputy County Attorney Stacey Dolgin-Kmetz

2. [2024-231](#) ACT - Custom Marine Agreement

AN ACT authorizing the County of Westchester to enter into an agreement with Endurance American Insurance Company ("Endurance"), as surety for Custom Marine, Inc., and with Mace Contracting, Inc. ("Mace"), for the County to settle its claim against Endurance regarding DPWT Contract No. 12-517-Rev. (the "Contract"), whereby Endurance shall tender to the County, the services of Mace, and Mace shall agree, to complete the remaining work

under the Contract.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

Guests: Law Dept.: Chris Inzero, Assistant County Attorney; Sheppard Mullin: Ira Schulman, Partner

3. [2024-269](#) ACT - Proceeding Settlement - Migi Asset Acquisition, LLC.

AN ACT authorizing the County Attorney to Settle the Proceeding entitled The County of Westchester v. Migi Asset Acquisition, LLC.

Guest: Law Dept.: Justin Adin, Chief Deputy County Attorney


II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

April 26, 2024

TO: Hon. Vedat Gashi, Chair
Hon. Jose Alvarado, Vice Chair
Hon. Tyrae Woodson-Samuels, Majority Leader
Hon. Margaret Cunzio, Minority Leader

FROM: George Latimer 
Westchester County Executive

RE: Message Requesting Immediate Consideration: **ACT – Approval for Payment of Legal Services.**

This will confirm my request that the Board of Legislators allow submission of the referenced communication to be submitted to the Board of Legislators April 29, 2024 Agenda.

Transmitted herewith for your review is an ACT for approval of payment for legal services rendered by appointed Special District Attorney Stephen R. Lewis.

Therefore, since this communication is of the utmost importance, it is respectfully submitted that the County Board of Legislators accepts this submission for April 29, 2024 “blue sheet” calendar.

Thank you for your prompt attention to this matter.



George Latimer
County Executive

April 24, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, New York 10601

Dear Honorable Members of the Board:

I respectfully request that your Honorable Board adopt “AN ACT of the Westchester County Board of Legislators approving for payment the bill for legal services rendered by appointed Special District Attorney Stephen R. Lewis.”

Pursuant to a Special District Attorney Order dated February 9, 2024, the Honorable James McCarty has ordered that Stephen R. Lewis be appointed to act as a Special District Attorney pursuant to New York County Law Sections §§ 701(1)(a) and 701(4), at a rate of \$225 per hour. Under New York County Law § 704(5), your Honorable Board is responsible for authorizing the payment of fees and disbursements to Special District Attorneys, after they have been certified by the Court.

The Honorable James McCarty transmitted to the Westchester County District Attorney’s Office on April 10, 2024 a certified invoice from Mr. Lewis in the amount of \$7515. The attached legislation will enable payment to be made to Mr. Lewis.

Further, there will be future invoices presented by Mr. Lewis while he continues his work as a Special District Attorney. In order to expedite payment, the District Attorney has requested that your Honorable Board set a “not-to-exceed” amount, so that payments can be processed upon certification by the Court, without the need to present each invoice individually for action by your Honorable Board. The District Attorney recommends a “not-to-exceed” amount of \$35,000.00, based upon Mr. Lewis’ first submission. The District Attorney believes it is of utmost importance to make clear that because the Court has ordered Mr. Lewis to act as a Special District Attorney in the subject matter, neither she, nor any member of her staff is involved with or has knowledge of the prosecutorial decisions being made by Mr. Lewis.

In light of the aforementioned, I respectfully request that this Honorable Board adopt the proposed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "George Latimer", written over a light blue horizontal line.

GEORGE LATIMER
County Executive

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

The Committee is in receipt of “AN ACT of the Westchester County Board of Legislators approving for payment the bill for legal services rendered by appointed Special District Attorney Stephen R. Lewis.

Your Committee is informed that, pursuant to a Special District Attorney Order dated February 9, 2024, the Honorable James McCarty has ordered that Stephen R. Lewis be appointed to act as a Special District Attorney pursuant to New York County Law Sections §§ 701(1)(a) and 701(4). For his work as a Special District Attorney, Mr. Lewis is to be paid the rate of \$225 per hour, plus reasonable and necessary disbursements and costs.

Your Committee is further informed that, to date, Mr. Lewis has submitted a bill in the amount of \$7,515.00, dated March 14, 2024, for legal services rendered from February 7, 2024 through March 13, 2024. This bill was certified by the Court, and transmitted to the District Attorney’s Office on April 10, 2024.

Under New York County Law § 704(5), this Honorable Board is responsible for authorizing the payment of fees and disbursements for Special District Attorneys. Having been so certified by the Court, your Committee recommends authorizing the payment of the existing invoice. It is further recognized that there will be future additional invoices for work submitted by Mr. Lewis. In order to expedite the payment process, and so as to not discourage attorneys from accepting the position of Special District Attorney in the future, the District Attorney has requested that this Honorable Board authorize the payment of future invoices by authorizing payments up to a “not-to-exceed” amount. The District Attorney recommends a “not-to-exceed” amount of \$35,000.00, based upon Mr. Lewis’ first submission. The District Attorney has informed your Committee that this could be subject to

change depending on how Mr. Lewis’s work proceeds. Thus, as written, the Act provides that future invoices may be paid, upon certification by the Court, so long as the rate of pay does not exceed \$225.00 per hour, and so long as the amount paid to Mr. Lewis does not exceed \$35,000.00. The District Attorney believes it is of utmost importance to make clear that because the Court has ordered Mr. Lewis to act as a Special District Attorney in the subject matter, neither she, nor any member of her staff is involved with or has knowledge of the prosecutorial decisions being made by Mr. Lewis.

Your Committee is informed that the proposed project does not meet the definition of an action under New York State Environmental Quality Review Act (“SEQRA”) and its implementing regulations 6 NYCRR Part 617. 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 concurs in this conclusion.

The Committee, after careful consideration, recommends the adoption of this Act.

Dated: 2024
White Plains, New York

FISCAL IMPACT STATEMENT

SUBJECT: Legal Services, Special DA S. Lewis 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 \$ 35,000

Total Current Year Revenue \$ -

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

Additional Appropriations

Other (explain)

Identify Accounts: DA Technical Services

Fund 101 Dept 37 Unit 0010 Sub-Unit 1000 Object 4420

Potential Related Operating Budget Expenses: Annual Amount \$35,000.00

Describe: Legal services rendered by Special District Attorney Stephen R. Lewis ordered by the Honorable James McCarty pursuant to New York County Law Sections 701(1)(a) and 701(4) to act as a Special District Attorney.

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

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

Current Year: N/A

Next Four Years: N/A

Prepared by: Roberto Nascimento

Title: Sr. Budget Analyst

Department: Budget

Date: April 26, 2024

Reviewed By: 

Budget Director

Date: 4/26/24

ACT NO. ____ - 2024

AN ACT of the Westchester County Board of Legislators approving for payment the bill for legal services rendered by appointed Special District Attorney Stephen R. Lewis

Be it enacted by the Board of Legislators of the County of Westchester, as follows:

§ 1. Pursuant to a Special District Attorney Order dated February 9, 2024, the Honorable James McCarty ordered that Stephen R. Lewis be appointed pursuant to New York County Law Sections 701(1)(a) and 701(4) to act as a Special District Attorney. For those services, Mr. Lewis has and will be providing legal services as a Special District Attorney, at a rate of \$225.00 per hour, plus reasonable and necessary disbursement.

§ 2. To date, Mr. Lewis has submitted a bill for services rendered from February 7, 2024 through March 13, 2024 for such services, in the amount of \$7,515.00.

§ 3. Pursuant to New York County Law Section 701 and the invoice submitted by Mr. Lewis, and certified by the Honorable James McCarty, payment of \$7,515.00 is hereby approved.

§ 4. It is further recognized that there will be future additional invoices for work submitted by Mr. Lewis. Upon certification by the court, in compliance with New York County Law Section 701, future invoices may be submitted to the Commissioner of Finance for payment, so long as the rate of pay does not exceed \$225.00 per hour, and so long as the amount paid to Mr. Lewis does not exceed \$35,000.00.

§ 5. Effective date. This Act shall take effect immediately.

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

April 23, 2024

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

Re: Legislation authorizing the County of Westchester to enter into an agreement with Endurance American Insurance Company (“Endurance”), as surety for Custom Marine, Inc., and with Mace Contracting, Inc., (“Mace”), for the County to settle its claim against Endurance regarding DPWT Contract No. 12-517-Rev. (the “Contract”), whereby Endurance shall tender to the County, the services of Mace, and Mace shall agree, to complete the remaining work under the Contract.

Dear Honorable Members of the Board:

This request, if enacted, would authorize the County of Westchester (the “County”), acting by and through the Commissioner of DPWT, or his designee, to enter into an agreement (the “Proposed Agreement”) with Endurance American Insurance Company (“Endurance”), as surety for Custom Marine, Inc. (“Custom”), and with Mace Contracting, Inc. (“Mace”), for the County to settle its claim against Endurance regarding DPWT Contract No. 12-517-Rev. (the “Contract”), whereby Endurance shall tender to the County, the services of Mace, and Mace shall agree, to complete the remaining work under the Contract (the “Remaining Work”).

On or about September 24, 2020, the County entered into the Contract with Custom, for an amount not-to-exceed \$6,628,460.00, regarding work identified as Cellular Bulkhead Rehabilitation, Phase III & IV, at the Yonkers Joint Wastewater Treatment Plant, in the City of Yonkers, NY.

On or about September 29, 2020, Endurance, on behalf of Custom, issued a performance bond to the County, and a labor and materials payment bond to the County, regarding the Contract. Both bonds bear bond no. EAIC4003080, and each has an individual penal sum of \$6,628,460.00.

Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914- 995-3132*

*Please be advised that service by facsimile is not accepted.



As part of Custom's obligations under the Contract, it agreed to make a good faith effort to have 20% of the work performed by a combination of Minority Business Enterprises and/or Women Business Enterprises (the "20% Participation Goal").

By letter from the County to Custom dated March 3, 2023, the County declared Mace in default of the Contract, due to its failure to make a good faith effort to attain the 20% Participation Goal. Additionally, the County asserted in said letter, that Mace not only failed to make a good faith effort to attain the 20% Participation Goal, but misrepresented to the County that it had attained said goal. The County then terminated the Contract due to Custom's default.

By ACT No. 73-2023, Your Honorable Board authorized the County Attorney to retain the law firm of Sheppard, Mullin, Richter, and Hampton, LLP ("Sheppard Mullin") to represent the County regarding Custom's default under the Contract.

By letter from Sheppard Mullin to Endurance dated April 27, 2023, the County demanded that Endurance, pursuant to its obligations under its Performance Bond, complete the remaining work under the Contract.

Pursuant to the County's demand upon Endurance to complete the remaining work under the Contract, Endurance now proposes an agreement to tender to the County, the services of Mace, and Mace agrees to complete, the remaining work under the Contract.

The Proposed Agreement shall contain the following terms. The County shall agree to administer the Contract with Mace in the same manner and upon the same terms as set forth therein, except that it shall pay Mace, for completion of the remaining work, the sum of \$2,449,098.70, constituting the remaining balance under the Contract. The remaining balance is subject to increase or decrease in accordance with the terms of the Contract. Mace shall agree to assume all obligations under the Contract in its completion of the remaining work. The County shall also pay Mace, an amount up to \$444,404.00 for any authorized Miscellaneous Additional Work provided for under the Contract. Mace shall deliver to the County, a performance bond, and a payment bond, in the form required by the Contract, with each bond having a separate penal sum of \$2,449,098.70, and each naming the County as obligee.

In exchange for Endurance's tender of Mace to the County, the County shall agree to discharge and release Endurance, together with its representatives, owners, officers, directors, employees, attorneys, successors, and assigns, from any and all performance obligations, claims, causes of action, costs, expenses, losses, damages or other claims or rights concerning the Contract and/or under the Custom Performance Bond.


Should the County enter into the Proposed Agreement, Endurance and Custom shall enter into an agreement, whereby Custom shall pay Mace a supplemental sum of \$733,000.00, in excess of the \$2,449,098.70 remaining contract balance, regarding Mace's completion of the remaining work. The County has no involvement in this proposed agreement, nor shall it have any obligation to pay any portion of the supplemental sum.

Additionally, should the County enter into the Proposed Agreement, Endurance and Mace shall enter into an agreement whereby Endurance shall defend and indemnify Mace regarding its completion of the remaining work.

It is advisable that the County enter into the Proposed Agreement with Endurance and Mace,, as it will allow the remaining work to be completed, and without cost to the County additional to that authorized under the Contract.

To protect the County's legal interests, and upon recommendation of Hugh J. Greechan, Commissioner of the Department of Public Work and Transportation, authority for the County to enter into the Proposed Agreement with Endurance, and Mace, is requested.

Very truly yours,


John M. Nonna
County Attorney

JMN/cji

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if approved by your Board, would authorize the County of Westchester (the “County”), acting by and through the Commissioner of the Department of Public Works and Transportation (“DPWT”), or his designee, to enter into an agreement (the “Proposed Agreement”) with Endurance American Insurance Company (“Endurance”), as Surety for Custom Marine, Inc. (“Custom”), and with Mace Contracting, Inc. (“Mace”), for the County to settle its claim against the Surety regarding DPWT Contract No. 12-517-Rev. (the “Contract”), whereby Endurance shall tender to the County, the services of Mace, and Mace shall agree, to complete the remaining work under the Contract (the “Remaining Work”).

On or about September 24, 2020, the County entered into the Contract with Custom, for an amount not-to-exceed \$6,628,460.00, regarding work identified as Cellular Bulkhead Rehabilitation, Phase III & IV, at the Yonkers Joint Wastewater Treatment Plant, in the City of Yonkers, NY.

On or about September 29, 2020, Endurance, on behalf of Custom, issued a performance bond to the County, and a labor and materials payment bond to the County, regarding the Contract. Both bonds bear bond no. EAIC4003080, and each has an individual penal sum of \$6,628,460.00.

As part of Custom’s obligations under the Contract, it agreed to make a good faith effort to have 20% of the work performed by a combination of Minority Business Enterprises and/or Women Business Enterprises (the “20% Participation Goal”).

By letter from the County to Custom dated March 3, 2023, the County declared Mace in default of the Contract, due to its failure to make a good faith effort to attain the 20% Participation Goal. Additionally, the County asserted in said letter, that Mace not only failed to make a good faith effort to attain the 20% Participation Goal, but misrepresented to the County that it had attained said goal. The County then terminated the Contract due to Custom's default.

By ACT No. 73-2023, Your Honorable Board authorized the County Attorney to retain the law firm of Sheppard, Mullin, Richter, and Hampton, LLP ("Sheppard Mullin") to represent the County regarding Custom's default under the Contract.

By letter from Sheppard Mullin to Endurance dated April 27, 2023, the County demanded that Endurance, pursuant to its obligations under its Performance Bond, complete the remaining work under the Contract.

Pursuant to the County's demand upon Endurance to complete the remaining work under the Contract, Endurance now proposes an agreement to tender to the County, the services of Mace, and Mace agrees to complete, the remaining work under the Contract.

The Proposed Agreement shall contain the following terms. The County shall agree to administer the Contract with Mace in the same manner and upon the same terms as set forth therein, except that it shall pay Mace, for completion of the remaining work, the sum of \$2,449,098.70, constituting the remaining balance under the Contract. The remaining balance is subject to increase or decrease in accordance with the terms of the Contract. Mace shall agree to assume all obligations under the Contract in its completion of the remaining work. The County shall also pay Mace, an amount up to \$444,404.00 for any authorized Miscellaneous Additional Work provided for under the Contract. Mace shall deliver to the County, a performance bond,

and a payment bond, in the form required by the Contract, with each bond having a separate penal sum of \$2,449.098.70, and each naming the County as obligee.

In exchange for Endurance's tender of Mace to the County, the County shall agree to discharge and release Endurance, together with its representatives, owners, officers, directors, employees, attorneys, successors, and assigns, from any and all performance obligations, claims, causes of action, costs, expenses, losses, damages or other claims or rights concerning the Contract and/or under the Custom Performance Bond.

Should the County enter into the Proposed Agreement, Endurance and Custom shall enter into an agreement whereby Custom shall pay Mace a supplemental sum of \$733,000.00, in excess of the \$2,449.098.70 remaining contract balance, regarding Mace's completion of the remaining work. The County has no involvement in this proposed agreement, nor shall it have any obligation to pay any portion of the supplemental sum.

Additionally, should the County enter into the Proposed Agreement, Endurance and Mace shall enter into an agreement whereby Endurance shall defend and indemnify Mace regarding its completion of the remaining work.

It is advisable that the County enter into the Proposed Agreement with Endurance and Mace,, as it will allow the remaining work to be completed, and without cost to the County additional to that authorized under the Contract.

Your Committee has carefully considered the subject matter and the accompanying Act, and recommends authorizing the County, acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, enter into the Proposed Agreement with Endurance, and with Mace, for the County to settle its claim against Endurance,

whereby Endurance shall tender to the County, the services of Mace, and Mace shall agree, to complete the remaining work under the Contract.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
April , 2024

l:cji

COMMITTEE ON

AN ACT authorizing the County of Westchester to enter into an agreement with Endurance American Insurance Company (“Endurance”), as surety for Custom Marine, Inc., and with Mace Contracting, Inc. (“Mace”), for the County to settle its claim against Endurance regarding DPWT Contract No. 12-517-Rev. (the “Contract”), whereby Endurance shall tender to the County, the services of Mace, and Mace shall agree, to complete the remaining work under the Contract.

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

Section 1. The County is hereby authorized by and through the Commissioner of Public Works and Transportation, or his designee, to enter into an agreement (the “Proposed Agreement”) with Endurance American Insurance Company (“Endurance”), as surety for Custom Marine, Inc., and with Mace Contracting, Inc. (“Mace”), for the County to settle its claim against Endurance regarding DPWT Contract No. 12-517-Rev. (the “Contract”), whereby Endurance shall tender to the County, the services of Mace, and Mace shall agree, to complete the remaining work under the Contract.

Section 2. The County, as part of the Proposed Agreement, is authorized to discharge and release Endurance, together with its representatives, owners, officers, directors, employees, attorneys, successors, and assigns, from any and all performance obligations, claims, causes of action, costs, expenses, losses, damages or other claims or rights concerning the Contract, and/or under its Performance Bond for the Contract, identified as Bond No. EAIC4003080.

Section 3. The County Attorney or his duly designated representative is hereby authorized to prepare and execute all documents necessary or desirable to accomplish the purpose of this Act.

Section 4. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Custom Marine, Inc. NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 0

Total Current Year Revenue \$ 0

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

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

Current Year: _____

Next Four years: _____

Prepared by: Christopher J. Inzero

Title: Associate County Attorney

Department: Law

Reviewed By: Lawrence C. Soule

Budget Department

If you need more space, please attach additional sheets.

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

May 2, 2024

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 Proceeding entitled
The County of Westchester v. Migi Asset Acquisition, LLC, pending
in the Supreme Court of the State of New York, Westchester
County Index No. 60705/2022

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 litigation between the County of Westchester and Migi Asset Acquisition, LLC, over the property located at 98 Washington Avenue, in the Village of Pleasantville (“the Premises”), as set forth below.

As you are aware, by Act 41 of 2022, your Honorable Board authorized the commencement of litigation related to an affordable housing development that was to be constructed at the Premises. The dispute arose due to a failure by Migi Asset Acquisition, LLC (“the Developer”) to complete construction of 14 units of affordable housing, as required by two contracts between the County and Developer. Under those contracts, the County had provided approximately \$2.6 million in subsidy funds--\$1.8 million by purchasing the property and reselling to the Developer for \$1, and \$788,533.12 through reimbursement of construction costs. The contracts, as extended by the County, required completion of the units by June 30, 2020; the units remain incomplete as of today.

Following the adoption of Act 41 of 2022, this Office commenced litigation against the Developer. In February 2023, the Developer filed for bankruptcy protection, which stayed further action in the County’s lawsuit. In October 2023, the bankruptcy petition was dismissed, and the County’s lawsuit recommenced. The parties have since completed most discovery, and engaged in settlement negotiations mediated by the Court.

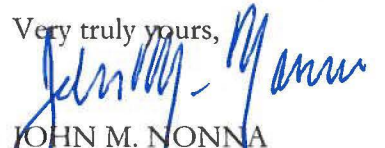
Additionally, the Developer has recently accepted an offer from Lifting Up Westchester to purchase the property, in the amount of \$2.1 million. This purchase would allow the property to be transferred to an entity that can complete the building and appropriately manage an affordable housing development. This offer—for which the Developer and Lifting Up Westchester have not yet entered into a contract on—is contingent on the Developer working out a deal with its mortgage company, Pride Lending, LLC, which holds a mortgage of at least \$2.9 million on the Premises, and has personal guarantees by principals of the Developer.

Given the financial situation of the Developer, the value of the property (which appraised in 2023 at \$2.1 million), and the offer from Lifting Up Westchester, the parties have negotiated a settlement as follows:

- 1) Developer is required to sell the property to Lifting Up Westchester no later than July 1, 2024. The County has the unilateral right to extend that date, in case Lifting Up Westchester needs additional time to close;
- 2) Developer is required to pay all outstanding property taxes at the closing of the sale; and
- 3) Developer is required to pay the County \$26,000 at the closing of the sale.

If the Developer is unable to close on the sale of the Premises for any reason, including a failure to work out a deal with its lender, the settlement would be voided and the litigation would recommence.

I recommend adoption of the enclosed Act.

Very truly yours,

JOHN M. NONNA
Westchester County Attorney

JMN/jra

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the settlement of the litigation between the County of Westchester and Migi Asset Acquisition, LLC, over the property located at 98 Washington Avenue, in the Village of Pleasantville (“the Premises”), as set forth below.

Your Committee is aware that, by Act 41 of 2022, your Honorable Board authorized the commencement of litigation related to an affordable housing development that was to be constructed at the Premises. The dispute arose due to a failure by Migi Asset Acquisition, LLC (“the Developer”) to complete construction of 14 units of affordable housing, as required by two contracts between the County and Developer. Under those contracts, the County had provided approximately \$2.6 million in subsidy funds--\$1.8 million by purchasing the property and reselling to the Developer for \$1, and \$788,533.12 through reimbursement of construction costs. The contracts, as extended by the County, required completion of the units by June 30, 2020; the units remain incomplete as of today.

Your Committee is informed that, following the adoption of Act 41 of 2022, the County Attorney commenced litigation against the Developer. In February 2023, the Developer filed for bankruptcy protection, which stayed further action in the County’s lawsuit. In October 2023, the bankruptcy petition was dismissed, and the County’s lawsuit recommenced. The parties have since completed most discovery, and engaged in settlement negotiations mediated by the Court.

Your Committee is also informed that the Developer has recently accepted an offer from Lifting Up Westchester to purchase the property, in the amount of \$2.1 million. This purchase would allow the property to be transferred to an entity that can complete the building and appropriately manage an affordable housing development. This offer—for which the Developer and Lifting Up Westchester have not yet entered into a contract on—is contingent on the Developer working out a deal with its mortgage company, Pride Lending, LLC, which holds a mortgage of at least \$2.9 million on the Premises, and has personal guarantees by principals of the Developer.

The County Attorney has told the Committee that, given the financial situation of the Developer, the value of the property (which appraised in 2023 at \$2.1 million), and the offer from Lifting Up Westchester, the parties have negotiated a settlement as follows:

- 1) Developer is required to sell the property to Lifting Up Westchester no later than July 1, 2024. The County has the unilateral right to extend that date;
- 2) Developer is required to pay all outstanding property taxes at the closing of the sale;
and
- 3) Developer is required to pay the County \$26,000 at the closing of the sale.

If the Developer is unable to close on the sale of the property for any reason, including an inability to work out a deal with its lender regarding the outstanding mortgage, the settlement would be void and the litigation would recommence.

The County Attorney has recommended approval of the settlement. Your Committee concurs with this recommendation and recommends that this Honorable Board adopt the proposed Act.

Dated: White Plains, New York
, 2024

COMMITTEE ON

AN ACT authorizing the County Attorney to Settle the Proceeding entitled *The County of Westchester v. Migi Asset Acquisition, LLC*, pending in the Supreme Court of the State of New York, Westchester County Index No. 60705/2022

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 Proceeding entitled *The County of Westchester v. Migi Asset Acquisition, LLC*, pending in the Supreme Court of the State of New York, Westchester County Index No. 60705/2022, for the following principal terms:

- A) Defendant Migi Asset Acquisition, LLC is to sell the property located at 98 Washington Avenue in the Village of Pleasantville (“the Premises”) to Lifting Up Westchester by July 1, 2024, or such later date as the County Attorney may agree to;
- B) Defendant Migi Asset Acquisition, LLC is to pay all outstanding property taxes on the Premises at the closing; and
- C) Defendant Migi Asset Acquisition, LLC is to pay the County of Westchester the sum of \$26,000 at the closing.

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.

Vedat Gashi
Chairman of the Board
Legislator, 4th District



TO: Hon. Jewel Williams Johnson
Chair, Budget & Appropriations

Hon. David Imamura
Chair, Law & Major Contracts

FROM: Hon. Vedat Gashi
Chairman of the Board

DATE: May 2, 2024

RE: Items 2024-269 - ACT-Proceeding Settlement-Migi Asset Acquisition, LLC

As Chairman of the Board of Legislators, I am placing the below item directly into the Committees on Budget & Appropriations and Law & Major Contracts.

Thank you.

(ID: 2024-269) ACT-Proceeding Settlement-Migi Asset Acquisition, LLC.

AN ACT authorizing the County Attorney to settle the Proceeding entitled, The County of Westchester v. Migi Asset Acquisition, LLC.

CC: Jill Axelrod
Marcello Figueroa
James Silverberg
Dylan Tragni
Sunday Vanderberg