



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

May 5, 2022

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 that, if adopted by your Honorable Board, would authorize the settlement of the potential claims and causes of action of the County of Westchester (the "County") against PSH Corp., which does business as John Herbert Company, ("JHC") in connection with flooring furnished and installed by JHC (the "Work") on the 9th floor of the Mount Vernon District Office of the County's Department of Social Services (the "Site").

The Department of Public Works and Transportation ("DPW&T") informed my office that the Work was performed by JHC at the end of 2020. DPW&T also informed my office that, three weeks after the Work was completed, portions of the flooring that were furnished and installed at the Site by JHC started to warp and proceeded to fail.

DPW&T subsequently retained a certified flooring inspector, whose detailed report indicates that the failure of the flooring was due to improper installation of the flooring after an earlier chemical asbestos abatement that was performed by another County contractor.

The County has had extensive internal discussions regarding this matter, and my office has been advised that DPW&T has had as a number of discussion with JHC as well. My office was recently informed by DPW&T that JHC made an offer, and that DPW&T finds this offer acceptable.

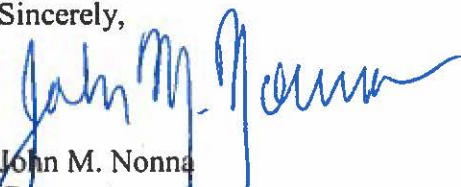
Under JHC's offer, JHC, a.) would furnish and install replacement flooring for most of the Site, and perform any necessary remedial work in other portions of the Site on an as-needed basis, as shown in the diagram attached as Exhibit 1, totaling at least \$184,915.36 in value for all goods and services, as indicated in the invoice attached as Exhibit 2. (the "Replacement Work"). b.) would provide a five (5) year warranty for the Replacement Work and the portions of the Work that would remain. under which warranty JHC would bear all costs for repair or replacement, and

with that warranty period commencing upon the completion of the Replacement Work, (the "Warranty"), and c.) would agree that the Replacement Work will be subject to all of the same contractual terms and conditions as the Work, except where those terms would conflict with or limit what is provided for in the terms of the settlement, in exchange for, a.) the County paying an amount not to exceed \$90,000.00 towards the Replacement Work, based upon the approximate cost of JHC furnishing and applying specialized materials, which were not used for the Work and which are supposed to ensure proper installation through the Replacement Work, and with JHC bearing all costs for the Replacement Work in excess of \$90,000.00, and b.) the County releasing JHC from further liability under the County's known and existing potential claims and causes of action regarding the Work, but not releasing JHC from any new or future claims and causes of action, including, without limitation, claims under the Warranty.

The proposed amendment does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. No environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, 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/bdm/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 that, if adopted by your Honorable Board, would authorize the settlement of the potential claims and causes of action of the County of Westchester (the "County") against PSH Corp., which does business as John Herbert Company, ("JHC") in connection with flooring furnished and installed by JHC (the "Work") on the 9th floor of the Mount Vernon District Office of the County's Department of Social Services (the "Site").

The County Attorney has advised your Committee that the Department of Public Works and Transportation ("DPW&T") informed his office that the Work was performed by JHC at the end of 2020. The County Attorney has advised your Committee that DPW&T also informed his office that, three weeks after the Work was completed, portions of the flooring that were furnished and installed at the Site by JHC started to warp and proceeded to fail.

The County Attorney has advised your Committee that DPW&T subsequently retained a certified flooring inspector, whose detailed report indicates that the failure of the flooring was due to improper installation of the flooring after an earlier chemical asbestos abatement that was performed by another County contractor.

The County Attorney has advised your Committee that the County has had extensive internal discussions regarding this matter, and his office has been advised that DPW&T has had as a number of discussion with JHC as well. The County Attorney has advised your Committee

that his office was recently informed by DPW&T that JHC made an offer, and that DPW&T finds this offer acceptable.

The County Attorney has advised your Committee that, under JHC's offer, JHC, a.) would furnish and install replacement flooring for most of the Site, and perform any necessary remedial work in other portions of the Site on an as-needed basis, as shown in the diagram attached as Exhibit 1, totaling at least \$184,915.36 in value for all goods and services, as indicated in the invoice attached as Exhibit 2, (the "Replacement Work"), b.) would provide a five (5) year warranty for the Replacement Work and the portions of the Work that would remain, under which warranty JHC would bear all costs for repair or replacement, and with that warranty period commencing upon the completion of the Replacement Work, (the "Warranty"), and c.) would agree that the Replacement Work will be subject to all of the same contractual terms and conditions as the Work, except where those terms would conflict with or limit what is provided for in the terms of the settlement, in exchange for, a.) the County paying an amount not to exceed \$90,000.00 towards the Replacement Work, based upon the approximate cost of JHC furnishing and applying specialized materials, which were not used for the Work and which are supposed to ensure proper installation through the Replacement Work, and with JHC bearing all costs for the Replacement Work in excess of \$90,000.00, and b.) the County releasing JHC from further liability under the County's known and existing potential claims and causes of action regarding the Work, but not releasing JHC from any new or future claims and causes of action, including, without limitation, claims under the Warranty.

Your Committee concurs with the conclusion that the proposed amendment does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617. Accordingly, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, 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: _____, 2022
White Plains, New York

COMMITTEE ON

FISCAL IMPACT STATEMENT

SUBJECT: MVDO Settlement

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 \$ 90,000

Total Current Year Revenue \$ -

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

Additional Appropriations

Other (explain)

Identify Accounts: 101-22-5000-5700-4200

Potential Related Operating Budget Expenses: Annual Amount \$ -

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount \$ -

Describe: _____

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

Current Year: _____

Next Four Years: _____

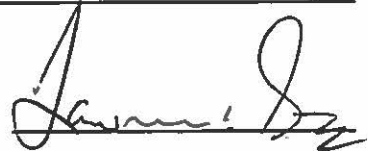
Prepared by: Gideon Grande

Title: Deputy Director

Department: Budget

Date: May 5, 2022

Reviewed By:



Budget Director

Date:

5/5/22

ACT NO. 2022 - _____

AN ACT authorizing the County Attorney to settle the potential claims and causes of action of the County of Westchester against PSH Corp. in connection with flooring furnished and installed by PSH Corp. on the 9th floor of the Mount Vernon District Office of the County's Department of Social Services.

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

Section 1. The County Attorney is hereby authorized to settle the potential claims and causes of action of the County of Westchester (the "County") against PSH Corp., which does business as John Herbert Company, ("JHC") in connection with flooring furnished and installed by JHC (the "Work") on the 9th floor of the Mount Vernon District Office of the County's Department of Social Services (the "Site"), on the following settlement terms:

JHC, a.) shall furnish and install replacement flooring for most of the Site, and perform any necessary remedial work in other portions of the Site on an as-needed basis, as shown in the diagram attached as Exhibit 1, totaling at least \$184,915.36 in value for all goods and services, as indicated in the invoice attached as Exhibit 2, (the "Replacement Work"), b.) shall provide a five (5) year warranty for the Replacement Work and the portions of the Work that would remain, under which warranty JHC would bear all costs for repair or replacement, and with that warranty period commencing upon the completion of the Replacement Work, (the "Warranty"), and c.) shall agree that the Replacement Work will be subject to all of the same contractual terms and conditions as the Work, except where those terms would conflict with or limit what is provided for in the terms of the settlement, in exchange for, a.) the County paying an amount not to exceed \$90,000.00 towards the Replacement Work, and with JHC bearing all costs for the Replacement Work in excess of \$90,000.00, and b.) the County releasing JHC from further liability under the County's known and existing potential claims and causes of action regarding the Work, but not releasing JHC from any new or future claims and causes of action, including, without limitation, claims under the Warranty.

§2. The County Attorney 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.

§3. This Act shall take effect immediately.

EXHIBIT 1



EXHIBIT 2

Quantity	Unit of Measure	Description	Unit Price	Extension
6,200	Sq. ft.	Labor to remove and dispose of existing LVT identified for Replacement. (Mohawk State Contract)	\$ 2.04	\$12,648.00
6,200	Sq. Ft.	Labor for Conventional Furniture moving (Medium) to allow for installation. (Mohawk State Contract)	\$ 0.79	\$4,898.00
6,200	sq. ft.	LR-57: Labor and Equipment to Shot blast concrete & Supply & Install Mapei Planiseal VS. (Tarkett State Contract)	\$ 10.41	\$64,542.00
6,200	sq. ft.	LR-48: Labor and material to Prime with Mapei Primer and top with Mapei Nova Plan 2 Plus @ 1/4" (Tarkett state contract)	\$ 4.21	\$26,102.00
6,550	sq. ft.	Supply Mohawk Luxury Vinyl Plank(7.25" x 48"): Hit the Mark/C0095, Color: Target 852. (Mohawk State Contract)	\$ 5.58	\$36,549.00
6,550	sq. ft.	Labor Charge to install Mohawk Luxury Vinyl Plank (Mohawk State Contract)	\$ 3.90	\$25,545.00
8	4 gallon pails	Supply Mapei Ultra Bond ECO 373 adhesive.	\$165.72	\$1,325.76
1,520	ln. ft.	Furnish and Install 4" Base (Mohawk State Contract)	\$ 5.28	<u>\$13,305.60</u>
		Preferred Option Total - Mechanical Preparation:		<u>\$ 184,915.36</u>

[NO FURTHER TEXT ON THIS PAGE]