

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

October 20, 2021

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 further amend a retainer agreement with 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 *Yonkers Contracting Company, Inc. v. County of Westchester, et al* /Index Number: 63929/2015 ("*Yonkers Contracting*"), by increasing the not-to-exceed amount authorized thereunder by an additional \$150,000.00 and by extending the term thereof through December 31, 2022.

By way of background, on February 26, 2018 by Act No. 2018-18, your Honorable Board authorized the County to enter into a retainer agreement with the law firm of Pepper Hamilton, LLP ("Pepper Hamilton"), pursuant to which Pepper Hamilton agreed to defend the County against claims commenced against it and to prosecute appropriate cross-claims in the *Yonkers Contracting* matter for a term commencing on January 11, 2018 and continuing through January 10, 2021 (the "Agreement"). In consideration for services rendered, your Honorable authorized the County to pay Pepper Hamilton an amount not-to-exceed \$150,000.00 at agreed upon rates.

Thereafter, on May 6, 2019 by Act No. 2019-83, your Honorable Board authorized the County to pay Pepper Hamilton an additional amount not-to-exceed of \$200,000.00, increasing the total contract amount to \$350,000.00.

Then on October 7, 2019 by Act No. 2019-198, your Honorable Board authorized the County to pay Pepper Hamilton an additional amount not-to-exceed of \$265,000.00, increasing the total contract amount to \$615,000.00.

Thereafter, on May 18, 2020 by Act No. 2020-89, your Honorable Board authorized the County to: 1) further amend the Agreement with Pepper Hamilton by increasing the not-to-

exceed cap thereunder by an additional \$69,100 to compensate Pepper Hamilton for legal services rendered through April 1, 2020; 2) consent to the assignment of the Agreement with Pepper Hamilton to the law firm of Sheppard Mullin, effective April 2, 2020; and 3) amend the Agreement, as assigned to Sheppard Mullin, to increase the not-to-exceed amount thereunder by an additional \$175,000.00.

Subsequently, on February 22, 2021, by Act No. 2021- 27, your Honorable Board authorized the County to extend the term of the Agreement with Sheppard Mullin through December 31, 2021.

I am advised that the County has exceeded its previous payment authorization and that there are several outstanding invoices from the Firm that have yet to be paid. In order to have sufficient funds available to pay Sheppard Mullin for services previously rendered, as well as for services to be rendered going forward, it is necessary to increase the not-to-exceed cap by an additional \$150,000.00, bringing the total aggregate cost of the Agreement, as previously amended and assigned, from an amount not-to-exceed \$859,100.00 to an amount not-to-exceed \$1,009,100.00.

For the services rendered to the County by Sheppard Mullin, the Firm will be paid at the agreed upon rates as follows: \$520.00 per hour for the services of Ira M. Schulman, Esq.; \$412.00 per hour for Sophia Cahill, Esq.; \$312.00 per hour for Michelle Cooper, Esq., and \$150.00 per hour for paralegal Leigh Ann Tencza; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay.

In addition, the Agreement with Sheppard Mullin is due to expire December 31, 2021. As the *Yonkers Contracting* case is still ongoing, the County continues to need representation. Accordingly, authority is also requested to extend the Agreement through December 31, 2022.

The Planning Department has advised that the proposed amendment to the 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 May 14, 2021, 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 further amend a retainer agreement with 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 *Yonkers Contracting Company, Inc. v. County of Westchester, et al* /Index Number: 63929/2015 (“*Yonkers Contracting*”), by increasing the not-to-exceed amount authorized thereunder by an additional \$150,000.00 and by extending the term thereof through December 31, 2022.

The County Attorney has advised your Committee that due to the special and complex nature of construction law litigation and the evaluation and analysis of damages, it is in the best interests of the County to retain counsel qualified to handle such litigation. Accordingly, on February 26, 2018 by Act No. 2018-18, your Honorable Board authorized the County to enter into a retainer agreement with the law firm of Pepper Hamilton, LLP (“Pepper Hamilton”), pursuant to which Pepper Hamilton agreed to defend the County against claims commenced against it and to prosecute appropriate cross-claims in the *Yonkers Contracting* matter for a term commencing on January 11, 2018 and continuing through January 10, 2021 (the “Agreement”). In consideration for services rendered, your Honorable authorized the County to pay Pepper Hamilton an amount not-to-exceed \$150,000.00 at agreed upon rates.

Thereafter, on May 6, 2019 by Act No. 2019-83, your Honorable Board authorized the County to pay Pepper Hamilton an additional amount not-to-exceed of \$200,000.00, increasing the total contract amount to \$350,000.00.

Then, on October 7, 2019 by Act No. 2019-198, your Honorable Board authorized the County to pay Pepper Hamilton an additional amount not-to-exceed of \$265,000.00, increasing the total contract amount to \$615,000.00.

Thereafter, on May 18, 2020 by Act No. 2020-89, your Honorable Board authorized the County to: 1) further amend the Agreement with Pepper Hamilton by increasing the not-to-

exceed cap thereunder by an additional \$69,100 to compensate Pepper Hamilton for legal services rendered through April 1, 2020; 2) consent to the assignment of the Agreement with Pepper Hamilton to the law firm of Sheppard Mullin, effective April 2, 2020; and 3) amend the Agreement, as assigned to Sheppard Mullin, to increase the not-to-exceed amount thereunder by an additional \$175,000.00.

Subsequently, on February 22, 2021, by Act No. 2021- 27, your Honorable Board authorized the County to extend the term of the Agreement with Sheppard Mullin through December 31, 2021.

Your Committee is advised that the County has exceeded its previous payment authorization and that there are several outstanding invoices from the Firm that have yet to be paid. In order to have sufficient funds available to pay Sheppard Mullin for services previously rendered, as well as for services to be rendered going forward, it is necessary to increase the not-to-exceed cap by an additional \$150,000.00, bringing the total aggregate cost of the Agreement, as previously amended and assigned, from an amount not-to-exceed \$859,100.00 to an amount not-to-exceed \$1,009,100.00.

For the services rendered to the County by Sheppard Mullin, the Firm will be paid at the agreed upon rates as follows: \$520.00 per hour for the services of Ira M. Schulman, Esq.; \$412.00 per hour for Sophia Cahill, Esq.; \$312.00 per hour for Michelle Cooper, Esq., and \$150.00 per hour for paralegal Leigh Ann Tencza; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay.

Your Committee is further advised that the Agreement with Sheppard Mullin is due to expire December 31, 2021. As the *Yonkers Contracting* case is still ongoing, the County continues to need representation. Accordingly, authority is also requested to extend the Agreement through December 31, 2022.

The Planning Department has advised that the proposed amendment to the 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 May 14, 2021, 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: _____, 2021
White Plains, New York

COMMITTEE ON

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ACT NO. – 2021

AN ACT authorizing the County of Westchester to further amend a retainer agreement with the law firm of Sheppard, Mullin, Richter & Hampton LLP, for the provision of outside counsel legal services in connection with the civil matter *Yonkers Contracting Company, Inc. v. County of Westchester, et al*, by increasing the not-to-exceed amount authorized thereunder by \$150,000.00 and by extending the term thereof through December 31, 2022.

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 amend a retainer agreement, as previously amended and assigned (the “Agreement”), with 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 *Yonkers Contracting Company, Inc. v. County of Westchester, et al* /Index Number: 63929/2015 (“*Yonkers Contracting*”), by increasing the not-to-exceed contract amount by One Hundred Fifty Thousand (\$150,000.00) Dollars. The new total aggregate contract amount for the Agreement will be an amount not-to-exceed One Million Nine Thousand One Hundred (\$1,009,100.00) Dollars.

§2. For the aforesaid services rendered to the County by Sheppard Mullin, the County shall continue to pay the Firm at the following rates: \$520.00 per hour for the services of Ira M. Schulman, Esq.; \$412.00 per hour for Sophia Cahill, Esq.; \$312.00 per hour for Michelle Cooper, Esq., and \$150.00 per hour for paralegal Leigh Ann Tencza; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay.

§3. The County is hereby further authorized to amend the Agreement with Sheppard Mullin for the provision of outside counsel legal services in connection with the *Yonkers Contracting* matter in order to extend the term through December 31, 2022.

§4. That except as otherwise expressly amended hereby, all other terms and conditions of the retainer agreement, as previously amended and assigned, shall remain in full force and effect.

§5. This Act shall take effect immediately.
