

95968

Date: September 13, 2022

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to amend a retainer agreement with the law firm of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin"), 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 cap by \$100,000.00 and by extending the term thereof through December 31, 2023.

By resolution approved on March 29, 2018 (the "March 29th Resolution"), your Honorable Board authorized the County of Westchester (the "County") to enter into an agreement (the "Agreement") to retain, at County expense, the law firm of Pepper Hamilton to defend the County against claims commenced against it and to prosecute appropriate cross-claims in the action entitled *Yonkers Contracting Company, Inc. v. The County of Westchester et al* /Index Number: 63929/2015, for a term commencing retroactive to January 11, 2018 and continuing through January 10, 2021 for a total amount not-to-exceed \$150,000.00, payable at agreed upon rates.

Thereafter, by resolution approved on July 11, 2019, your Honorable Board authorized the County to amend the Agreement with Pepper Hamilton for the limited purpose of increasing the not-to-exceed cap by an additional \$200,000.00, increasing the total contract amount to \$350,000.00 (the "First Amendment"). The First Amendment was subsequently executed.

Then, on October 17, 2019, your Honorable Board authorized the County to further amend the Agreement to increase the not-to-exceed cap by \$265,000.00, for a total contract amount of \$615,000.00 (the "Second Amendment"). The Second Amendment was subsequently executed.

Thereafter, by resolution approved on May 28, 2020, 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 (the "Third Amendment"); 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 by \$175,000.00 for services to be rendered by Sheppard Mullin (the "Fourth Amendment"). Both the Third Amendment and the Fourth Amendment were subsequently executed.

Subsequently, by resolution approved on March 11, 2021, your Honorable Board authorized the County to amend the Agreement with Sheppard Mullin in order to extend the term through December 31, 2021 (the "Fifth Amendment"). The Fifth Amendment was subsequently executed.

Most recently, by resolution approved on December 23, 2021, your Honorable Board authorized the County to increase the not-to-exceed amount under the Agreement with Sheppard Mullin by \$150,000.00 and extend the term thereof through December 31, 2022.

I am advised that the County has exceeded its previous payment authorization and that there is an outstanding invoice from the Firm that has yet to be paid. In order to have sufficient funds available to pay Sheppard Mullin for services previously rendered, as well as for any services that may be needed going forward, it is necessary to increase the not-to-exceed cap by an additional \$100,000.00, bringing the total aggregate cost of the Agreement, as previously amended and assigned, from an amount not-to-exceed \$1,009,100.00, to an amount not-to-exceed \$1,109,100.00.

For the services rendered to the County by Sheppard Mullin, the firm will be paid at following agreed upon 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.

In addition, the Agreement with Sheppard Mullin is due to expire December 31, 2022. As the *Yonkers Contracting* case is still ongoing, the County continues to need representation. Accordingly, authority is also requested to amend the Agreement to extend the term through December 31, 2023.

Except as otherwise specifically amended hereby, all remaining terms and conditions set forth in the Agreement shall remain in full force and effect upon the parties.

It should be noted that on September 12, 2022, by Act No. 2022- 119, the County Board of Legislators authorized the County to increase the not-to-exceed amount under the Agreement with Sheppard Mullin by \$100,000.00 and to extend the term thereof through December 31, 2023.

Authority to exempt the procurement of this amendment from the requirements of the Westchester County Procurement Policy and Procedures pursuant to Section 3(a)xxi thereof, has been granted by your Honorable Board in accordance with a separate resolution of even date herewith.

The Agreement will continue to serve a public purpose by providing the County with the specialized knowledge and expertise necessary to defend the County in this litigation.

The goal and objective of the Agreement is in the best interests of the County in terms of fiscal responsibility, as ensuring the County's proper handling of this lawsuit is expected to ultimately result in a cost savings to the County.

The goal and objective of the Agreement will be tracked and monitored by the Office of the County Attorney.

I respectfully recommend the adoption of the attached Resolution.

JMN/jpg/nn

APPROVED BOARD OF ACQUISITION & CONTRACT - 09/15/2022 - RAYMOND SCULKY, SECRETARY

RESOLUTION

Upon a communication from the County Attorney, be it hereby:

RESOLVED, that the County of Westchester (the "County") is hereby authorized to amend a retainer agreement with the law firm of Sheppard, Mullin, Richter & Hampton LLP (the "Firm"), as previously amended and assigned, 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, for a term commencing on January 11, 2018 and continuing through December 31, 2022 in an amount not-to-exceed \$1,009,100.00, by 1) increasing the not-to-exceed amount by an additional \$100,000.00, to a new total aggregate amount not-to-exceed of \$1,109,100.00 and 2) extend the term of the retainer agreement from January 1, 2023 through December 31, 2023; and be it further

RESOLVED, that except as otherwise specifically amended hereby, all remaining terms and conditions set forth in the Agreement, as previously amended and assigned, shall remain in full force and effect upon the parties; and be it further

RESOLVED, that this Agreement is subject to County appropriations; and be it further

RESOLVED, that this Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Contractor, then the Contractor shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute and deliver any and all documents and to take all action necessary and appropriate to effectuate the purposes hereof.

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
221	60	0110:0110	4420		\$100,000

Budget Funding Year(s): 2022-2023 Start Date: 01/01/2023 End Date: 12/31/2023
(must match resolution)

Funding Source Tax Dollars: \$100,000
State Aid: _____
\$100,000 Federal Aid: _____
(must match resolution) Other: _____