

95971

Date: September 13, 2022

To: Board of Acquisition and Contract

From: John M. Nonna
County Attorney

Re: Authority for the County of Westchester to enter into 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 *Sherwani Contracting Inc. v. County of Westchester*, Index No. 61222/2022, for a term commencing retroactive to July 25, 2022 and continuing until a final disposition and/or order of the case or until the County determines, in its sole discretion, to terminate the agreement for an amount not-to-exceed \$100,000 payable at approved hourly rates.

Authority is requested for the County of Westchester (the "County") to enter into an agreement (the "Agreement") with the law firm of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin" or the "Firm") to provide outside counsel legal services to the County in connection with the civil matter entitled *Sherwani Contracting Inc. v. County of Westchester*, Index No. 61222/2022, for a term commencing retroactive to July 25, 2022 and continuing until a final disposition and/or order of the case or until the County determines, in its sole discretion, to terminate the agreement. In consideration for services rendered, the County will pay the Firm an amount not-to-exceed \$100,000.00, payable at agreed upon rates.

By way of background, the County has been named as a respondent/defendant in the civil matter, *Sherwani Contracting Inc. v. County of Westchester*. Sherwani Contracting Inc., ("Sherwani") as Petitioner/Plaintiff, asserts two causes of action against the County. Sherwani's first cause of action is pursuant to Article 78 of the New York Civil Practice Law and Rules, and alleges that the County wrongfully terminated a public works construction contract with it, titled "Renovations and Improvements – 2906 Old Yorktown Road, Yorktown Heights, New York, Contract No. 17-510". Sherwani's second cause of action alleges under the principles of common law that the County breached said contract. Sherwani seeks damages in both its first and second causes of action, of a sum of not less than \$1,000,000.00, and other damages to be established at a trial.

Due to the complex and specialty nature of construction law litigation, and the evaluation and analysis of damages related to such claims, it is in the best interests of the County to retain counsel qualified to handle such litigation. Sheppard Mullin is a firm that specializes in this type of litigation. Moreover, its lead attorney, Ira M. Schulman, Esq. is a nationally-recognized construction law attorney with over 37 years of experience in the field and has represented the County successfully in the past on similar matters. The Firm will be retained to, *inter alia*,

defend the County against claims commenced against it, and, if necessary, prosecute appropriate counterclaims and/or cross claims and/or implead third parties.

For the services rendered to the County by Sheppard Mullin, the Firm will be paid at the agreed upon rates as follows: \$550.00 per hour for the services of Ira M. Schulman, Esq.; \$450.00 per hour for Sophia Cahill, Esq.; \$350.00 per hour for Michelle Cooper, Esq., and \$150.00 per hour for paralegal services; or personnel within Sheppard Mullin with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable to the Firm under the retainer exceed the sum of One Hundred Thousand Dollars (\$100,000.00).

It should be noted that on September 12, 2022, by Act No. 2022- 123, the County Board of Legislators authorized the County to retain Sheppard Mullin in connection with the *Sherwani Contracting* matter under the aforementioned terms.

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 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

RESOLUTION

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

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to enter into a retainer agreement with the law firm of Sheppard, Mullin, Richter & Hampton LLP (the “Firm”), for the provision of outside counsel legal services in connection with the civil matter entitled *Sherwani Contracting Inc. v. County of Westchester*, Index No. 61222/2022, for a term commencing retroactive to July 25, 2022 and continuing until a final disposition and/or order of the case or until the County determines, in its sole discretion, to terminate the agreement; and be it further

RESOLVED, that for the services rendered to the County by the Firm, the Firm shall paid at the agreed upon rates as follows: \$550.00 per hour for the services of Ira M. Schulman, Esq.; \$450.00 per hour for Sophia Cahill, Esq.; \$350.00 per hour for Michelle Cooper, Esq., and \$150.00 per hour for paralegal services; or personnel within the Firm with comparable experience and ability as those mentioned at the same rate of pay. In no event shall the total amount payable to the Firm under the retainer exceed the sum of One Hundred Thousand Dollars (\$100,000.00); 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
101	18	1000	4923		\$100,000

Budget Funding Year(s): 2022 Start Date: 07/25/2022 End Date: Final disposition of case or termination by County (must match resolution)

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