

59927

Date: November 29, 2017

To: The Honorable Board of Acquisition and Contract

From: Kathleen M. O'Connor
Commissioner of Parks, Recreation and Conservation

Re: **Authority to rescind the Resolution approved on November 9, 2017 and also authorize the County of Westchester ("the County") to terminate a lease agreement with DLL Finance LLC dated March 21, 2014 for the provision of golf cars and enter into a new 5 year lease agreement with DLL Finance LLC for the provision of golf cars, and also authorize the County to enter into a maintenance agreement with Club Car, LLC to cover the golf cars during the lease term, commencing upon delivery of all of the golf cars which is expected on or about December 1, 2017, subject to appropriations.**

On November 9, 2017 your Honorable Board approved a resolution authorizing the County to terminate a lease agreement with DLL Finance LLC dated March 21, 2014 for the provision of golf cars and enter into a new 5 year lease agreement with DLL Finance LLC for the provision of golf cars (the "November 9, 2017 Resolution").

The November 9, 2017 Resolution contained the some inaccuracies. As such it is recommended that the November 9, 2017 Resolution be rescinded in its entirety and the attached resolution be adopted.

Authorization is requested for the County to terminate the lease agreement with DLL Financing LLC and authorization is also requested to enter into the proposed lease agreement (the "Lease Agreement") with DLL Finance LLC ("DLL"), which is the finance company for Club Car, LLC, P.O Box 204658, Augusta Georgia 30917-4658 ("Club Car"). Club Car will provide the leased golf cars and Carryall vehicles and perform the maintenance services, and the County's payments for these services will be included in the payments from the County to DLL under the Lease Agreement. DLL will be responsible for payments to Club Car for the services pursuant to the Lease Agreement. The services provided by Club Car to the County will be performed pursuant to a separate maintenance agreement (the "Maintenance Agreement"). Authorization is also requested to enter into the proposed Maintenance Agreement. In addition to the maintenance of the leased vehicles, Club Car will refurbish twelve gasoline golf cars which were provided to the County under the prior agreement. The term of the Maintenance Agreement will be for a period of five years commencing upon delivery of the vehicles. The cost to the County of the leased vehicles and all maintenance and warranties shall be included in the County's payments under the Lease Agreement. The Maintenance Agreement with Club Car will be at no additional cost to the County.

The public purpose of the agreements is to allow the County to lease golf cars for the convenience and benefit of the public golfer. The goal of these agreements is to provide this important amenity to patrons of County golf courses and provide revenue to the County. The objective of these agreements will be tracked and monitored using financial reports and by site visits by Department of Parks, Recreation and Conservation staff.

Authority to exempt the Lease Agreement and the Maintenance Agreement 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 two separate resolutions.

Accordingly, approval of the attached resolution is respectfully recommended.

KMO/JC/jrc
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/30/2017 - HISA MUNICIPAL SECRETARY

RESOLUTION

Upon a communication from the County's Commissioner of Parks, Recreation and Conservation, be it hereby:

RESOLVED, that the November 9, 2017 resolution authorizing the County to terminate a lease agreement with DLL Finance LLC dated March 21, 2014 for the provision of golf cars and enter into a new 5 year lease agreement with DLL Finance LLC for the provision of golf cars, is hereby rescinded in its entirety; and be it further

RESOLVED, that the County of Westchester is hereby authorized to terminate the lease agreement with DLL Financing LLC, 8001 Birchwood Court, Suite C, P.O. Box 2000, Johnston, IA 50131 ("DLL") dated March 1, 2014 for the provision of 385 golf cars and the related golf car maintenance agreement with Club Car, Inc., 4125 Washington Road, Evans, GA 30809 at no cost to the County; and be it further

RESOLVED, that the County of Westchester is authorized to enter into a new 5-year lease agreement (the "Lease Agreement") with DLL for the lease of 385 new GPS-equipped golf cars and 6 new Carryall 300 Gas Utility vehicles, to be distributed to each County golf course as follows:

Dunwoodie – 65 electric powered golf cars

Hudson Hills – 30 electric powered golf cars and 40 gasoline powered golf cars

Maple Moor – 65 gasoline powered golf cars

Mohansic – 60 gasoline powered golf cars

Saxon Woods – 62 gasoline powered golf cars

Sprain Lake – 63 gasoline powered golf cars;

6 Carryall 300 Gas Utility vehicles, one for each of the above locations; and be it further

RESOLVED, that the Lease Agreement shall commence upon the delivery of all of the golf cars which final delivery is anticipated to be on or about December 1, 2017 with the County paying \$544,351.50 for the first year of the lease and \$555,901.50 per year for the remaining 4 years of the lease; and be it further

RESOLVED, that, in connection with the above Lease Agreement, the County of Westchester is authorized to enter into a 5-year maintenance agreement (the "Maintenance Agreement") with Club Car, LLC ("Club Car") to run concurrently with the Lease Agreement, the cost of which shall be included in the lease payments under the Lease Agreement. The Maintenance Agreement shall include full service maintenance on the vehicles and the refurbishing of 12 ranger vehicles provided to the County under the prior lease; and be it further

RESOLVED, that the County is authorized to include in the Lease Agreement the following terms:

"You (the County) are responsible for any losses, damages, penalties, claims, suits and actions, including, without limitation, court costs and attorney's fees, (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to (a) the ownership, operation, use, lease, possession or delivery of the Equipment, (b) any defective condition in the Equipment arising while in Your possession or (c) this Lease (and any supplements and amendments hereof). To the maximum extent permitted by applicable law, You agree to reimburse Us (DLL) for and, if We request, to defend Us against any Claims. This indemnification will continue even after the termination of this Lease."; and be it further

RESOLVED, that the County is authorized to include in the Maintenance Agreement the following terms:

"The remedies of customer (the County) set forth herein are exclusive, and the total liability of Club Car with respect to this agreement shall not exceed the price of the services or parts provided upon which such liability is based. Club Car and its suppliers or subcontractors shall in no event be liable to customer, any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, indirect, special or punitive damages arising out of this contract or any breach thereof, any defect in or failure of or malfunction of the equipment hereunder, whether or not such damage is based on contract, warranty, negligence, indemnity, strict liability, or otherwise."; and be it further

RESOLVED, that these Agreements are subject to County appropriations; and be it further

RESOLVED, that these Agreements are 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 these Agreements. 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 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 either to terminate these Agreements 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 these Agreements upon reasonable prior written notice; and be it further

RESOLVED, that the that the County Executive or his duly authorized designee is hereby authorized to take such action and execute such documents as may be necessary and proper to effect the purposes hereof.

Original Agreement	\$	2,767,957.50
First Amendment	\$	
This Amendment	\$	
TOTAL	\$	<u>2,767,957.50</u>

Agreement #

Account to be Charged/credited	Fund	Dept	Capital Project or Org	Object/ Sub Object	Trust Account	Dollars	
	165	42	3010	4380		\$274,890.00	2018
	165	42	3050	4380		\$45,493.50	2018
	165	42	3100	4380		\$45,493.50	2018
	165	42	3150	4380		\$41,994.00	2018
	165	42	3200	4380		\$43,393.80	2018
	165	42	3250	4380		\$44,093.70	2018
	165	42	3300	4380		\$48,993.00	2018
	165	42	3010	4380		\$286,440.00	2019
	165	42	3050	4380		\$45,493.50	2019
	165	42	3100	4380		\$45,493.50	2019
	165	42	3150	4380		\$41,994.00	2019
	165	42	3200	4380		\$43,393.80	2019
	165	42	3250	4380		\$44,093.70	2019
	165	42	3300	4380		\$48,993.00	2019
	165	42	3010	4380		\$286,440.00	2020
	165	42	3050	4380		\$45,493.50	2020
	165	42	3100	4380		\$45,493.50	2020
	165	42	3150	4380		\$41,994.00	2020
	165	42	3200	4380		\$43,393.80	2020

