

72705

November 18, 2019

To: Honorable Board of Acquisition & Contract

From: Joseph K. Spano
Commissioner of Correction

Re: Authority to amend an agreement with Aramark Correctional Services, LLC for the provision of food service at the Department of Correction.

By resolution approved on January 3, 2019 (the "January 3rd Resolution"), your Honorable Board authorized the County of Westchester (the "County"), acting by and through its Department of Correction (the "Department"), to enter into an agreement with Aramark Correctional Services, LLC ("Aramark") for the provision of food service at the Department of Correction for a term from January 1, 2019 through December 31, 2020, at a cost not to exceed \$4,589,198 payable at the per meal rates specified in Exhibit "A" to the January 3rd Resolution, with the County's sole option to renew the agreement for up to three (3) additional one (1) year terms, subject to budget appropriations (the "Agreement").

Authority is requested for the County to amend the Agreement with Aramark in order to amend the provisions of the Agreement, effective as of August 1, 2019 (the "Effective Date"), as follows:

1. **Catering Fund:** Section 6.10.1 in Schedule A of the Agreement shall be amended such that the ninth bullet point, titled "Auxiliary Expenses" is deleted in its entirety and replaced with the following:

"Catering Fund: Contractor shall furnish up to \$25,000.00 per contract year which shall be funded by Contractor transferring \$2,083 each month during the Term into a reserve account for the County's catering costs (the "Catering Fund"). County shall pay for any catering costs in excess of \$25,000 per contract year. In the event that the cost of catering for the County does not exceed \$25,000 during a contract year, any remaining Catering Fund balance shall roll over into the next contract year. Any portion of the Catering Fund that is not expended prior to the expiration or earlier termination of the Agreement shall revert to the County."

2. **Financial Commitment:** The amount of the financial commitment currently committed to shall be increased from an amount up to \$15,000 to an amount up to \$40,000. The parties also expect an additional financial commitment to be made in the year 2020 in an amount up to \$15,000. As such, the Paragraph titled, "Financial Commitment" in Schedule B of the Agreement shall be deleted in its entirety and replaced with the following:

Financial Commitment: Contractor shall make a financial commitment to County in an amount up to \$40,000 (the "2019 Financial Commitment), and to the extent the Agreement is in full force and effect, Aramark expects to make an additional financial commitment of an amount up to \$15,000 in the year 2020 with the details of such investment to be mutually agreed by the parties at such time (the "2020 Financial Commitment", and together with the 2019 Financial Commitment, the "Financial Commitment"). County agrees to invest the Financial Commitment in foodservice-related improvements and services at the Westchester County DOC. Any equipment purchased by Contractor on County's behalf shall be purchased as a "sale-for resale" to the County. County shall hold title to all such equipment (with the exception of those items which bear the name of Aramark, its logo, or any of its logo, service marks or trademarks or any logo, service marks or trademarks of a third party) upon such resale. County acknowledges that it is a tax-exempt entity and will provide Contractor with a copy of the appropriate tax-exempt certificate. The Financial Commitment shall be amortized on a straight-line basis commencing upon the date of expense and continuing through December 31, 2023. Upon expiration or termination of this Agreement by either party for any reason whatsoever prior to the complete amortization of the Financial Commitment, County shall reimburse Contractor for the unamortized balance of the Financial Commitment as of the date of expiration or termination plus all accrued but unbilled interest as of the date of expiration or termination. Such interest shall accrue from the effective date of this Agreement at the Prime Rate plus two percentage points per annum, computed each accounting period on the declining balance. In the event such amounts owing to Contractor are not paid to Contractor within 30 days of expiration or termination, County agrees to pay interest on such amounts at the Prime Rate plus two percentage points per annum, compounded monthly from the date of expiration or termination, until the date paid. The right of Contractor to charge interest for late payment shall not be construed as a waiver of Contractor's right to receive payment of invoices within 30 days of the invoice date. Any portion of the Financial Commitment that is not expended prior to the expiration or earlier termination of the Agreement shall revert to Contractor."

3. **Insurance and Indemnification:** Section 11 of the Agreement shall be deleted in its entirety and replaced with the following:

Insurance and Indemnification: The Contractor agrees to procure and maintain insurance naming the County as additional insured, as provided and

described in Schedule "C", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "C", the Contractor agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Contractor or third parties under the direction or control of the Contractor; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) In the event the Contractor does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Contractor shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement."

Except as specifically amended hereby, all remaining terms and conditions of the Agreement will remain in full force and effect

A resolution requesting the same is herewith attached for your Honorable Board's approval.

JKS/DLV/dv

RESOLUTION

Upon a communication from the Commissioner of Correction, be it hereby

RESOLVED, that the County of Westchester is authorized to amend the agreement with Aramark Correctional Services, LLC (“Aramark”) for the provision of food service at the Department of Correction (the “Agreement”), effective as of August 1, 2019 (the “Effective Date”), as follows:

1. **Catering Fund:** Section 6.10.1 in Schedule A of the Agreement shall be amended such that the ninth bullet point, titled “Auxiliary Expenses” is deleted in its entirety and replaced with the following:

“**Catering Fund:** Contractor shall furnish up to \$25,000.00 per contract year which shall be funded by Contractor transferring \$2,083 each month during the Term into a reserve account for the County’s catering costs (the “Catering Fund”). County shall pay for any catering costs in excess of \$25,000 per contract year. In the event that the cost of catering for the County does not exceed \$25,000 during a contract year, any remaining Catering Fund balance shall roll over into the next contract year. Any portion of the Catering Fund that is not expended prior to the expiration or earlier termination of the Agreement shall revert to the County.”

2. **Financial Commitment:** The amount of the financial commitment currently committed to shall be increased from an amount up to \$15,000 to an amount up to \$40,000. The parties also expect an additional financial commitment to be made in the year 2020 in an amount up to \$15,000. As such, the Paragraph titled, “Financial Commitment” in Schedule B of the Agreement shall be deleted in its entirety and replaced with the following:

“**Financial Commitment:** Contractor shall make a financial commitment to County in an amount up to \$40,000 (the “2019 Financial Commitment), and to the extent the Agreement is in full force and effect, Aramark expects to make an additional financial commitment of an amount up to \$15,000 in the year 2020 with the details of such investment to be mutually agreed by the parties at such time (the “2020 Financial Commitment”, and together with the 2019 Financial Commitment, the “Financial Commitment”). County agrees to invest the Financial Commitment in foodservice-related improvements and services at the Westchester County DOC. Any equipment purchased by Contractor on County’s behalf shall be purchased as a “sale-for resale” to the County. County shall hold title to all such equipment (with the exception of those items which bear the name of Aramark, its logo, or any of its logo, service marks or trademarks or any logo, service marks or trademarks of a third party) upon such resale. County acknowledges that it is a tax-exempt entity and will provide Contractor with a copy of the appropriate tax-exempt certificate. The Financial Commitment shall be amortized on a straight-line basis commencing upon the date of expense and

continuing through December 31, 2023. Upon expiration or termination of this Agreement by either party for any reason whatsoever prior to the complete amortization of the Financial Commitment, County shall reimburse Contractor for the unamortized balance of the Financial Commitment as of the date of expiration or termination plus all accrued but unbilled interest as of the date of expiration or termination. Such interest shall accrue from the effective date of this Agreement at the Prime Rate plus two percentage points per annum, computed each accounting period on the declining balance. In the event such amounts owing to Contractor are not paid to Contractor within 30 days of expiration or termination, County agrees to pay interest on such amounts at the Prime Rate plus two percentage points per annum, compounded monthly from the date of expiration or termination, until the date paid. The right of Contractor to charge interest for late payment shall not be construed as a waiver of Contractor's right to receive payment of invoices within 30 days of the invoice date. Any portion of the Financial Commitment that is not expended prior to the expiration or earlier termination of the Agreement shall revert to Contractor.”

3. **Insurance and Indemnification:** Section 11 of the Agreement shall be deleted in its entirety and replaced with the following:

“ **Insurance and Indemnification:** The Contractor agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "C", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "C", the Contractor agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Contractor or third parties under the direction or control of the Contractor; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) In the event the Contractor does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Contractor shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.”; and be it further

RESOLVED, that except as specifically amended hereby, all remaining terms and conditions of the Agreement shall remain in full force and effect; and be it further

RESOLVED, that the County Executive or his duly authorized designee be, and hereby is, authorized to take such actions and execute such documents as may be 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
	401	35	1000	4380		2,294,599
	401	35	1000	4380		2,294,599

Budget Funding Year(s) 2019-2020 Start Date 1/1/2019 End Date 12/31/20
 (must match resolution)

Funding Source Tax Dollars 4,589,198

State Aid _____

\$ - 4,589,198 Federal Aid

(must match resolution)

Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 12/15/2019 - LISA MRIJAS SECRETARY