

#70538

DATE: July 2, 2019

TO: Honorable Members  
Board of Acquisition and Contract

FROM: Rocco A. Pozzi  
Commissioner of Probation

RE: **RESOLUTION AUTHORIZING THE COUNTY, ACTING BY AND THROUGH THE DEPARTMENT OF PROBATION, TO ENTER INTO A SECOND AMENDMENT TO THE LEASE AGREEMENT WITH PROTEUS ON-DEMAND FACILITIES, LLC. FOR TEMPORARY STRUCTURES ON THE GROUNDS OF WOODFIELD COTTAGE IN ORDER TO PAY FOR CERTAIN ADDITIONAL GOODS AND INCIDENTAL SERVICES IN THE AMOUNT OF FIVE HUNDRED FIFTY THOUSAND FORTY EIGHT DOLLARS AND 77 CENTS (\$550,048.77) BASED ON AN AGREEMENT TO COMPLETE THE BOY'S UNIT, WITHOUT PREJUDICE TO OTHER CLAIMS BY PROTEUS FOR ADDITIONAL GOODS AND SERVICES AND TO MAKE OTHER NECESSARY CONFORMING CHANGES TO THE LEASE.**

By Resolution of your Honorable Board approved on July 19, 2018, the County of Westchester (the "County"), acting by and through its Department of Probation ("Probation") was authorized to enter into a lease agreement (the "Lease") with Proteus On-Demand Facilities, LLC., ("Proteus") for an amount not to exceed \$8,428,266, to lease temporary structures, related equipment and other tangible items (the "Units") in which to temporarily house adolescent offenders who have been court-ordered to secure detention and cannot be detained in Woodfield Cottage with juvenile delinquents pursuant to the "Raise the Age" law. The Lease was subsequently entered into on August 6, 2018.

By Resolution of your Honorable Board approved on March 7, 2019, the County was authorized to enter into a first amendment (the "First Amendment") of the Lease in order to provide for separate dates by which the Units are handed over to the County to use the Girls Unit while the Boys Unit was being completed and to make any other necessary conforming changes to the Lease for this purpose, and increase the amount of the lease by up to \$46,000.00 in order to provide for up to two additional monthly payments for the Girls Unit at \$23,000.00 per month until the Hand-Over date of the Boys Unit occurs.

Due to delays in the completion of the Boys Unit, by Resolution of your Honorable Board approved on June 27, 2019, the amount payable for the Girls Unit rent under the First Amendment to the Lease was increased by an additional \$138,000.00 to pay for additional monthly rental payments for the Girls Unit until the Hand-Over date of the Boys Unit occurs.

A resolution of Your Honorable Board is now respectfully requested authorizing the County to enter into a Second Amendment (the "Second Amendment") of the Lease in order to allow for an additional lease payment by the County of Five Hundred Fifty Thousand Forty Eight Dollars and 77 cents (\$550,048.77) for additional Goods and Incidental Services.

The purpose of this Second Amendment to the Lease between the County and Proteus is to enable the County to use a portion of the Goods, defined as the "Boy's Unit" in Exhibit A to the Lease, which is anticipated to be completed shortly after execution of this Second Amendment. Due to unexpected field conditions and requests for additional Goods and Incidental Services not required under the Lease, which were necessary to complete the project and/or to satisfy changes requested by the State Commission of Correction during the installation process, Proteus incurred expenses for such additional Goods and Services in excess of the amounts paid to Proteus in advance of such installation per the terms of the Lease. Proteus first advised the County of its cost overruns in late February of 2019, after which the County requested the necessary documentation to process Proteus's claims for extra Goods and Incidental Services beyond those required by the Lease. Proteus has been unable to pay its contractors and work on the Boy's Unit ceased, albeit the Boy's Unit is nearly complete. The parties have been working in good faith to resolve Proteus's claims for extra payment. The parties have recently reached an agreement under which Proteus agrees it will cause its contractors to return to the Woodfield site to complete the Boy's Unit in exchange for an additional lease payment by the County of Five Hundred Fifty Thousand Forty Eight Dollars and 77 cents (\$550,048.77) for additional Goods and Incidental Services as more fully described below. The staff of the Probation Department and the Department of Public Works has reviewed these claims and are satisfied that such claims have been sufficiently documented as items that were beyond the scope of the Lease. It would also be agreed that this Second Amendment shall: (1) be without prejudice to Proteus's ability to pursue its claims for reimbursement for additional Goods and Incidental Services beyond the scope of the Lease, except for those additional Goods and Incidental Services that the County is paying for in this Second Amendment to the Lease; and (2) the County's right to obtain sufficient information to establish that the additional Good and Incidental Services are beyond the scope of the Lease and that the Parties agree to work together in good faith to resolve such additional claims.

The proposed Amendment is in the County's best interest in that it would allow Probation to begin to house male offenders in the Boy's Unit sooner than waiting for the completion of the negotiations over the remaining Proteus claims, thus saving the County on the costs and logistical problems associated with transportation and housing of the male offenders during the pendency of their court proceedings.

Accordingly, I recommend adoption of the annexed proposed Amendment.

RAP/JR/JMR  
Attachment

## RESOLUTION

Upon a communication the Commissioner of Probation, be it hereby

**RESOLVED**, that the County of Westchester ("County") is hereby authorized to enter into a second amendment (the "Second Amendment") of its lease with Proteus On-Demand Facilities, LLC. ("Proteus") of temporary structures, related equipment and other tangible items ("Units") in which to temporarily house adolescent offenders who have been court-ordered to secure detention and cannot be detained in Woodfield Cottage with juvenile delinquents pursuant to the "Raise the Age" law; and be it further

**RESOLVED**, that the Second Amendment shall provide for an amendment to Exhibit A to add a new Exhibit A-1 describing certain additional "Goods" and "Incidental Services" and an amendment to Exhibit B to the Lease which will replace it with Exhibit B-1 which contains an additional Lease payment titled "Additional Goods and Incidental Services Payment No. 1 Invoice No. 19000449.7" in the amount of Five Hundred Fifty Thousand Forty Eight Dollars and 77 cents (\$550,048.77); and be it further

**RESOLVED**, that the Second Amendment shall state that upon payment by the County of the amount set forth in Exhibit B Revision 1 for Invoice No. 19000449.7, Proteus agrees that it will cause its contractors to immediately return to the Site and finish all work necessary to complete the Boys Unit and make it ready for Hand-Over to the County and that the execution of this Second Amendment shall: (1) be without prejudice to Proteus's ability to pursue its claims for reimbursement for additional Goods and Incidental Services beyond the scope of the Lease, except for those additional Goods and Incidental Services that the County is paying for in this Second Amendment to the Lease; and (2) the County's right to obtain sufficient information to establish that the additional Good and Incidental Services are beyond the scope of the Lease and that the Parties agree to work together in good faith to resolve such additional claims; and be it further

**RESOLVED**, that the County is authorized to make any other necessary conforming changes to the Lease necessary to carry out the above authorized purposes; and be it further

**RESOLVED**, that all other terms and conditions of the Lease shall remain in full force and effect; and be it further

**RESOLVED**, that the County Executive or his duly authorized designee is hereby authorized to execute any documents and take any actions reasonably necessary and appropriate to effectuate the purposes of this Resolution.

Agreement No.

Account to be Charged	Fund	Dept.	Major Program, Program & Phase or Unit	Object/ Sub Object	Trust Account	Dollars
	<b>101</b>	<b>39</b>	<b>2000/2200</b>	<b>4320</b>		<b>550,048.77</b>

Budget Funding Year(s) **2019** Start Date \_\_\_\_\_ End Date \_\_\_\_\_  
(must match resolution)

Funding Source Tax Dollars: \_\_\_\_\_  
State Aid: **550,048.77** \_\_\_\_\_  
Federal Aid \_\_\_\_\_  
Other \_\_\_\_\_  
(must match resolution)

APPROVED BOARD OF ACQUISITION & CONTRACT - 07/03/2019 - LISA MARIJAJ, SECRETARY