

Law & Major Contracts Meeting Agenda



Committee Chair: Damon Maher

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Monday, January 31, 2022

10:00 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations committee

MINUTES APPROVAL

I. ITEMS FOR DISCUSSION

1. [2022-32](#) ACT - Retainer Agreement with Wicks Group, PLLC

AN ACT authorizing the County of Westchester to retain, at County expense, the Wicks Group, PLLC for the provision of outside counsel services related to the Westchester County Airport, for a term of one (1) year commencing on January 1, 2022 for an amount not-to-exceed ONE HUNDRED THOUSAND (\$100,000) DOLLARS.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

Guest: County Attorney John Nonna

2. [2022-33](#) ACT - Lawsuit Settlement James v. County of Westchester

AN ACT authorizing the County Attorney to settle the lawsuit of Jessica James v. County of Westchester in the amount of ONE HUNDRED THOUSAND (\$100,000) DOLLARS, inclusive of attorney's fees.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

Guest: Senior Assistant County Attorney Mark Gardner

3. [2022-54](#) ACT - Airport Use Litigation

AN ACT authorizing the County Attorney to commence legal action, including litigation, against certain airlines that operate at the Westchester County Airport to enjoin them from violating the County's Terminal Use Procedures.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

Guests: County Attorney John Nonna and Deputy County Attorney David Chen

4. [2022-55](#) ACT - Civil Litigation to Void Lease (Proteus)

AN ACT authorizing the County Attorney to commence an action on behalf of the County of

Westchester against Proteus On-Demand Facilities, LLC relating to a lease agreement for temporary structures.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS

Guests: County Attorney John Nonna, Senior Assistant County Attorney Sean Carey, and Assistant County Attorney Jim Carpiello

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

2022-32



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

January 3, 2022

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith is an Act which, if adopted by your Honorable Board, would authorize the County of Westchester ("County") to continue to retain, at County expense, the Wicks Group, PLLC (the "Firm") for the provision of outside counsel services in connection with various legal issues relating to the Westchester County Airport (the "Airport"), for a one (1) year term commencing on January 1, 2022 for an amount not-to-exceed One Hundred Thousand (\$100,000.00) Dollars.

Your Honorable Board initially authorized the retention of the Firm in 2011 after a nationwide competitive proposal process to identify a source of counsel in the specialized fields of airport law and administrative practice before the Federal Aviation Administration ("FAA"). The Firm was chosen both on the basis of their outstanding qualifications and their fee structure, which was substantially below those of other firms practicing in the same field. Since that time, your Honorable Board has authorized the renewal of the Firm's contract on an annual basis.

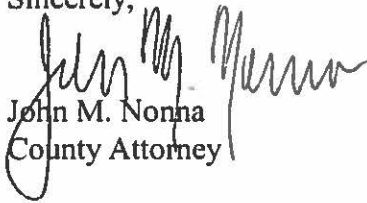
The County continues to require the services of the Firm in 2022 to provide various legal services, as needed, concerning matters in which it has specific expertise not otherwise available in-house, including, but not limited to, compliance with federal law and FAA regulations, application and enforcement of the Terminal Use Procedures, the Terminal Use Agreement and Airport Tenant Agreements within the regulatory environment, as well as developments in Airport Law.

Accordingly, authority is requested to enter into an agreement with the Firm to provide legal services to the County in connection with the Airport for a one (1) year term commencing on January 1, 2022 and continuing through December 31, 2022. For the aforesaid services rendered to the County by the Firm, the Firm will be paid at the blended rate of Three Hundred Eighty (\$380.00) Dollars per hour for all lawyers, not-to-exceed the aggregate sum of One Hundred Thousand (\$100,000.00) Dollars.

The Planning Department has advised that the proposed outside counsel agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

This contract will allow the County to continue to avail itself of the Firm's expertise in Airport law and its familiarity with the unique legal problems affecting the Airport. As such, I believe it continues to be in the County's best interest to retain the Firm and most respectfully recommend your Honorable Board's approval of the attached Act.

Sincerely,



John M. Nonna
County Attorney

JMN/JPG/ml

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the enactment of an Act which, if adopted by this Honorable Board, would authorize the County of Westchester (“County”) to continue to retain, at County expense, the Wicks Group, PLLC (the “Firm”) for the provision of outside counsel services in connection with various legal issues relating to the Westchester County Airport (the “Airport”), for a one (1) year term commencing on January 1, 2022 for an amount not-to-exceed One Hundred Thousand (\$100,000.00) Dollars.

Your Committee is advised that your Honorable Board initially authorized the retention of the Firm in 2011 after a nationwide competitive proposal process to identify a source of counsel in the specialized fields of airport law and administrative practice before the Federal Aviation Administration (“FAA”). The Firm was chosen both on the basis of their outstanding qualifications and their fee structure, which was substantially below those of other firms practicing in the same field. Since that time, your Honorable Board has authorized the renewal of the Firm’s contract on an annual basis.

Your Committee is advised that the County continues to require the services of the Firm in 2022 to provide the County with various legal services, as needed, concerning matters in which it has specific expertise not otherwise available in-house, including, but not limited to, compliance with federal law and FAA regulations, application and enforcement of the Terminal Use Procedures, the Terminal Use Agreement and Airport Tenant Agreements within the regulatory environment, as well as developments in Airport Law.

Accordingly, authority is requested to enter into an Agreement with the Firm to provide legal services to the County in connection with the Airport for a one (1) year term commencing retroactive to January 1, 2022 and continuing through December 31, 2022. For the aforesaid services rendered to the County by the Firm, the Firm will be paid at the blended rate of Three Hundred Eighty (\$380.00) Dollars per hour for all lawyers, not-to-exceed the aggregate sum of One Hundred Thousand (\$100,000.00) Dollars.

The Planning Department has advised that the proposed outside counsel agreement does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

An affirmative vote of a majority of the voting strength of the Board is required for approval of the attached Act.

Accordingly, your Committee concurs with the County Attorney's recommendation that it would be in the best interests of the County to continue to retain the Firm and requests approval of the attached Act.

Dated: _____, 2022
White Plains, New York

COMMITTEE ON

vj/pg

FISCAL IMPACT STATEMENT

SUBJECT: Wicks Group, PLLC

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 100,000

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 161_44_4110_4420

Potential Related Operating Budget Expenses: Annual Amount \$100,000.00

Describe: An ACT authorizing the County of Westchester to amend an agreement for the provision of outside counsel services related to the Airport, extending the term through 12/31/2022 and increasing the not to exceed amount by \$100,000.

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: n/a

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: n/a

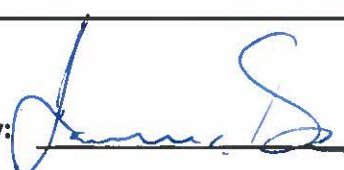
Next Four Years: n/a

Prepared by: Dianne Vanadia

Title: Sr. Budget Analyst

Department: Budget

Date: November 29, 2021

Reviewed By: 
Budget Director

Date: 11/29/21

ACT NO. 2022 - _____

AN ACT authorizing the County of Westchester to retain, at County expense, the Wicks Group, PLLC for the provision of outside counsel services related to the Westchester County Airport, for a term of one (1) year commencing on January 1, 2022 for an amount not-to-exceed \$100,000.00.

BE IT ENACTED by the Board of Legislators of the County of Westchester, as follows:

Section 1. The County of Westchester (“County”) is hereby authorized to retain, at County expense, the Wicks Group, PLLC (the “Firm”), for the provision of outside counsel services related to the Westchester County Airport, as needed, concerning matters in which it has specific expertise not otherwise available in-house, including, but not limited to, compliance with federal law and FAA regulations, application and enforcement of the terminal use procedures, the terminal use agreement and airport tenant agreements within the regulatory environment, as well as developments in airport law, for a one (1) year term commencing on January 1, 2022 and continuing through December 31, 2022.

§2. For the aforesaid services rendered to the County by the Firm, the Firm shall be paid at the blended rate of Three Hundred Eighty (\$380.00) Dollars per hour for all lawyers, not-to-exceed the aggregate sum of One Hundred Thousand (\$100,000.00) Dollars.

§3. The County Executive or his authorized designee, be and hereby is authorized to execute all instruments and to take all actions reasonably necessary to carry out the purposes of this Act.

§4. This Act shall take effect immediately.

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

January 13, 2022

Westchester County Board of Legislators
County of Westchester
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request for authorization to settle the lawsuit of Jessica James v. County of Westchester, in Westchester County Supreme Court, Index No. 53652/2019, in the amount of \$100,000.00 inclusive of attorney's fees.

Dear Honorable Members of the Board:

Attached for your consideration is an Act, which if enacted by your Board, would authorize the settlement of the lawsuit of Jessica James v. County of Westchester, in the amount of \$100,000.00 inclusive of attorney's fees.

This matter is pending in the Westchester County Supreme Court before the Honorable Joan Lefkowitz. The matter tentatively settled on December 20, 2021 pending this Board's approval of a settlement in the amount of \$100,000.00, inclusive of attorney's fees.

Ian Kingsley of Goldberg, Miller & Rubin, PC, 797 Third Avenue, 24th Floor, New York, New York 10017 is representing the plaintiff.

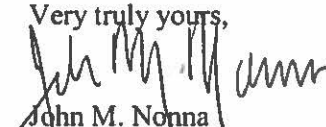
This matter arises out of a passenger accident which occurred on March 16, 2018. The 64-year-old plaintiff alleged that at 7:45 p.m. on Court Street, near Post Road, in White Plains, bus 576 closed its rear doors on her before she exited the vehicle, causing her to fall. The bus video shows that the rear doors started to close while plaintiff was still inside the bus and descending the steps. As plaintiff attempted to exit, the doors began to close and she stumbled as she hurried to get out. She lost her balance as she pulled her right arm through the door, fell on the sidewalk and landed on her left side. She tried to break her fall by putting her hands out.

Plaintiff was brought to White Plains Hospital by ambulance. Plaintiff complained of bilateral wrist pain, posterior knee pain, and left hip pain. Plaintiff stated her pain level was 9/10. Subsequent MRI's showed herniated discs from C2 through C7 and from L1 through S1. On May 10, 2018, at Montefiore Ambulatory Surgical Center, plaintiff underwent arthroscopic surgery on her right shoulder for a rotator cuff tear. Plaintiff also received a nerve block for post-operative pain control.

Subsequently, and in addition to her shoulder surgery, plaintiff underwent epidural steroid injections to her neck and lower back. She received one epidural in her back and multiple injections in her neck. Over a period of time, plaintiff regularly received physical therapy for her shoulder and back. Plaintiff was diagnosed with carpal tunnel syndrome in her right wrist as a result of the accident. Plaintiff claims that she suffers from depression as a result of the accident and was prescribed Zoloft.

The plaintiff will argue that the bus driver was negligent in his operation of the bus. The plaintiff will further argue that the bus driver's negligence was the proximate cause of her injuries. The bus operator in question was subject to a disciplinary hearing. The operator was issued a violation for the incident.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The accompanying Act will authorize settlement of the lawsuit entitled, Jessica James v. County of Westchester, in the amount of \$100,000.00, Westchester County Supreme Court Index No. 53652/2019, inclusive of attorney's fees.

Very truly yours,

John M. Nonna
County Attorney

JMN/mg

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize the settlement of the lawsuit of Jessica James v. County of Westchester, in Westchester County Supreme Court, Index No. 53652/2019, in the amount of \$100,000.00.

This matter is pending in the Westchester County Supreme Court before the Honorable Joan Lefkowitz. The matter tentatively settled pending this Board's approval of a settlement in the amount of \$100,000.00, inclusive of attorney's fees. Ian Kingsley of Goldberg, Miller & Rubin, PC, 797 Third Avenue, 24th Floor, New York, New York 10017, is representing the plaintiff.

This matter arises out of a passenger accident which occurred on March 16, 2018. The 64-year-old plaintiff alleged that at 7:45 p.m. on Court Street, near Post Road, in White Plains, bus 576 closed its rear doors on her before she exited the vehicle, causing her to fall. The bus video shows that the rear doors started to close while plaintiff was still inside the bus and descending the steps. As plaintiff attempted to exit, the doors began to close and she stumbled as she hurried to get out. She lost her balance as she pulled her right arm through the door, fell on the sidewalk and landed on her left side. She tried to break her fall by putting her hands out.

Plaintiff was brought to White Plains Hospital by ambulance. Plaintiff complained of bilateral wrist pain, posterior knee pain, and left hip pain. Plaintiff stated her pain level was 9/10. Subsequent MRI's showed herniated discs from C2 through C7 and from L1 through S1. On May 10, 2018, at Montefiore Ambulatory Surgical Center, plaintiff underwent arthroscopic surgery on her right shoulder for a rotator cuff tear. Plaintiff also received a nerve block for post-operative pain control.

Subsequently, and in addition to her shoulder surgery, plaintiff underwent epidural steroid injections to her neck and lower back. She received one epidural in her back and multiple injections in her neck. Plaintiff regularly received physical therapy for her shoulder and back. Plaintiff was diagnosed with

carpal tunnel syndrome in her right wrist as a result of the accident. Plaintiff claims that she suffers from depression as a result of the accident and was prescribed Zoloft.

The plaintiff will argue that the bus driver was negligent in his operation of the bus. The plaintiff will further argue that the bus driver's negligence was the proximate cause of her injuries. The bus operator in question was subject to a disciplinary hearing. The operator was issued a violation for the incident.

The settlement takes into consideration the uncertainty of litigation and the potential costs of trial, subsequent proceedings and potential appeal. Both outside counsel and our insurer's adjuster recommend this settlement. The accompanying Act will authorize settlement of the lawsuit entitled Jessica James v. County of Westchester, in Westchester County Supreme Court, Index No. 53652/2019, in the amount of \$100,000.00, inclusive of attorney's fees.

Your Committee has carefully considered the subject matter, the settlement proposal, the attached Act and recommends authorizing the County Attorney or his designee to settle the lawsuit entitled Jessica James v. County of Westchester, in Westchester County Supreme Court, Index No. 53652/2019, in the amount of \$100,000.00, inclusive of attorney's fees. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York

, 2022

ACT NO. -2022

AN ACT authorizing the County Attorney to settle the lawsuit of Jessica James v. County of Westchester, in Westchester County Supreme Court, Index No. 53652/2019, in the amount of \$100,000.00, inclusive of attorney's fees

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is authorized to settle the lawsuit of Jessica James v. County of Westchester, in Westchester County Supreme Court, Index No. 53652/2019, in the amount of \$100,000.00 inclusive of attorney's fees. The County will pay \$100,000.00 as required by the self-insured retention applicable to its insurance policy.

Section 2. The County Attorney or his designee is hereby authorized and empowered to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Jessica James v Cty. of Westchester

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 100,000

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 101-44-2100-4924

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Dianne Vanadia

Title: Sr. Budget Analyst

Department: Budget

Date: January 11, 2022

Reviewed By: [Signature]

Budget Director

Date: 01/11/22

1/10/22

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

January __, 2022

Westchester County Board of Legislators
Michaelian Office Building
148 Martine Avenue, Suite 800
White Plains, New York 10601

Re: Request for Authorization to Commence Legal Action Regarding Ongoing Violations of
Airport Terminal Use Procedures

Dear Honorable Members of the Board of Legislators:

Attached for your consideration is an Act which, if approved, would authorize the commencement of legal action, including litigation, against certain airlines that operate at the Westchester County Airport (the Airport).

As you know, Section 712.462 of the Laws of Westchester County sets forth the Airport's Terminal Use Procedures (TUPs). Subsection 1 states that the TUPs "shall apply to all use of the passenger terminal" by any airline "providing Passenger Service," and that "[a]ll Passenger Service provided at the Airport shall be provided at the Terminal." Subsection 2 defines "Passenger Service" as "any air service to or from the Airport for which seats are individually offered or sold to the public or a segment of the public, regardless of whether such individual seats are offered or sold directly by the aircraft operator, a charterer, another Airline, or any other entity." The TUPs have been reviewed by the Federal Aviation Administration (FAA), whose Office of the Chief Counsel has represented to the County that the TUPs comply with federal aviation law.

We have been informed by now-former Airport Director Peter Scherrer and his recent replacement, April Gasparri, that certain airlines operating at the Airport have been violating the aforementioned law by operating air service to or from the Airport (for which seats are sold to a segment of the public) not from the Terminal, as required, but rather from Forward Operating Bases (FBOs). Our Office has, in conjunction with outside aviation law counsel, the Wicks Group, PLLC, sent cease-and-desist letters to these airlines.

Unfortunately, certain of these airlines remain in violation of the TUPs. Accordingly, we have concluded that the only way to ensure compliance is to initiate legal action.

For these reasons, we are respectfully requesting authorization on behalf of the County to commence legal action against the airlines who remain in violation of County law, including possible litigation to obtain a declaratory judgment and injunctive relief against said airlines.

Very truly yours,

John M. Nonna, Esq.
Westchester County Attorney

JNM/dhc
Encls.

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if approved, would authorize the commencement of legal action, including litigation, against certain airlines that operate at the Westchester County Airport (the Airport).

Section 712.462 of the Laws of Westchester County sets forth the Airport's Terminal Use Procedures (TUPs). Subsection 1 states that the TUPs "shall apply to all use of the passenger terminal" by any airline "providing Passenger Service," and that "[a]ll Passenger Service provided at the Airport shall be provided at the Terminal." Subsection 2 defines "Passenger Service" as "any air service to or from the Airport for which seats are individually offered or sold to the public or a segment of the public, regardless of whether such individual seats are offered or sold directly by the aircraft operator, a charterer, another Airline, or any other entity." These TUPs have been reviewed by the Federal Aviation Administration (FAA), whose Office of the Chief Counsel has represented to the County that the TUPs comply with federal aviation law.

Your Committee has been informed by the County Attorney and the Airport Director that certain airlines operating at the Airport have been violating the aforementioned law by operating flights at the Airport (for which seats are sold to the public) not from the Terminal, as required, but rather from Forward Operating Bases (FBOs). The Office of the County Attorney has sent cease-and-desist letters to these airlines, in conjunction with outside aviation law counsel. Certain of these airlines remain in violation of the TUPs, however. Accordingly, the County Attorney seeks authorization to commence litigation against those airlines.

Your Committee concurs with the Westchester County Attorney, and therefore recommends that your Board approve the annexed Act to commence legal action, including litigation against these airlines for declaratory and injunctive relief.

Dated: White Plains, New York

_____, 2022

COMMITTEE ON

ACT NO.

-2022

AN ACT authorizing the County Attorney to commence legal action, including litigation, against certain airlines that operate at the Westchester County Airport to enjoin them from violating the County's Terminal Use Procedures.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized on behalf of the County of Westchester to commence legal action, including litigation, against certain airlines that operate at the Westchester County Airport (the Airport), and any other necessary parties, to enjoin them from further violation of the Laws of Westchester County, including but not limited to Section 712.462 thereof, which sets forth the Airport's Terminal Use Procedures (TUPs). Certain airlines have been in violation, and continue to be in violation, of the TUPs by operating flights at the Airport (for which seats are sold to the public) not from the Terminal, as required, but from Forward Operating Bases (FBOs). These airlines have each refused to comply with cease-and-desist letters and other communications intended to resolve the issue from both the Office of the County Attorney and from the Wicks Group, the County's outside aviation counsel.

Section 2. The County Attorney is hereby authorized and empowered to undertake such legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

George Latimer
County Executive

Department of Law

John M. Nonna
County Attorney

January 24, 2022

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, NY 10601

Re: An Act authorizing the County Attorney to commence an action on behalf of the County of Westchester against Proteus On-Demand Facilities, LLC relating to a lease agreement for temporary structures

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if approved, would authorize the County Attorney to commence an action on behalf of the County of Westchester against Proteus On-Demand Facilities, LLC (“Proteus”) relating to a lease agreement for temporary structures (the “Lease”). The temporary structures were designed to lodge sixteen- and seventeen-year olds who have been detained as juveniles as a result of New York State’s Raise the Age law (“Raise the Age”).

Relevant Background

Raise the Age Law

On April 10, 2017, New York State passed Raise the Age, raising the age of criminal responsibility from sixteen to eighteen years of age. Its key provision—raising the age—was implemented in phases, with the age of criminal responsibility rising from sixteen to seventeen on October 1, 2018; and from seventeen to eighteen on October 1, 2019.

Among its other relevant provisions, Raise the Age requires that detained sixteen- and seventeen-year olds (“Older Youths”) be lodged in “specialized secure juvenile detention facilities” (“SSJDF’s”) and kept apart from younger detained juveniles. Raise the Age also requires that SSJDF’s be certified by the Office of Children and Family Services (“OCFS”) and the State Commission of Correction (“SCOC”) and be operated in compliance with the established guidelines for juvenile detention facilities.

The County’s Existing Juvenile Detention Facility

Since the 1970’s, the County has detained juveniles facing criminal charges in Woodfield Secure Detention (“Woodfield”), a County-owned, 24-bed secure detention facility located on Westchester County’s Grassland Campus. Since 2008, Woodfield has been overseen by the



Westchester County Department of Probation (“Probation”), an administrative arm of the County of Westchester (see Charter and Administrative Code of Westchester County § 164.11 [establishing Probation]).

While Probation oversees Woodfield, the day-to-day detention services are performed by Children’s Village, Inc. (“CVI”), a third-party vendor.

The County’s Proposed Temporary Structures

To provide a stopgap between Raise the Age’s implementation and the eventual construction of a more permanent facility, the County submitted a proposal to SCOC in 2008. The proposal sought permission to lodge Older Youths in temporary housing units annexed to Woodfield: one 10-bed unit affixed to Woodfield’s east side reserved for female detainees (the “East Wing”); one two-story, 20-bed unit affixed to Woodfield’s west side reserved for male detainees (the “West Wing”).

On July 2, 2018, SCOC approved the County’s proposal.

The Lease

On August 6, 2018, the County and Proteus entered the Lease, pursuant to which the County leased two temporary structures from Proteus, the West Wing and the East Wing, which Proteus agreed to install and annex to Woodfield. The Lease specifically provides that “it is recognized by [Proteus] that the [temporary facilities] are being used as a detention/incarceration facility.”

Under the Lease, once both temporary structures are installed and the County accepts handover of same, the County is obligated to pay Proteus 48 monthly lease payments of \$69,000. At the end of the lease term, the County, at its option, may either (a) purchase the temporary structures at fair market value; or (b) direct Proteus to disassemble and remove the temporary structures and provide Proteus with a final lease payment of \$1,177,250.

The County accepted handover of the East Wing on or about March 10, 2019, and handover of the West Wing on September 9, 2019. The Lease term runs from the later date and therefore expires by its own terms in approximately 19 months, on Friday, September 1, 2023.

Instant Dispute

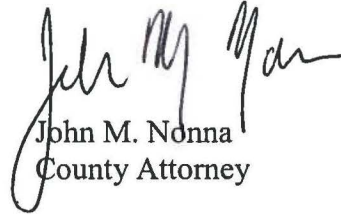
The core issue is that neither the West Wing nor the East Wing remains fit for its intended purpose: detaining sixteen- and seventeen-year-olds. The temporary structures are incapable of withstanding the damage imposed upon them by their detainees.

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Requested Authority

For the foregoing reasons, I recommend commencing an action on the County's behalf against Proteus for a court order (i) to enforce the County's rights; and (ii) for such other relief as is necessary to wind up tertiary disputes related to the Lease. The Commissioner of the Westchester County Department of Probation concurs in this recommendation.

Very truly yours,



John M. Nonna
County Attorney

JMN/stc

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Honorable Board, would authorize the County Attorney to commence an action on behalf of the County of Westchester against Proteus On-Demand Facilities, LLC (“Proteus”) relating to a lease agreement for temporary structures (the “Lease”). The temporary structures were designed to lodge sixteen- and seventeen-year olds who have been detained as juveniles as a result of New York State’s Raise the Age Law (“Raise the Age”).

The County and Proteus entered the Lease on August 6, 2018. Under the Lease, the County leased two temporary structures from Proteus, which Proteus agreed to install and annex to Woodfield. The Lease was intended to be used to detain sixteen- and seventeen-year-olds who, as a result of Raise the Age, cannot be detained in the Westchester County Jail. The Lease runs through Friday, September 1, 2023, with the County obligated to make nineteen additional monthly lease payments of \$69,000, for a total expense of \$1,311,000.00.

Experience has proved that the temporary structures are unfit for purpose. The County Attorney has therefore recommended commencing an action for a court order (i) to enforce the County’s rights; and (ii) for such other relief as is necessary to wind up tertiary disputes related to the Lease.

Your Committee concurs with the County Attorney and the Commissioner of the Department of Probation, Rocco Pozzi, and therefore recommends that the Board approve the accompanying Act authorizing the County Attorney to initiate such legal action against Proteus On-Demand Facilities, LLC.

An affirmative vote of a majority of the Board is required to pass this Act.

Dated: White Plains, New York
January __, 2022

l:stc- 2022 01 24

ACT NO. 2022

AN ACT authorizing the County Attorney to commence an action on behalf of the County of Westchester against Proteus On-Demand Facilities, LLC relating to a lease agreement for temporary structures.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

1. The County Attorney is authorized to commence an action on behalf of the County of Westchester against Proteus On-Demand Facilities, LLC relating to a lease agreement for temporary structures.
2. The County Attorney or her designee be and hereby is authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary and desirable to accomplish the purposes hereof.
3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Civil Litigation to Void Lease (Proteus)

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ -0

Total Current Year Revenue \$ _____

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 101-39 2000:2200-4380

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: _____

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four years: _____

Prepared by: Sean T. Carey

Title: Senior Assistant County Attorney

Department: Law

Reviewed By: _____

Budget Department

If you need more space, please attach additional sheets.