

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

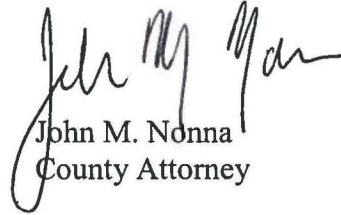
The core issue is that neither the West Wing nor the East Wing remains fit for its intended purpose: detaining sixteen- and seventeen-year-olds. The temporary structures are incapable of withstanding the damage imposed upon them by their detainees.

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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.