

39056

To: The Board of Acquisition and Contract

From: Thomas J. Lauro
Commissioner of Environmental Facilities

Date: March 13, 2014

Re: Resolution authorizing the County of Westchester to enter into an agreement with River Club, L.L.C. for the relocation of a portion of a sewer trunk line located on property owned by River Club, LLC along Warburton Avenue in the City of Yonkers, including an easement for the new sewer trunk line

Transmitted herewith is a resolution authorizing the County of Westchester (the "County") to enter into an agreement that would provide for the relocation of a portion of the County's sewer trunk line running through property located adjacent to Warburton Avenue in the City of Yonkers and currently owned by River Club, L.L.C. (the "Owner"), including a perpetual easement for the new sewer trunk line. In consideration for the completion of the relocation project, the County shall pay \$625,000.00 to River Club, L.L.C. and \$10.00 for the new easement. In 2007, the County's forty-eight (48) inch sewer trunk line broke, resulting in damages to the Owner's property. The Owner and the County thereafter entered into a License Agreement to, among other things, allow the County to perform certain tests on a portion of the Property and to determine the cause of the sewer line break and complete the repairs. In 2008, as a result of the damages caused by the broken pipe, the Owner, by Summons with Notice, commenced a lawsuit (the "Legal Action") against the County in the Supreme Court of Westchester County.

The Department of Environmental Facilities and the Owner have agreed to execute a new easement agreement that would require the Owner to relocate the existing trunk line to a more favorable location on the Owner's property, benefitting both the County and the Owner. Relocating the trunk line will benefit the County as the County will acquire a new section of trunk line pipe (approx. 545 feet) to replace a section that was installed approximately eighty years ago. In addition, the Owner will be required to install a retaining wall for the length of the new trunk line to provide protection from slope failure, which will make the new trunk line much more secure than the existing installation. Additionally, the final slope of the ground over the new trunk line will provide easier access to maintain, repair or rehabilitate the trunk line in the future. The new location will also benefit the Owner in its efforts to develop the property.

The original easements for the existing sewer trunk line on the Owner's property will be terminated upon the completion of the installation and acceptance by the County of the new sewer trunk line. The agreement will be conditioned upon and subject to (a) the issuance of all necessary permits for the relocation of the sewer line and (b) the receipt of revised site plan approval from the City of Yonkers for the Owner's plans for the development of the property. The Owner will have two years to complete the relocation work after execution of the relocation agreement and after the aforesaid conditions have been satisfied.

The objective and public purpose of this contract is to relocate the existing sewer line to a more favorable and stable location. Work under the agreement will be tracked and monitored through site visits by staff of the Department of Environmental Facilities.

It should be noted that the County Board of Legislators passed legislation authorizing this easement relocation agreement under Act 2014-11. As I believe this agreement to be in the best interests of the County, I respectfully urge your Honorable board to approve the attached resolution.

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/01/2014 - JOSEPH VIEIRA, SECRETARY

RESOLUTION

Upon a communication from the Commissioner of Environmental Facilities, be it hereby

RESOLVED, that the County of Westchester is authorized to enter into an agreement with River Club, L.L.C. wherein the County shall pay \$625,000.00 to River Club, L.L.C for the relocation of a portion of a sewer trunk line located on property owned by River Club, LLC along Warburton Avenue in the City of Yonkers, including a perpetual easement for the new sewer trunk line for which the County shall pay \$10.00; and be it further

RESOLVED, under the terms of the relocation agreement, the original easements for the existing sewer trunk line on the Owner's property will be terminated upon the completion of the installation and acceptance by the County of the new sewer trunk line. The relocation agreement will be conditioned upon and subject to (a) the issuance of all necessary permits for the relocation of the sewer line and (b) the receipt of revised site plan approval from the City of Yonkers for the Owner's plans for the development of the property. The Owner will have two years to complete the relocation work after execution of the relocation agreement and after the aforesaid conditions have been satisfied; and be it further.

RESOLVED, that this Agreement is subject to County appropriations; and be it further

RESOLVED, that this Agreement subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. 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 of time after such release(s) or adoption(s), to conduct analysis, the County shall retain the right to either terminate this Agreement 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 this Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized to execute the above agreement on behalf of the County of Westchester; and to take all other action necessary to effectuate the purposes hereof.

Account to be
Charged/credited

	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	322	60	SY085-13 C	6050		\$625,000
	322	60	SY085-13 A	6050		\$10

Budget Funding Year(s) 2014

Start Date upon execution End Date easement is perpetual

Funding Source

Tax Dollars \$625,010

State Aid _____

\$ 625,010
(must match resolution)

Federal Aid _____

Other _____