

74015

To: Board of Acquisition and Contract

From: Joseph K. Spano
Commissioner

Date: January 16, 2020

Re: Authorization for the County of Westchester to enter into a memorandum of agreement with the County of Nassau whereby each County would agree to receive and keep inmates from the other County as well as provide both routine and extraordinary medical and dental care services to the other County's inmates being housed in their respective correctional facilities.

Authority is requested for the County of Westchester ("Westchester"), acting by and through its Department of Correction, to enter into a memorandum of agreement (the "MoA") with the County of Nassau ("Nassau") (each a "County" or collectively the "Counties"), pursuant to which each County would agree to receive and keep inmates from the other County as well as provide both routine and extraordinary medical and dental care services to the other County's inmates being housed in their respective correctional facilities.

By way of background, both Nassau and Westchester operate County Correctional facilities. For reasons related to safety, gang affiliation, etc., from time to time the Counties reciprocally exchange inmates via so-called Substitute Jail Orders. Each County receives and keeps inmates from the other County who may be sentenced or remanded by a duly authorized Court or Magistrate, on a space- available basis, but do not charge the other County boarding costs for those inmates. In addition, each hosting County provides routine in-house medical and dental care (such care the "Routine Care") for inmates from the referring County, at no cost to the referring County. Each County, when medically necessary, also provides extraordinary medical and dental care that is over and above the Routine Care typically provided in a Correctional Facility (such care, the "Extraordinary Care"), and charges the referring County for costs associated with such Extraordinary Care. This relationship has existed on an informal basis for a number of years but has never been formally memorialized.

The Counties now desire to enter into an MoA to formally memorialize this relationship. Accordingly, authority is requested for Westchester to enter into an MoA with Nassau, pursuant to which each County would agree to receive and keep inmates from the other County, as well as provide Routine Care to the other County's inmates being housed in their respective correctional facilities, at no cost to the other County. The MoA would further authorize each County to provide Extraordinary Care to the other County's inmates being housed in their respective

correctional facilities, and to reimburse the hosting County for costs associated with the provision of such Extraordinary Care. The term of the proposed MoA would commence retroactive to August 1, 2019 and will continue indefinitely, unless terminated for convenience on sixty (60) days written notice to the other County.

In addition, pursuant to the terms of the MoA, each County will agree to be solely responsible for and indemnify and hold harmless the other County and its officers, employees, and agents from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys' fees and disbursements) and damages, directly arising out of or in connection with the negligence or willful misconduct of the indemnifying County or its respective agents.

It should be noted that in accordance Section 504 of the New York Correction Law, the State Commission of Correction, upon application by the County of Westchester, has the authority to designate a substitute jail for the County for use by the County in the event that the County jail is unfit or unsafe for the confinement of some or all of the inmates. As such, since the proposed MoA is authorized by Corrections Law §504, it does not constitute an intermunicipal agreement and Board of Legislator approval is not required.

Pursuant to Section 3(a)(iii) of the Westchester County Procurement Policy and Procedures (the "Procurement Policy"), the Procurement Policy does not apply to transactions or contracts with the United States of America, any State, and any political subdivision, agency or instrumentality thereof.

This MoA is necessary for the County to carry out its duty to maintain the safety of inmates in the event that the County Jail is filled to capacity and to assure the safety of a prisoner, if necessary, by housing the inmate outside of Westchester County. The goal of maintaining the safety of the public and prisoners while prisoners are being maintained in substitute jails will be tracked and monitored by the Department of Correction through booking records and monthly invoices.

The approval of this MoA will assure the public safety of County residents and will permit the use of substitute jails where necessary pursuant to Section 504 of the Correction Law. The proposed agreement is in the best interests of the County, because the County has obtained a favorable and realistic rate for housing inmates in both the Westchester and Nassau County Jails.

A resolution for your consideration is annexed hereto which I recommend for your favorable consideration.

JKS/WF/SV/jpg
Att.

RESOLUTION

Based on a communication from the Commissioner of Correction, be it hereby

RESOLVED, that the County of Westchester (“Westchester”) is hereby authorized to enter into a Memorandum of Agreement with the County of Nassau (“Nassau”) (each a “County”) (the “MoA”), pursuant to which each County would agree to receive and keep inmates from the other County as well as provide routine medical and dental care to the other County’s inmates being housed in their respective correctional facilities, at no cost to the other County; and be it further

RESOLVED, that the MoA shall further authorize each County to provide extraordinary medical and dental care, as defined in the MoA, to the other County’s inmates being housed in their respective correctional facilities, and to reimburse the hosting County for costs associated with the provision of such extraordinary medical and dental care; and be it further

RESOLVED, that the term of the MoA shall commence retroactive to August 1, 2019 and will continue indefinitely, unless terminated for convenience on sixty (60) days written notice to the other County; and be it further

RESOLVED, that pursuant to the terms of the MoA, each County will also agree to be solely responsible for and indemnify and hold harmless the other County and its officers, employees, and agents from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys’ fees and disbursements) and damages, directly arising out of or in connection with the negligence or willful misconduct of the indemnifying County or its respective agents; and be it further

RESOLVED, that the County Executive or his duly authorized designee, be and hereby is authorized and empowered to execute any and all documents necessary or appropriate to effectuate the purposes hereof.

Account to be Charged/credited	Fund	Agency	Capital Project Or Org	Object/ Sub Object	Trust Account	Activity	Dollars
	101	35	1000	4380			TBD

Budget Funding Year(s) 2019- Start Date 08/01/2019 End Date Evergreen

(must match resolution)
Funding Source

Tax Dollars TBD

State Aid _____

\$ TBD
(must match resolution)

Federal Aid _____

Other _____