



George Latimer
County Executive

Department of Health

Sherlita Amler, M.D.
Commissioner

78576

DATE: August 12, 2020

TO: Board of Acquisition and Contract

FROM: Sherlita Amler, M.D.
Commissioner
Department of Health

SUBJECT: Authority for the County to enter into an agreement, a.) pursuant to which the County will consent to, Acme Bus Corp. assigning to Orange County Transit, LLC an agreement under which Acme Bus Corp. provides the County with transportation services for pre-school children with special needs, and b.) modifying the terms of payment under said assigned agreement in order to provide for certain payments to Orange County Transit, LLC in the event that, in the future, the Governor of the State of New York orders the closure, due to COVID-19, of all schools and school programs for which Orange County Transit, LLC provides transportation services under the assigned agreement.

By a resolution approved on July 13, 2017, the County of Westchester (the "County") entered into an agreement with Acme Bus Corp. ("Acme"), pursuant to which Acme was to provide the County with transportation services for pre-school children with special needs, for certain, specified school programs, for the period from September 1, 2017 through August 31, 2022, for a total amount not-to-exceed \$6,620,610.06, payable pursuant to specific rates for services (the "Original Agreement"). The Original Agreement was subsequently executed.

The County, by a letter dated October 1, 2019, partially terminated the Original Agreement, effective at the end of the day on October 20, 2019, such that Acme would, thereafter, only provide transportation services for pre-school children with special needs for two (2) programs, which are commonly known as Hudson Valley UCP and Parkside/PARC, under the partially-terminated Original Agreement (the Original Agreement, as partially terminated, hereafter referred to as "E/T533").

The County has been made aware of the fact that Acme is currently in bankruptcy proceedings. As part of that process, Acme inquired with the County about its willingness to consent to Acme assigning E/T533 to Orange County Transit, LLC (“Orange”). Acme made this inquiry because E/T533 prohibits Acme from assigning it to another entity without the prior written consent of the County. The Department of Health (“DOH”) contacted Orange and, based upon DOH’s conversations with Orange, determined that it is agreeable to such an assignment. Orange will accept such an assignment from Acme if the County will agree to modify the terms of payment under E/T533 in order to provide for certain payments in the event that, in the future, the Governor of the State of New York orders the closure, due to COVID-19, of all schools and school programs for which Orange would provide transportation services under E/T533. The County is agreeable to making such a modification to the terms of payment under E/T533.

Therefore, the County respectfully requests authority from your Honorable Board to enter into an agreement (the “Assignment Agreement”) with both Acme and Orange, pursuant to which:

- 1.) Acme will acknowledge that, subject to the receipt of all necessary legal approvals, it has assigned to Orange all of Acme’s right, privilege, interest, obligation and duty of performance in, to, and under E/T533 (the “Assignment”);
- 2.) Orange will acknowledge that, subject to the receipt of all necessary legal approvals, it has accepted the Assignment from Acme and, accordingly, Orange agrees to perform under E/T533 through the remainder of its term as if Orange were an original party thereto, with all terms and conditions of E/T533 remaining in full force and effect, except as provided in items ‘4’ and ‘5’, below;
- 3.) the County will consent to the Assignment;
- 4.) the County will agree that, effective September 1, 2020, in the event that, in the future, the Governor of the State of New York issues an executive order that requires the closure, due to COVID-19, of all schools and school programs for which transportation services are provided by Orange under E/T533, Orange shall be paid, for each school day for the duration of such ordered closure, an amount equal to forty percent (40%) of the amount to which Orange was entitled for the services it provided on the last school day prior to the beginning of such ordered closure; provided, however, that such amounts shall only be paid by the County to the extent that they will be used by Orange for costs associated with Orange maintaining readiness to resume providing services upon the end of such ordered closure; and
- 5.) Orange, as soon as reasonably practicable but in no event fewer than five (5) business days prior to Orange providing any transportation services under E/T533, shall submit to the County, for approval, documentation and proof that Orange has furnished the annual performance security required under E/T533. Such annual performance security shall be in the amount of One Hundred and Twenty-Nine Thousand Five Hundred and Thirty-One Dollars (\$129,531.00) for each of the period from September 1, 2020 through August 31, 2021 and the period from September 1, 2021 through August 31, 2022.

The proposed Assignment Agreement will serve a public purpose by ensuring that the

County can continue to receive necessary transportation services for children in Westchester County with special needs, so that they can safely travel to and from the programs in which they participate.

The goal and objective of the proposed Assignment Agreement is to ensure that the County can continue to receive necessary transportation services for children in Westchester County with special needs, so that they can safely travel to and from the programs in which they participate.

The goal and objective of the proposed Assignment Agreement is in the best interests of the County in terms of public health and safety, as ensuring that the County can continue to receive necessary transportation services for children in Westchester County with special needs, so that they can safely travel to and from the programs in which they participate, will allow each child to receive appropriate services in accordance with each child's respective approved Individualized Education Program, and do so in the child's least restrictive setting.

The goal and objective of the proposed Assignment Agreement will be tracked and monitored by the staff of DOH.

I respectfully recommend the adoption of the attached resolution.

SA/MY/bdm/nn

APPROVED BOARD OF ACQUISITION & CONTRACT ADMINISTRATION
LISA M. PATA, SECRETARY

RESOLUTION

Upon a communication from the Commissioner of Health, be it hereby

RESOLVED, that the County of Westchester (the "County") is hereby authorized to enter into an agreement with both Acme Bus Corp. ("Acme") and Orange County Transit, LLC ("Orange"), pursuant to which:

- 1.) Acme will acknowledge that, subject to the receipt of all necessary legal approvals, it has assigned to Orange all of Acme's right, privilege, interest, obligation and duty of performance in, to, and under Acme's agreement with the County ("E/T533") pursuant to which Acme is to provide the County with transportation services for pre-school children with special needs for two (2) programs, which are commonly known as Hudson Valley UCP and Parkside/PARC, for the period from September 1, 2017 through August 31, 2022, for a total amount not-to-exceed \$6,620,610.06, payable pursuant to specific rates for services (the "Assignment");
- 2.) Orange will acknowledge that, subject to the receipt of all necessary legal approvals, it has accepted the Assignment from Acme and, accordingly, Orange agrees to perform under E/T533 through the remainder of its term as if Orange were an original party thereto, with all terms and conditions of E/T533 remaining in full force and effect, except as provided in items '4' and '5', below;
- 3.) the County will consent to the Assignment;
- 4.) the County will agree that, effective September 1, 2020, in the event that, in the future, the Governor of the State of New York issues an executive order that requires the closure, due to COVID-19, of all schools and school programs for which transportation services are provided by Orange under E/T533, Orange shall be paid, for each school day for the duration of such ordered closure, an amount equal to forty percent (40%) of the amount to which Orange was entitled for the services it provided on the last school day prior to the beginning of such ordered closure; provided, however, that such amounts shall only be paid by the County to the extent that they will be used by Orange for costs associated with Orange maintaining readiness to resume providing services upon the end of such ordered closure; and
- 5.) Orange, as soon as reasonably practicable but in no event fewer than five (5) business days prior to Orange providing any transportation services under E/T533, shall submit to the County, for approval, documentation and proof that Orange has furnished the annual performance security required under E/T533. Such annual performance security shall be in the amount of One Hundred and Twenty-Nine Thousand Five Hundred and Thirty-One Dollars (\$129,531.00) for each of the period from September 1, 2020 through August 31, 2021 and the period from September 1, 2021 through August 31, 2022

; 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.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
					N/A

Budget Funding Year(s): N/A Start Date: 09/01/17 End Date: 08/31/22
 (must match resolution)

Funding Source _____ Tax Dollars: N/A
 State Aid: _____
 Federal Aid: _____
 Other: _____
 (must match resolution)

APPROVED BOARD OF ACQUISITION & CONTRACT - 08/13/2020 - USA MARIJAJ, SECRETARY