

15485

Date: November 23, 2010

To: Honorable Board of Acquisition and Contract

From: Ann Marie Berg
Commissioner of Finance

Re: **Authority to enter into a second amendment to the Cooperation Agreement between the County of Westchester and the Westchester County Health Care Corporation.**

BACKGROUND

As your Honorable Board may know, in 1997 the State of New York enacted legislation which authorized the creation of the Westchester County Health Care Corporation ("WCHCC"). The County of Westchester ("County") and WCHCC subsequently entered into agreements to transfer the facilities and operations of the Westchester County Medical Center to WCHCC, to wit: in 1997 an Operating Agreement and a Lease Agreement, both of which were amended in 1998 by the Transition Agreement and the Amended and Restated Lease Agreement. The Transition Agreement was further amended by a First Amendment to the Transition Agreement dated December 21, 1999; a Modification Agreement dated November 14, 2000; a Second Amendment dated December 1, 2003; a Third Amendment dated December 16, 2004; a Fourth Amendment dated December 21, 2006, and a Fifth Amendment dated December 19, 2007. On December 15, 2008, the parties entered into a Cooperation Agreement, which amended and restated the 1998 Transition Agreement. Thereafter on December 7, 2009, the Board of Legislators approved Act No. 223-2009 authorizing the County to enter into a First Amendment to the Cooperation Agreement in order to revise the pay down terms of WCHCC's Credit Line. The First Amendment was duly executed on December 17, 2009. On November 22, 2010, the County Board of Legislators approved an Act authorizing a Second Amendment to the Cooperation Agreement as hereinafter set forth.

As part of the Children's Hospital financing that was contemplated by the 1999 First Amendment to the Transition Agreement, the County entered into a Guaranty Agreement dated November 1, 2000 with WCHCC (the "Guaranty Agreement") to guarantee a portion of WCHCC's indebtedness to finance the Children's Hospital Project, refinance certain existing County indebtedness and finance various related capital projects. The County acknowledged that its guarantee of indebtedness would be subordinate (as described below) to bonds being issued by WCHCC (WCHCC's Revenue Bonds) (Series 2000A - Senior Lien). Such subordination was memorialized in the Modification Agreement. Pursuant to the terms of the

Guaranty Agreement, the Modification Agreement and the First Amendment to the Transition Agreement, the County agreed to guarantee the payment of the principal of and interest on Revenue Bonds (Series 2000B – Subordinate Lien), Revenue Bonds (Series 2000C-1 Tax Exempt – Subordinate Lien) and Revenue Bonds (Series 2000C-2 Taxable– Subordinate Lien). On November 14, 2000, WCHCC issued bonds consisting of Series 2000A Senior Lien bonds and Series 2000B, 2000C-1 and 2000C-2 Subordinate Lien bonds. Thereafter in 2002, the County guaranteed Revenue Bonds (Series 2002 – Subordinate Lien).

In order to enhance the marketability of its Revenue Bonds (Series 2000A - Senior Lien), in November 2000 WCHCC requested and the County agreed to subordinate its lien on the Collateral that the County had under the Transition Agreement and currently has under Article Twenty-Eight of the Cooperation Agreement (as defined in the Cooperation Agreement Schedule 28.0) to the security interests and liens in WCHCC's Gross Receipts granted in respect of the Revenue Bonds (Series 2000A - Senior Lien). Such bonds were issued under and secured by the Master Trust Indenture dated as of November 1, 2000 between WCHCC and the United States Trust Company of New York, as assigned to the Bank of New York Mellon, as trustee (the "MTI"). The County's lien under Article Twenty-Eight of the Cooperation Agreement secures the WCHCC's performance of all of its obligations under the Cooperation Agreement, the Restated Lease and any other agreement between WCHCC and the County either now or hereafter existing, and further secures any other obligation of any sort whatsoever from WCHCC to the County, and was given in consideration for the County's entering into the Cooperation Agreement.

NEW FINANCING PLAN

WCHCC has now proposed a new financing plan which would include the issuance of its revenue bonds in amounts necessary to (i) refund and defease all of the outstanding amounts of the WCHCC's Revenue Bonds (Series 2000A - Senior Lien), Revenue Bonds (Series 2000B – Subordinate Lien)(Westchester County Guaranteed), Revenue Bonds (Series 2000C-1 Tax Exempt – Subordinate Lien)(Westchester County Guaranteed), Revenue Bonds (Series 2000C-2 – Taxable - Subordinate Lien)(Westchester County Guaranteed) and Revenue Bonds (Series 2002 - Subordinate Lien)(Westchester County Guaranteed), and (ii) provide new money financing for additional Capital Projects as defined in Section 6.0 of the Cooperation Agreement, (iii) refund and defease the \$30,000,000 TD Bank loan in its entirety, and (iv) refund and defease all of its outstanding working capital commercial paper which constitutes the Credit Line for which the County provides Credit Support under Article Nine of the Cooperation Agreement (the bonds to be issued to accomplish (i) through (iv) above are collectively hereinafter referred to as the "Series 2010 Senior Lien Bonds"). In addition, WCHCC currently estimates that the amount of Series 2010 Senior Lien Bonds which must be issued to accomplish all elements of such financing plan will be in the approximate total amount up to \$500,000,000.

Notwithstanding the above, and with respect only to WCHCC's Revenue Bonds (Series 2000A - Senior Lien), if market conditions are not favorable at the time WCHCC's Series 2010 Senior Lien Bonds are priced, WCHCC may in its discretion determine not to refund and defease such Series 2000A Senior Lien Bonds. In such circumstance, the County anticipates that the amount of the Series 2010 Senior Lien Bonds will be reduced by the par amount thereof related

to the refunding and defeasance of the Series 2000A Senior Lien Bonds and the security interests and liens on Gross Receipts granted in respect of WCHCC's Series 2000A Senior Lien Bonds will remain as is and will continue as a Permitted Lien.

REQUEST FOR SUBORDINATION

In order to enhance the marketability of its Series 2010 Senior Lien Bonds, WCHCC has requested that the County agree to subordinate its lien on the Collateral that the County currently has under Article Twenty-Eight of the Cooperation Agreement to the security interests and liens in WCHCC Gross Receipts to be granted in respect of the Series 2010 Senior Lien Bonds.

CONSIDERATION

As consideration for the County's agreement to subordinate its lien, WCHCC will be refunding and defeasing all of the outstanding amounts of WCHCC's Revenue Bonds that are guaranteed by the County, refunding and defeasing the entire Credit Line that the County provides Credit Support for under Article Nine of the Cooperation Agreement on or before December 31, 2010, which is currently \$56 million plus unpaid interest, and refunding and defeasing the \$30 million loan with TD Bank.

CREDIT SUPPORT CHANGES

As your Honorable Board is aware, the County currently provides Credit Support for WCHCC's Credit Line in the amount of \$56,000,000.00, plus unpaid interest. Since 1998 the County has been contractually obliged to provide support for WCHCC's credit lines in the form of an appropriation in the County's Operating Budget specifically linked to WCHCC's credit lines. As you know, WCHCC has been, in essence, rolling over its credit lines. By way of the Cooperation Agreement, the County agreed to provide its support for the WCHCC's working capital financing for the term of the Cooperation Agreement, subject to yearly appropriation by the Board of Legislators, upon the condition that the WCHCC reduce its obligation on a yearly basis to zero by the year 2017, the end of the term of the Cooperation Agreement.

As noted above, as part of the consideration for the County to agree to subordinate its Article Twenty-Eight lien on the Collateral to the security interests and liens in WCHCC Gross Receipts to be granted in respect of Series 2010 Senior Lien Bonds, it is proposed that WCHCC will refund and defease its outstanding working capital commercial paper thereby terminating the Credit Line provided by JPMorgan Chase Bank and terminating the Subsidy and Credit Support Agreement with the County dated as of February 1, 1998, as amended. As such, on or before December 31, 2010, WCHCC will release the County from its current obligation to provide Credit Support for such Credit Line under Article Nine of the Cooperation Agreement.

FEE REIMBURSEMENT

WCHCC has agreed to reimburse the County the reasonable fees paid by the County to Hawkins, Delafield and Wood LLP and Public Financial Management, Inc. with respect to their work for the County related to the Series 2010 Senior Lien Bonds.

As you know, Section 3307(4) of the New York Public Authorities Law requires the approval of the Board of Legislators and Board of Acquisition and Contract for the WCHCC and the County to enter into contracts. Accordingly, transmitted herewith is a proposed Resolution that authorizes a Second Amendment to the Cooperation Agreement between the County and WCHCC.

AMB/TSA
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 11-23-2010 - JOMARY VIEIRA, SECRETARY

RESOLUTION

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

RESOLVED, that the County of Westchester ("County") is authorized to enter into a Second Amendment to the Cooperation Agreement between the County and the Westchester County Health Care Corporation ("WCHCC") dated December 15, 2008 in order to subordinate the lien on the Collateral that the County has under Article Twenty-Eight of the Cooperation Agreement (as defined in the Cooperation Agreement Schedule 28.0) to the lien that will be granted for WCHCC's Series 2010 Senior Lien Bonds to be issued under and secured by the Master Trust Indenture dated November 1, 2000 ("MTI") between WCHCC and the United States Trust Company of New York, as assigned to the Bank of New York Mellon, as trustee; and be it further

RESOLVED that as consideration for the County's agreement to subordinate its lien, WCHCC will be refunding and defeasing all of the outstanding amounts of WCHCC's Revenue Bonds that are guaranteed by the County, refunding and defeasing the entire Credit Line that the County provides Credit Support for under Article Nine of the Cooperation Agreement on or before December 31, 2010, which is currently \$56 million plus unpaid interest, and refunding and defeasing the \$30 million loan with TD Bank.

Notwithstanding the above, and with respect only to WCHCC's Revenue Bonds (Series 2000A - Senior Lien), if market conditions are not favorable at the time WCHCC's Series 2010 Senior Lien Bonds are priced, WCHCC may in its discretion determine not to refinance its Revenue Bonds (Series 2000A - Senior Lien). In such circumstance, the amount of the Series 2010 Senior Lien Bonds will be reduced by the par amount thereof related to the refunding and defeasance of the Series 2000A Senior Lien Bonds and the security interests and liens on Gross Receipts granted in respect of WCHCC's Series 2000A Senior Lien Bonds will remain as is and will continue as a Permitted Lien; and be it further

RESOLVED, that WCHCC shall refund and defease the Credit Line it maintains with JPMorgan Chase Bank and replace it with long term debt. WCHCC shall pay off the Credit Line and release the County from its current obligation to provide Credit Support under Article Nine of the Cooperation Agreement on or before December 31, 2010; and be it further

RESOLVED, that WCHCC shall reimburse the County the reasonable fees paid by the County to Hawkins, Delafield and Wood LLP and Public Financial Management, Inc. with respect to their work for the County related to WCHCC's Series 2010 Senior Lien Bonds; and be it further

RESOLVED, that the County Commissioner of Finance is authorized to sign an acknowledgement at the end of the Section 6.06 compliance certificate that WCHCC is required to file under the Section 6.06 of the MTI upon confirmation of Section 6.06 compliance; and be it further

RESOLVED, that all other terms of the Cooperation Agreement, as amended, shall remain in full force and effect; and be it further

RESOLVED, that the County Executive, the Commissioner of Finance and the County Attorney or their authorized designees are hereby authorized and empowered to execute all instruments and to take all actions necessary and appropriate to effectuate the purposes hereof.

Account to be Charged/credited	Fund	Agency	Capital Project Or Org	Object/ Sub Object	Trust Account	Activity	Dollars
							N/A

Budget Funding Year(s) 2010 Start Date 1/1/08 End Date 12/31/17
 (must match resolution)

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

APPROVED BOARD OF ACQUISITION & CONTRACT - 11-23-2010 - JOMARY VIEIRA, SECRETARY