

49531

DATE: November 17, 2015

TO: Board of Acquisition and Contract

FROM: Jay T. Pisco, P.E.
Commissioner of Public Works and Transportation
Adam Rodriguez
Acting Director of Real Estate

RE: Authority for the County of Westchester ("County") to amend: (i) its sublease from the Westchester County Health Care Corporation ("WCHCC") for a portion of Cedarwood Hall and (ii) its sublease with Westchester Institute for Human Development ("Institute") for that same space. (Agreement No. 05-913)

On December 13, 2004, the Board of Legislators approved Local Law No. 22-2004 which authorized the County to enter into subleases with WCHCC and the Institute. As Cedarwood Hall is included in the Premises as defined by the Restated and Amended Lease Agreement between the County and WCHCC dated December 30, 1998, WCHCC subleases that portion of Cedarwood Hall used by the Institute to the County ("2005 WCHCC Agreement") and the County in turn subleases the same space to the Institute ("2005 WIHD Agreement"). Pursuant to Local Law Intro. No. 8591-2015, approved by the Board of Legislators on November 9, 2015, authorization was granted for this arrangement to continue uninterrupted and enables the Institute to get the best possible Medicaid reimbursement rates.

Authorization is now sought for the County to enter into and amend its sublease of a portion of Cedarwood Hall from the WCHCC and also to enter into and amend the County's sublease of that space to the Institute.

The amendment to the 2005 WCHCC Agreement will require the County to pay WCHCC \$966,455 annually (representing base rent and additional rent). The County and the Institute will simultaneously enter into an amendment to the 2005 WIHD Agreement, and the Institute will be required to pay the County fair market value rent of \$32.32 per square foot for 72,796 square feet for a Base Annual Rent of \$2,352,766.72, plus Additional Rent of \$4,560.00 representing the cost of medical waste removal, for a total Rent of \$2,357,326.72. The Institute will also be required to pay its proportionate share of any increases in operating costs (taxes, heat, electric, maintenance, common area maintenance, etc.). In addition, the Institute which was originally a division of WCHCC, on January 26, 2004 became a separate entity known as "WIHD, Inc." Thereafter, on April 5, 2005, WIHD, Inc. filed a Restated Certificate of Incorporation with New York State Department of State and amended its name to "Westchester Institute for Human Development". The amendment to the 2005 WIHD Agreement addresses the name change and acknowledges this change retroactively.

The term of both amended subleases shall be April 1, 2015 through March 31, 2018 (the "Initial Term"), and thereafter, both shall automatically renew for an additional two (2) year term (the "Two Year Renewal") unless the sublessee (the County for its sublease with WCHCC or the Institute for its sublease with the County) provides written notice at least one hundred eighty (180) days prior to the end of the Initial Term, that it does not wish to renew the sublease. If the sublease is renewed for the Two Year Renewal, it shall thereafter automatically renew for an additional five (5) year term (the "Five Year Renewal") unless either party notifies the other party in writing, at least one hundred eighty (180) days prior to the end of the Two Year Renewal, that it does not wish to renew the sublease. Notwithstanding the foregoing, in addition to any other termination rights under the original agreements, if the Five Year Renewal does take effect, either party shall have the right to terminate the sublease agreement at any time during such Five Year Renewal, without cause or penalty, upon three hundred and sixty five (365) days' prior written notice to the other.

In addition, the amendment to the 2005 WCHCC Agreement provides that WCHCC will only be responsible to furnish janitorial services for the common areas on the first floor and for the removal of medical waste, the cost of which will be included as additional rent. The Institute under the amendment to the 2005 WIHD Agreement will be responsible for providing and paying for janitorial services for all other areas that comprise the premises. All other terms and conditions of the 2005 WCHCC Agreement and 2005 WIHD Agreement shall remain in full force and effect.

It should be noted that the County will also enter into a separate agreement with the Institute for services relating to clinical programs, training, education, technical assistance and applied research related to individuals with disabilities and their families which agreement will be separately submitted to your Honorable Board for consideration and approval.

An appropriate Resolution is attached for your consideration and approval.

RESOLUTION

Upon a communication from the Commissioner of Public Works and Transportation and the Acting Director of Real Estate, be it hereby

RESOLVED, that the County of Westchester (the "County") is authorized to enter into an amendment to its sublease agreement with Westchester County Health Care Corporation ("WCHCC") for a portion of Cedarwood Hall (the "Premises"), which sublease was duly executed in 2005 ("2005 WCHCC Agreement"), for a new term commencing April 1, 2015 through March 31, 2018 (the "Initial Term"). After the Initial Term the sublease shall automatically renew for an additional two (2) year term (the "Two Year Renewal") unless the County provides written notice at least one hundred eighty (180) days prior to the end of the Initial Term, that it does not wish to renew the sublease. If the sublease is renewed for the Two Year Renewal, it shall thereafter automatically renew for an additional five (5) year term (the "Five Year Renewal") unless either party notifies the other party in writing, at least one hundred eighty (180) days prior to the end of the Two Year Renewal, that it does not wish to renew the sublease. Notwithstanding the foregoing, in addition to any other termination rights set forth in the original sublease agreement, if the Five Year Renewal does take effect, either party shall have the right to terminate the sublease agreement at any time during such Five Year Renewal, without cause or penalty, upon three hundred and sixty five (365) days' prior written notice to the other; and be it further

RESOLVED, that the County shall pay WCHCC \$966,455 annually (representing base rent and additional rent); and be it further

RESOLVED, that the County is authorized to enter into an amendment to its sublease agreement with Westchester Institute for Human Development (the "Institute"), which sublease was duly executed in 2005 ("2005 WIHD Agreement"), in order to change the name of the Institute retroactively from April 5, 2005 to "Westchester Institute for Human Development" and to allow the County to continue to sublease the Premises to the Institute for a new term commencing April 1, 2015 through March 31, 2018 (the "Initial Term"). After the Initial Term the sublease shall automatically renew for an additional two (2) year term (the "Two Year Renewal") unless the Institute provides written notice at least one hundred eighty (180) days prior to the end of the Initial Term, that it does not wish to renew the sublease. If the sublease is renewed for the Two Year Renewal, it shall thereafter automatically renew for an additional five (5) year term (the "Five Year Renewal") unless either party notifies the other party in writing, at least one hundred eighty (180) days prior to the end of the Two Year Renewal, that it does not wish to renew the sublease. Notwithstanding the foregoing, in addition to any other termination rights set forth in the 2005 WIHD Agreement, if the Five Year Renewal does take effect, either party shall have the right to terminate the sublease agreement at any time during such Five Year Renewal, without cause or penalty, upon three hundred and sixty five (365) days' prior written notice to the other; and be it further

RESOLVED that the Institute will pay the County fair market value rent of \$32.32 per square foot for 72,796 square feet for a Base Annual Rent of \$2,352,766.72, plus Additional Rent of \$4,560.00 representing the cost of medical waste removal, for a total Rent of \$2,357,326.72. The Institute shall also pay its proportionate share of any increases in operating costs (taxes, heat, electric, maintenance, common area maintenance, etc.); and be it further

RESOLVED, that under the amendment to the 2005 WCHCC Agreement, WCHCC shall provide janitorial services for the common areas on the first floor and for the removal of medical waste, the cost of which is included as part of the additional rent. The Institute, under the amendment to the 2005 WIHD Agreement will be responsible for providing and paying for janitorial services for all other areas that comprise the premises; and be it further

RESOLVED, that except as modified herein, all other terms and conditions of the 2005 WCHCC Agreement and 2005 WIHD Agreement shall remain in full force and effect; and be it further

RESOLUTION

RESOLVED, that the amendment to the 2005 WCHCC Agreement is subject to County Appropriations, and be it further;

RESOLVED, that the County Executive or his authorized designee is hereby authorized and empowered to execute all instruments and to take all action necessary and appropriate to effectuate the purposes hereof.

Agreement No. 05-913

Account to be Charged/Credited

Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
101	46	3300	4320		\$ 724,842.00 (2015)
101	46	3300	9289		\$1,767,987.00 (2015)
101	46	3300	4320		\$ 966,455.00 (2016)
101	46	3300	9289		\$2,357,327.00 (2016)
101	46	3300	4320		\$ 966,455.00 (2017)
101	46	3300	9289		\$2,357,327.00 (2017)
101	46	3300	4320		\$ 241,614.00 (2018)
101	46	3300	9289		\$ 589,329.00 (2018)

Budget Funding Year(s) 2015 - 2018 Start Date 04/01/15 End Date 03/31/18
 (must match resolution)

Funding Source: Tax Dollars \$2,899,366.00
 State Aid _____
\$2,899,366.00 Federal Aid _____
 (must match resolution) Other \$7,071,970 (Rental Revenue)