

71952

DATE: October 4, 2019

TO: Honorable Board of Acquisition and Contract

FROM: Norma V. Drummond
Commissioner of Planning

Hugh J. Greechan, Jr. P.E.
Commissioner of Public Works and Transportation

SUBJECT: Resolution authorizing the County of Westchester to amend a Developer Infrastructure Agreement with Chappaqua Station, LLC to provide construction management services in connection with the construction of site work and infrastructure improvements all in support of an affordable AFFH development to be known as Chappaqua Station, in order to have the developer deposit funds in escrow to facilitate the completion of work by the County's contractor.

On July 2, 2015, your Honorable Board approved a Resolution authorizing the County of Westchester (the "County") to enter into agreements to purchase and subsequently convey approximately 0.34-acre of real property located at 54 Hunts Place in the Town of New Castle (the "Property"), to fund the construction of necessary site work and infrastructure improvements and to accept and/or release any rights in the Property deemed necessary in furtherance of this development including, without limitation, easements and/or subordination agreements, all in support of an affordable development to be known as Chappaqua Station which will be constructed on the Property and will provide twenty-eight (28) one and two-bedroom affordable rental units that will affirmatively further fair housing ("AFFH").

That Resolution also authorized the County to enter into an agreement with Chappaqua Station, LLC, its designee, successors or assigns currently anticipated to be Chappaqua Station Housing Development Fund Company Inc., a not-for-profit corporation organized and existing under the Not-For-Profit Corporation Law of the State of New York, to convey fee title to the Property for One (\$1.00) Dollar to the developer. Additionally, the prior resolution authorized the County to enter into an intermunicipal agreement ("IMA") with the Town of New Castle (the "Town") in a not-to-exceed amount of \$1,650,000 (the "FAH Funds") for construction of site work and infrastructure improvements.

On June 22, 2017, your Honorable Board approved a Resolution amending the July 2, 2015 Resolution to: 1) delete all references to an IMA with the Town in a not-to-exceed amount of

\$1,650,000 for infrastructure improvements; and 2) to authorize the County to enter into a Developer Infrastructure Agreement with Chappaqua Station, LLC (the "Developer") to provide construction management services in connection with the construction of site work and infrastructure improvements.

On February 15, 2018, your Honorable Board awarded Contract No. 17-535, Hunts Place Infrastructure Improvement Project, to MVM Construction LLC, 100 Oak Street, Mount Vernon, New York ("MVM"), in the amount of \$1,269,013.00 (the "Contract"). Due to MVM's subsequent non-compliance with numerous requirements, on June 20, 2019, your Honorable Board approved a Resolution declaring MVM in default of the Contract, authorizing the Commissioner of Public Works and Transportation (the "Commissioner") to terminate the Contract if MVM failed to diligently pursue curing the default, and authorizing the Commissioner to enter into a Takeover Agreement with the surety.

MVM has continued working in an effort to cure its default. The County and the Developer seek to amend the Developer Infrastructure Agreement in order to:

- 1) Require the Developer to deposit in escrow the sum of \$100,000.00 as an inducement and accommodation to obtain performance by MVM relating to corrective work and completion of certain additional work;
- 2) Require the Developer to deposit in escrow an additional \$50,000.00 to be held pending agreement between the Developer and MVM relating to work performed by MVM outside of the Contract for which MVM claims entitlement to additional costs payable by Developer, and other work items within the Contract scope, performed by others than MVM (and paid by or on behalf of the Developer) for which the Developer claims a credit. The Developer will endeavor to negotiate a balancing of accounts with MVM relating to this work outside of the Contract ("MVM/Developer Change Orders") and, to the extent any dispute remains on the amount of any offsets/credits, the County will assist MVM and the Developer in coming to a resolution by direct discussions and/or mediation. Upon full agreement or other resolution of the MVM/Developer Change Orders, the sum (if any) agreed to be due to MVM will be released to MVM from escrow, with any balance in escrow being released to the Developer;
- 3) Provide that after completion of all the Infrastructure Improvements, if the Developer presents a claim to the County which would otherwise be claimable against the warranty, or other obligations of MVM under the Contract, the Commissioner of the Department of Public Works and Transportation, in his or her sole discretion, may assign the rights to the Developer to seek a remedy relating to that specific claim directly against MVM. The Commissioner shall not unreasonably deny assignment of a valid claim presented by the Developer; and
- 4) Provide that time periods for completion of the Development by the Developer will be extended by seven (7) months with such dates including (but not being limited to) the "Failure to Complete" date within Article 2 of the Developer Infrastructure Agreement. For clarification, the "Failure to Complete" date will be extended to February 15, 2021.

Except as specified above, all other terms and conditions of the Developer Infrastructure Agreement will remain in full force and effect.

The goal and objective of this agreement is to carry out the County's obligations under the Settlement Agreement by constructing affordable AFFH units in accordance with the terms of said Settlement Agreement. This development will enhance the neighborhood through its design and landscaping. Department of Planning staff will monitor and track construction of the development, as well as monitor compliance with the affordability requirements.

I recommend approval of the attached Resolution.

NVD/HJG/DLV/dv
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/10/2015
USMIRIJAJ, SECRETARY

RESOLUTION

Upon a communication from the Commissioner of Planning and the Commissioner of Public Works and Transportation, be it hereby

RESOLVED, that the County of Westchester (the "County") is authorized to amend a Developer Infrastructure Agreement with Chappaqua Station, LLC (the "Developer") to provide construction management services in connection with the construction of site work and infrastructure improvements all in support of an affordable AFFH development to be known as Chappaqua Station, in order to:

- 1) Require the Developer to deposit in escrow the sum of \$100,000.00 as an inducement and accommodation to obtain performance by MVM Construction LLC ("MVM") relating to corrective work under Contract No. 17-535, Hunts Place Infrastructure Improvement Project (the "Contract") and completion of certain additional work;
- 2) Require the Developer to deposit in escrow an additional \$50,000.00 to be held pending agreement between the Developer and MVM relating to work performed by MVM outside of the Contract for which MVM claims entitlement to additional costs payable by Developer, and other work items within the Contract scope, performed by others than MVM (and paid by or on behalf of the Developer) for which the Developer claims a credit. The Developer will endeavor to negotiate a balancing of accounts with MVM relating to this work outside of the Contract ("MVM/Developer Change Orders") and, to the extent any dispute remains on the amount of any offsets/credits, the County will assist MVM and the Developer in coming to a resolution by direct discussions and/or mediation. Upon full agreement or other resolution of the MVM/Developer Change Orders, the sum (if any) agreed to be due to MVM will be released to MVM from escrow, with any balance in escrow being released to the Developer;
- 3) Provide that after completion of all the Infrastructure Improvements, if the Developer presents a claim to the County which would otherwise be claimable against the warranty, or other obligations of MVM under the Contract, the Commissioner of the Department of Public Works and Transportation (the "Commissioner"), in his or her sole discretion, may assign the rights to the Developer to seek a remedy relating to that specific claim directly against MVM. The Commissioner shall not unreasonably deny assignment of a valid claim presented by the Developer; and
- 4) Provide that time periods for completion of the Development by the Developer will be extended by seven (7) months with such dates including (but not being limited to) the "Failure to Complete" date within Article 2 of the Developer Infrastructure Agreement. For clarification, the "Failure to Complete" date will be extended to February 15, 2021;

and be it further

RESOLVED, that all other terms and conditions of the Developer Infrastructure Agreement shall remain in full force and effect; and it is further

RESOLVED, that the County Executive or his duly authorized designee is authorized to execute any documents and take any actions necessary to effectuate purposes hereof.

Original Agreement \$ 2,925,000.00
 This Amendment \$ 0.00
 TOTAL \$2,925,000.00

AGREEMENT NUMBER C-FAH-15-37

Account to be
 Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
318	19	BPL50-15-R BOND ACT 2014-213	6050	N/A	\$0.00
318	19	BPL50-15-S BOND ACT 2014-214	6050	N/A	\$0.00

Budget Funding Year(s) FY 2015: Start Date: July 13, 2017 End Date: July 12, 2022

Funding Source Tax Dollars \$0.00
 State Aid _____
\$00.00 Federal Aid _____
 (must match resolution) Other _____

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APPROVED BOARD OF ACQUISITION & CONTRACTS 10/10/2019 - LISA MRIJAJ, SECRETARY