

George Latimer
County Executive

Department of Health

Sherlita Amler, M.D.
Commissioner

87104

DATE: September 10, 2021

TO: Board of Acquisition and Contract

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

SUBJECT: Authority to amend an agreement with Orange County Transit, LLC, pursuant to which it was to provide transportation services for pre-school children with special needs, by modifying the terms of payment under the agreement in order to add new provisions for certain payments to the contractor in the event that, i.) a program to be served by the contractor modifies its schedule, due to COVID-19, such that it will operate in-person for only four (4) days of the five (5) days per regular week, or ii.) one or more schools or school programs for which transportation services are provided by the contractor is closed and/or conducts only remote learning for a period of at least five (5) consecutive scheduled school days due to COVID-19.

By a resolution approved on July 13, 2017, your Honorable Board authorized the County of Westchester (the "County") entered into an agreement with Acme Bus Corp. ("Acme"), pursuant to which Acme was to provide transportation services for pre-school children with special needs, for certain schools and school programs, for the period from September 1, 2017 through August 31, 2022, for a total amount not-to-exceed \$6,620,610.06 (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").

By a resolution approved on August 13, 2020, your Honorable Board authorized the County to enter into an agreement with both Acme and Orange County Transit, LLC ("Orange"),

pursuant to which the County consented to Acme assigning E/T533 to Orange and agreed to modify the terms of payment under E/T533 in order to provide for certain payments in the event 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 under E/T533 (the "Assignment Agreement"). The Assignment Agreement was subsequently executed.

The Department of Health ("DOH") has determined that E/T533, as modified by the Assignment Agreement, (the "Agreement") should be amended in order to modify its terms of payment. Specifically, DOH believes that the Agreement should be amended in order to add new provisions for certain payments to Orange in the event that, i.) a program to be served by Orange modifies its schedule, due to COVID-19, such that it will operate in-person for only four (4) days of the five (5) days per regular week, or ii.) one or more schools or school programs for which transportation services are provided by Orange is closed and/or conducts only remote learning for a period of at least five (5) consecutive scheduled school days due to COVID-19.

Accordingly, the County respectfully requests authority from your Honorable Board to amend the Agreement by modifying the terms of payment under the Agreement (the "First Amendment") in order to specify that, a.) effective September 1, 2020, in the event that a program to be served under the Agreement modifies its schedule, due to COVID-19, such that it will operate in-person for only four (4) days of the five (5) days per regular week, Orange will be paid at a rate of one hundred and twenty percent (120%) of the authorized round-trip rate for that program for each round-trip on each day the contractor transports students during each regular week that the program has such reduced in-person operation; provided, however, that this higher rate shall only be paid by the County to the extent that the additional payment will be used by Orange for costs associated with it maintaining readiness to provide the transportation services for such program for five (5) days per regular week, and b.) effective September 1, 2020, in the event that one or more schools or school programs for which transportation services are provided by Orange is closed and/or conducts only remote learning for a period of at least five (5) consecutive scheduled school days due to COVID-19, Orange shall be paid, for each scheduled school day for such schools or school programs, for the duration of such period, an amount equal to forty percent (40%) of the amount to which Orange was entitled for the services Orange provided for such schools or school programs on the last school day prior to the beginning of such period; 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 it maintaining readiness to resume providing services upon the end of such period.

Except as described above, all terms and conditions of the Agreement shall remain in full force and effect.

The proposed First Amendment will serve a public purpose by helping ensure that Orange will be able to maintain its readiness to provide services under the Agreement and provide children with safe transportation to and from the programs in which they participate.

The goal and objective of the proposed First Amendment is to help ensure that Orange will be able to maintain its readiness to provide services under the Agreement and provide

children with safe transportation to and from the programs in which they participate.

The goal and objective of the proposed First Amendment is in the best interests of the County in terms of public health and safety, as ensuring the future availability of safe 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 First Amendment 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 - 09/23/2021 - RAYMOND SCULKA, 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 amend its agreement with Orange County Transit, LLC (“Orange”), pursuant to which Orange was to provide transportation services for pre-school children with special needs, for certain schools and school programs, for the period from September 1, 2017 through August 31, 2022, (the “Agreement”) in order to modify the terms of payment under the Agreement, such that it will specify that, a.) effective September 1, 2020, in the event that a program to be served under the Agreement modifies its schedule, due to COVID-19, such that it will operate in-person for only four (4) days of the five (5) days per regular week, Orange will be paid at a rate of one hundred and twenty percent (120%) of the authorized round-trip rate for that program for each round-trip on each day the contractor transports students during each regular week that the program has such reduced in-person operation; provided, however, that this higher rate shall only be paid by the County to the extent that the additional payment will be used by Orange for costs associated with it maintaining readiness to provide the transportation services for such program for five (5) days per regular week, and b.) effective September 1, 2020, in the event that one or more schools or school programs for which transportation services are provided by Orange is closed and/or conducts only remote learning for a period of at least five (5) consecutive scheduled school days due to COVID-19, Orange shall be paid, for each scheduled school day for such schools or school programs, for the duration of such period, an amount equal to forty percent (40%) of the amount to which Orange was entitled for the services Orange provided for such schools or school programs on the last school day prior to the beginning of such period; 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 it maintaining readiness to resume providing services upon the end of such period; and be it further

RESOLVED, that except as hereby authorized to be amended, all terms and conditions of the Agreement shall remain in full force and effect; 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

<u>Fund</u>	<u>Dept</u>	<u>Major Program, Program & Phase or Unit</u>	<u>Object/S ub-object</u>	<u>Trust Account</u>	<u>Dollars</u>	<u>Budget Year</u>

Budget Funding Years	2017-22	Start date	<u>09/01/2020</u>	End date	<u>08/31/2022</u>
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Funding Source	Tax dollars					
	State aid					
	Insurance					
(must match resolution)	Medicaid					

APPROVED BOARD OF ACQUISITION & CONTRACT - 09/23/2021 - RAYMOND SCULKY, SECRETARY