

14019

Department of Transportation

September 13, 2010

To: The Honorable Board of Acquisition and Contract

From: John J. Hsu, P.E.
Acting Commissioner of Transportation

Re: Authority to amend a lease agreement with JPMorgan Chase Bank, National Association, for space at the Westchester County Airport

On June 18, 2009, your Honorable Board approved a Resolution authorizing the County of Westchester (the "County") to enter into a lease agreement with JPMorgan Chase Bank, National Association ("JPMorgan") for the use of Hangar E-1 at the Westchester County Airport ("Airport") for a term of ten (10) years from April 1, 2010 through March 31, 2020, with JPMorgan having the option to renew the lease for two (2) additional ten (10) year terms. The lease has been executed and JPMorgan has begun making extensive improvements to the Hangar expected to cost over \$18,000,000.00, including the renovation of the Hangar into a state-of-the-art "green" building with the intention of seeking certification from the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System.

Section 5.2.7 of the lease provides that upon JPMorgan's occupancy of Hangar E-1 for business use (as distinguished from performance of construction work), a separate lease between the County and JPMorgan dated March 31, 2005 for space in Hangar D-1 at the Airport will be terminated. The parties have proposed to amend this provision so that the Hangar D-1 Lease will not be terminated upon JPMorgan's occupancy of Hangar E-1 for business use as currently provided. The Hangar E-1 Lease will be further amended to provide that after the date that JPMorgan occupies Hangar E-1 for business use, JPMorgan's only liability under the Hangar D-1 Lease will be to pay or reimburse the County for all real estate taxes until the lease is assigned or until September 30, 2011, whichever occurs first. If the Hangar D-1 Lease has not been assigned, with the County's consent not to be unreasonably withheld, to a third party by September 30, 2011, then the Hangar D-1 Lease will terminate on that date. The Hangar E-1 Lease will also be amended to provide that in the event of an assignment of the Hangar D-1 Lease, the County will release JPMorgan from liability under that lease upon the effective date of the assignment.

In addition, Schedule "B" to the Hangar E-1 Lease requires an upgrade of the aircraft hangar foam/water deluge fire protection system to comply with National Fire Protection Association ("NFPA") standard 409. In order to comply with that standard, the County would need to install a cistern for water storage. The County has not budgeted for such an expense and prefers to undertake that project at a later date when funds have been allocated. Therefore, it is also necessary to amend the Hangar E-1 Lease to eliminate the required compliance with NFPA standard 409 and reflect that the fire protection system will only need to meet the standard in place in 1958 when the hangar was originally constructed, or otherwise be in compliance with applicable law.

Finally, JPMorgan engaged a consultant to perform a pre-occupancy Phase II environmental site investigation at Hangar E-1, the results of which show significant underground contamination. While the lease provides a mechanism for remediating hazardous materials discovered during the lease term, it does not cover contamination found prior to the lease commencement. Although it is not a responsible party, JPMorgan is willing to commence remediation of the hazardous materials and has requested that the County reimburse it for the cost of this remediation (estimated to be approximately \$1,100,000.00) through a series of rent abatements to be applied against the rents payable under the Hangar E-1 lease in equal quarterly installments over a five (5) year period commencing January 1, 2011. The remediation plan will require County approval, and in the event that the final cost of the remediation is not known at the time of applying the rent abatements, then the rent abatements will be made on the basis of the cost of remediation known at that time, and the parties will agree to appropriate adjustments in order to achieve an aggregate abatement amount equal to the final cost of the remediation, promptly after it becomes known. The Department of Transportation is in support of this request. It should also be noted that the County has notified the prior Hangar E-1 tenants about the contamination and demanded full defense and indemnification from them.

The main goal of this agreement is to generate revenue from a County structure located at the airport and to have that structure modernized and maintained by the tenant. Airport Administration and the Finance Department will invoice the tenant on a monthly basis and oversee the proposed improvements to be made.

The Board of Legislators adopted **Local Law Intro No. 19-2010** on September 7, 2010 authorizing the County to amend this lease.

I recommend adoption of the attached proposed Resolution.

R E S O L U T I O N

Upon a communication from the Acting Commissioner of Transportation, it is hereby

RESOLVED, that the County of Westchester (the "County") is authorized to amend the lease agreement with JPMorgan Chase Bank, National Association ("JPMorgan") for the use of Hangar E-1 at the Westchester County Airport (the "Hangar E-1 Lease") to provide that a separate lease between the County and JPMorgan dated March 31, 2005 for space in Hangar D-1 at the Airport shall not be terminated upon JPMorgan's occupancy of Hangar E-1 for business use as currently provided. The Hangar E-1 Lease shall be further amended to provide that after the date that JPMorgan occupies Hangar E-1 for business use, JPMorgan's only liability under the Hangar D-1 Lease shall be to pay or reimburse the County for all real estate taxes, as such term is defined in Section 15.2.1 of the Hangar D-1 Lease, until the lease is assigned or until September 30, 2011, whichever occurs first. The Hangar E-1 Lease shall be further amended to provide that if the Hangar D-1 Lease has not been assigned, with the County's consent not to be unreasonably withheld, to a third party by September 30, 2011, then the Hangar D-1 Lease shall terminate on that date. The Hangar E-1 Lease shall also be amended to provide that in the event of an assignment of the Hangar D-1 Lease, the County shall release JPMorgan from liability under the Hangar D-1 Lease upon the effective date of the assignment; and be it further

RESOLVED, that the County is authorized to amend Schedule "B" to the Hangar E-1 Lease to eliminate the required compliance with National Fire Protection Association standard 409 and reflect that the Hangar E-1 fire protection system shall only need to meet the standard in place in 1958 when the hangar was originally constructed, or otherwise be in compliance with applicable law; and be it further

RESOLVED, that the County is further authorized to amend the Hangar E-1 Lease to provide that JPMorgan shall commence remediation of preexisting hazardous materials and that the County shall reimburse JPMorgan for the cost of this remediation (estimated to be approximately \$1,100,000.00) through a series of rent abatements to be applied against the rents payable under the Hangar E-1 Lease in equal quarterly installments over a five (5) year period commencing January 1, 2011. The remediation plan shall require County approval, and in the event that the final cost of the remediation is not known at the time of applying the rent abatements, then the rent abatements shall be made on the basis of the cost of remediation known at that time, and the parties shall agree to appropriate adjustments in order to achieve an aggregate abatement amount equal to the final cost of the remediation, promptly after it becomes known; and be it further

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

Original Agreement: \$11,648,571.00
 First Amendment : (~~\$1,100,000.00~~)
 Total: \$10,648,571.00

Account to be Charged/credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	161	44	4110	9096-01		-\$220,000.00 2011
	161	44	4110	9096-01		-\$220,000.00 2012
	161	44	4110	9096-01		-\$220,000.00 2013
	161	44	4110	9096-01		-\$220,000.00 2014
	161	44	4110	9096-01		-\$220,000.00 2015

Budget Funding Year(s) 2011 - 2015 Start Date 01/01/2011 End Date 12/31/2015
 (must match resolution)

Funding Source: Tax Dollars _____
 State Aid _____

\$ -1,100,000.00 Other Airport Special Revenue Fund
 (must match resolution)