

30453

November 20, 2012

To: Members of the Board of Acquisition and Contract

From: Jay T. Pisco, P.E.
Commissioner of Public Works and Transportation

Mary J. Mahon
Director of Real Estate

Re: **Authority to enter into a Lease Agreement with 15 South Fifth Avenue, LLC for approximately 22,000 square feet of space at 15 South Fifth Avenue in Mount Vernon, New York, for a period of ten (10) years at a base rental of \$550,000.00 for the first year of the agreement. (Agreement No. 12-929)**

Authority is requested for the County of Westchester (the "County") to enter into a ten (10) year lease agreement with 15 South Fifth Avenue, LLC (the "Landlord"), for approximately 22,000 square feet of office space at 15 South Fifth Avenue in Mount Vernon, New York (the "Leased Premises"). This lease was approved by the Board of Legislators by adoption of a Local Law on November 13, 2012.

The Lease will commence upon the completion of renovations requested by the County. The County will have two five year renewal options. The above notwithstanding, the initial lease term shall not end prior to the last day of the then current semester of Westchester Community College, which semesters end on May 31, August 31 and December 31 in each year. Accordingly, the initial lease term, if not ending on one of such semester ending dates, shall be extended by the number of days necessary to reach the last day of the semester.

The new space, which also includes approximately 31 parking spaces, will be occupied by Westchester Community College (the "College") and will replace current space leased by the College at 175 Gramatan Avenue, Mount Vernon, which lease is set to expire on April 30, 2013. As part of a continuing effort to provide educational opportunities to residents of the County who are currently unable to attend classes at the College's main Valhalla campus, the College developed satellite campuses to better serve the community. The courses to be offered at the new location in Mount Vernon will include general education courses, a business/marketing lab, and computer labs.

The Landlord will be responsible for completing approximately \$2,300,000.00 in renovations to the leased space to make it ready for occupancy by the College. These renovations include the construction of classrooms, labs, and other facilities needed for use by the College. It is anticipated that the leased space will be ready for occupancy for the College's summer 2013 term. In the event the Lease is terminated due to the County's default prior to the end of the initial ten (10) year term, in order to reimburse the Landlord for its costs in completing the renovations, the County will be obligated to pay \$230,000.00 for each year or portion thereof, pro rata, of the remaining initial term of the lease.

For the initial ten (10) year term, Fixed Rent shall be paid on 22,000 rentable square feet (although the actual rented space is approximately 22,264 square feet) as follows:

<u>PERIOD</u>	<u>RATE</u>
First Five Years after Commencement Date	\$25.00 per rentable square foot per annum
Sixth Year after Commencement Date	\$25.85 per rentable square foot per annum
Seventh Year after Commencement Date	\$26.75 per rentable square foot per annum
Eighth Year after Commencement Date	\$27.70 per rentable square foot per annum
Ninth Year after Commencement Date	\$28.70 per rentable square foot per annum
Tenth Year after Commencement Date	\$29.70 per rentable square foot per annum.

The above rent includes a charge of \$10.00 per square foot to reimburse the Landlord for its costs in renovating the Building. These costs are being fully amortized over the ten (10) year term.

For the County's first five year renewal option, Fixed Rent of \$19.70 (which no longer includes \$10.00 for amortization) shall be increased by 3% to \$20.29 and remain the same for each year of the first five year renewal period. For the County's second five year renewal option, Fixed Rent shall be increased by 4% to \$21.10 and remain the same for each year of the second five year renewal period.

The Landlord shall be responsible, at its cost and expense, to operate, maintain and repair the Building and Building systems (including heating, ventilating, air conditioning, elevator and plumbing systems). The County shall be responsible for all costs, expenses and fees relating to the maintenance, repair, and replacement of the non-structural elements (e.g.: painting, carpeting, etc.) of the leased premises, with respect to which the Landlord will perform the work and bill the costs, expenses and fees thereof to the County as additional rent.

With respect to real estate taxes and special and other levies ("Taxes"), the County shall be responsible, as additional rent, for payment of its pro rata share of any Taxes, or in the event the Landlord submits the Real Property to a condominium regime in which the Leased Premises shall be one condominium unit, then the County shall be responsible for payment of 100% of the taxes levied on the condominium unit comprising the Leased Premises, in either case not to exceed \$100,000.00 (the "Tax Cap") in the first Lease year immediately following the Lease Commencement Date. In each subsequent Lease Year, the Tax Cap shall increase by the same percentage as the aggregate real estate taxes for the Real Property or the condominium unit over the prior Lease year.

The lease shall also contain a mutual indemnification clause whereby the County and the Landlord shall indemnify each other for damages caused by the indemnifying party. The Lease is in the public's best interests as it provides for the continuation of WCC's presence in Mount Vernon. This Lease will be monitored by the Department of Public Works and Transportation to insure that the lease responsibilities are met by the owner. There are no energy or environmental components associated with this agreement. This Lease is exempt from the Westchester County Procurement Policy and Procedures pursuant to Section 3(b) thereof.

Your approval of the attached Resolution is respectfully requested.

RESOLUTION

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

RESOLVED, that the County of Westchester (the "County") is authorized to enter into a ten (10) year lease agreement ("Lease") with 15 South Fifth Avenue, LLC (the "Landlord"), or the owner of record, for approximately twenty two thousand (22,000) square feet of space (the "Premises") located at 15 South Fifth Avenue, Mount Vernon, New York (the "Building"). The Lease will commence upon the completion of renovations requested by the County. The County will have two five year renewal options. The above notwithstanding, the initial lease term shall not end prior to the last day of the then current semester of Westchester Community College, which semesters end on May 31, August 31 and December 31 in each year. Accordingly, the initial lease term, if not ending on one of such semester ending dates, shall be extended by the number of days necessary to reach the last day of the semester; and be it further

RESOLVED, that for the initial ten (10) year term, Fixed Rent shall be paid on 22,000 rentable square feet (although the actual rented space is approximately 22,264 square feet) as follows:

<u>PERIOD</u>	<u>RATE</u>
First Five Years after Commencement Date	\$25.00 per rentable square foot per annum
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Ninth Year after Commencement Date	\$28.70 per rentable square foot per annum
Tenth Year after Commencement Date	\$29.70 per rentable square foot per annum.

For the County's first five year renewal option, Fixed Rent shall be \$20.29 per rentable square foot per annum. For the County's second five year renewal option, Fixed Rent shall be increased to \$21.10 per rentable square foot per annum; and be it further

RESOLVED, that the Landlord shall be responsible for completing approximately \$2,300,000.00 in renovations to the leased space as approved by the College to make it ready for occupancy by the College. These renovations include the construction of classrooms, labs, and other facilities needed for use by the College. In the event the County terminates the Lease without right prior to the end of the initial ten (10) year term, the County will be obligated to pay \$230,000.00 for each year or portion thereof, pro rata, of the remaining initial term of the lease; and be it further

RESOLVED, that the Landlord shall be responsible, at its cost and expense, to operate, maintain and repair the Building and Building systems (including heating, ventilating, air conditioning, elevator and plumbing systems). The County shall be responsible for all costs, expenses and fees relating to the maintenance, repair, and replacement of the non-structural elements (e.g.: painting, carpeting, etc.) of the leased premises, with respect to which the Landlord will perform the work and bill the costs, expenses and fees thereof to the County as additional rent; and be it further

RESOLVED, that the County shall be responsible, as additional rent, for payment of its pro rata share of any real estate taxes and special and other levies ("Taxes"), or in the event the Landlord submits the Real Property to a condominium regime in which the Leased Premises shall be one condominium unit, then the County shall be responsible for payment of 100% of the taxes levied on the condominium unit comprising the Leased Premises, in either case not to exceed \$100,000.00 (the "Tax Cap") in the first Lease year immediately following the Lease Commencement Date. In each subsequent Lease Year, the Tax Cap shall increase by the same percentage as the aggregate real estate taxes for the Real Property or the condominium unit over the prior Lease year; and be it further

RESOLUTION

RESOLVED, that the Lease shall contain a mutual indemnification clause whereby the County and the Landlord shall indemnify each other for damages caused by the indemnifying party; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute and deliver all instruments approved as to form and substance by the County Attorney as are necessary and appropriate to effectuate the purposes hereof.

Agreement No. 12-929

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	701	78	8221	4320		\$5,801,400.00

Budget Funding Year(s) 2013-2023 Start Date 06/01/2013 End Date 05/31/2023
 (must match resolution)

Funding Source: Tax Dollars _____ Contractor Federal I.D. No./
 Social Security No.: _____
 State Aid \$2,842,686.00
\$5,801,400.00 Federal Aid _____ Vendor No.: _____
 (must match resolution) Other \$2,958,714.00 (Tuition) Encumbrance No.: _____

APPROVED BOARD OF ACQUISITION & CONTRACTS - 12/13/2012 - JOMAR WEIR SECRETARY