

65107

September 18, 2018

TO: Honorable Board of Acquisition and Contract

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

SUBJECT: Authority to enter into an agreement with Westchester Airport Associates L.P. which will settle pending claims related to parking operations at Westchester County Airport. (Agreement No. WCA 18005)

Authority of your Honorable Board is sought for an agreement (the "Settlement Agreement") among the County of Westchester (the "County"), Westchester Airport Associates L.P. ("WAA"), and the County of Westchester Industrial Development Agency (the "Agency") which will settle pending claims of the County and WAA related to parking operations at Westchester County Airport (the "Airport").

By way of background, it should be noted that the County and WAA entered into an Agreement of Lease dated October 19, 1993, (the "Ground Lease") of certain property located at the Airport in connection with WAA's construction and operation of a parking garage thereon. WAA thereafter assigned its interest in the Ground Lease to the Agency pursuant to the terms of an Assignment dated February 1, 1994 (the "Assignment"). The Agency subsequently entered into a Sublease and Assignment Agreement dated February 1, 1994 (the "Sublease"). The Ground Lease was thereafter amended by a First Amendment dated August 11, 1994 (the "First Amendment"), a Second Amendment dated May 23, 2001 (the "Second Amendment"), and a Third Amendment dated April 8, 2003. Additionally, the County and WAA entered into a Settlement Agreement dated February 28, 2013, to resolve claims related to WAA withholding rent as well as the County's operation of a cell phone waiting lot.

Disputes have arisen over the payment of Percentage Rent owed by WAA under the Ground Lease totaling \$775,000.00. WAA has alleged that the operation of off-site public parking and transportation of airline passengers by SUNY Purchase is in violation of the terms of the Ground Lease and have caused WAA damages, and that the proposed construction of an off-site parking garage at 11 New King Street in the Town of North Castle (the "Proposed Garage") will cause further damages.

Pursuant to the terms of the proposed Agreement, WAA will pay the overdue Percentage Rent as follows: \$200,000.00 by September 15, 2018; \$200,000.00 by January 15, 2019; \$200,000.00 by September 15, 2019; and \$175,000.00 by September 15, 2020. Additionally, within one year from execution of the proposed Agreement, and subject to all necessary approvals, the County will undertake reasonable steps to institute access fees for commercial vehicles transporting passengers to and from the Airport terminal building.

Under the proposed Agreement, the County will review its rights and responsibilities in connection with the Proposed Garage. It should be noted that the County's Planning Board has reviewed the site plan for the Proposed Garage and by letter dated July 11, 2018 sent to the Town Clerk of North Castle, recommended disapproval of an application for a special use permit that is needed to construct the Proposed Garage.

Section 158.11(5) of the County Charter requires Board of Legislators approval in order to compromise, settle or adjust any rights, claims, demands or causes of action in favor of or against the County. The Board of Legislators adopted Act No. 2018-__ on September 17, 2018 authorizing the County to enter into the Agreement.

The goals of this agreement include resolving longstanding disputes between the parties and generating revenue from County-owned facilities. Airport administration will oversee the Agreement and monthly invoices will be sent to WAA for payment.

This agreement is in the best interest of the County and the traveling public. Therefore, we recommend approval of the annexed Resolution.

HJG/DLV/dv

RESOLUTION

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

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to enter into an agreement with Westchester Airport Associates L.P. (“WAA”) in substantially the same form as attached hereto as Schedule “A” to settle pending claims of the County and WAA related to the operation of the parking facility at Westchester County Airport; and be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized to execute all instruments necessary to implement this resolution.

Agreement No. WCA 18005

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Of Unit	Object/ Sub Object	Trust Account	Dollars
	161	44	4110	9096		\$200,000.00 (2018)
	161	44	4110	9096		\$400,000.00 (2019)
	161	44	4110	9096		\$175,000.00 (2020)

Budget Funding Year(s): 2018-2020 Start Date: 09/15/2018 End Date: 09/15/2020
 (must match resolution)

Funding Source: Tax Dollars _____
 State Aid _____
\$775,000.00 Federal Aid _____
 (must match resolution) Other Airport Special Revenue Fund

APPROVED BOARD OF ACQUISITION & CONTRACTS - 09/20/2018 - LISA MRYAN, SECRETARY

SCHEDULE "A"

Settlement Agreement

APPROVED BOARD OF ACQUISITION & CONTRACT - 09/20/2018 - LISA MRIJAJ, SECRETARY

AGREEMENT made this ___ day of September, 2018 (the “Effective Date”) by and between:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (hereinafter referred to as the “County”)

and

WESTCHESTER AIRPORT ASSOCIATES L.P., a Delaware limited partnership qualified to do business in the State of New York, having an office at 7 Renaissance Square, White Plains, New York 10601 (hereinafter referred to as the “Tenant”)

WHEREAS, the County and Tenant entered into an Agreement of Lease dated October 19, 1993, (the “Ground Lease”) of certain property located at the Westchester County Airport in connection with the Tenant’s construction and operation of a Parking Facility thereon (the “Parking Facility”); and

WHEREAS, the Tenant thereafter assigned its interest in the Ground Lease to the County of Westchester Industrial Development Agency (the “Agency”) pursuant to the terms of an Assignment dated February 1, 1994 (the “Assignment”); and

WHEREAS, the Agency thereafter entered into a Sublease and Assignment Agreement, dated February 1, 1994; and

WHEREAS, the Ground Lease was thereafter amended by a First Amendment of Ground Lease dated August 11, 1994 to revise the property description as set forth in Exhibit “A” of the Ground Lease; and

WHEREAS, the Ground Lease was thereafter amended by a Second Amendment of Ground Lease, dated May 23, 2001; and

WHEREAS, the Ground Lease was thereafter amended by a Third Amendment of Ground Lease, dated April 8, 2003; and

WHEREAS, the Tenant has withheld Percentage Rent totaling approximately \$775,000.00 for the months of May, June and July, 2016, and May and June, 2017 (the “2016/2017 Percentage Rent”); and

WHEREAS, in 1994, the Agency, as Leasehold Mortgagee, issued bonds to finance construction of the Parking Facility; and

WHEREAS, the Tenant has alleged that the opening of and operation of the offsite parking lot by SUNY Purchase (the “SUNY Lot”) has caused significant competition at the Parking Facility and resulted in reduced revenues; and

WHEREAS, the Tenant has alleged that the proposed construction and operation of an offsite parking garage at 11 New King Street in the Town of North Castle (the “Proposed Garage”) will cause significant competition at the Parking Facility and will result in further reduced revenues; and

WHEREAS, the Tenant has alleged that the County has breached the Ground Lease by failing to discourage the shuttle service for passenger pick up and drop off from the SUNY Lot and by failing to discourage offsite parking by implementing access fees or otherwise; and

WHEREAS, the County denies any breach of the Ground Lease, as amended, and has alleged that Tenant does not have the right to withhold any rent payments pursuant to the terms of the Ground Lease, and that the failure of Tenant to pay Percentage Rent when due is a breach of the Ground Lease; and

WHEREAS, the County and the Tenant desire to provide for the payment of all past due Percentage Rent.

NOW, THEREFORE, in consideration of the premises and covenants herein, the parties agree as follows:

1. All initially capitalized terms shall have the meaning ascribed to them in the Ground Lease.
2. Tenant agrees to pay all unpaid 2016/2017 Percentage Rent in the amount of \$775,000.00 as follows: \$200,000.00 by September 15, 2018; \$200,000.00 by January 15, 2019; \$200,000.00 by September 15, 2019; and \$175,000.00 by September 15, 2020. Time is of the essence with respect to these payments. If the Tenant fails to make any payment on or before the date specified, then: (a) all other payments shall be accelerated and become immediately due and payable, without notice or demand; and (b) interest shall accrue at the rate of nine percent (9%) from the date such payment was due under this Agreement until the date that payment is made in full.
3. The County shall review its rights and responsibilities in connection with the Proposed Garage. The Tenant acknowledges that the County Planning Board has already reviewed the site plan for the Proposed Garage and, by letter to the Town Clerk of the Town of North Castle dated July 11, 2018, has recommended disapproval of the application for a special use permit.
4. The County shall undertake reasonable efforts to inform the public of the availability of parking space in the overflow parking lot operated by the Tenant.
5. The County shall, within one (1) year of the date of this Agreement, undertake reasonable efforts to institute access fees for commercial vehicles transporting passengers to and from the Airport terminal building, subject to all necessary legal approvals.
6. This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.
7. All other terms and conditions of the Ground Lease, as previously amended, shall remain in effect.
8. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate.

THE COUNTY OF WESTCHESTER

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

WESTCHESTER AIRPORT ASSOCIATES, L.P.

By: _____
Louis R. Cappelli, President
Airport Parking Associates, General Partner
WAA, L.P.

Approved by the Board of Legislators of the County of Westchester on _____, 2018.

Approved by the Board of Acquisition and Contract of the County of Westchester on _____, 2018.

Approved to as to form and
manner of execution

Associate County Attorney
County of Westchester

Vutera/DTR/111144/WAA Payment Agreement for Garage Lease Breach 7-31-18