

70802

July 18, 2019

To: Board of Acquisition and Contract

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

Gary A. Friedman, Esq.
Director of Real Estate

Re: Authority to enter into a thirty (30) year lease agreement with The Mark 95, LLC for approximately 35,000 square feet of space comprising two floors of a yet to be constructed building to be located on all, or a portion of each of the following lots (identified by section-block-lot): 3-802-0043, 3-802-0041, 3-802-0020, 3-802-0038 and 3-802-0033, collectively to be known as 26 Garden Street or such other address approved by the City of New Rochelle, along with a separate secure parking area to be located in the building which will contain between 50 and 60 secure parking spaces separately allocated for use by County employees and Court personnel. (Lease Agreement No. 19-920)

On July 15, 2019 the Westchester County Board of Legislators adopted Local Law Intro. No. 11932 - 2019 which authorized the County of Westchester ("County") to enter into a lease agreement for property located in New Rochelle which will be occupied by the Westchester Family Court-New Rochelle (part of the NYS Unified Court System), as well as by the County's Probation Department and the Office for Women, and will replace space currently being leased by the County at 420 North Avenue, New Rochelle.

Authorization is now requested from your Honorable Board for the County to enter into a thirty (30) year lease agreement (the "Lease") with The Mark 95, LLC, (the "Landlord"), for approximately 35,000 square feet of space comprising two floors of a yet to be constructed building (the "Building") to be located on all, or a portion of each of the following lots (identified by section-block-lot): 3-802-0043, 3-802-0041, 3-802-0020, 3-802-0038 and 3-802-0033, collectively to be known as 26 Garden Street or such other address approved by the City of New Rochelle, along with a separate secure parking area to be located in the Building which will contain between 50 and 60 secure parking spaces separately allocated for use by County employees and Court personnel (together the "Leased Premises").

The Landlord is authorized to enter into (i) a collateral assignment of this Lease to any mortgagee pursuant to a mortgage or security agreement, (ii) an assignment or transfer of Landlord's interest in this Lease or the Leased Premises in connection with the exercise by any mortgagee of remedies against Landlord with respect to its mortgage or security agreement, or (iii) any assignment of this lease to MJ Garden LLC.

The Lease will commence upon Landlord's delivery of possession of the Leased Premises to the County with the issuance of either a temporary certificate of occupancy or a certificate of occupancy (the "Commencement Date") and will continue for a period of thirty (30) years thereafter (the "Lease Term"). The period between the execution of the Lease and Landlord's delivery of possession of the Leased Premises, is not considered part of the thirty (30) year lease term, but rather is the period during which the Landlord and the County will be obligated to carry out those terms of the Lease which shall be completed prior to the Lease Commencement Date, including the construction and build out of the Leased Premises.

The Landlord will construct the Leased Premises in accordance with the preliminary plans attached to the Lease as Exhibit "A" (the "Build Out"), which will be substituted with final plans that have been reviewed and approved by the Commissioner of Public Works and Transportation ("DPWT Commissioner").

Landlord will deliver possession of the Leased Premises to the County on or before June 30, 2021 (the "Delivery of Possession Date"). It should be noted that if the County does not obtain all necessary legal approvals and execute the Lease by August 16, 2019, and the Lease effective date is consequently postponed, then the Delivery of Possession Date will likewise be postponed an amount of time equal to the number of days that it takes to obtain all necessary legal approvals and for the County to execute the Lease. The County's obligation to execute this Lease by August 16, 2019 is conditioned upon Landlord acquiring an ownership interest in all of the lots that comprise 26 Garden Street. If Landlord does not own all of the lots that comprise 26 Garden Street by August 16, 2019, the County shall not be obligated to execute this Lease and any delay resulting therefrom shall not be justification by Landlord to delay the Delivery of Possession Date. In addition, the Delivery of Possession Date will be extended where a Change Order requested by Tenant necessarily extends the Delivery of Possession Date.

In the event the Landlord fails, for any reason except due to delays caused by the County, including delays due to change orders, to deliver the Leased Premises to the County by the Delivery of Possession Date, then the County will be entitled to liquidated damages in the amount of four thousand (\$4,000.00) dollars per day, until the day the Leased Premises are delivered to the County (the "Liquidated Damages"). The Liquidated Damages will be applied as a credit against the County's monthly rent payment upon commencement of the Lease Term. In the event the Landlord fails, for any reason, to deliver possession of the Leased Premises to the County within ninety (90) days from the date Liquidated Damages begin to accrue, then the County, at its sole discretion, may terminate the Lease immediately by sending written notice thereof to Landlord and the County shall have no further obligations or liability to Landlord under the Lease.

Beginning on the Commencement Date and for the entire Lease Term, the County will pay the Landlord minimum annual rent as set forth in Schedule "A" annexed to the Lease, in monthly installments in advance on the first day of each calendar month ("Minimum Annual Rent"). In addition to Minimum Annual Rent, the County will be responsible to pay the Landlord for various other costs, liabilities and obligations, which the County assumes or agrees to pay or discharge pursuant to the Lease ("Additional Rent"). Additional Rent will include, but shall not be limited to: (i) the cost of Landlord's Build-Out of the Leased Premises, which amortized annual costs based on \$7 million principal amount are set forth in Schedule "A", and shall be billable to the County on a monthly basis in equal installments; (ii) the County's proportionate share of real property and other taxes; (iii) the County's

proportionate share of the cost of repairs to common building systems and/or capital improvements to the common areas and structural portions of the Building; and (iv) late payment fees. In

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addition, the Landlord will add a 4% management fee to the County's proportionate share of actual common area maintenance ("CAM") costs. Additional Rent will be payable monthly upon the County's receipt of an invoice from Landlord for such amounts. The County may also be responsible for certain direct payments, such as utilities and cleaning and trash hauling services.

Pursuant to the terms of the Lease, the Landlord will be responsible to repair, maintain and replace, as necessary, all structural portions of the real property containing the Leased Premises, including but not limited to, the foundation, roof and exterior walls. In addition, the Landlord will be responsible for the maintenance, repairs, replacements and/or improvements of the common building systems utilized by all tenants in the real property containing the Leased Premises. All actual costs of such repairs will be billed to the County as Additional Rent based on the County's proportionate share of said costs, plus the aforementioned 4% CAM management fee, unless such repairs are allocated to the portion of the space or common elements which service solely the County, in which case the cost of such repairs will be borne fully by the County. The County will be responsible, at its sole cost and expense, for all non-structural, non-common building systems repairs, replacements and maintenance to the Leased Premises.

Change order requests that do not seek to increase the total amount payable under the Lease, or extend the Lease Term, shall only require the approval of your Honorable Board, upon recommendation of the DPWT Commissioner. Change orders that result in an increase to the total amount payable under the Lease, or which extend the Lease Term, shall require an amendment to the Lease and shall be subject to approval of the Board of Legislators and your Honorable Board. Notwithstanding the immediately preceding sentence, your Honorable Board, upon recommendation of the DPWT Commissioner, is authorized to approve change orders that in the aggregate do not exceed ten (10%) percent of the total principal amount for the Build Out, without additional Board of Legislator approval for same.

The County shall also have a right of first refusal should the Landlord decide to sell the Leased Premises during the Lease Term.

In addition, the Landlord shall contribute to the County a one-time refurbishment allowance in the amount of \$150,000.00 after the commencement of Year 15 of the Lease.

The Lease is subject to annual appropriations, however, non-compliance with certain stipulations identified in the Lease, shall constitute a breach of the Lease, upon which (i) the Landlord may exercise its remedies under the Section 16.3 of the Lease, and (ii) the Landlord shall be further entitled to specific performance and injunctive relief as a remedy for such breach.

The Lease is exempt from the County's Procurement Policy pursuant to Section 3(b) therein.

An appropriate resolution is attached for your consideration.

RESOLUTION

Lease Agreement No. 19-920

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 thirty (30) year lease agreement (the "Lease") with The Mark 95, LLC, (the "Landlord"), for approximately 35,000 square feet of space comprising two floors of a yet to be constructed building (the "Building") to be located on all, or a portion of each of the following lots (identified by section-block-lot): 3-802-0043, 3-802-0041, 3-802-0020, 3-802-0038 and 3-802-0033, collectively to be known as 26 Garden Street or such other address approved by the City of New Rochelle, along with a separate secure parking area to be located in the Building which will contain between 50 and 60 secure parking spaces separately allocated for use by County employees and Court personnel (together the "Leased Premises"). The Leased Premises will be occupied by the Westchester Family Court-New Rochelle (part of the NYS Unified Court System), as well as by the County's Probation Department and the Office for Women; and be it further

RESOLVED, that the Landlord is authorized to enter into (i) a collateral assignment of the Lease to any mortgagee pursuant to a mortgage or security agreement, (ii) an assignment or transfer of Landlord's interest in the Lease or the Leased Premises in connection with the exercise by any mortgagee of remedies against Landlord with respect to its mortgage or security agreement, or (iii) any assignment of this lease to MJ Garden LLC; and be it further

RESOLVED, that the Lease will commence upon Landlord's delivery of possession of the Leased Premises to the County with the issuance of either a temporary certificate of occupancy or a certificate of occupancy (the "Commencement Date") and will continue for a period of thirty (30) years thereafter (the "Lease Term"). The period between the execution of the Lease and Landlord's delivery of possession of the Leased Premises shall not be considered part of the thirty (30) year lease term, but rather will be the period during which the Landlord and the County will be obligated to carry out those terms of the Lease which shall be completed prior to the Lease Commencement Date, including the construction and build out of the Leased Premises; and be it further

RESOLVED, that the Landlord will construct the Leased Premises in accordance with the preliminary plans attached to the Lease as Exhibit "A" (the "Build Out"), which will be substituted with final plans that have been reviewed and approved by the Commissioner of Public Works and Transportation ("DPWT Commissioner"); and be it further

RESOLVED, that Landlord will deliver possession of the Leased Premises to the County on or before June 30, 2021 (the "Delivery of Possession Date"). If the County does not obtain all necessary legal approvals and execute the Lease by August 16, 2019, and the Lease effective date is consequently postponed, then the Delivery of Possession Date will likewise be postponed an amount of time equal to the number of days that it takes to obtain all necessary legal approvals and for the County to execute the Lease. The County's obligation to execute this Lease by August 16, 2019 is conditioned upon Landlord acquiring an ownership interest in all of the lots that comprise 26 Garden Street. If Landlord does not own all of the lots that comprise 26 Garden Street by August 16, 2019, the County shall not be obligated to execute this Lease and any delay resulting therefrom shall not be justification by Landlord to delay the Delivery of Possession Date. In addition, the Delivery of Possession Date will be extended where a Change Order requested by the County necessarily extends the Delivery of Possession Date; and be it further

RESOLUTION

Lease Agreement No. 19-920

RESOLVED, that in the event the Landlord fails, for any reason, except due to delays caused by the County, including delays due to change orders, to deliver the Leased Premises to the County by the Delivery of Possession Date, then the County will be entitled to liquidated damages in the amount of four thousand (\$4,000.00) dollars per day, until the day the Leased Premises are delivered to the County (the "Liquidated Damages"). The Liquidated Damages will be applied as a credit against the County's monthly rent payment upon commencement of the Lease Term. In the event the Landlord fails, for any reason, to deliver possession of the Leased Premises to the County within ninety (90) days from the date Liquidated Damages begin to accrue, then the County, at its sole discretion, may terminate the Lease immediately by sending written notice thereof to Landlord and the County shall have no further obligations or liability to Landlord under the Lease; and be it further

RESOLVED, that beginning on the Commencement Date and for the entire Lease Term, the County will pay the Landlord minimum annual rent as set forth in Schedule "A" attached hereto, in monthly installments in advance on the first day of each calendar month ("Minimum Annual Rent"). In addition to Minimum Annual Rent, the County will be responsible to pay the Landlord for various other costs, liabilities and obligations, which the County assumes or agrees to pay or discharge pursuant to the Lease ("Additional Rent"). Additional Rent will include, but shall not limited to: (i) the cost of Landlord's Build-Out of the Leased Premises, which amortized annual costs based on \$7 million principal amount are set forth in Schedule "A", and shall be billable to the County on a monthly basis in equal installments; (ii) the County's proportionate share of real property and other taxes; (iii) the County's proportionate share of the cost of repairs to common building systems and/or capital improvements to the common areas and structural portions of the Building; and (iv) late payment fees. In addition, the Landlord will add a 4% management fee to the County's proportionate share of actual common area maintenance ("CAM") costs. Additional Rent will be payable monthly upon the County's receipt of an invoice from Landlord for such amounts. The County may also be responsible for certain direct payments, such as utilities and cleaning and trash hauling services; and be it further

RESOLVED, that pursuant to the terms of the Lease, the Landlord will be responsible to repair, maintain and replace, as necessary, all structural portions of the real property containing the Leased Premises, including but not limited to, the foundation, roof and exterior walls. In addition, the Landlord will be responsible for the maintenance, repairs, replacements and/or improvements of the common building systems utilized by all tenants in the real property containing the Leased Premises. All actual costs of such repairs will be billed to the County as Additional Rent based on the County's proportionate share of said costs, plus the aforementioned 4% CAM management fee, unless such repairs are allocated to the portion of the space or common elements which service solely the County, in which case the cost of such repairs will be borne fully by the County. The County will be responsible, at its sole cost and expense, for all non-structural, non-common building systems repairs, replacements and maintenance to the Leased Premises; and be it further

RESOLVED, that change order requests that do not seek to increase the total amount payable under the Lease, or extend the Lease Term, shall only require the approval of the County Board of Acquisition & Contract, upon recommendation of the DPWT Commissioner. Change orders that result in an increase to the total amount payable under the Lease, or which extend the Lease Term, shall require an amendment to the Lease and shall be subject to approval of the Board of Legislators and your Honorable Board. Notwithstanding the immediately preceding sentence, your Honorable Board, upon recommendation of the DPWT Commissioner, is authorized to approve change orders that in the aggregate do not exceed ten (10%) percent of the total principal amount for the Build Out, without additional Board of Legislator approval for same; and be it further

RESOLUTION

Lease Agreement No. 19-920

RESOLVED, that the County shall also have a right of first refusal should the Landlord decide to sell the Leased Premises during the Lease Term; and be it further

RESOLVED, that the Landlord shall contribute to the County a one-time refurbishment allowance in the amount of \$150,000.00 after the commencement of Year 15 of the Lease; and be it further

RESOLVED, that this Lease is subject to annual County appropriations, however, non-compliance with certain stipulations identified in the Lease shall constitute a breach of the Lease, upon which (i) the Landlord may exercise its remedies under the Section 16.3 of the Lease, and (ii) the Landlord shall be further entitled to specific performance and injunctive relief as a remedy for such breach; and be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to implement this Resolution.

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Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	101	46	3300	4320		\$55,532,125.07

Budget Funding Year(s) 2021-2051 Start Date 06/30/2021 End Date 06/29/2051
 (must match resolution)

Funding Source: Tax Dollars 100% County
 State Aid _____
\$55,532,125.07 Federal Aid _____
 (must match resolution) Other _____

SCHEDULE "A"
Rent Schedule

Year	Minimum Annual Rent Column A	Additional Rent for Build Out Column B	Total
1	\$910,000.00	\$503,628.00	\$1,413,628.00
2	\$932,750.00	\$503,628.00	\$1,436,378.00
3	\$956,068.75	\$503,628.00	\$1,459,696.75
4	\$979,970.47	\$503,628.00	\$1,483,598.47
5	\$1,004,469.73	\$503,628.00	\$1,508,097.73
6	\$1,029,581.47	\$503,628.00	\$1,533,209.47
7	\$1,055,321.01	\$503,628.00	\$1,558,949.01
8	\$1,081,704.04	\$503,628.00	\$1,585,332.04
9	\$1,108,746.64	\$503,628.00	\$1,612,374.64
10	\$1,136,465.30	\$503,628.00	\$1,640,093.30
11	\$1,164,876.94	\$503,628.00	\$1,668,504.94
12	\$1,193,998.86	\$503,628.00	\$1,697,626.86
13	\$1,223,848.83	\$503,628.00	\$1,727,476.83
14	\$1,254,445.05	\$503,628.00	\$1,758,073.05
15	\$1,285,806.18	\$503,628.00	\$1,789,434.18
16	\$1,317,951.33	\$503,628.00	\$1,821,579.33
17	\$1,350,900.11	\$503,628.00	\$1,854,528.11
18	\$1,384,672.62	\$503,628.00	\$1,888,300.62
19	\$1,419,289.43	\$503,628.00	\$1,922,917.43
20	\$1,454,771.67	\$503,628.00	\$1,958,399.67
21	\$1,498,414.82	\$503,628.00	\$2,002,042.82
22	\$1,543,367.26	\$503,628.00	\$2,046,995.26
23	\$1,589,668.28	\$503,628.00	\$2,093,296.28
24	\$1,637,358.33	\$503,628.00	\$2,140,986.33
25	\$1,686,479.08	\$503,628.00	\$2,190,107.08
26	\$1,737,073.45	\$503,628.00	\$2,240,701.45
27	\$1,789,185.66	\$503,628.00	\$2,292,813.66
28	\$1,842,861.23	\$503,628.00	\$2,346,489.23
29	\$1,898,147.06	\$503,628.00	\$2,401,775.06
30	\$1,955,091.47	\$503,628.00	\$2,458,719.47
TOTALS	\$40,423,285.07	\$15,108,840.00	\$55,532,125.07

Note: Rent Increase: 2.5 % for years 1-20; 3.0 % for Years 21-30

*Additional Rent for other than the Build Out is payable in accordance with the terms of the Lease and includes, but is not limited to, costs identified in Article V, Article VIII Section 8.1(a)-(g), Article IX, Article XI, Article XV and Section 20.24.