



Westchester Community College

State University of New York

72071

October 14, 2019

To: Board of Acquisition and Contract

From: Belinda S. Miles
President

Re: Authority to enter into a Confidentiality Agreement between the College of New Rochelle (“CNR”) and the County of Westchester, acting by and through SUNY Westchester Community College (the “College”) for the purpose of permitting the College to obtain and review confidential documents in order to conduct due diligence related to the sale of assets by CNR.

Authority is hereby requested to enter into a Confidentiality Agreement between the College of New Rochelle (“CNR”) and the County of Westchester, acting by and through SUNY Westchester Community College (the “College”) for the purpose of permitting the College to obtain and review confidential documents in order to conduct due diligence related to the sale of assets by CNR. The term of the Agreement shall be for a period of twelve (12) months from the date of the Agreement.

As has been reported in the media, CNR has declared bankruptcy and an auction of its assets is anticipated in early November. The College believes it is prudent to evaluate such assets to determine whether any of such assets might be worth offering a bid on. The College recognizes that any such acquisition is subject to any necessary legal approvals and is only seeking approval to execute this Confidentiality Agreement in order to conduct due diligence.

In order to obtain access to these documents, the College would be required to execute a Confidentiality Agreement with CNR. Such agreement would, among other things, require the Recipient of the documents to protect the confidentiality of such documents, immediately notify CNR if such documents are subpoenaed or requested by any other method, including the New York Freedom of Information Act. It should be noted that the College will utilize protocols to protect the confidentiality of these documents.

Additionally, the agreement requires the County, acting by and through the College to represent that “it is acting as principals on this transaction without a broker and that, if it chooses to employ a broker hereafter, Recipient shall do so at its sole cost and expense” and to provide the following indemnity “Recipient agrees to indemnify and hold CNR and Brokers harmless from and against any and all loss, costs, damages and judgments (including reasonable attorneys’ fees and disbursements) arising from the claim(s) of any brokers alleging to have dealt with or through Recipient in connection with the Property”. It should be noted that the College has not retained any broker who might assert such a claim.

The Agreement also contains a clause which states that “The prevailing party in any action sought to enforce or interpret this Agreement or any provision thereof shall be entitled to recover reasonable attorneys’ fees and costs in conjunction with such legal proceeding from the non-prevailing party.” As noted above, the College will utilize protocols to protect the confidentiality of these documents and intends to abide by the terms and conditions of this Agreement.

Since CNR’s asset auction is anticipated to take place in early November, the College respectfully requests that your Honorable Board expedite its consideration of this resolution. I believe that it is in the best interest of the College, its faculty and students to enter into this agreement, and I therefore, recommend that you act favorably on the annexed proposed resolution.

BSM/jmr/jpi
Attachment

RESOLUTION

Upon a communication from the President of Westchester Community College, be it hereby

RESOLVED, that the County of Westchester, acting by and through SUNY Westchester Community College (the “College”) is hereby authorized to enter into a Confidentiality Agreement with the College of New Rochelle (“CNR”) for the purpose of permitting the College to obtain and review confidential documents in order to conduct due diligence related to the sale of assets by CNR, with a term of twelve (12) months from the date of the agreement; and be it further

RESOLVED, that the County, acting by and through the College, is authorized to agree to indemnify CNR and hold CNR and its designated Brokers harmless from and against any and all loss, costs, damages and judgments (including reasonable attorneys’ fees and disbursements) arising from the claim(s) of any brokers alleging to have dealt with or through Recipient in connection with the Property; 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.

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
N/A						

Budget Funding Year(s) Start Date: Upon full execution End Date: N/A
 (must match resolution)

Funding Source: Tax Dollars _____ Contractor Federal I.D. No./ Social Security No.: _____
 State Aid _____
 _____ Federal Aid _____ Vendor No.: _____
 (must match resolution) Other _____ Encumbrance No.: _____