

Memorandum
Department of Public Works and Transportation

87678

September 22, 2021

To: The Honorable Board of Acquisition and Contract

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

Christopher D. Steers
Director of Countywide Administrative Services

Re: **Request for authority for the County of Westchester (“County”) to enter into a Lease Agreement with Ziza Associates, LLC (“Ziza” or “Landlord”) for the period commencing on September 23, 2021 and terminating on December 31, 2021 with the County having an option to renew for an additional one-month period from January 1, 2022 through January 31, 2022 for 3,000 square feet of space at 10 County Center Road, White Plains, New York (Lease Agreement No. 21-932).**

Authority is currently requested for the County to enter into a Lease Agreement (“Lease”) with Ziza for the period commencing September 23, 2021 and terminating on December 31, 2021 (“Initial Term”), with the County having an option to renew for an additional one month, for the period from January 1, 2022 through January 31, 2022 (“Renewal Term”), for 3,000 square feet of space at 10 County Center Road, Suite 102, White Plains, New York (“Leased Premises”). This space will be used for storage and sorting of Personal Protective Equipment (“PPE”) and COVID-19 test kits.

In consideration for the use of the Leased Premises, the County would pay rent at the rate of \$5,500.00, pro-rated based on the actual lease commencement date, per month for the Initial Term, and, in the event the County exercises its Renewal Term option, \$5,665.00 for the Renewal Term. In addition, the County will be required to pay a security deposit in the amount of \$12,250.00 (“Security Deposit”) as security for the faithful performance and observance by the County of the terms, conditions and provisions of Lease. If the County fully and faithfully complies with all Lease Terms, the Security Deposit will be returned to the County after the Lease termination and after delivery of the entire possession of the Leased Premises to Landlord.

It should be noted that certain provisions of the Lease require the County to pay additional costs and fees, including but not limited to real estate taxes, electricity, heat and air conditioning, and replacement lighting equipment.

The County may be responsible for Additional Rent as defined by the lease for such actions as repairs by Landlord, for example, if Landlord elects to make repairs in or to the Building or the facilities and systems thereof for which the County is responsible in accordance with the lease. Landlord may charge Additional Rent for electing to cure County defaults as defined by the Lease. Fees in connection with late payment charges, would also be payable by Additional Rent, as well as removal of any signage installed by the County and not removed upon termination of the Lease.

It should be noted that the Lease contains the following Indemnity clause:

“Tenant shall not do or permit any act or thing to be done upon the Premises which may subject Landlord to any liability or responsibility for injury, damages to persons or property or to any liability by reason of any violation of law or of any legal requirement of public authority, but shall exercise such control over the Premises as to fully protect Landlord against any such liability. Tenant agrees to indemnify and save harmless Landlord from and against all liabilities, obligations, damages, penalties, claims, costs and expenses, including reasonable attorney fees, incurred or arising from (i) any act, omission or negligence of Tenant, its contractors, licensees, agents, employees, invitees or visitors, including any claims arising from any act, omission or negligence of Landlord or Landlord and Tenant; (ii) any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring during the Term in or about the Premises, (iii) any accident, injury or damage to any person, entity or property, occurring outside of the Premises but anywhere within or about the Real Property, where such accident, injury or damage results or is claimed to have resulted from an act or omission of Tenant or Tenant’s agents, employees, invitees or visitors, including any claims arising from any act, omission or negligence of Landlord or Landlord and Tenant, (iv) any breach, violation or nonperformance of any covenant, condition or agreement in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed and (v) Tenant, or any of Tenant’s contractors, licensees, agents, employees, invitees or visitors causing or permitting any Hazardous Substance (as hereinafter defined) to be brought upon, kept or used in or about the Premises or the Real Property or any seepage, escape or release of such Hazardous Substances. The term "Hazardous Substances" shall mean, collectively, (a) asbestos and polychlorinated biphenyls and (b) hazardous or toxic materials, wastes and substances which are defined, determined and identified as such pursuant to any law. Tenant’s liability under this Lease extends to the acts and omissions of any subtenant and any contractor, licensee, agent, employee, invitee or visitor of any subtenant. As used herein and in all other provisions in this Lease containing indemnities made for the benefit of Landlord, the term "Landlord" shall mean the Landlord herein named and its managing agent and their respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective members, officers, partners, agents, consultants, servants, employees, successors and assigns. This indemnity and hold harmless agreement shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses of any kind or nature incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof. This Paragraph shall survive the expiration or sooner termination of this Lease.”

The goal and objective of this Lease is to enable the County Department of Health to partner with local school districts to provide COVID-19 testing kits for students and faculty. The kits require a staging area for PPE storage, test storage, and package assembly. The program is of a temporary nature and is expected to continue through the end of the year.

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

We recommend approval of the attached resolution.

RESOLUTION

Lease Agreement No. 21-932

Upon a communication from the Commissioner of Public Works and Transportation and the Director of Countywide Administrative Services, be it hereby

RESOLVED, that the County of Westchester (“County”) is authorized to enter into a Lease Agreement with Ziza Associates, LLC (“Landlord”) for the period commencing on September 23, 2021 and terminating on December 31, 2021 with the County having an option to renew for an additional one-month period from January 1, 2022 through January 31, 2022 for 3,000 square feet of space at 10 County Center Road, White Plains, New York; and be it further

RESOLVED, that in consideration for the use of the Leased Premises, the County will pay rent at the rate of \$5,500.00 per month, pro-rated based on the actual lease commencement date, for the Initial Term, and, in the event the County exercises its Renewal Term option, \$5,665.00 for the Renewal Term. In addition, the County will pay a security deposit in the amount of \$12,250.00 as security for the faithful performance and observance by the County of the terms, conditions and provisions of Lease. If the County fully and faithfully complies with all Lease Terms, the Security Deposit will be returned to the County after the Lease termination and after delivery of the entire possession of the Leased Premises to Landlord; and be it further

RESOLVED, that under the lease the County shall pay additional costs and fees, including but not limited to real estate taxes, electricity, heat and air conditioning, and replacement lighting equipment.

RESOLVED, that the County may be responsible for Additional Rent as defined by the lease for such actions as repairs by Landlord, for example, if Landlord elects to make repairs in or to the Building or the facilities and systems thereof for which the County is responsible in accordance with the lease. Landlord may charge Additional Rent for electing to cure County defaults as defined by the Lease. Fees in connection with late payment charges, would also be payable by Additional Rent, as well as removal of any signage installed by the County and not removed upon termination of the Lease; and be it further

RESOLVED, that the lease contains the following indemnification clause:

“Tenant shall not do or permit any act or thing to be done upon the Premises which may subject Landlord to any liability or responsibility for injury, damages to persons or property or to any liability by reason of any violation of law or of any legal requirement of public authority, but shall exercise such control over the Premises as to fully protect Landlord against any such liability. Tenant agrees to indemnify and save harmless Landlord from and against all liabilities, obligations, damages, penalties, claims, costs and expenses, including reasonable attorney fees, incurred or arising from (i) any act, omission or negligence of Tenant, its contractors, licensees, agents, employees, invitees or visitors, including any claims arising from any act, omission or negligence of Landlord or Landlord and Tenant; (ii) any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring during the Term in or about the Premises, (iii) any accident, injury or damage to any person, entity or property, occurring outside of the Premises but anywhere within or about the Real Property, where such accident, injury or damage results or is claimed to have resulted from an act or omission of Tenant or Tenant’s agents, employees, invitees or visitors, including any claims arising

RESOLUTION

from any act, omission or negligence of Landlord or Landlord and Tenant, (iv) any breach, violation or nonperformance of any covenant, condition or agreement in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed and (v) Tenant, or any of Tenant's contractors, licensees, agents, employees, invitees or visitors causing or permitting any Hazardous Substance (as hereinafter defined) to be brought upon, kept or used in or about the Premises or the Real Property or any seepage, escape or release of such Hazardous Substances. The term "Hazardous Substances" shall mean, collectively, (a) asbestos and polychlorinated biphenyls and (b) hazardous or toxic materials, wastes and substances which are defined, determined and identified as such pursuant to any law. Tenant's liability under this Lease extends to the acts and omissions of any subtenant and any contractor, licensee, agent, employee, invitee or visitor of any subtenant. As used herein and in all other provisions in this Lease containing indemnities made for the benefit of Landlord, the term "Landlord" shall mean the Landlord herein named and its managing agent and their respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective members, officers, partners, agents, consultants, servants, employees, successors and assigns. This indemnity and hold harmless agreement shall include indemnity from and against any and all liability, fines, suits, demands, costs and expenses of any kind or nature incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof. This Paragraph shall survive the expiration or sooner termination of this Lease.”; and be it further

RESOLVED, that the County Executive or his duly authorized designee, is hereby authorized and empowered to execute any and all documents necessary and appropriate to effectuate the purposes hereof.

Lease Agreement No. 21-932

Account to be Charged/Credited			Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	Fund	Dept.				
	101	46	3300-3348	4320		\$30,125.00 (2021)
	101	46	3300-3348	4320		\$ 5,665.00 (2022)

Budget Funding Year(s): 2021-2022 Start Date: 09/23/2021 End Date: 01/31/2022
 (must match resolution)

Funding Source: Tax Dollars 100% County
 State Aid _____
\$35,790.00 Federal Aid _____
 (must match resolution) Other _____