

39738

April 15, 2014

TO: Honorable Board of Acquisition and Contract

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

Mary J. Mahon  
Director of Real Estate

SUBJECT: Authority to sign any agreements necessary to: 1) consent to the assignment of a lease agreement with 41 North 73 West, Inc. d/b/a Avitat Westchester and Jet Systems for Hangar E at Westchester County Airport, to Signature Flight Support Corporation; 2) consent to the assignment of a lease agreement with Westair Aviation Services, LLC for Hangar M at Westchester County Airport, to Signature or Million Air Interlink, Inc. or to White Plains Aviation Partners, LLC, an affiliate of Million Air; 3) amend the Jet Systems lease to permit the assignment to a current fixed base operator at the Airport; and 4) amend a separate lease with Signature for Hangars A, C-2 and G to permit the early exercise of a renewal option and provide for a rent credit.

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On March 24, 2014, the Westchester County Board of Legislators adopted a Local Law authorizing the County to: 1) consent to the assignment of a lease agreement with 41 North 73 West, Inc. d/b/a Avitat Westchester and Jet Systems (“Jet Systems”) for Hangar E at Westchester County Airport (the “Airport”) to Signature Flight Support Corporation (“Signature”); 2) consent to the assignment of a lease agreement with Westair Aviation Services, LLC (“Westair”) for Hangar M at the Airport to Signature or Million Air Interlink, Inc. (“Million Air”) or to White Plains Aviation Partners, LLC, an affiliate of Million Air; 3) amend the Jet Systems lease to permit the assignment to a current fixed base operator at the Airport; and 4) amend a separate lease with Signature for Hangars A, C-2 and G to permit the early exercise of a renewal option and provide for a rent credit.

Transmitted herewith is a proposed Resolution that will authorize the County of Westchester to sign any agreements necessary to: 1) consent to the assignment of a lease agreement with Jet Systems for Hangar E at the Airport to Signature; 2) consent to the assignment of a lease agreement with Westair for Hangar M at the Airport to Signature or Million Air or to White Plains Aviation Partners, LLC, an affiliate of Million Air; 3) amend the Jet Systems lease to permit the assignment to a current fixed base operator at the Airport; and 4) amend a separate lease with Signature for Hangars A, C-2 and G to permit the early exercise of a renewal option and provide for a rent credit.

On August 4, 2005, your Honorable Board authorized the County to enter into a lease agreement with Jet Systems for a term of ten years commencing October 1, 2005, with the tenant having the option for two ten-year extensions, for the use of Hangar E for the storage and maintenance of aircraft. The lease agreement prohibits Jet Systems from assigning the lease without the written approval of the County, and states that the County will not consent to the assignment to a fixed base operator ("FBO") currently operating at the airport. Jet Systems has requested that the County consent to the assignment of its lease to Signature, a current FBO. Because of the lease restriction, it is necessary to amend the Jet Systems lease to permit the assignment to Signature. Signature will assume all of Jet Systems' obligations under the lease.

On June 23, 1999, your Honorable Board authorized the County to enter into a lease agreement with Westair for a term of 30 years for the construction and operation of a light general aviation facility (Hangar M), and providing services such as aircraft fueling, hangar space, aircraft tie-down and parking, maintenance, flight instruction, charters and rental. The lease agreement prohibits Westair from assigning the lease without the written approval of the County, and such consent may not be unreasonably withheld.

Westair had requested that the County consent to the assignment of its lease to Signature, an aviation service company which has been operating at the airport for many years. However, the County was notified that Million Air, which has a franchise agreement with Westair, intended to exercise its right of first refusal to purchase Westair under the terms of its franchise agreement. Million Air then notified Westair that it was exercising its right of first refusal. Recently, the County was advised that Million Air is finalizing an asset purchase agreement with Westair, which is expected to close some time in April of this year.

Accordingly, the proposed Resolution would authorize the County to consent to the assignment of the Westair lease to either Signature or Million Air Interlink, Inc. or to White Plains Aviation Partners, LLC, an affiliate of Million Air InterLink, Inc. which the County has been advised by counsel for Million Air is intended to ultimately be the tenant under the County Lease. If the Million Air transaction with Westair closes, then Signature will be unable to close its purchase of Westair and the County would assign the Westair lease to Million Air or its affiliate White Plains Aviation Partners, LLC.

It should also be noted that the owner of Million Air approached the Westchester Industrial Development Agency ("WIDA") with an application for up to \$40 million in financing for major improvements to Westair's facility. On February 6, 2014, WIDA adopted a preliminary inducement resolution.

If the transaction between Million Air and Westair does not close, then the County would assign the lease to Signature.

On September 29, 2006, your Honorable Board authorized the County to enter into a lease agreement with Signature for the use of Hangars A, C-1, C-2, and G, related aircraft aprons and ramps, and a vehicle parking area for a term of ten years, commencing July 1, 2006, with the tenant having the option for two ten-year extensions. On August 4, 2011, your Honorable Board authorized the County to enter into an amendment with Signature removing from the leased premises Hangar C-1, an office

area in Hangar A, and 62 vehicle parking spaces adjacent to these hangars, and reducing the rent accordingly. Authority is now requested for the County to enter into a second amendment to the Signature lease to permit the early exercise of the initial renewal option for the term from July 1, 2016 through June 30, 2026, and provide for a rent credit of \$2,800,000.00, at the rate of \$200,000.00 per lease year or part thereof from January 2013 to June 2026. It is recognized and understood by the parties that the County's rent reduction in lieu of one-time cash payment is consideration to incentivize Signature to exercise the early renewal of its lease option, which the County has determined to be an economic benefit for the Westchester County Airport, given current difficult market conditions. This credit will be applied in equal monthly installments.

In 2011 and 2012, Signature instituted actions challenging the non-exempt tax status of its leasehold: Signature Flight Support Corporation v. Town of Rye et al. It should be noted that the County's consent to two lease assignments and the amendment to the Jet Systems lease will be contingent upon the execution by Signature of a stipulation of discontinuance in connection with these actions, unconditionally withdrawing all claims, agreeing not to seek tax exempt status for the property for as long as the Lease is in effect, waiving its right to seek judicial review of the assessed value of its real property (124.31-1-6; 124.31-1-8; and 124.31.-1-9 on the Town of Rye Tax Map) pursuant to the Real Property Tax Law, in and for assessment years 2013, 2014, 2015 and 2016, and reimbursing the County and other taxing entities up to \$160,000 for their respective attorneys' fees and costs associated with the actions filed by Signature.

This action is in the best interest of the County as it allows for the assignment of lease agreements to existing fixed-base operators ensuring continuing rent payments to the year 2026, and also terminates litigation challenging the non-tax exempt status of the Signature leasehold. The terms of the agreement will be monitored by the Department of Public Works and Transportation staff.

We recommend approval of the annexed Resolution.

JTP/MJM/DLV/dv

## 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 is authorized to sign any agreements necessary to consent to the assignment of a lease agreement with 41 North 73 West, Inc. d/b/a Avitat Westchester and Jet Systems ("Jet Systems") for Hangar E at Westchester County Airport to Signature Flight Support Corporation ("Signature"). Signature shall assume all of Jet Systems' obligations under the lease; and be it further

**RESOLVED**, that the County is authorized to amend the Jet Systems lease to permit the assignment to a current fixed base operator at the airport, namely Signature; and be it further

**RESOLVED**, that the County is authorized to sign any agreements necessary to consent to the assignment of a lease agreement with Westair Aviation Services, LLC ("Westair") for Hangar M at Westchester County Airport to Signature or Million Air Interlink, Inc. ("Million Air") or to White Plains Aviation Partners, LLC, an affiliate of Million Air. Signature or Million Air or White Plains Aviation Partners, LLC shall assume all of Westair's obligations under the lease and continue using the leased premises as a light general aviation facility; and be it further

**RESOLVED**, that the County is authorized to amend a lease agreement with Signature to permit the early exercise of the initial renewal option for the term from July 1, 2016 through June 30, 2026, and provide for a rent credit of \$2,800,000.00, at the rate of \$200,000.00 per lease year or part thereof from January 2013 to June 2026. It is recognized and understood by the parties that the County's rent reduction in lieu of one-time cash payment is consideration to incentivize Signature to exercise the early renewal of its lease option, which the County has determined to be an economic benefit for the Westchester County Airport, given current difficult market conditions. This credit shall be applied in equal monthly installments; and be it further

**RESOLVED**, that the authorizations granted in the first, second and third Resolved paragraphs above are contingent upon all of the following: 1) the execution by Signature of a stipulation of discontinuance, with prejudice, in connection with the existing actions challenging the non-exempt tax status of Signature's leasehold; 2) Signature shall agree not to seek tax exempt status for the property for as long as the lease is in effect, 3) Signature shall waive its right to seek judicial review of the assessed value of its real property (124.31-1-6; 124.31-1-8; and 124.31-1-9 on the Town of Rye Tax Map) pursuant to the Real Property Tax Law, in and for assessment years 2013, 2014, 2015 and 2016, and 4) Signature shall agree to reimburse the County and other taxing entities up to \$160,000 for their respective attorneys' fees and costs associated with the actions filed by Signature; 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.

# RESOLUTION

Account to be Charged/credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
161	44	4110	9096		(\$200,000) year 2013
161	44	4110	9096		(\$200,000) year 2014
161	44	4110	9096		(\$200,000) year 2015
161	44	4110	9096		\$1,189,192 year 2016
161	44	4110	9096		(\$200,000) year 2016
161	44	4110	9096		\$2,437,843 year 2017
161	44	4110	9096		(\$200,000) year 2017
161	44	4110	9096		\$2,559,735 year 2018
161	44	4110	9096		(\$200,000) year 2018
161	44	4110	9096		\$2,687,722 year 2019
161	44	4110	9096		(\$200,000) year 2019
161	44	4110	9096		\$2,822,108 year 2020
161	44	4110	9096		(\$200,000) year 2020
161	44	4110	9096		\$2,963,214 year 2021
161	44	4110	9096		(\$200,000) year 2021
161	44	4110	9096		\$3,111,374 year 2022
161	44	4110	9096		(\$200,000) year 2022
161	44	4110	9096		\$3,266,943 year 2023
161	44	4110	9096		(\$200,000) year 2023
161	44	4110	9096		\$3,430,290 year 2024
161	44	4110	9096		(\$200,000) year 2024
161	44	4110	9096		\$3,601,805 year 2025
161	44	4110	9096		(\$200,000) year 2025
161	44	4110	9096		\$1,844,827 year 2026
161	44	4110	9096		(\$200,000) year 2026

Budget Funding Year(s) 2013 Start Date 1/1/2013 End Date 6/30/26  
 (must match resolution)

Funding Source Tax Dollars \_\_\_\_\_  
 State Aid \_\_\_\_\_  
\$27,115,053 Federal Aid \_\_\_\_\_  
 (must match resolution) Other Airport Special Revenue Fund