

41875

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

DATE: August 18, 2014

SUBJECT: Authority for the County of Westchester to enter into a lease agreement with Reckson Operating Partnership, L.P. for space on the sixth floor at 140 Grand Street, White Plains, New York, for the term September 1, 2014 through August 31, 2019. (Lease Agreement No. 14-934)

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Authority is requested for the County of Westchester to enter into a lease agreement with Reckson Operating Partnership, L.P. (the "Landlord") for space on the sixth floor at 140 Grand Street, White Plains, New York, for the term September 1, 2014 through August 31, 2019. This space, comprising approximately 17,800 square feet (the "Premises"), will continue to be used by the State Appellate Courts. The current lease for the Premises is set to expire on August 31, 2014.

The County shall pay Fixed Annual Rent (exclusive of electric) for the Premises from the Commencement Date of September 1, 2014 through the Expiration Date of August 31, 2019 at the rate of Six Hundred Six Thousand Two Hundred Sixty-Eight and 00/100 (\$606,268.00) Dollars per annum (\$50,522.33 per month); provided, however, during the first year of the lease term, five (5) monthly installments of Fixed Annual Rent (without electricity) accruing under the lease shall be abated by the sum of \$50,522.33 per month (for a total abatement of \$252,611.67). In addition to the payment of Fixed Annual Rent, the County shall also pay as Additional Rent, its proportionate share (14.83%) of increases in the Landlord's operating expenses and property taxes, as well as the sum of \$85.00 per month for each of the nine (9) parking spaces allocated for the County's use. The "Base Year for Taxes" for taxes shall be the taxes actually due and payable with respect to the 2014/2015 tax year with respect to taxes imposed on a fiscal year basis and the 2014 tax year with respect to taxes imposed on a calendar year basis. The "Base Year for Operating Costs" shall be the 2014 actual operating expenses. Additionally, the County shall pay the Landlord for all electrical energy consumed by the County in the Premises at Landlord's cost and for its pro-rata share of electrical energy consumed in the common areas.

The Landlord has also agreed to repair walls and door finishes and provide new carpet in the courtroom space at Landlord's expense.

Under the terms of the lease, the County will be required to indemnify the Landlord in accordance with the terms set forth in Schedule "A" attached to the resolution.

Rent under this lease will be fully reimbursed by the State of New York. All payments under this lease will be subject to County budget appropriations.

This agreement is exempt from application of the Westchester County Procurement Policy and Procedures pursuant to Section 3(b) thereof.

Board of Acquisition and Contract  
Lease Agreement No. 14-934  
Reckson Operating Partnership, L.P.  
Space at 140 Grand Street, White Plains, New York  
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The public purpose of this agreement is to provide the New York State Unified Court System with office and court space in the White Plains area. The goal of this agreement is to fulfill the County of Westchester's responsibility to provide the court with space. If this agreement were not in place, the Appellate Court would not be able to conduct business, and the County would be in violation of New York State law, thus addressing the County Executive's priority area of Fiscal Responsibility (FS). There are no energy or environmental components associated with this lease agreement.

The agreement will be monitored by the Department of Public Works and Transportation to ensure that the lease responsibilities are met by the Landlord.

Accordingly, approval of the attached proposed Resolution is recommended.

JTP/MJM/dm  
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT 08/21/2014 - JOSEPH VIEIRA, SECRETARY

# RESOLUTION

Upon a communication from the Commissioner of Public Works and Transportation and the Director of Real Estate, it is hereby

**RESOLVED**, that the County of Westchester (the "County") is authorized to enter into a lease agreement with Reckson Operating Partnership, L.P. (the "Landlord") for approximately 17,800 square feet of space on the sixth floor at 140 Grand Street, White Plains, New York, for the term September 1, 2014 through August 31, 2019; and be it further

**RESOLVED**, that the County shall pay as Fixed Annual Rent (exclusive of electric) for the Premises from the Commencement Date of September 1, 2014 through the Expiration Date of August 31, 2019 at the rate of Six Hundred Six Thousand Two Hundred Sixty-Eight and 00/100 (\$606,268.00) Dollars per annum (\$50,522.33 per month); provided however, during the first year of the lease term, five (5) monthly installments of Fixed Annual Rent (without electricity) accruing under the lease shall be abated by the sum of \$50,522.33 per month (for a total abatement of \$252,611.67). In addition to the payment of Fixed Annual Rent, the County shall also pay as Additional Rent, its proportionate share (14.83%) of increases in the Landlord's operating expenses and property taxes, as well as the sum of \$85.00 per month for each of the nine (9) parking spaces allocated for the County's use. The "Base Year for Taxes" for taxes shall be the taxes actually due and payable with respect to the 2014/2015 tax year with respect to taxes imposed on a fiscal year basis and the 2014 tax year with respect to taxes imposed on a calendar year basis. The "Base Year for Operating Costs" shall be the 2014 actual operating expenses. Additionally, the County shall pay the Landlord for all electrical energy consumed by the County in the Premises at Landlord's cost and for its pro-rata share of electrical energy consumed in the common areas; and be it further

**RESOLVED**, that the Landlord shall make certain improvements to the leased space at Landlord's expense, including the repair of walls and door finishes and the installation of new carpet in the courtroom space; and be it further

**RESOLVED**, that all payments under this lease shall be subject to County budget appropriations; and be it further

**RESOLVED**, that the County shall indemnify the Landlord in accordance with the terms set forth in Schedule "A" attached hereto; and be it further

# RESOLUTION

**RESOLVED**, that the County Executive, or his duly appointed designee be, and hereby is, authorized to execute such documents and take such actions as may be necessary and appropriate to effect the purposes hereof.

Lease Agreement No. 14-934

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Bond Act No.	Dollars
	101	46	3300	4320	N/A	\$205,149.32 (2014)
	101	46	3300	4320	N/A	\$362,836.31 (2015)
	101	46	3300	4320	N/A	\$615,448.00 (2016)
	101	46	3300	4320	N/A	\$615,448.00 (2017)
	101	46	3300	4320	N/A	\$615,448.00 (2018)
	101	46	3300	4320	N/A	\$410,298.47 (2019)

Budget Funding Year(s) 2014-2019 Start Date 09/01/14 End Date 08/31/19  
 (must match resolution)

Funding Source: Tax Dollars 100% County Contractor Federal I.D. No./  
 Social Security No.: \_\_\_\_\_  
 State Aid \_\_\_\_\_

\$2,824,628.10 Federal Aid \_\_\_\_\_ Vendor No.: \_\_\_\_\_  
 (must match resolution) Other \_\_\_\_\_ Encumbrance No.: \_\_\_\_\_

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## **SCHEDULE "A"**

### **Indemnification terms in lease with Reckson Operating Partnership, L.P. for space at 140 Grand Street White Plains, New York**

(2 pages)

17.01 (a) The County ("Tenant") covenants and agrees to indemnify and save Landlord and its designees harmless from and against any and all claims arising during the Term for damages or injuries to goods, wares, merchandise and property or for any personal injury or loss of life in, upon or about the Demised Premises or the Building or on the sidewalks adjoining the Demised Premises, resulting from the negligence of Tenant, its agents, servants, employees, representatives or contractors.

(b) Tenant further assumes the risk of and sole responsibility for, and hereby agrees to indemnify and save harmless Landlord and its designees (including the holder of any Superior Mortgage) from, any and all claims for injuries, death, loss or damage of any kind or character to person or property, by whomsoever suffered or asserted, resulting from or arising out of:

(i) The condition or use (including the making of Tenant's Changes) of the Demised Premises, all buildings, improvements and equipment or Tenant's operation thereof during the Term or any renewal or extension thereof, and whether due to any latent or patent defect; provided, however, that Tenant shall have no liability arising out of any latent defect for the repair of which Landlord is responsible under this Lease prior to the time when Tenant in fact discovers it and shall have no liability arising out of any patent defect for the repair of which Landlord is responsible under this Lease prior to the time when Tenant in fact discovers it; and provided, further that Tenant shall have no liability arising out of any such latent or patent defect after such discovery if Tenant shall give Landlord prompt written notice of the existence of such defect and shall take all reasonable precautions to prevent the occurrence of any injuries, death, loss and damage attributable solely and directly to such defect;

(ii) The negligence of Tenant, its agents, servants, employees, representatives and/or contractors, whether occurring on or off the Demised Premises; or

(iii) The failure by Tenant, its agents, servants or employees, to comply with any provision of this Lease.

Notwithstanding anything to the contrary contained herein, Tenant shall only be obligated under subparagraphs (a) and (b) of this Paragraph 17.01 to indemnify, defend and hold harmless Landlord against and from such claims as they arise from the negligence or default of Tenant, its agents, servants, representatives, employees, or contractors. Tenant shall not be obligated to indemnify Landlord to the extent that Landlord is negligent.

(c) (i) Notwithstanding anything to the contrary set forth above in this Article 17, in no event shall Tenant's indemnification of Landlord pursuant to Articles 17 and 22 of this Lease exceed the "Capped Liability Amount" (hereinafter defined) during the Term of this Lease or any extension or renewal.

(ii) The "Capped Liability Amount" for the term of the Lease or of any renewals or extensions shall be Ten Million Dollars (\$10,000,000.00).

22.02 Except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the Landlord, (including its officers, employees and agents) the Tenant shall indemnify and hold harmless the Landlord, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising out of the acts or omissions hereunder by the Tenant or third parties under the direction or control of the Tenant.

22.03 Whenever either party shall be obligated under this Lease to indemnify the other party, the indemnifying party shall also provide the defense for and defend, at its sole expense, said claims, demands and causes of action, and to bear all other costs and expenses related thereto. The indemnifying party may select legal counsel (subject to the consent of the indemnified party, which consent shall not be unreasonably withheld) and shall keep the indemnified party fully apprised at all times of the status of such defense. Legal counsel of the insurer for either party is hereby deemed satisfactory to both parties. Defense by the Office of the Westchester County Attorney is deemed satisfactory by the Landlord.