

80164

October 14, 2020

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 amend a thirty (30) year lease agreement between the County of Westchester (“County”) and The Mark 95, LLC, which was assigned to MJ Garden, LLC (“MJ Garden”) for the Westchester Family Court and other County offices, in order to: (1) authorize MJ Garden to assign the Lease to MJ Garden III, LLC (hereinafter, “MJ Garden III”); (2) modify the definition of “Building”; (3) add a new Section 11.6 whereby the County acknowledges and consents to a lease/leaseback by and among MJ Garden and the New Rochelle Industrial Development Agency; and (4) clarify Section 5.1 to provide that Taxes will include the PILOT Payments, assessments or fees required to be paid to the IDA. (Lease Agreement No. 19-920)

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By Resolution approved on July 25, 2019 your Honorable authorized the County to enter into a thirty (30) year lease agreement (the “Lease Agreement”) with The Mark 95, LLC, as Landlord, pursuant to which the County, as Tenant, would lease new facilities for the Westchester Family Court, the Westchester County Department of Probation and the Westchester County Office for Women and related parking facilities (collectively, the “Courthouse Project” or the “Leased Premises”), located at 26 Garden Street in New Rochelle (the “Project Site”). The Lease Agreement was executed by the parties on August 15, 2019, and immediately thereafter, The Mark 95, LLC assigned the Lease Agreement to MJ Garden, in accordance with Section 11.5 thereof.

Thereafter, by resolution approved on July 30, 2020, your Honorable authorized the County to enter into a Change Order (“Change Order #1”) in the amount of \$55,000.00 to modify the Plans and complete the work necessary to add an additional elevator stop on the first floor of the Building for the separate secure elevator. Change Order #1 was subsequently executed.

Thereafter, by resolution approved on September 24, 2020, your Honorable authorized the County to enter into a second Change Order (“Change Order #2”) in the amount of \$28,000.00 to provide card reader/fab units for all three elevator cars, including the car station and controller provisions and for the connection of the security company’s wiring to the controllers that are supplied. Change Order #2 was subsequently executed.

Authorization is now requested from your Honorable Board for the County to further amend the Lease Agreement by (1) authorizing MJ Garden to assign the Lease to MJ Garden III, LLC (hereinafter, "MJ Garden III"); (2) modifying the definition of "Building"; (3) add a new Section 11.6 whereby the County acknowledges and consents to a lease/leaseback by and among MJ Garden and the New Rochelle Industrial Development Agency; and (4) clarify Section 5.1 to provide that Taxes will include the PILOT Payments, assessments or fees required to be paid to the IDA.

As your Honorable Board is aware, the Courthouse Project is but one component of a larger multi-phased development at the Project Site. MJ Garden is creating a condominium regime for the entire, multi-phase development being constructed at the Project Site. The non-parking portion of the Courthouse Project is one condominium unit (the "Courthouse Unit") with its own tax lot (#0103) and the parking portion of the Courthouse Project is another condominium unit (the "Courthouse Parking Unit") with its own tax lot (#0101) (together with the "Courthouse Unit", the "Courthouse and Courthouse Parking Units"). The condominium contains additional units with their own separate tax lots for the additional mixed-uses contemplated at the Project Site, including for approximately 186 affordable residential rental housing units and parking (the "Residential Unit").

First, authority is requested to amend the Lease Agreement by modifying the definition of "Building" as set forth in Section 1.1(c) thereof, to include, among other things, the tax lots to be assigned to the Courthouse and Courthouse Parking Units when the condominium form of ownership is in place (i.e., tax lot #s 0103 and 0101).

Second, authority is also requested to amend the Lease Agreement by adding a new Section 11.6 whereby the County would acknowledge and consent to a lease between MJ Garden and the IDA of the Courthouse and Courthouse Parking Units and leaseback of the Courthouse and Courthouse Parking Units by the IDA to MJ Garden. It will also be necessary to modify Section 5.1 of the Lease Agreement to clarify that Taxes will include any taxes, PILOT Payments, assessments or fees required to be paid to the IDA pursuant to the attached PILOT Payment Schedule.

The County would benefit from the IDA financial assistance, particularly with respect to the PILOT payments relating to the Courthouse Unit. The IDA has agreed to set a \$0 base PILOT payment amount for the Courthouse Unit for a thirty year period leaving a projected nominal annual charge for taxes and fees as set forth on the attached PILOT Payment Schedule for the Courthouse Project. Since under Section 5.1 of the Lease Agreement, the County is obligated to pay Taxes with respect to the Courthouse and Courthouse Parking Units (including PILOT payments), the County's obligation for Taxes is materially reduced under the PILOT Agreement with the IDA lease/leaseback structure, than it would be for real property taxes without the IDA's assistance.

Board of Acquisition and Contract  
Lease Agreement No. 19-920  
MJ Garden, LLC (Amend)  
Space at 26 Garden Street, New Rochelle, New York  
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Lastly, authority is requested to amend the Lease Agreement by amending Section 11.5 thereof to authorize the assignment of the Lease Agreement from MJ Garden to MJ Garden III and consent to the granting of a PILOT mortgage to the IDA. The amendment to Section 11.5 would also authorize the County to consent to the assignment of Lease rent payments and the granting of a financing mortgage to the trustee for Landlord's financing of the Leased Premises, which mortgage will be junior in priority to the PILOT mortgage and superior to the Lease.

MJ Garden desires to transfer ownership under the condominium structure of the Courthouse and Courthouse Parking Units to MJ Garden III, a New York limited liability company with identical ownership and control as MJ Garden. MJ Garden has advised that it is necessary for the Courthouse Project's financing that the obligor for the financing be a bankruptcy remote special purpose entity (SPE). Since MJ Garden has other obligations at the Project Site, it cannot achieve this financing requirement if it is the obligor.

Transferring the Courthouse and Courthouse Parking Units and assigning the Lease Agreement to MJ Garden III will result in the Courthouse Project landlord being obligated only with respect to the Courthouse Project and not the other aspects of the planned development at the Project Site. By only owning the Courthouse and Courthouse Parking Units, MJ Garden III as an SPE, limits the possibility of the Courthouse Project landlord having financial and legal obligations and liability other than with respect to the Courthouse Project and thus the assignment, if consented to by the County, would reduce the risk of interruption of services to the County as tenant.

Except as otherwise specifically amended hereby, all remaining terms and conditions of the Lease Agreement shall remain in full force and effect upon the parties.

The proposed amendment to the Lease Agreement is exempt from the County Procurement Policy pursuant to Section 3(b) thereof which exempts real property leases, licenses and concessions.

On October 5, 2020 by Local law Intro No. 12887-2020, the Westchester County Board of Legislators authorized the County to amend the Lease Agreement as described above.

Accordingly, a Resolution for your Honorable Board's approval is herewith attached.

HJG/GAF/jpg/tsa  
Attachment

# RESOLUTION

## Amendment to 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 amend a thirty (30) year lease agreement (the “Lease”) between the County and The Mark 95, LLC, which was assigned to MJ Garden, LLC (“MJ Garden” or “Landlord”) for the Westchester Family Court and other County offices, in order to: (1) amend Section 11.5 thereof to authorize MJ Garden to assign the Lease to MJ Garden III, LLC and consent to the granting of a PILOT mortgage to the New Rochelle Industrial Development Agency (the “IDA”). The amendment to Section 11.5 would also authorize the County to consent to the assignment of Lease rent payments and the granting of a financing mortgage to the trustee for Landlord’s financing of the leased premises, which mortgage will be junior in priority to the PILOT mortgage and superior to the Lease; (2) modify the definition of “Building” as set forth in Section 1.1(c) thereof to include, among other things, the tax lots to be assigned to the leased premises when the condominium form of ownership is in place; (3) add a new Section 11.6 whereby the County acknowledges and consents to a lease/leaseback by and among MJ Garden and the IDA; and (4) clarify Section 5.1 to provide that Taxes will include the PILOT Payments, assessments or fees required to be paid to the IDA; and be it further

**RESOLVED**, that except as otherwise specifically amended hereby, all remaining terms and conditions of the Lease shall remain in full force and effect upon the parties; 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.

Amendment to Lease Agreement No. 19-920

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	101	46	3300	4320		N/A

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 \_\_\_\_\_

\$ \_\_\_\_\_ Federal Aid \_\_\_\_\_  
 (must match resolution)

Other \_\_\_\_\_