

86983

August 23, 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 a period commencing upon execution and substantial completion of improvements to the leased premises, and terminating 36 months thereafter, for 3,240 square feet of space at 10 County Center Road, White Plains, New York (Lease Agreement No. 21-931).**

Authority is currently requested for the County to enter into a Lease Agreement (“Lease”) with Ziza for a period commencing upon execution and substantial completion of improvements to the leased premises, and terminating 36 months thereafter for 3,240 square feet of space at 10 County Center Road, White Plains, New York (“Leased Premises”). This space will be used as a Veterans’ Affairs Office.

In consideration for its use of the Leased Premises, and in consideration for improvements to be made by Landlord to the Leased Premises, the County would pay rent as follows:

	Yearly Rent	Annual Rent	Monthly Rent	Annual Increase
1 st	12 month period after Rent Commencement	\$82,240.00	\$7,020.00	3%
2 nd	12 month period after Rent Commencement	\$86,767.20	\$7,230.60	3%
3 rd	12 month period after Rent Commencement	\$89,370.22	\$7,447.52	3%

	Construction Reimbursement	Total Reimbursement Cost	Monthly Reimbursement
	36 Month period after Rent Commencement	\$ 108,849.20	\$ 3,023.59

In addition, the County will be required to pay a security deposit in the amount of \$15,390.00 (“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.

The County will be responsible for its pro rata share of real estate taxes utilizing 2021 as the base year.

It should be noted that certain provisions of the Lease require the County to pay additional costs and fees, including but not limited to electricity, excessive water use (if any), 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 an 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 provide a more centralized and updated Veterans’ Affairs Office to more effectively serve our constituent population. Additionally, this location was chosen after multiple sites were evaluated for its quality, proximity to MOB, and is updated HVAC system which provides CDC recommended air quality mitigation for COVID protections.

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

We recommend approval of the attached resolution.

HJG/CS/mlg
Attachment

RESOLUTION

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 (“Lease”) with Ziza Associates, LLC (“Ziza” or “Landlord”) for a period commencing upon execution and substantial completion of improvements to the leased premises, and terminating 36 months thereafter, for 3,240 square feet of space at 10 County Center Road, White Plains, New York (“Leased Premises”); and be it further

RESOLVED, that in consideration for the use of the Leased Premises and in consideration for Landlord’s improvements to be made to the Leased Premises, the County will pay rent as follows:

Yearly Rent	Annual Rent	Monthly Rent	Annual Increase
1 st 12 month period after Rent Commencement	\$82,240.00	\$7,020.00	3%
2 nd 12 month period after Rent Commencement	\$86,767.20	\$7,230.60	3%
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Construction Reimbursement	Total Reimbursement Cost	Monthly Reimbursement
36 Month period after Rent Commencement	\$ 108,849.20	\$ 3,023.59

In addition, the County will be required to pay a security deposit in the amount of \$15,390.00 (“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; and be it further

RESOLVED, that the County shall also pay to the Landlord its pro rata share of the real estate taxes utilizing 2021 as the base year; and be it further

RESOLVED, that under the lease the County shall pay additional costs and fees, the including but not limited to electricity, excess water charges (if any), heat and air conditioning, and replacement lighting equipment; and be it further

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 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. 21-931

Account to be Charged/Credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	101	46	3348	4320		\$59,390 37,390 (2021)
	101	46	3348	4320		\$133,500 132,750 (2022)
	101	46	3348	4320		\$137,333 136,917 (2023)
	101	46	3348	4320		\$92,667 115,833 (2024)

Budget Funding Year(s): 2021-2024
(must match resolution)

Start Date: ~~Upon Execution~~11/1/2021

End Date: 10/31/2024

Funding Source

Tax Dollars 100% County

State Aid _____

Federal Aid _____

~~\$ 422,890.00~~ \$ 422,890.00
(must match resolution)

Other _____