

95335

TO: Board of Acquisition and Contract

FROM: Hugh J. Greechan, Jr., PE
Commissioner of Public Works and Transportation

Christopher D. Steers
Director of Countywide Administrative Services

DATE: August 29, 2022

SUBJECT: Authority to enter into a lease agreement with Commerce Street Professional Center, LLC, for 1,931 square feet of office space (Suite 208) on the second floor of the building located at 1940 Commerce Street, Yorktown Heights, New York, for a term of five (5) years, commencing on the first day of the month following the County's occupancy of Suite 208 (Lease Agreement No. 22-908)

Authority of your Honorable Board is requested for the County of Westchester ("County"), acting by and through its Department of Public Works and Transportation ("Department"), to enter into a lease agreement ("Lease" or "Agreement") with Commerce Street Professional Center, LLC ("Landlord"), for 1,931 square feet of office space ("Suite 208") on the second floor of the building located at 1940 Commerce Street, Yorktown Heights, NY ("Property"), for a term of five (5) years, commencing on the first day of the month following the date of occupancy of Suite 208 by the County ("Commencement Date"), which commencement date is estimated to occur on or around March 1, 2023, since the Landlord will be performing certain improvements to Suite 208 prior to the County's occupancy of Suite 208.

By way of background, on April 20, 2017, your Honorable Board approved Resolution # 56173, which authorized the County to enter into a lease agreement ("2017 Lease") with the Landlord, for use of 1,431 square feet of office space ("Suite 204") at the Property by the Department, with a term from April 1, 2017 through March 31, 2022. The 2017 Lease expired on March 31, 2022 but the Department was in need to continue to lease Suite 204 until Suite 208 (comprised of Suites 208 and 209), which is undergoing certain improvements by the Landlord, is ready for occupancy by the Department. As such, on June 23, 2022, your Honorable Board approved Resolution # 94184, which authorized the County to enter into a lease agreement for the continued use of Suite 204 by the Department, with a term which is set to expire on the date the County relocates and occupies Suite 208, under the proposed Lease.

In consideration for the leasing of Suite 208 by the County under the proposed Lease, the County will pay the following annual rents and fees for cleaning and heating/cooling services, in equal monthly installments:

<u>Years 1 – 5</u>	<u>Rent</u>	<u>Cleaning Fees</u>	<u>Heating/Cooling Fees</u>	<u>Total Annual</u>
First Year	\$48,275.40	\$6,492.00	\$2,892.00	\$57,659.40
Second Year	\$49,723.20	\$6,687.00	\$2,979.00	\$59,389.20
Third Year	\$51,210.60	\$6,888.00	\$3,068.40	\$61,167.00
Fourth Year	\$52,755.00	\$7,095.00	\$3,160.80	\$63,010.80
Fifth Year	\$54,338.40	\$7,308.00	\$3,255.60	\$64,902.00

The annual rent for the first year of the Lease reflects a charge of \$25.00 per each square feet. The annual rents and fees for cleaning and heating/cooling services set forth above, which fees are considered additional rent, reflect an annual increase of three percent (3%) over the annual rent and fees for the immediately preceding year, and such 3% annual increase will occur on the anniversary of the Commencement Date. It should be noted that there are no operating costs and expenses in connection with the leasing of Suite 208 and the building common areas as these expenses are included in the net base rent.

The County will also be responsible to pay an annual fixed security access fee of \$38.00 per month/\$456.00 per year, during the term of the Agreement.

Furthermore, the County is responsible for its proportionate share of electricity and real estate taxes and for additional costs in the amount of \$18,918.00 associated with certain electrical and other miscellaneous work requested by the County to be completed by the Landlord prior to the County's occupancy of Suite 208, as follows:

Tenant's Work:

Electrical Work	\$14,773.00
Upgrade of interior office doors with glass	\$2,987.00
Purchase and Installation of microwave	\$1,158.00
<u>Total</u>	<u>\$18,918.00</u>

In consideration for the occupancy of and fees and charges to be paid by the County for Suite 208, the Landlord will complete the following improvements:

- Supply and install new partitions to the underside of the existing suspended ceiling as shown on the Tenant's Floor Plan;
- Supply and install new office doors, similar to those doors currently exiting in the existing suites;
- Paint all walls and door frames off-white, similar to the suite's existing color;
- Replace exiting damaged or stained ceiling tile;
- Replace all bunt out light bulbs in all fixtures;

- Supply and install Building standard carpeting in the office. The Tenant may select the carpeting from the Owner's samples;
- Clean the office, and window blinds;
- Supply and install a five (5'-0") long Kitchenette. The kitchenette will have a five (5') foot base cabinet, a white formica Counter-top, and a stainless steel sink with faucet and a duplex outlet above the counter top; and
- Supply and install as required so that there will be: four (4) duplex outlets, one (1) on each wall, two (2) ceiling hung 2' x 4' lighting fixtures, similar to the existing fixtures and one switch in each new office.
- The two (2) primary entrance doors into Suites 208 and 209 shall remain. The Tenant shall select the entrance door that the Tenant prefers to use.

The Agreement will require the County to indemnify the Landlord, as follows:

“In consideration of said demised premises being leased to [County] for the above rental, [County] agrees that the [County] at all times, will indemnify and keep harmless [Landlord] from all losses, damages, liabilities and expenses which may arise or be claimed against [Landlord] and be in favor of any person, firm, corporation, for any injuries or damages to the person or property of any person, firm, corporation, consequent upon or arising from the use or occupancy of said demised premises by [County], or consequent upon or arising from [County]’s failure to comply with the aforesaid laws, statutes, ordinances, or regulations; that [Landlord] shall not be liable, except for [Landlord]’s acts of negligence, to [County] for any damages, losses, or injuries to the person or property of [County] which may be caused by acts, neglect, omissions, or defaults of any person, firm, or corporation and that [County] will indemnify and keep harmless [Landlord] from all damages, liabilities, losses, injuries, or expenses which may arise or be claimed against [Landlord] and be in favor of any person, firm, or corporation for any injuries or damages to the person or property of any person, firm, or corporation where said injuries or damages arose about or upon said demised premises.”

This proposed Lease is in the public’s best interest as it will provide the District Attorney’s Office with the space necessary to offer services to residents of the County.

This proposed Lease is exempt from the County Procurement Policy pursuant to Section 3(b) thereof. The lease will be monitored by the Department of Public Works and Transportation.

Therefore, we recommend approval of the annexed Resolution.
HJG/cmc

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 (the "County") is hereby authorized to enter into a lease agreement with Commerce Street Professional Center, LLC ("Landlord") for 1,931 square feet of office space (Suite 208) on the second floor of the building located at 1940 Commerce Street, Yorktown Heights, New York, for a term of five (5) years, commencing on the first day of the month following the date of occupancy of Suite 208 by the County ("Commencement Date"); and be it further

RESOLVED, that under the terms of the lease, the County shall lease approximately 1,931 square feet and shall pay annual rent and fees for cleaning and heating/cooling services, in equal monthly installments, reflecting a three percent (3%) annual increase to occur on the anniversary of the Commencement Date, as follows:

<u>Years 1 – 5</u>	<u>Rent</u>	<u>Cleaning Fees</u>	<u>Heating/Cooling Fees</u>	<u>Total</u>
First Year	\$48,275.40	\$6,492.00	\$2,892.00	\$57,659.40
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RESOLVED, that the County will also be responsible for an annual fixed security access fee of \$38.00 per month/\$456.00 per year, during the term of the lease; and be it further

RESOLVED, that the County will also be responsible for its proportionate share of electricity and real estate taxes and for additional costs in the amount of \$18,918.00 associated with additional electrical and other miscellaneous work requested by the County to be completed by the Landlord prior to the County's occupancy of Suite 208, as follows:

Tenant's Work:

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RESOLVED, that the County will indemnify the Landlord, as follows:

"In consideration of said demised premises being leased to [County] for the above rental, [County] agrees: that the [County] at all times, will indemnify and keep harmless [Landlord] from all losses, damages,

liabilities and expenses which may arise or be claimed against [Landlord] and be in favor of any person, firm, corporation, for any injuries or damages to the person or property of any person, firm, corporation, consequent upon or arising from the use or occupancy of said demised premises by [County], or consequent upon or arising from [County]'s failure to comply with the aforesaid laws, statutes, ordinances, or regulations; that [Landlord] shall not be liable, except for [Landlord]'s acts of negligence, to [County] for any damages, losses, or injuries to the person or property of [County] which may be caused by acts, neglect, omissions, or defaults of any person, firm, or corporation and that [County] will indemnify and keep harmless [Landlord] from all damages, liabilities, losses, injuries, or expenses which may arise or be claimed against [Landlord] and be in favor of any person, firm, or corporation for any injuries or damages to the person or property of any person, firm, or corporation where said injuries or damages arose about or upon said demised premises.”

RESOLVED, that this lease agreement is subject to County appropriations; and be it further

RESOLVED, that this lease agreement is also subject to further financial analysis of the impact of any New York State Budget (the “State Budget”) proposed and adopted during the term of this lease agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this lease agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Landlord, then the Landlord shall have the right to terminate this Agreement upon reasonable prior written notice; 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.

Lease Agreement No. 22-908

Account to be Charged/credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	101	46	3300/3322	4320		\$77,033.40 (Year 1)
	101	46	3300/3322	4320		\$59,845.20 (Year 2)
	101	46	3300/3322	4320		\$61,623.00 (Year 3)
	101	46	3300/3322	4320		\$63,466.80 (Year 4)
	101	46	3300/3322	4320		\$65,358.00 (Year 5)

Budget Funding Year(s) 2023-2028 Start Date 03/1/2023 End Date 02/29/2028
(must match resolution)

Funding Source Tax Dollars 100%

State Aid _____

\$327,326.40 Federal Aid _____
(must match resolution)

Other _____