

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Honorable Board, would authorize the settlement of four of the County's five counterclaims in the pending litigation between the County and White Plains Aviation Partners, LLC, d/b/a Million Air White Plains ("Million Air"), as set forth below. The County's remaining counterclaim, along with all of Plaintiff's claims in the litigation, will be dismissed without prejudice subject to the terms of a written interim settlement agreement, as discussed further below.

Your Committee recalls that, on May 16, 2016, the County Board adopted Local Law No. 3-2016, which authorized the County to terminate a prior lease with Million Air and enter into a new 30-year ground lease (the "Lease") that allowed Million Air to operate both a Light General Aviation ("LGA") facility and a Full Service Heavy Aircraft General Aviation Fixed Base Operation ("FBO") on approximately 22.4 acres ("Leased Premises") at the Airport. Pursuant to the terms of the Lease, Million Air subsequently constructed an approximately 50,000 sq. ft. hangar and refurbished terminal building at Million Air's FBO.

Your Committee has been informed that separately, in 2019, the County entered into a license agreement ("License") with Million Air, permitting Million Air to use approximately 7,192 square feet of undeveloped space adjacent to the Federal Aviation Administration tower ("Lot 2") solely for parking vehicles owned by Million Air, its employees, subtenants and service providers, for a term from March 1, 2019, through February 28, 2020. The License was not extended, but Million Air continued to use Lot 2.

Your Committee is aware that on June 16, 2021, Million Air commenced an action in federal court, alleging that the County breached certain terms of the Lease. Boiled down, Million Air claimed, among other things, that the County unreasonably withheld approval for Million Air to construct a proposed approximately 80,000 square foot hangar for heavy general aviation on its Leased Premises. Million Air sought a Court order directing the County to approve construction of the proposed hangar, along with “millions of dollars in damages.”

Your Committee is also aware that when the County answered Million Air’s operative complaint in October 2022, it denied any allegation that the County unreasonably withheld approval to build the proposed hangar. In addition, the County asserted five counterclaims against Million Air: breach of contract (1) under Lease section 3.1 for keeping a T-Hangar (known as T-Hangar 25) out-of-service; (2) under Lease sections 5.3 and 9.6 for failing to maintain and repair T-hangar 25, and for failing to restore it to a serviceable condition; (3) under Lease sections 7.1 and 11.1 for using T-hangar 25 for non-aeronautical purposes; (4) under Lease sections 13.8 and 13.9 for failing to obtain the County’s prior written consent to sublease a lounge to Blade Urban Air Mobility, Inc.; and (5) under Lease Article 1 and the 2019 License, for Million Air’s failure to surrender Lot 2 following the License’s expiration.

Your Committee is informed that, during the course of the litigation, Million Air restored T-Hangar 25 to service, as confirmed by the Airport Manager and the County’s Department of Public Works and Transportation. This T-hangar restoration resolves three of the County’s five counterclaims—Counterclaims One, Two, and Three—as each was premised on the T-hangar’s being inoperable. The proposed Act presented herewith, if adopted by the Board, would allow for the dismissal of each of these three Counterclaims with prejudice.

Your Committee is also informed that the parties have negotiated a Lease Amendment which, as more fully discussed below and in the Committee Report for Local Law Intro. No. _____, will, among other things, add Lot 2 to Million Air's Leased Premises and will require Million Air to pay the County for its past use of the parking area. If the Lease Amendment is authorized by the Board pursuant to Local Law Intro. No. ____, then this will dispose of a fourth counterclaim of the County's—Counterclaim Five.

Your Committee acknowledges that the Lease Amendment will add Lot 2 to the Leased Premises. In consideration of this amendment, Million Air will pay the County \$77,083.25 for the past use of the parking area. In addition, the annual rent on the FBO will increase by \$15,678.56 commencing retroactively to February 1, 2024. The annual rent on the entire Leased Premises, inclusive of Lot 2, will be subject to increases as specified in the Lease. Million Air will remain responsible for the maintenance, repairs, snow and ice removal, and environmental compliance of Lot 2, to the extent that Million Air is responsible under the Lease for maintaining the balance of the Leased Premises.

Your Committee recognizes that, also as part of this Lease Amendment, Million Air will agree to maintain T-hangar 25 on the Leased Premises and T-hangar 25's associated ramp for LGA use, and Million Air will also continue to provide no fewer than 39 tie-down spaces for 39 LGA aircraft. All remaining terms and conditions of the Lease will remain unchanged. The terms of the Lease Amendment will be in substantially the same form as the draft amendment attached to the proposed Local Law.

Your Committee therefore understands that if the proposed Lease Amendment is approved through Local Law Intro. No. ____, then the Act enclosed herewith, if adopted, would also permit the County to dismiss Counterclaim Five regarding the License with prejudice.

The County Attorney has also advised your Committee that, with respect to the remaining issues in the litigation, the parties have agreed that if the Lease Amendment is approved and executed, and the County's four Counterclaims are dismissed with prejudice, then the parties will dismiss all other claims and counterclaims currently pending in the litigation without prejudice, subject to the terms of a written interim settlement agreement between the parties, to allow for further discussions without the expenditure of litigation costs and expenses.

Your Committee is also aware that the County withdrew a Short Form Environmental Assessment ("EA") under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.*, to the Federal Aviation Administration (the "FAA"), which covered both previously constructed facilities, and Million Air's proposed 78,000 sq. ft. hangar, and substituted a revised Standard EA covering the already constructed 50,000 sq. ft. hangar and terminal building. In the interim settlement agreement, Million Air acknowledges that this new EA will remain the operative EA before the FAA until a Finding of No Significant Impact ("FONSI") is issued regarding the already constructed facilities.

Your Committee has also been informed that the interim settlement provides the County with an express reservation of rights concerning any and all objections the County may have regarding Million Air's request to construct a new approximately 78,000 hangar on the Leased Premises. Finally, the interim settlement agreement states explicitly that nothing shall obligate the County Board to act

ACT NO.

-2024

AN ACT authorizing the County Attorney to settle counterclaims in the federal action entitled *White Plains Aviation Partners, LLC, d/b/a Million Air White Plains v. County of Westchester*, pending in the United States District Court for the Southern District of New York, No. 21 Civ. 5312 (VB).

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. Upon enactment of Local Law Intro. No. ____-2024, the County Attorney is hereby authorized to agree to a dismissal with prejudice of Counterclaims One, Two, Three, and Five in the federal action entitled *White Plains Aviation Partners, LLC, d/b/a Million Air White Plains v. County of Westchester*, pending in the United States District Court for the Southern District of New York, No. 21 Civ. 5312 (VB), which relate to the County's claims that White Plains Aviation Partners, LLC, breached its lease with the County by not properly using and maintaining a T-Hangar for light general aviation known as T-Hangar 25, and by using certain parking spaces without authorization.

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.