

ACT 109 - 2023

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive recommending the enactment of an Act, which, if adopted by this Honorable Board, would authorize the County of Westchester (the “County”) to enter into an inter-municipal agreement (“IMA”) with the County of Nassau, New York (“Nassau”), pursuant to which Nassau will share the source code and related files for its financial disclosure system (“System”) with the County.

The County Departments of Human Resources and Information Technology have advised that the Commissioner of Human Resources is required to perform the administrative tasks related to the filing of the annual Financial Disclosure Statement Forms (“Forms”) certain County employees, board and commission members are required to file under the County Code of Ethics. This function was previously administered by the Law Department and was a manual, cumbersome process involving significant printing, labeling and mailing. Forms frequently are submitted without being fully completed or containing incorrect information, necessitating additional correspondence to collect the required information.

The proposed IMA would assist the County Department of Information Technology with development of an automated solution for the Department of Human Resources which would be more efficient and more cost effective. The Department has further advised that Nassau’s financial disclosure form is similar to the County’s. Nassau has agreed to provide the County with the source code for Nassau’s System at no charge, so the Department may customize the application for County use. The new system would notify users if information is missing and will not allow Form submission until all required information is provided. The new system will also check for errors and automate follow ups to non-compliant responders.

The term of the proposed IMA shall commence on the date on which the IMA is fully executed by both parties and shall terminate when both parties have fulfilled their respective obligations, unless terminated sooner in accordance with its terms. Either party may

terminate the IMA for convenience upon sixty (60) days written notice of termination to the other party.

While the proposed IMA provides for sharing of the source code at no cost to the County, it includes the following indemnification provisions:

“Indemnification; Defense; Cooperation. (a) Each Party shall be solely responsible for and shall indemnify and hold harmless the other Party, and their respective officers, employees, and agents (the “Indemnified Party”) from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys’ fees and disbursements) and damages (“Losses”), directly arising out of the negligence or willful misconduct of the indemnifying Party or its respective Agents.

(b) The indemnifying Party shall, upon the appropriate Indemnified Party’s demand and at the Indemnified Party’s direction, promptly and diligently defend, at the indemnifying Party’s own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against the Indemnified Party for which the indemnifying Party is responsible under this Section, and, further to the indemnifying Party’s indemnification obligations, the indemnifying Party shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) The provisions of this Section shall survive the termination of this Agreement.”

The Planning Department has advised that the IMA does not meet the definition of an “action” under the State Environmental Quality Review Act (“SEQR”), and its implementing regulations, 6 NYCRR, Part 617. Please refer to the Memorandum from the Department of Planning dated January 12, 2023, which is on file with the clerk of your Honorable Board. Therefore, no further environmental review is required. Your Committee concurs with this conclusion.

An affirmative vote of a majority of the voting strength of the Board is required for approval of the attached Act.

Accordingly, your Committee concurs with the County Executive's proposal and recommends that your Honorable Board adopt the annexed legislation authorizing the County to enter into the IMA.

Dated: June 12th, 2023
White Plains, New York

Luigi Zilli Johnson

Robert J. J. J. J.

David J. Tubiolo

[Signature]

[Signature]

[Signature]

Call Park

Handwritten initials

Manuel Bau

COMMITTEE ON

c:mg/12-16 -2022

Budget & Appropriations

FISCAL IMPACT STATEMENT

SUBJECT: IMA Nassau Cty source code sharing NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ _____ -

Total Current Year Revenue \$ _____ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: N/A

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: Act to enter into an IMA with the County of Nassau pursuant to which the County will share the source code for Financial Disclosure System.

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: N/A

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Li-Li Ng

Title: Assistant Budget Analyst

Department: Budget

Date: May 11, 2023

Reviewed By: 
Budget Director

Date: 5/16/23

ACT NO. 109 – 2023

AN ACT to authorize the County of Westchester to enter into an inter-municipal agreement with the County of Nassau pursuant to which the County of Nassau will share the source code for its Financial Disclosure System.

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

Section 1. The County of Westchester be and hereby is authorized to enter into an inter-municipal agreement (“IMA”) with the County of Nassau, New York (“Nassau”), pursuant to which Nassau will share the source code and related files for its financial disclosure system (“System”) with the County at no cost to the County for a period commencing upon full execution of the IMA and terminating when both parties have fulfilled their respective obligations, unless terminated sooner in accordance with its terms.

Section 2. The County Executive or his authorized designee is hereby authorized and empowered to execute all instruments and take all action reasonably necessary and appropriate to effectuate the purposes hereof.

Section 3. This Act shall take effect immediately.

**INTERMUNICIPAL AGREEMENT BETWEEN
THE COUNTY OF NASSAU, NEW YORK,
AND
THE COUNTY OF WESTCHESTER, NEW YORK
IN RELATION TO THE FINANCIAL DISCLOSURE SYSTEM SHARING
AGREEMENT**

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement") made and entered as of the date on which this Agreement is last executed by the parties hereto, by and between the COUNTY OF NASSAU, a municipal corporation having its principal offices at One West Street, Mineola, New York 11501 ("Nassau County") and the COUNTY OF WESTCHESTER, a municipal corporation having offices at 148 Martine Avenue, White Plains, NY 10601 ("Westchester County") (collectively, the "Parties", and individually, a "Party").

WITNESSETH:

WHEREAS, Nassau County has developed a financial disclosure system (the "System") for Nassau County Employees through the Nassau County Department of Information and Technology; and

WHEREAS, Westchester County desires to use the source files and packages related to the System to develop its own Financial Disclosure System and Nassau County desires to provide Westchester County with the source files and packages; and

WHEREAS, Nassau County and Westchester County believe it to be in the best interest of the taxpayers of their respective communities to authorize intermunicipal cooperation with respect to mutual covenants set forth in the proposed agreement; and

WHEREAS, the Parties are authorized, pursuant to both Article 9, § 1 of the New York State (the "State") Constitution and Article 5-G of the General Municipal Law to enter into intergovernmental agreements.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Parties hereto agree as follows:

1. Term. This Agreement shall commence on the date on which this Agreement is last executed by the Parties (the "Commencement Date") and shall terminate when all Parties have fulfilled their respective obligations hereunder, unless this Agreement is sooner terminated in accordance with its terms. Either party may terminate this Agreement for convenience upon sixty (60) days written notice of termination to the other party.

2. The Program. Nassau County will be providing a compressed computer folder containing various source files and packages necessary for the function of the web application (the "Deliverables"). The source files include but are not limited to the following file types: .php, .html, .css, .js, and .sql. (the "Source Files"). Nassau County shall provide limited, over the phone, technical support.

3. Payment. (a) Nassau County agrees to provide the Deliverables and Source Files to Westchester County at no cost in exchange for Westchester County's agreement to

forbear sharing the Deliverables and Source Files with any third party and to consent to the other terms of this Agreement so that Nassau County may retain its proprietary right to the Deliverables and Source Files.

4. Indemnification; Defense; Cooperation. (a) Each Party shall be solely responsible for and shall indemnify and hold harmless the other Party, and their respective officers, employees, and agents (the "Indemnified Party") from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys' fees and disbursements) and damages ("Losses"), directly arising out of the negligence or willful misconduct of the indemnifying Party or its respective Agents.

(b) The indemnifying Party shall, upon the appropriate Indemnified Party's demand and at the Indemnified Party's direction, promptly and diligently defend, at the indemnifying Party's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against the Indemnified Party for which the indemnifying Party is responsible under this Section, and, further to the indemnifying Party's indemnification obligations, the indemnifying Party shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) The provisions of this Section shall survive the termination of this Agreement.

5. Relationship of the Parties. Nothing contained herein shall be construed to create an employment or principal-agent relationship, or a partnership or joint venture, between Nassau County and any officer, employee, servant, agent or independent contractor of Westchester County, or between Westchester County and any officer, employee, servant, agent or independent contractor of Nassau County, and neither party shall have the right, power or authority to obligate or bind the other in any manner whatsoever.

6. Right to Works/Ownership of Work Product/Copyright. (a) Nassau County retains all right, title and interest, including all copyrights, patent rights and trade secret rights, in any Nassau County property or works. Nassau County hereby grants to Westchester County a non-exclusive, irrevocable, non-transferable, royalty-free, perpetual internal use license to use such Nassau County property or work, as described in section 2, for the Program. As used in this Agreement, the term "Nassau County Works" means any of the following: (i) any deliverables or reports provided to Westchester County in connection with the Services, including applications, software program, Source Files, packages, documentation, report, data, flow diagram, document, or other material owned, generated, or distributed by Nassau County; or (ii) any tools or utilities contained in the deliverables or reports and developed by or on behalf of Nassau County or used by Nassau County.

(b) Nassau County retains sole ownership and all right, title, and interest in and to any reports, documents, data, photographs, Deliverables, Source Files, packages, and/ or other materials provided by Nassau County ("County Works") to the Westchester County for services under this Agreement.

(c) Any reports, documents, data, photographs, deliverables, products, and/or other materials produced by Westchester County pursuant to this Agreement, and any and all drafts

and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the Westchester County.

7. End-User Conditions and Restrictions. Copies of the Deliverables, Source Files, or application created or transferred pursuant to this Agreement are licensed, not sold, and Westchester County receives no title to or ownership of any copy of the Deliverables or Source files itself. Furthermore, Westchester County receives no rights to the Deliverables or Source files other than those specifically granted herein. Without limiting the generality of the foregoing, Westchester County receives no right to and shall not: (a) modify, create derivative works from, distribute, public display, or publicly perform the Deliverables or Source Files, except as provided in this Agreement; (b) sublicense or otherwise transfer any of the rights granted in section # 6; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the Software; or (d) use the Software for Service bureau or time-sharing purposes or in any other way allow third parties to exploit the Software, including without limitation as software-as-a-service. Provider grants the license in section # under copyright and also, solely to the extent necessary to exercise such rights, under patent and any other applicable intellectual property rights.

9. Standard Distribution Conditions and Restrictions. This Agreement grants Westchester County no title to or ownership of the Deliverables or Source Files, and Westchester County receives no rights to the Deliverables or Sources Files other than those specifically granted in Section # 6. Without limiting the generality of the foregoing, Westchester County shall not: (a) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the Deliverables or Source Files, unless explicitly permitted by this Agreement; or (b) use the Deliverables or Source Files for Service bureau or time-sharing purposes or in any other way allow third parties to exploit the Deliverables or Source Files, including without limitation as software-as-a-service; (c) distribute copies of the Deliverables or Source Files to any third party; or (d) distribute copies of the Deliverables or Source File to any employee or other third party, unless explicitly permitted by this Agreement. Westchester County may not license copies of the Deliverables or Source Files to any third party pursuant to the license above and neither Westchester County nor its users or employees will receive title to or ownership of any copy or of the Deliverables or Source Files itself. Provider grants the license in Section # 6, and also, solely to the extent necessary to exercise such rights, under patent and any other applicable intellectual property rights.

8. Additional Disclaimers. (a) Nassau County does not warrant that the Deliverables will perform without error or that it will run without immaterial interruption. Nassau County gives no warranty regarding, and will have no responsibility or liability for, any loss arising out of: (a) a modification of the Deliverables or Source Files made by anyone other than Nassau County, unless Nassau County approves such modification in writing; or (b) use of the Deliverables or Source Files in combination with any operating system not authorized in the County Works or which source files and packages the County Works describes as unsuitable.

(b) Westchester County recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the source files and packages, Westchester County assumes such risks. Nassau County offers no representation, warranty or guarantee that Westchester County's Data will not be exposed or disclosed through errors or the actions of third parties. Nassau County will have no responsibility or liability for the accuracy of data uploaded to the system created by Westchester County, including without limitation Westchester County's Data and any other data uploaded by Westchester County's users.

12. Compliance With Law.

(a) Generally. The Parties shall comply with any and all applicable Federal, State and local Laws (as hereinafter defined), including, but not limited to, the State Environmental Quality Review Act and those laws relating to conflicts of interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Records Access. The Parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. The Parties acknowledge that Information in the County's possession may be subject to disclosure under Section 87 of the New York State Public Officer's Law. In the event that such a request for disclosure is made, the County shall make reasonable efforts to notify the Parties of such request prior to disclosure of the Information so that the Parties may take such action as it deems appropriate.

(c) Technology Export. Westchester County shall not: (a) permit any third party to access or use the source file or packages in violation of any U.S. law or regulation; or (b) export the software or otherwise remove it from the United States, except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Westchester County shall not permit any third party to access or use the Software in, or export the Software to, a county subject to a United States Embargo (as of the Effective date, the Crimea Region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria).

13. Termination. (a) Generally. This Agreement may be terminated (i) for "Cause (as hereinafter defined)" by any Party upon thirty (30) days' written notice to the other Party, stating the reason for termination, (ii) upon mutual written Agreement of the Parties, and (iii) in accordance with any other provisions of this Agreement expressly addressing termination.

(b) As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; ((

17. Consent to Jurisdiction and Venue; Governing Law; Jury Trial Waiver.

Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in the State, and the Parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of the State, without regard to the conflict of laws provisions thereof. The Parties hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement

18. Notices. Any notice, request, demand or other communication required to be given or made in connection with this Agreement shall be (a) in writing, (b) delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service, (c) deemed given or made on the date the delivery receipt was signed, three (3) business days after it is mailed or one (1) business day after it is released to a courier service, as applicable, and (d) (i) if to the County Comptroller, to the attention of the Nassau County Comptroller at 240 Old Country Road, Mineola, NY 11501, and (ii) if to a Party or the Parties, to the attention of the persons who executed this Agreement on behalf of the respective Parties at the addresses first above written, or in each case to such other persons or addresses as shall be designated by written notice.

19. All Legal Provisions Deemed Included; Severability; Supremacy; Construction. (a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of any Party to Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

(d) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against any Party as drafter.

20. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

21. Successors and Assigns. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

22. No Arrears or Default. No Party is in arrears to any other Party to this Agreement upon any debt or contract and no Party is in default as surety, contractor, or otherwise upon any obligation to another Party, including any obligation to pay taxes to, or perform services for or on behalf of, another Party.

23. Assignment; Amendment; Waiver; Subcontracting. This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the Nassau County Executive or his or her duly-designated deputy (the "County Executive"), and any purported assignment, other disposal or modification without all such prior written consents shall be null and void. The failure of any Party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

24. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

25. Third Party Claims. Nothing in this Agreement shall create or give to third parties any claim or right of action against the any Party beyond such as may legally exist irrespective of this Agreement.

26. Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. No Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all approvals have been obtained, including, if required, approval by the County Legislature and the Town Board and (ii) this Agreement has been executed by the County Executive and the Town Supervisor.

(b) Availability of Funds. No Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to the Parties from the state and/or federal governments.

{The rest of this page is intentionally left blank.}

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

COUNTY OF NASSAU

By: _____
Name:
Title:
Date: _____

COUNTY OF WESTCHESTER

By: _____
Name:
Title:
Date: _____

State of New York)
) ss:
County of Nassau)

On this ___ day of _____, 20___, before me, the undersigned, a notary public in and for the State of New York, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual or the person upon whose behalf of which the individual acted, executed the instrument.

Notary Public

State of New York)
) ss:
County of Westchester)

On this ___ day of _____, 20___, before me, the undersigned, a notary public in and for the State of New York, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual or the person upon whose behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.
WESTCHESTER COUNTY)

I **HEREBY CERTIFY** that I have compared the foregoing Act, Act No. 109 - 2023, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Act, which was duly adopted by the County Board of Legislators, of the County of Westchester on June 20, 2023, and approved by the County Executive on June 21, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 22nd day of June, 2023.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

