

ACT NO. 2023- \_\_\_\_\_

**AN ACT** authorizing the County of Westchester to enter into an intermunicipal agreement with the Town of North Salem in connection with a flood mitigation project (Capital Project BPL26, Unique ID# 2235).

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

**Section 1.** The County of Westchester (the "County") is hereby authorized to enter into an intermunicipal agreement (the "IMA") with the Town of North Salem (the "Town"), in substantially the form attached hereto, in connection with a flood mitigation project to be conducted in the Town to mitigate flooding in the area of Peach Lake.

**§2.** The term of the IMA shall commence upon execution thereof by both parties and approval of same by the Office of the County Attorney, and shall continue for a period of five (5) years.

**§3.** The County Executive or his authorized designee is empowered to execute any and all documents necessary and appropriate to effectuate the purposes hereof.

**§4.** This Act shall take effect immediately.

**AGREEMENT**, made the            day of            , 2023 by and between

**THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601,

(hereinafter referred to as the “County”)

and

**THE TOWN OF NORTH SALEM**, a municipal corporation of the State of New York, having an office and place of business at 266 Titicus Road, North Salem, New York 10560,

(hereinafter referred to as the “Municipality”).

### **RECITALS**

**WHEREAS**, in response to serious flooding issues throughout Westchester County, in 2011 the County enacted the Westchester County Storm Water Management Law (“SWML”) to assist municipalities with storm water management (flood mitigation). See Laws of Westchester County Chapter 241, Article III-A, Sections 241.252-241.260. The SWML provides for the evaluation of flooding within the County through preparation of watershed “reconnaissance plans”, and the SWML authorizes County cooperation with municipalities, including funding assistance, to improve storm water management and reduce flooding. The SWML authorizes the creation of a Storm Water Advisory Board (the “SWAB”) to assist County municipalities in addressing flooding; and

**WHEREAS**, the SWML enables the County to partner with municipalities located in Westchester to provide funding for flood mitigation and/or flood damage reduction projects; and

**WHEREAS**, the SWML funding program is divided into “Phase I” funding and “Phase II” funding; and

**WHEREAS**, Phase I funding is up to fifty (50) percent toward the costs for the preparation of detailed engineering analysis, design, specification and construction documents for flood mitigation and/or flood damage reduction projects; and

**WHEREAS**, Phase II funding is up to fifty (50) percent toward the costs for the implementation and construction of flood mitigation and/or flood damage reduction projects; and

**WHEREAS**, approval by the Board of Legislators for Phase I funding does not guarantee approval for Phase II funding; and

**WHEREAS**, the Municipality wishes to participate in the SWML funding program and has submitted an application to the County for Phase I financial assistance to address flooding problems within the Municipality; and

**WHEREAS**, a Storm Water Reconnaissance Plan has been prepared by the County departments of Planning and Public Works and Transportation pursuant to the SWML entitled the Stormwater Reconnaissance Plan for the Croton River and Inland Long Island Sound Watershed (the "Reconnaissance Plan"); and

**WHEREAS**, the Reconnaissance Plan was recommended by the SWAB to the County Executive and the Board of Legislators; and

**WHEREAS**, the Board of Legislators approved the Reconnaissance Plan on September 8, 2014 by Act No. 155 - 2014; and

**WHEREAS**, the area of flooding for which the Municipality wishes to participate in the SWML funding program is identified as a flood problem area in the Reconnaissance Plan; and

**WHEREAS**, pursuant to the SWML funding program and in an effort to protect County-owned and/or managed infrastructure, assets and property, including the protection of County bridges, sanitary sewer and/or storm water pipes, and County parkland and other municipal and private property, the County desires to contribute Phase I funding to the costs of a study focused on developing solutions to flooding in the area of Peach Lake in the Town of North Salem, identified as Flood Problem Area NSM-5 in the Stormwater Reconnaissance Plan for the Croton River and Inland Long Island Sound Watershed (the "Project"), and further described herein, to be undertaken by the Municipality; and

**WHEREAS**, the Municipality has prepared documentation in support of the need for the Project and the Project has been presented to and received support from the County Stormwater Advisory Board.

**NOW, THEREFORE**, in consideration of the mutual representations, covenants and agreements herein set forth, the County and the Municipality, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

## **ARTICLE I**

### **TERM**

**Section 1.0.** The recitals are hereby incorporated by reference into the body of this Agreement.

**Section 1.1.** The term of this Agreement shall be for a period of five (5) years commencing upon full execution as evidenced by the date on the top of page 1 of this Agreement.

## **ARTICLE II**

### **TERMS OF PAYMENT AND MUNICIPALITY REPRESENTATIONS**

**Section 2.0.** Pursuant to the County's SWML funding program and in an effort to protect County-owned and/or managed infrastructure, assets and property, including the protection of County bridges, sanitary sewer and/or stormwater pipes, and County parkland and other municipal and private property, the County desires at this time to contribute Phase I funding toward a study of the Project. The Project is owned by the Municipality and consists of flood mitigation and/or flood damage reduction work. The scope of work for this Phase I funding agreement is more fully described in Schedule "A", attached hereto and made a part hereof. In consideration for the County's aforesaid contribution, the Municipality represents that it shall complete the study of the Project in accordance with Schedule "A" and all of the other terms of this Agreement.

The County agrees to finance the study for the Project on a reimbursement basis. It is recognized and understood by the Municipality that at the time of execution of this Agreement, the County has obtained appropriations and bonding authority to fund its share of the cost of the study for the Project. Eligible project costs up to \$239,800.00 shall be paid up to fifty (50) percent by the County (up to \$119,900.00) and fifty (50) percent by the Municipality; provided, however, should the total eligible project costs be less than \$239,800.00, the County shall only be responsible for fifty (50) percent of the lesser amount. The Municipality shall be responsible for all costs in relation to the Project that exceed the County's contribution set forth herein, and under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the County be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder in connection with this Project except as herein expressly set forth.

The County does not provide or extend any warranty of fitness for a particular purpose or workmanship for any work undertaken in connection with, or paid under, this Agreement. Payment

hereunder by the County shall operate as a release to the County from any and all obligations or liabilities in connection herewith to the Municipality, its contractor(s), or subcontractor(s) hereunder.

**Section 2.1.** The Municipality represents that within one (1) year of the date hereof that the “Flood Mitigation Criteria” as set forth in that certain document entitled “Development and Planning Standards of the Westchester County Flood Action Task Force” developed by the SWAB and approved by the Board of Legislators will have been adopted in the Municipality’s appropriate land use regulations, guidelines and policies or in stand-alone form, and documentation of the adoption of such policies must be provided to and approved by the Commissioner of the County Department of Planning (“Planning Commissioner”). It is understood and agreed to by the Municipality that the payment of County funds under this Agreement for the Project is contingent upon the Municipality’s adoption of the aforesaid policies.

**Section 2.2.** The parties agree that all payments made by the County to the Municipality shall be on a reimbursement basis only. Any and all requests for payment to be made, including any request for partial payment upon completion of a portion of the Project, shall be submitted by the Municipality on an invoice and shall be paid only after approval by the Planning Commissioner and the Commissioner of the Westchester County Department of Public Works and Transportation (“DPWT Commissioner”). The Municipality agrees that it shall submit all documentation that the County may require to substantiate all requests for payment. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall a *final* payment be made to the Municipality prior to completion of the Project and the approval of same by the Planning Commissioner and DPWT Commissioner. If at any time the Municipality shall neglect or fail to perform properly any of its obligations under this Agreement, the County shall have the right to withhold, in whole or in part, any payments otherwise due or to become due to the Municipality hereunder until such neglect or failure shall have been remedied to the reasonable satisfaction of the County.

**Section 2.3.** The Municipality represents warrants and guarantees that:

(a) It is a municipal corporation duly organized, validly existing under the laws of the State of New York; the execution and performance of this Agreement by the Municipality has been duly authorized by its governing body; this Agreement, and any other documents required to be delivered by the Municipality when so delivered, will constitute the legal, valid and binding obligations of the

Municipality in accordance with their respective terms; and the Municipality will deliver to the County at the time of execution of this Agreement a resolution adopted by its governing body authorizing the execution of this Agreement, and any other documents required to be delivered by the Municipality, including the aforesaid Easement;

(b) The person signing this Agreement on behalf of the Municipality has full authority to bind the Municipality to all of the terms and conditions of this Agreement pursuant to the resolution granting such authority by the Municipality's governing body, as noted above;

(c) It is financially and technically qualified to perform its obligations hereunder, including without limitation, full implementation of the Project; and

(d) The Municipality acknowledges that the County is acting in reliance on the above representations.

### **ARTICLE III**

#### **MANAGEMENT OF THE PROJECT**

**Section 3.0.** The Municipality shall be responsible for all engineering phases of the Project, including, but not limited to, any additional study or engineering necessary to fully comply with the requirements of the funding program, final engineering, specifications and designs. The Municipality shall submit any required documentation, including additional engineering or progress reports, to the DPWT Commissioner or his duly authorized representative and to the Planning Commissioner or her duly authorized designee for review, and said design plans and specifications shall be mutually approved by all parties. The Municipality shall fully complete the project tasks as set forth in Schedule "A" and submit proof of such completion to the County for its review and approval on or before eighteen (18) months from the date of the execution of this Agreement by all parties. Notwithstanding the foregoing, the parties may agree to a twelve (12) month extension of time for completion, subject to all necessary legal approvals for such extension of time. In the event that the Municipality fails to complete the scope of work set forth in Schedule "A" and submit proof of such completion to the County in a timely manner as set forth herein, including any twelve (12) month extension agreed to between the parties, it shall remit all funds disbursed hereunder to the County within thirty (30) days of receipt of written request from the County unless an extension of time for completion is mutually agreed to between the parties, subject to all necessary legal approvals for said extension of time.

**Section 3.1.** In connection with the Project, the Municipality shall obtain all required approvals and permits and promptly execute and comply with all statutes, ordinances, rules, orders, regulations, codes and requirements of the Federal, State, County and municipal governments of the County. The Municipality shall also comply with any and all sanitary rules and regulations of the State and County Health Departments and with the State Environmental Quality Review Act. The Municipality shall comply with the aforementioned statutes, ordinances, rules, orders, regulations, codes and requirements in its implementation of the Project including, but not limited to management, operation, maintenance and supervision of same.

**ARTICLE IV**  
**FAIR AND AFFORDABLE HOUSING CONDITIONS**

**Section 4.0.** The Municipality hereby commits to the County that it is in compliance with the terms and conditions set forth in the County's Discretionary Funding Policy annexed hereto and forming a part hereof as Schedule "E" or has submitted documentation to the satisfaction of the County that the Municipality is not considered an eligible municipality under these requirements.

**Section 4.1.** As further consideration for the County's financial contribution toward the Project, the Municipality certifies that it has adopted municipal zoning code provisions and/or policies which reflect the guidance provided in the Model Ordinance Provisions and the Municipality is committed to affirmatively further fair housing, including a ban on local residency requirements and preferences and other selection preferences that do not affirmatively further fair housing, except to the extent provided in the Model Ordinance Provisions.

**Section 4.2.** The Municipality agrees to offer to the County a Right of First Refusal to retain and/or purchase any and all land acquired in rem to be used for housing that affirmatively furthers fair housing ("AFFH").

**Section 4.3.** The Municipality agrees to actively affirmatively further fair housing through its land use regulations and other affirmative measures to assist the development of affordable housing.

**Section 4.4.** The Municipality further agrees to market housing units that affirmatively further fair housing in accordance with Westchester County's Affirmative Fair Housing Marketing Plan throughout the period of affordability.

**Section 4.5.** Nothing in this Agreement is intended to affect the County's interest in the Project or release the Municipality from its obligations under the law with respect to affordable AFFH units.

**Section 4.6.** Should the Municipality fail to abide by any of the above conditions, the Municipality shall, upon thirty (30) days written notice by the County, refund any funds paid to the Municipality under this Agreement.

## **ARTICLE V** **ACCOUNTING**

**Section 5.0.** The Municipality shall cause accurate records and books of account to be maintained in which shall be entered all matters relating to this Agreement, including all liabilities thereof and all expenditures, and payments to any and all contractors or subcontractors involved in the Project. Such books and records shall be maintained in accordance with generally accepted accounting principles, consistently applied and shall be kept at a location within Westchester County. The Municipality will provide the County with documentation, upon the County's request, in order to verify same. The County shall have the right to audit, inspect, examine and copy such books and records of the Municipality at all reasonable times during normal business hours at the office of the Municipality. The County's audit rights hereunder extend to all documents, reports, and records which relate to the Municipality's commitment to affirmatively further fair housing as described in Article IV herein.

## **ARTICLE VI** **NOTICES**

**Section 6.0.** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, (with acknowledgement received and a copy of the notice sent by registered or certified mail, postage pre-

paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County: Commissioner  
Department of Planning  
County of Westchester  
148 Martine Avenue  
White Plains, New York 1060

Commissioner  
Department of Public Works and Transportation  
County of Westchester  
148 Martine Avenue  
White Plains, New York 10601

with a copy to: County Attorney  
County of Westchester  
148 Martine Avenue  
Room 600  
White Plains, New York 10601

To the Municipality: Town Supervisor  
The Town of North Salem  
266 Titicus Road  
North Salem, New York 10560

with a copy to:

## **ARTICLE VII**

### **INDEMNIFICATION**

**Section 7.0.** To the fullest extent permitted by law, the Municipality shall defend, indemnify and hold harmless the County, its elected officials, officers, employees and agents (the "Indemnitees") from and against, any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly from the Project, including any which may arise from a change in applicable laws, rules and regulations, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following:

(a) Work. Any construction, repair, alteration, addition, replacement, restoration or improvement work done by or on behalf of the Municipality in, on or about the Project or any part thereof;

(b) Use. The use, occupation, condition, operation, maintenance, management, supervision or development of or providing security for all or any portion of the Project, or the affected portion thereof, by or on behalf of the Municipality, including without limitation, any liability with respect to the any violations imposed by any governmental authorities in respect of any of the foregoing;

(c) Act or Failure to Act of Municipality. Any act performed by, or any failure to perform any act required to be performed by the Municipality, a third party under the direction or control of the Municipality, or any of the Municipality's officers, agents, contractors, servants, employees, lessees or invitees in connection with this Agreement or the Project;

(d) Accidents, Injury to Person or Property. Any accident, injury, (including death at any time resulting therefrom) or damage to any person, including, without limitation, employees of the Municipality or any Indemnitee, or property occurring in, on, or about the Project or any part thereof; or

(e) Breach of Municipality's Obligation. Any failure or refusal on the part of the Municipality to perform its obligations pursuant to this Agreement.

(f) Municipality's Obligations. The Municipality's failure, within any applicable grace period, to perform or comply with any of the covenants, terms or conditions contained in this Agreement on the Municipality's part to be kept, observed, performed or complied with within any applicable grace period.

**Section 7.1.** The Municipality hereby further acknowledges and agrees that it shall defend, indemnify and hold harmless the County for any "Environmental Damages" to the Property. "Environmental Damages" shall mean all claims, damages, demands losses, penalties, fines, fees, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including, without limitation, reasonable attorney's fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Material" or "Hazardous Waste" upon, beneath, or about the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of "Environmental Requirements" pertaining to the Property, regardless of whether the existence of such "Hazardous Materials" or "Hazardous Waste" or the violation of "Environmental Requirements" arose prior to the Municipality or County's ownership of the Property, including, without limitation:

(i) damages for personal injury, or injury to Property or natural resources occurring upon or off the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;

(ii) fees incurred for the service of attorneys, consultants, contractors or experts, laboratories and all other costs incurred in connection with the investigation or remediation of such "Hazardous Materials" or "Hazardous Waste" or violation of "Environmental Requirements" including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the Property or any other property or otherwise expended in connection with such conditions; and

(iii) liability to any third person or governmental agency to indemnify such person or agency for the costs expended in connection with the items referenced in subparagraph (ii) herein;

(iv) diminution in the value of the Property and damages for loss of business and restriction on the use of the Property or any part thereof.

**Section 7.1.a. Definitions.** For the purposes of this Agreement, the following definitions shall apply:

- (1) "Hazardous Materials" or "Hazardous Waste" shall mean any substance:
  - (i) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or
  - (ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitations, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC §9601 (14) 42 USC §9602 and any "hazardous waste" as defined in or listed under the United States Solid Waste Disposal Act, as amended, 42 USC §6901(5), 42 USC §6921; or
  - (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or
  - (iv) the presence of which, on the Property, causes or threatens to cause a nuisance on the Property or to nearby properties or poses or threatens to pose a hazard to the health and safety of persons on, about or nearby the Property; or

(v) the presence of which on nearby properties would constitute a trespass by the owner of the Property; or

(vi) without limitation which contains gasoline, diesel fuel, or other petroleum hydrocarbons; or

(vii) without limitation which contains polychlorinated biphenols (PCBs), asbestos, or urea formaldehyde foam insulation.

(2) "Environmental Requirements" shall mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

**Section 7.2.** The Municipality shall promptly notify the County in writing of any claims made or any suits instituted against the Municipality of which it has knowledge arising from its performances hereunder or in connection with this Agreement or in connection with the Project.

**Section 7.3.** In the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of all or part of this Article, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing all or part of this Article of the Agreement.

**Section 7.4.** This Article shall survive termination or expiration of this Agreement.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**Section 8.0.** Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void.

**Section 8.1.** The Municipality shall submit documentation to the County demonstrating compliance with the State Environmental Quality Review Act and its implementing regulations (“SEQR”), including those activities that have been determined not to constitute an action as defined by SEQR or activities determined to be Type II actions as defined by SEQR. The Municipality shall act as the lead agency for meeting the requirements of SEQR for any Unlisted or Type I action that is undertaken pursuant to this Agreement, unless otherwise directed by the Planning Commissioner. The Municipality shall include the County as an Involved Agency (as defined in SEQR) in all matters relating to SEQR and conduct a coordinated review where applicable.

**Section 8.2.** The failure of the County to insist upon strict performance of any term, condition or covenant herein shall not be deemed a waiver of any rights or remedies that the County may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants herein.

**Section 8.3.** It is mutually understood and agreed that the terms, covenants, conditions and agreements herein contained shall be binding upon the parties hereto and upon their respective successors, legal representatives and assigns.

**Section 8.4.** This Agreement and its attachments constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. This Agreement shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties, and approved by the Office of the County Attorney.

**Section 8.5.** It is recognized and understood that the Municipality is not an agent of the County and in accordance with such status, the Municipality, its consultant(s), its subcontractor(s), and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement neither hold themselves out as, nor claim to be acting in the capacity of officers, employees, agents, representatives or servants of the County, nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges

derived from workers compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

**Section 8.6.** The Municipality shall comply with the insurance requirements contained in Schedule "C" entitled "Standard Insurance Provisions," attached hereto and made a part hereof. The Municipality may, in lieu of procuring and maintaining the aforesaid insurance, elect to obtain such coverage through a program of self-insurance, which coverage and program shall be in accordance with generally accepted standards for similarly situated entities. In addition to the foregoing, the Municipality shall contractually ensure that all of its contractors, subcontractors and/or independent contractors (individually a "Contractor" or collectively, the "Contractors") that are engaged to construct the Project shall provide such insurance coverage as described in Schedule "C" naming as additional insured, the Municipality and the County and their respective officials (elected or otherwise), officers, employees and agents (collectively the "Additional Insureds"). The Municipality shall require, before the Project commences that each such insurance policy be endorsed to contain the following clauses: (a) the insurer shall have no right to recovery or subrogation against the Additional Insureds (including their respective officials (elected or otherwise), officers, employees and agents), it being the intention that the insurance policy shall protect both the insured and the Additional Insureds and be primary coverage for any and all losses covered by such insurance; (b) the clause "other insurance provisions" in any such insurance policy shall not apply to the Additional Insureds or their insurance policies; (c) the insurer issuing the policy shall have no recourse against the Additional Insureds (including their respective officials (elected or otherwise), officers, employees and agents) for payment of any premiums or for assessments under any form of policy; and (d) any and all deductibles in such insurance policy shall be assumed by and be for the account of, and at the sole risk of the Contractor.

**Section 8.7.** This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

**Section 8.8.** In the event that any one or more provisions, sections, subsections, clauses or words of this Agreement are for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid section, subsection, clause or word has not been contained herein.

**Section 8.9.** This Agreement shall be deemed executory only to the extent of funds appropriated and made available for the purpose of this Agreement and no liability on account thereof shall be incurred by the County beyond the amount of such appropriated funds.

**Section 8.10.** All covenants, stipulations, promises, agreements and obligations of the Municipality and the County contained herein shall be deemed to be stipulations, promises, agreements and obligations of the Municipality and the County and not of any member, officer or employee of the Municipality or the County in his/her individual capacity and no recourse shall be had for any obligation or liability herein or any claim based thereon against any member, officer or employee of the Municipality or the County or any natural person executing this Agreement.

**Section 8.11.** The parties represent that they have all requisite power and authority to execute, deliver and perform this Agreement, and this Agreement has been duly authorized by all necessary action on the part of the parties. The parties each agree to execute and deliver such further instruments and to seek such additional authority as may be required to carry out the intent and purpose of this Agreement, including providing the County with any necessary property interests in the Project in order for the County to fund the Project.

**Section 8.12.** This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement binding upon all the parties hereto.

**Section 8.13.** Nothing in this Agreement shall act to confer third-party beneficiary rights on any person or entity not a party to this Agreement.

**Section 8.14.** The headings in this Agreement are for reference purposes only and shall not be used in construing the terms of this Agreement.

**Section 8.15.** The Municipality agrees to comply with the terms set forth in Schedule "D", attached hereto and made a part hereof, regarding Vendor Direct Payment Terms.

**Section 8.16.** The Municipality hereby acknowledges that any provision of this Agreement which requires consent of the County shall be subject to receipt by the County of any and all necessary legal approvals.

**Section 8.17.** No director, officer, employee, agent or other person authorized to act on behalf of the County shall have any personal liability in connection with this Agreement or any failure of the County to perform its obligations hereunder. No director, officer, employee, agent or other person authorized to act on behalf of the Municipality shall have any personal liability in connection with this Agreement or any failure of the Municipality to perform its obligations hereunder.

**Section 8.18.** The Municipality agrees to allow the County reasonable access to the Project, during normal business hours, to permit inspection and observation of the Project. The Municipality may require the County to provide reasonable notice prior to such inspection and observation.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement on the day and year first above written.

**COUNTY OF WESTCHESTER**

By: \_\_\_\_\_  
Blanca Lopez  
Acting Commissioner of Planning

**TOWN OF NORTH SALEM**

By: \_\_\_\_\_  
Name:  
Title:

Approved by the Board of Legislators of the County of Westchester by Act No. 2023-  
on the day of , 2023

Approved by the Town Board of the Town of North Salem on the \_\_\_ day of \_\_\_\_\_, 2023.

Approved

---

Sr. Assistant County Attorney  
County of Westchester

DRAFT

**MUNICIPALITY'S ACKNOWLEDGMENT**

STATE OF NEW YORK )

ss.:

COUNTY OF WESTCHESTER)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2023 before me, the undersigned, a Notary Public in and for said State, 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 behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment