

LOCAL LAW NO. – 2025

A LOCAL LAW authorizing the County of Westchester to enter into an intermunicipal agreement with the City of Yonkers, whereby the County will lease certain property from the City of Yonkers, and contribute \$15,000,000.00 toward the construction of upland site work improvements, including remediation work, to create a riverfront park in Yonkers.

BE IT RESOLVED by the County Board of the County of Westchester as follows:

Section 1. The County of Westchester (“County”) is hereby authorized to enter into an intermunicipal agreement (“IMA”) with the City of Yonkers (“City”), whereby the County shall (i) contribute up to \$15,000,000.00 for the creation of a riverfront park on the Hudson River, in the Ludlow section of Yonkers (“Park,” “Property” or “Fernbrook/Ludlow Waterfront Park”) and (ii) lease the Park from the City, which Park is comprised of certain riverfront properties owned by the City located on Water Grant Street, Pier Street and Yerks Place, Yonkers, NY, more particularly identified as Section 1, Block 615, Lots 1, 6, 10 and 35.45, Section 1, Block 622, Lots 1 and 8 and Section 1, Block 623, Lots 1, 2 and 4 on the tax maps of the City of Yonkers, and certain County property which is being conveyed to the City and leased back to the County.

§2. The County shall contribute up to \$15,000,000.00 to finance the construction of upland site work improvements to create the Park, including, but not limited to, remediation work.

§3. The Park shall be operated and maintained solely by the City and remain accessible to all County residents for park purposes in perpetuity, free of any parking entry charges or use

fees, except for the renting of picnic facilities, kayak equipment or other activities mutually approved by the parties, provided (i) such fees are reasonable and (ii) the City shall charge the same fees to residents and non-residents of the City of Yonkers.

§4. The term of the IMA term shall commence upon the commencement of the construction of the upland site work improvements on the Park and shall continue for the life of the bonds which is anticipated to be fifteen (15) years, unless the Agreement is terminated sooner in accordance with the terms of this Agreement.

§5. The County Executive or his authorized designee is hereby empowered to execute all instruments and take such action as may be reasonably necessary to effectuate the purposes hereof.

§6. This Local Law shall take effect immediately.

THIS INTERMUNICIPAL AGREEMENT ("Agreement"), made the____ day of _____, 20____, 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 CITY OF YONKERS, a municipal corporation of the State of New York, having an office and place of business at 40 South Broadway, Yonkers, NY 10701 (hereinafter referred to as the "Municipality" or the "City")

WITNESSETH

WHEREAS, the Municipality is the owner of certain riverfront properties consisting of approximately 3.2 acres (the "City Property"), located on Water Grant Street, Pier Street and Yerks Place, Yonkers, NY, in the Ludlow Section of Yonkers, more particularly identified as Section 1, Block 615, Lots 1, 6, 10 and 35.45, Section 1, Block 622, Lots 1 and 8 and Section 1, Block 623, Lots 1, 2 and 4 on the tax maps of the City of Yonkers and described on Schedule "A," which is attached to and made a part of this Agreement; and

WHEREAS, the County, acting by and through the Department of Planning ("Department"), is the owner of certain real property adjacent to the City Property, consisting of approximately 0.4 acres (the "County Parcel" or "County Property"), located at 1 Fernbrook Street, Yonkers, New York 10705, as more particularly identified as Section 1, Block 600, portion of Lot 1 in the tax maps of the City of Yonkers and described on Schedule "A-1" which is attached to and made a part of this Agreement (the City Property together with the County Parcel shall hereinafter be referred to as the "Property")

WHEREAS, the parties desire to conduct upland site work improvements on the Property to create a riverfront park ("Park" or "Fernbrook/Ludlow Waterfront Park") on the Property and make the Property available to all Westchester County residents for park and recreational purposes; and

WHEREAS, the County desires to assist the Municipality in making the needed park improvements to the Property.

NOW, THEREFORE, in consideration of the premises and 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

IMPROVEMENTS TO THE PROPERTY

Section 1.0. The Municipality shall provide, all labor and equipment required to perform all work described below, as more particularly detailed in Schedule “B” which is attached to and made a part of this Agreement. All work by the Municipality shall be performed in conformance with the specifications to be pre-approved by the County and using the MasterSpec/CSI format Specifications with unit pricing as a framework for construction methodology.

The Municipality shall undertake park improvements to the Property which have been approved by the Municipality and the County including, but not limited to, site preparation and demolition, site & soil remediation, excavation and grading, pre and post storm water erosion and sedimentation control, bulkhead and pilings work, and then the construction of park facilities, as more particularly described in the drawings and specifications attached hereto as Schedule “B”, to be used, occupied and/or enjoyed by all County residents (“Park Improvements”). Park improvements shall consist, among other things, of park facilities to including but not limited to a playground, dog park, non-wading water spray park, outdoor fitness area, parking lot with EV charging stations, picnic and seating areas, and associated drainage structures, pavements, separation walls, fences, railings, site furniture, lighting and landscaping. The Municipality shall not deviate from the approved drawings and specifications without the prior written consent of the County’s Commissioner of Planning or his authorized representative (the “Planning Commissioner”) and the County’s Commissioner of Public Works and Transportation (the “Public Works Commissioner”). The Property and the improvements shall be accessible to all Westchester County residents in perpetuity.

All of the activities listed herein shall be incorporated into the unique project undertaken to create the Park and shall not be segregated into separate construction contracts or other agreements scheduled to take place at a future date. Any and all permits and approvals necessary to complete this work from any agencies, including but not limited to all State and Federal agencies, are the responsibility of the Municipality and shall be provided to the County prior to undertaking any construction activities.

No alterations, changes or modifications to the Park shall be made by the Municipality during the term of this Agreement, without first obtaining the approval of the County's Planning's Commissioner and Public Works Commissioner.

ARTICLE II

PAYMENT

Section 2.0. In consideration for the park improvements and the availability of the Park to all Westchester County residents, the County shall pay to the Municipality an amount not to exceed FIFTEEN MILLION DOLLARS (\$15,000,000.00), payable in the manner set forth below, for the Park Improvements described in Section 1, not to exceed the total aggregate amount of \$15,000,000.00. In the event the Municipality incurs costs in excess of \$15,000,000 to construct the Park, such costs shall be the responsibility of the Municipality. The County shall have no further financial obligation whatsoever for the Property, including operation, maintenance and future capital improvements.

Payment under this Agreement shall be made after submission by the Municipality of an invoice together with supporting documentation, as specified below, and paid only after approval of the invoice and supporting documentation by the Planning Commissioner and Public Works Commissioner. The City shall invoice the County monthly, and such invoices shall be uniquely numbered, and signed by the Municipality, evidencing work completed up to the invoice date. Each invoice shall be submitted with supporting documentation, consisting of contractor invoices as well as an AIA G702 form(s) signed by the Architect or Engineer of Record and the Inspecting Engineer certifying that the work claimed in the requisition has been performed as per the approved plans & specifications. Any changes to the work shall be submitted on an AIA G701 form with

the same requirements and signatures, however, the County will not be responsible for payment of any change orders without advance written approval of the County.

Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Municipality for out of pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder.

Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Municipality as are reasonably pertinent to this Agreement or inspect the work to substantiate the basis for payment. The County will not withhold payment pursuant to this paragraph for more than sixty (60) days after payment would otherwise be due pursuant to the provisions of this Section 2.0, but the County shall not be restricted from withholding payment for cause found in the course of such audit or because of failure of the Municipality to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

ARTICLE III

LEASE OF PROPERTY

Section 3.0. In order to facilitate the County's issuance of bonds to finance the park improvements to the Property, the Municipality grants to the County the right to use and occupy the upland portion of the Park, as more particularly detailed in Schedule "B," for the term and subject to the conditions set forth in this Agreement. The County shall use the Property for the purposes contemplated by this Agreement and for no other purpose.

Section 3.1. The consideration for this lease shall be the County's faithful performance of all of its obligations under this Agreement.

Section 3.2. Upon the termination of this Agreement, the County shall peaceably surrender up the Property to the Municipality. Upon such termination, the Municipality may re-enter and repossess the Property together with all improvements and additions thereto. The Municipality

shall use the Property in perpetuity for the purposes contemplated by this Agreement and for no other purpose.

Section 3.3. (a) Except as set forth in that certain Phase I and II environmental site assessment and field testing reports. for the Property, dated February 28, 2022 and April 21, 2022, respectively, a copies of which have been delivered to the County, and the representations of sewer discharges set forth in Section 5.1, the Municipality represents and warrants and guarantees to the County as follows:

- (i) the Municipality has no knowledge of, and has not received any notice of any condition at, on, under or related to the Property or ground or surface waters associated therewith or migrating or threatening to migrate to or from the Property which may have a material effect on the value of the Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements (as defined below); and
- (ii) the Municipality has no knowledge of, has and has not received any notice of any condition at, on, under, or related to the Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Property presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as "Hazardous Materials" below; and

(b) Definitions. For the purposes of this Agreement and this Section 3.3, the following definitions will apply:

- (i) "Hazardous Materials" will mean any substance:
 - (a) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or
 - (b) 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 limitation, 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

- (c) 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
 - (d) 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
 - (e) the presence of which on nearby properties would constitute a trespass by the owner of the Property; or
 - (f) which contains, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; or
 - (g) which contains, without limitation, polychlorinated biphenols (PCBs), asbestos, or urea formaldehyde foam insulation.
- (ii) "Environmental Requirements" will 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.

(c) The Municipality shall, perform any cleanup, response, removal or remediation of any environmental conditions currently existing on the Property, required by a governmental entity (hereinafter collectively referred to as "Response Action"), and the Municipality shall not be entitled to any damages, actual or consequential, by reason of any work required by the Response Action or the Response Action's interference with Municipality's use of the Property. The Municipality shall permit the County and its contractors full, unrestricted and unconditional access to the Property for the purpose of inspecting, completing or engaging in a Response Action for which the Municipality is responsible should the Municipality fail to diligently pursue and

complete such Response Action to the satisfaction of the governmental agency requiring the Response Action. The County's completion of any of Municipality's obligations hereunder shall not be deemed a waiver of the Municipality's obligations under this Agreement. The County shall have the right, but not the obligation, to conduct reasonable inspections of the Municipality's Response Action and the Municipality shall provide the County with a copy of the Response Action, all information requested by the County regarding the Municipality's Response Action or any environmental condition for which the Municipality is responsible.

(d) Without limiting any other provisions of this Agreement, the Municipality, at its expense, will at all times maintain and keep the Property and all improvements and property now or hereafter erected or placed thereon, including but not limited to, the structures, equipment, and operations, in compliance with all federal, state, and local laws, rules and regulations designed to prevent or control the discharge of substances in the land, water, or air, and the Municipality agrees to indemnify, hold harmless and defend County from and against any and all suits, actions, proceedings, fines, claims, or the cleanup, response, removal or remediation of any environmental condition arising from or alleged to arise from a violation of any such environmental law, rule, or regulation, unless and except where such violation shall have been caused solely by the fault of County.

Without limiting any other provision of this Agreement, the County shall have the right to enter and inspect the Property in order to determine whether the Municipality is complying with such laws, rules and regulations, but no such inspection or absence of inspection by the County shall be construed to relieve the Municipality of its obligations to comply with all such laws, rules, and regulations.

(e) The Municipality hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages (as defined below), arising out of or in any way connected with the Municipality's work at the Property or the use of the Property. Environmental Damages will mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any kind or nature, whether or not such claim is ultimately defeated, and any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or

unforeseeable, including without limitation, reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" at, on, under or related to the Property (or ground or surface water associated therewith) 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 when the existence of such Hazardous Materials or the violation of Environmental Requirements arose, including, without limitation:

- (i) damages for personal injury, death or injury to property or natural resources occurring on 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, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials 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 related property or otherwise expended in connection with such conditions;
- (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 subsection (ii) herein; and
- (iv) diminution in the value of the Property and damages for loss of business from restriction on the use of the Property or any part thereof.

All of the provisions of this Section 3 shall survive the expiration or other termination of this Agreement.

ARTICLE IV

RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY

REGARDING THE PARK

Section 4.0. The Municipality shall have sole authority and control over the development, operation, management, scheduling and maintenance of the Property as a riverfront park. The Property shall be operated as a city park, but shall be available to all Westchester County residents.

Section 4.1. The Municipality shall, at its sole cost and expense, assume full responsibility for the operation of the Property for park purposes in accordance with this Agreement and for repair, maintenance and security of the Property in accordance with this Agreement and applicable laws and regulations, all to the satisfaction of the County.

Section 4.2. The Municipality shall operate the Property for the accommodation of the public for park purposes. The Property shall be open and available to the general public and under no circumstance shall access be limited solely to residents of the Municipality or other designated local government. The Municipality agrees that it will not delegate its authority to operate and maintain the Park to a third party or park/recreation commission and will not charge any parking, entry or use fees to be charged on Westchester County residents, except that the Municipality may charge use fees to park patrons for the renting of picnic facilities, kayak equipment or other activities mutually approved by the parties herein, provided such fees are reasonable. To the extent any fees are charged for the renting of park facilities, equipment or activities, the fees charged to non-residents of the Municipality who are County residents will not exceed the fees charged to the Municipality's residents.

Section 4.3. The Municipality shall, at its sole cost and expense, continuously throughout the term of this Agreement, provide reasonable and adequate security and safety at the Property through the Municipality's police department or other agency designated to provide such police services.

Section 4.4. The Municipality shall, at its sole cost and expense, repair, maintain and properly supervise the Park, it being understood and agreed that such repair, maintenance and supervision shall be performed by the Municipality when necessary and to correct hazardous conditions, in compliance with all applicable federal, state and local laws and regulations. The

Municipality shall, at its own cost and expense, keep any and all refuse in containers and remove and dispose of same as required by applicable laws and regulations. It is hereby acknowledged by the Municipality that any existing storm, sanitary or combined sewer systems or outfalls which exist within the limits of the Property will continue to be the responsibility of the Municipality. This agreement does not relieve the Municipality of maintaining these structures, associated infrastructure or performing future upgrades to the Property as required by County, State or Federal applicable laws and regulations.

Section 4.5. Following construction of park improvements on the Property, the Park shall be available to the public at all times as required by this Agreement except that the Municipality (i) may occasionally schedule certain specific uses in certain areas of the Park, as deemed appropriate; and (ii) may reserve for official municipal uses only certain areas of the Park including municipal offices, garages, storage space, certain parts of the pier, provided such area of the Park reserved for municipal use is *de minimis* compared to the overall size of the Park.

Section 4.6. The Municipality shall, at its own cost and expense, promptly comply with all statutes, ordinances, rules, orders, regulations, codes and requirements of the Federal, State, County and local governments and all insurance requirements applicable to the Property or any part thereof or applicable to this Agreement. The County's Commissioner of Parks, Recreation and Conservation or his designee (the "County Parks Commissioner") shall be entitled to enter the Property, or any part thereof, at any and all times for any and all purposes, without the need to obtain the consent or permission of the Municipality.

Section 4.7. All signage to be utilized by the Municipality in connection with the operation of the Property as a riverfront park shall be subject to the prior written approval of the County Parks Commissioner and shall be provided to the County in advance for review. The Municipality shall acknowledge the County's contribution toward improvement of the Property as a park on signs erected at the Property, and shall also obtain the County's approval for standard language to be used in all formal media advertisement mentioning the Property relating to the County's contribution and the availability of the Property to all County residents. In addition, the

Municipality shall install sign(s) on the Property: (i) indicating that the Park is open to all County residents and (ii) providing warning indications of possible sewer discharge at the existing outfall.

ARTICLE V
RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY REGARDING THE
COUNTY PROPERTY

Section 5.0. The parties hereby acknowledge, represent and covenant, that, as further consideration for the City's investment and obligations in the construction of upland park improvements at the Property, the County will convey the County Parcel, an unimproved County-owned land located at 1 Fernbrook Street, Yonkers, New York 10705, as more particularly described on Schedule "A-1," to be used in perpetuity as part of the Property for park purposes, for \$1.00. It is hereby understood by the parties that title to the County Parcel shall revert to the County (i) if the Park is not completed by the Municipality within five (5) years from the date the Municipality obtains all necessary permits and approvals, or (ii) in the event the County Parcel is no longer used for park purposes, or (ii) any parking, entry or use fees (other than those expressly allowed herein) are charged to Westchester County residents.

Section 5.1. The Municipality acknowledges, represents and covenants that it has examined the County Parcel and has determined it to be suitable for its intended use. The Municipality accepts the County Parcel in its present, "as is" condition, without any representations or warranties from the County as to its suitability for any purpose, state of repair or quality of any other matter whatsoever. The Municipality further acknowledges and understands that the waters adjacent to the County Parcel are often subject to frequent sewer discharges at the existing outfall. The Municipality bears all risk of loss in connection with the use of the County Parcel, and expressly releases the County from any and all liability to it.

In furtherance of this Agreement, the Municipality agrees to do the following prior to completion of all Park improvements:

- i) To replace the existing native trees that will be removed by the Municipality on the County Property with the same number of native trees to be located on the Park as determined to be appropriate by the Municipality;
- ii) To conduct and provide the County with a mark out depicting all existing utilities on the County Parcel;
- iii) To install, operate and maintain at all times a number of Electric Vehicle ("EV") Charging Stations, to be located on the County Parcel, equivalent to twenty percent (20%) of the total number of parking spaces available at the County Parcel at any given time, and to install the necessary power supply, charging cable, connectors and other appurtenant equipment necessary to facilitate the installation of additional EV Charging Stations, as required by applicable law in order to properly accommodate the demands and needs of all County residents for additional EV Charging Stations;
- iv) To inspect, upgrade any existing storm, sewer or combined sewer system equipment under, on or above the Park area.

Section 5.2. In furtherance of this Agreement, the Municipality shall act in strict accordance with all applicable federal, state and local laws and regulations. The County shall have no financial or other obligation or liability with respect to the County Parcel, except for the County Bulkhead (as defined below) or other infrastructure or systems installed, maintained and operated by the County comprising or related to the Facility (as defined in Section 6.0) or the County Bulkhead.

Without limiting any other provisions of this Agreement, the Municipality, at its expense, will at all times maintain and keep the County Parcel and all improvements thereon, including the existing railroad tie bulkheads ("Railroad Bulkheads") and other infrastructure or systems at the County Parcel not related to the Facility or the County Bulkhead (as defined below), in compliance with all federal, state, and local laws, rules and regulations designed to prevent or control the discharge of substances in the land, water, or air, and the Municipality agrees to indemnify, hold harmless and defend County from and against any and all suits, actions, proceedings, fines, claims, or the cleanup, response, removal or remediation of any environmental condition arising from or alleged to arise from a violation of any such environmental law, rule, or regulation unless caused solely by the County. The steel bulkhead ("County Bulkhead") shall remain the property and responsibility of the County.

Upon the effective date of the conveyance of the County Parcel to the Municipality, the Municipality shall assume full responsibility for the County Parcel in all respects, including, but not limited, the responsibility for the maintenance, repair and replacement of the Railroad Bulkheads, other existing infrastructure or systems, to the County's reasonable satisfaction. The Municipality hereby acknowledges, represents and covenants that in event it is necessary to replace the Railroad Bulkheads, the new bulkheads shall be designed at the discretion of the City Engineer and shall meet current design and use standards.

The Municipality shall permit the County and its contractors full, unrestricted and unconditional access to the Property for the purpose of inspecting the Railroad Bulkheads and other existing infrastructure or systems for which the Municipality is responsible to maintain to the satisfaction of the County. The County shall have the right, but not the obligation, to conduct any required maintenance to the Railroad Bulkhead or other infrastructure or systems and the Municipality shall provide the County all information requested by the County regarding same for which the Municipality is responsible. Prior to undertaking any work the County shall notify the City in writing. In the event the City has not responded to the County within forty-five (45) days from receipt of written notice, the County may proceed with the maintenance. The County shall be reimbursed by the Municipality for any costs incurred in connection with any Municipality's obligations regarding the County Parcel and/or the Railroad Bulkhead, within ninety (90) days of receipt of an invoice, with supporting documentation from the County. In the event the Municipality fails to reimburse the County within said ninety (90) day period, in addition to any other remedies it may have, the County shall have the right to deduct from future contract payments under any contracts the County may have with the Municipality any funds the County may determine are owed to the County under this Agreement. It is hereby understood and acknowledged by the Municipality that the County's completion of any of Municipality's obligations hereunder shall not be deemed a waiver of the Municipality's obligations under this Agreement.

All of the provisions of this Section 5 shall survive the expiration or other termination of this Agreement.

ARTICLE VI

EASEMENTS OVER COUNTY PROPERTY
IN FAVOR OF THE COUNTY

Section 6.0. In consideration for the granting by the County to the Municipality of the County Parcel, the Municipality hereby grants and conveys to the County, its successors and assigns, a permanent easement over the County Property for any purpose whatsoever related to the operation of the County's Wastewater Treatment Plant, also known as the "Yonkers Joint Resource Recovery Facility" ("Facility"), including, but not limited to, inspecting, installing and operating the County Bulkhead, new bulkheads, underground utilities, underground storm drainage and other sewer lines and improvements such as, but not limited to, protective barriers and fences and fire hydrants related to the Facility or the County Bulkhead, together with the right of ingress and egress to exercise all of the rights herein granted.

Section 6.01. It is hereby understood and acknowledged by the Municipality that Municipality shall assume full responsibility for the maintenance, repair and replacement of the Railroad Bulkheads and other existing infrastructure or systems on the County Parcel, other than any infrastructure or systems comprising or related to the Facility and the County Bulkhead, to the County's reasonable satisfaction, and to replace the Railroad Bulkheads and other infrastructure as provided above in section 5.2. The County shall have the right, but not the obligation, to conduct any required maintenance to the Railroad Bulkheads or other infrastructure or systems, pursuant to the terms set forth in Section 5.2 hereof.

Section 6.02. The parties hereby represent, warrant and covenant to execute and record an easement agreement setting forth the rights and obligations of each party hereunder.

ARTICLE VII

INSURANCE AND INDEMNITY

Section 7.0. The Municipality agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "C," entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "C," In lieu of procuring and

maintaining the aforementioned insurance, the Municipality may 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 and provide evidence of same to the County. Further, if the Municipality changes from a self-insurance program to a traditional insurance program, then the Municipality shall forward certificates of General Liability coverage naming the County as an additional insured. Moreover, the Municipality shall contractually ensure that all of its contractors, subcontractors and/or independent contractors engaged to construct the Park shall provide such insurance coverage at minimums shown in Schedule "C" naming the County, its officials, officers, employees and agents, as additional insured. In addition, and not in limitation of the foregoing, the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the maintenance, clean up, operation, security and/or repair of the County Parcel, the Park, this Agreement or out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Contractor; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) 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 this provision, 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 this provision of the Agreement.

All of the provisions of this Section 7 shall survive the expiration or other termination of this Agreement.

ARTICLE VIII

RESPONSIBILITIES OF THE COUNTY

Section 8.0. The County shall have no responsibility for the Property, including the County Parcel, except for the County Bulkhead or other infrastructure or systems installed, maintained and operated by the County comprising or related to the Facility or the County Bulkhead, other than to provide the payment set forth in Section 2.0 hereof.

ARTICLE IX

TERM OF AGREEMENT

Section 9.0. The term of this agreement shall commence upon the commencement of the construction of the upland site work improvements on the Property and shall continue for the life of the bonds which is anticipated to be fifteen (15) years, unless the Agreement is terminated sooner in accordance with the terms of this Agreement. The parties acknowledge to execute a letter acknowledging the Commencement Date.

ARTICLE X

TERMINATION OR EXTINGUISHMENT OF LEASE

Section 10.0. If for any reason the lease granted herein is terminated or extinguished prior to the defeasance of all Bonds issued by the County for the Park project, the Municipality shall have the obligation to reimburse the County, which reimbursement (hereinafter referred to as the "Reimbursable Amount") shall be an amount equal to the unamortized value of the construction costs from the date of the termination or extinguishment of this lease as depreciated on a straight-line basis over a period of fifteen (15) years beginning on the date on which the first of any bonds issued to construct the Park are sold (the "Bond Sale Date"). The Reimbursable Amount shall be forwarded by the Municipality to the County by wire transfer (in same day funds) two business days prior to the bond call date. The County shall give the Municipality notice of the Bond Sale Date within thirty (30) calendar days after the Bond Sale Date.

The Municipality shall keep all such records as may be necessary to document such cost of the Park project. The Municipality will provide the County with documentation, upon the County's request, in order to verify same.

ARTICLE XI

NOTICES

Section 11.0. 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 sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses 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.

To the County: Commissioner of Planning
148 Martine Avenue, Room 432
White Plains, NY 10601-4704

with copies to:	County Attorney 148 Martine Avenue, Room 600 White Plains, New York 10601	Commissioner of Public Works 148 Martine Avenue, Room 528 White Plains, New York 10601
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To the Municipality: City of Yonkers
40 South Broadway
Yonkers, NY 10701

with copies to: Corporation Counsel
City of Yonkers
40 South Broadway, Law Dep't
Yonkers, NY 10701

ARTICLE XII

MISCELLANEOUS

Section 12.0. Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void.

Section 12.1. 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 12.2. In the event that the Municipality materially defaults in the performance of any term, condition or covenant herein contained, the County, at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement, provided, however, upon any alleged material default under this Agreement the County must provide the Municipality 90 days' written notice prior to seeking to terminate the Agreement, and the Municipality may cure the default complained of within such notice period, or, if any such default is not curable within such notice period, such period may be extended by another 90 day period, provided the Municipality promptly commences to cure the default and diligently pursues all necessary and appropriate action to effect such cure. In the event this Agreement is terminated, the Municipality shall have one hundred eighty (180) days from the effective termination date to pay the County, as liquidated damages, the full amount paid by the County pursuant to this Agreement.

Section 12.3. 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 12.4. 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 12.5 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 12.6. This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

Section 12.7. 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 12.8. The Municipality agrees to observe and obey any and all Federal, State and local laws, rules and regulations, and to require its officers, agents, employees, contractors, and suppliers to observe and obey the same.

Section 12.9. 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 12.10. 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 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 12.11. The parties each agree to execute and deliver such further instruments and to obtain such additional authority as may be required to carry out the intent and purpose of this Agreement.

Section 12.12. 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. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

Section 12.13. Failure of any party to insist upon strict performance of any term, condition or covenant of this Agreement shall not be deemed to constitute a waiver or relinquishment of such term, condition or covenant for the future right to insist upon and to enforce by injunction or by other legal or appropriate remedy strict compliance by any other party with such term, condition or covenant.

[NO FURTHER TEXT/SIGNATURE PAGE FOLLOWS]

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

COUNTY OF WESTCHESTER

By: _____
Blanca P. Lopez
Commissioner, Department of Planning

CITY OF YONKERS

By: _____
(Name & title)

Approved by the Municipality's governing board on the ____ day of _____, 20__.

Approved by the Board of Legislators of the County of Westchester by Local Law No. __-2025.

Authorized by the Board of Acquisition and Contract of the County of Westchester on the ____ day of _____, 20__.

Approved:

Approved as to form:

Sr. Assistant County Attorney
The County of Westchester
IMA Yonkers Waterfront Park.cmc.02.05.2025

Corporation Counsel
City of Yonkers

MUNICIPALITY'S ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On this _____ day of _____, 20____, before me personally came
_____, to me known, and known to me to be the
_____ of _____,
the municipal corporation described in and which executed the within instrument, who being by me
duly sworn did depose and say that he, the said _____ resides at

and that he is _____ of said municipal corporation.

Notary Public County

CERTIFICATE OF AUTHORITY
(Municipality)

I, _____,
certify that I am the _____ of the _____
(Officer other than officer signing contract)
(Title)

(Name of Municipality)

(the "Municipality") a corporation duly organized in good standing under the

(Law under which organized, e.g., the New York Municipality
Law, Municipality Law, General Municipal Law)

named in the foregoing agreement that _____
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution

(Title of such person),
of the Municipality,

that said agreement was duly signed for on behalf of said Municipality by authority of its

(Municipality Board, Municipality Board, Municipality Council)

thereunto duly authorized, and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)
ss.:
COUNTY OF WESTCHESTER)

On this _____ day of _____, 20____, before me personally came _____
_____ whose signature appears above, to me known, and know to be the
_____ of _____,
(title)

the municipal corporation described in and which executed the above certificate, who being by
me duly sworn did depose and say that he, the said _____
resides at _____, and that he is
the _____ of said municipal corporation.
(title)

Notary Public County

SCHEDULE "A"

MAP/LEGAL DESCRIPTION OF THE CITY PROPERTY

[to be attached/inserted]

DRAFT

SCHEDULE "A-1"

MAP/LEGAL DESCRIPTION OF THE COUNTY PROPERTY

[to be attached/inserted]

SCHEDULE "B"

PLANNED IMPROVEMENTS TO THE PROPERTY

[Construction Drawings and Specifications to be attached]

SCHEDULE "C"

STANDARD INSURANCE PROVISIONS **(MUNICIPALITY)**

1. . Prior to commencing work, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

2 The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:

- i. Premises - Operations.
- ii. Broad Form Contractual.
- iii. Independent Contractor and Sub-Contractor.
- iv. Products and Completed Operations.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

All Contracts involving the use of explosives, demolition and/or underground work shall provide proof that XCU is covered.

c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

e) Pollution Liability, either by separate policy of insurance or through endorsement to the General Liability Policy. Minimum Limit: \$3,000,000. This insurance shall indicate the following coverages:

- (i) Transit
- (ii) Sudden and Accidental
- (iii) Clean-up

f) Professional Liability Insurance with limits of \$1,000,000 per occurrence/\$3,000,000 aggregate.

g) Builder's Risk –Contractor at their own cost and expense shall provide and maintain a Builder's Risk Form, All Risk Insurance Contract. The coverage shall be written for 100% of the completed value of the construction work, with the County of Westchester named as loss payee as its interest may appear

h) Owners Protective Liability Policy naming the County as insured, with a minimum limit of liability per occurrence of \$3,000,000 (**All work requiring the use of scaffolding** where applicable, or as determined by the Director, Risk Management)

i) Crane, Rigging, & Crane Operator (Rigger Liability) Insurance with a minimum limit of liability per occurrence of \$5,000,000 for bodily injury and a minimum limit of \$500,000 per occurrence for property damage or a combined single limit of \$5,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.