

George Latimer
County Executive

April 13, 2021

Westchester County Board of Legislators
148 Martine Avenue, Room 800
White Plains, New York 10601

Dear Members of the Board of Legislators:

Transmitted herewith for your consideration is proposed legislation, which, if adopted by your Honorable Board, would authorize the County of Westchester ("County"), acting by and through its Department of Public Safety ("Department"), to enter into an inter-municipal agreement ("IMA" or "Agreement") with the Town of Carmel, New York ("Carmel"), in order to have its public safety employees utilize the County's Firing Range ("Firing Range") located at the County's Police Academy in Valhalla, New York, also known as Grasslands Reservation in the Town of Mount Pleasant, New York ("Police Academy"), for firearms training. The IMA shall be for a term of up to five (5) years, commencing on August 1, 2021 and expiring on July 31, 2026. Each party shall have the right to terminate the Agreement on thirty (30) days' written notice to the other.

In exchange for the use of the Firing Range, which will be staffed by a Department safety officer, Carmel will pay a flat fee of Three Thousand Ninety and 00/100 (\$3,090.00) Dollars per eight (8) hour tour, for a maximum number of thirty-six (36) officers in attendance. The Firing Range will be operated under the direction of the safety officer. Carmel will adhere to all instructions issued by the Department's safety officer. Carmel shall have the option of requesting the Department to provide a firearms instructor to assist with the training process of its employees. If Carmel requests a firearms instructor, Carmel shall pay an additional fee equal to \$108.18 per hour or \$865.44 per eight (8) hour tour. Any Carmel employee attending the Firing Range shall be responsible to bring his/her own weapons and ammunition.

In the event that police officers from Carmel provide instruction at the Police Academy, under separate agreement between the County and Carmel, the Commissioner of the Department, or his designee, may provide Carmel with a credit equal to one (1) eight - hour tour at the Firing Range for each seven (7) hours of instruction at the Police Academy.

The County has entered into a number of IMAs with municipalities throughout Westchester since 2008, which your Honorable Board last authorized on May 18, 2020 by Act No. 2020 – 91, as well as with Carmel, which your Honorable Board last authorized on May 16, 2016 by Act 131 – 2016, to use the Firing Range for firearms training. The program has proven successful, and it is recommended that the County continue to allow Carmel to take part in this valuable program.

The Department of Planning has advised that the actions under the IMA do not meet the definition of an "action" under the New York State Environmental Quality Review Act ("SEQR") and its implementing regulations, 6 NYCRR, Part 617.2(b). Therefore, no further environmental review is required.

I urge your Honorable Board's approval of the attached proposed legislation as the continuation of this program is worthwhile and in the best interests of the County.

Sincerely,

A handwritten signature in cursive script, appearing to read "George Latimer".

George Latimer
County Executive

GL/CMC
Attachments

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

Your Committee is recommending the approval of an Act which would authorize the County of Westchester ("County"), acting by and through its Department of Public Safety ("Department"), to enter into an inter-municipal agreement ("IMA" or "Agreement") with the Town of Carmel, New York ("Carmel") in order to have its public safety employees utilize the County's Firing Range ("Firing Range") located at the County's Police Academy in Valhalla, New York, also known as Grasslands Reservation in the Town of Mount Pleasant, New York ("Police Academy") for firearms training. The IMA will be for a period of five (5) years, commencing on August 1, 2021 and expiring on July 31, 2026. Each party shall have the right to terminate the agreement on thirty (30) days' notice to the other.

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The County has entered into a number of IMAs with municipalities throughout Westchester since 2008, which your Honorable Board last authorized on May 18, 2020 by Act No. 2020 – 91, as well as with Carmel, which your Honorable Board last authorized on May 16, 2016 by Act 131 – 2016, to use the Firing Range for firearms training. The program has proven successful, and it is recommended that the County continue to allow Carmel to take part in this valuable program.

The Department of Planning has advised that the actions under the IMA do not meet the definition of an “action” under the New York State Environmental Quality Review Act (“SEQR”) and its implementing regulations, 6 NYCRR, Part 617.2(b). Therefore, no further environmental review is required. As you know, your Honorable Board may use such expert advice to reach its own conclusion.

Your Committee has been advised that passage of the attached Act requires an affirmative vote of a majority of the members of your Honorable Board.

Your Committee has carefully considered the proposed Act and recommends your Honorable Board's favorable action on the annexed Act.

Dated: _____, 2021.
White Plains, New York

COMMITTEE ON

C:CMC/DPS/Carmel.04.13.2021

FISCAL IMPACT STATEMENT

SUBJECT: Carmel to Utilize Firing Range

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ _____

Total Current Year Revenue \$ _____

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

Additional Appropriations

Other (explain)

Identify Accounts: In exchange for use of the Firing Range, an instructor will be supplied to the

Academy or a flat rate of \$3,090.00 will be charged to the Town.

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: Town of Carmel's public safety employees will utilize County Firing Range.

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

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

Current Year: _____

Next Four Years: _____

Prepared by: Siva Gopalkrishna

Title: Supervisor-Fiscal Operations

Department: Public Safety

Date: March 16, 2021

Reviewed By: 

Budget Director

Date: 4/16/21

TO: Carla Chaves, Assistant County Attorney
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM
Director of Environmental Planning



DATE: March 25, 2021

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR AGREEMENT WITH
TOWN OF CARMEL FOR USE OF COUNTY FIRING RANGE**

PROJECT/ACTION: An intermunicipal agreement with the Town of Carmel to allow its public safety employees to use the County's firing range, located at the Grasslands Reservation in the Town of Mount Pleasant, for firearms training. The County has been allowing local municipalities as well as the County of Putnam to utilize the County's facility following the completion of the construction of the indoor firing range in 2008. The current agreement with the Town of Carmel is due to expire. The proposed authorization will allow the Town of Carmel to continue to use the firing range for an additional 5 years.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTION 617.5(c)():**

COMMENTS: None.

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Norma Drummond, Commissioner
Siva Gopalkrishna, Supervisor-Fiscal Operations, Department of Public Safety
Claudia Maxwell, Associate Environmental Planner

ACT NO. 2021-_____

AN ACT authorizing the County of Westchester, acting by and through its Department of Public Safety, to enter into an inter-municipal agreement with the Town of Carmel in order to have its public safety employees from Carmel utilize the County's Firing Range located at the County's Police Academy in Valhalla, New York, for firearms training.

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

Section 1. The County of Westchester ("County"), acting by its Department of Public Safety ("Department"), is authorized to enter into an inter-municipal agreement ("IMA") with the Town of Carmel, New York ("Carmel") in order to have its public safety employees utilize the County's Firing Range ("Firing Range") located at the County's Police Academy in Valhalla, New York, also known as Grasslands Reservation in the Town of Mount Pleasant, New York ("Police Academy"), for firearms training.

§2. In exchange for the use of the Firing Range, which will be staffed by a Department safety officer, Carmel will pay a flat fee of Three Thousand Ninety and 00/100 (\$3,090.00) Dollars per eight (8) hour tour, for a maximum number of thirty-six (36) officers in attendance. The Firing Range will be operated under the direction of the safety officer. Carmel will adhere to all instructions issued by the Department's safety officer. Carmel shall have the option of requesting the Department provide a firearms instructor to assist with the training process of its employees. If Carmel requests a firearms instructor, Carmel shall pay an additional fee equal to \$108.18 per hour or \$865.44 per eight (8) hour tour. Any Carmel employee attending the Firing Range shall be responsible to bring his/her own weapons and ammunition.

In the event that police officers from Carmel provide instruction at the Police Academy, under separate agreement between the County and Carmel, the Commissioner of the Department, or his designee, may provide Carmel with a credit equal to one (1) eight - hour tour at the Firing Range for each seven (7) hours of instruction at the Police Academy.

§3. The IMA will be for a period of five (5) years, commencing on August 1, 2021 and expiring on July 31, 2026. Each party shall have the right to terminate the agreement on thirty (30) days' notice to the other.

§4. The County Executive or his authorized designee is hereby authorized and empowered to execute any and all documents and take all actions necessary and appropriate to accomplish the purposes hereof.

§5. This Act shall take effect immediately.

the desired firearms training session. Promptly thereafter, upon at least twenty-four (24) hours prior to the reservation date, Carmel shall send via facsimile or email a written confirmation letter to the Department specifying the dates and times reserved. The Department's Firing Range telephone number is (914) 231-4381 and the facsimile number is (914) 231-4389. It is hereby understood by Carmel that an email will be provided by the Department's Firing Range personnel upon a telephonic request for same from Carmel.

Section 2. In exchange for the use of the Firing Range, which will be staffed by a Department safety officer, Carmel shall pay a flat fee of Three Thousand Ninety and 00/100 (\$3,090.00) Dollars per eight (8) hour tour, for a maximum number of thirty-six (36) officers in attendance. The Firing Range shall be operated under the direction of the safety officer. Carmel shall adhere to all instructions issued by the Department's safety officer. Carmel shall have the option of requesting the Department to provide a firearms instructor to assist with the training process of its employees. If Carmel requests a firearms instructor, Carmel shall pay an additional fee equal to \$108.18 per hour or \$865.44 per eight (8) hour tour. Any one attending the Firing Range shall be responsible to bring his/her own weapons and ammunition.

The County shall send an invoice to Carmel not later than the 15th day of the month following the month in which the services were provided by the County. Carmel shall pay any such invoice within thirty (30) days of receipt thereof.

Section 3. Carmel agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "A," 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 "A," Carmel agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, Carmel 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 performance or failure to perform hereunder by Carmel or third parties under the direction or control of Carmel; 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, except for that which was contributed to, caused by or resulting from the sole negligence of the County, and to bear all other costs and expenses related thereto; and

(c) In the event Carmel 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 Carmel 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.

Section 4. In no event shall the County have any obligation to Carmel or its employees for a any claim raised or benefits provided pursuant to New York General Municipal Law Section 207-c.

Section 5. The term of this Agreement shall commence on August 1, 2021 and continue in full force and effect for five (5) years until July 31, 2026, unless terminated earlier pursuant to the terms herein.

Section 6. This Agreement may be terminated by either party by giving written notice of the termination to the other party not less than thirty (30) days prior to the effective date of such termination.

Section 7. 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: Acting Commissioner - Sheriff of Public Safety
Saw Mill River Parkway
Hawthorne, New York 10532

With a copy to: County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To Carmel: Town of Carmel
60 McAlpin Avenue
Mahopac, New York 10541

Section 8. The failure of either party 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 party may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants herein.

Section 9. This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It 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.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

Section 10. Carmel and the County agree that Carmel and its officers, employees, agents, subconsultants and/or consultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, Carmel covenants and agrees that neither Carmel nor any of its officers, employees, agents, contractors, subconsultants and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

Section 11. Carmel shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations relating to this Agreement.

Section 12. Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or

by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

Section 13. This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. 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 14. This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

THE COUNTY OF WESTCHESTER

By _____
Thomas A. Gleason
Acting Commissioner – Sheriff
Department of Public Safety

THE TOWN OF CARMEL

By _____

Approved by the Westchester County Board of Legislators by Act No. 2021 - ____ on
_____.

Approved as to form and
Manner of execution:

Assistant County Attorney
The County of Westchester
Firing Range IMA Carmel.cmc.03.15.2021 v1.doc

Date

CARMEL'S ACKNOWLEDGEMENT

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

On this _____ day of _____, 2021, 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/she, the said _____
_____ resides at _____
_____ and that he/she is _____ of said municipal corporation.

Notary Public County

CERTIFICATE OF AUTHORITY
(Municipality)

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

_____ of the _____
(Title) (Name of Municipality)

(the "Municipality") a corporation duly organized in good standing under the County of Putnam
(Law under which organized, e.g., the New York Village Law, Town Law, General Municipal Law)

named in the foregoing agreement that _____ who signed said
(Person executing agreement)

agreement on behalf of the Municipality was, at the time of execution the _____ of

the Municipality, that said agreement was duly signed for on behalf of said Municipality by

authority of its _____ Legislature 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 PUTNAM)

On this _____ day of _____, 2021, 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

SCHEDULE "A"

STANDARD INSURANCE PROVISIONS (MUNICIPALITY-Firing Range Agreement)

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. The 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 the 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) Employer's Liability with minimum limit of \$100,000.00.
- c) 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.
- d) 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.

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

- e) 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.
- f) Police Professional Liability: The Municipality shall provide proof of such insurance (\$1,000,000 per occurrence)

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.

DRAFT