

Planning, Economic Development & Energy Meeting Agenda



Committee Chair: Catherine Parker

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Tuesday, September 21, 2021

1:00 PM

Committee Room

CALL TO ORDER

Meeting joint with the Committees on Budget & Appropriations, Public Works & Transportation, and Environment & Health

MINUTES APPROVAL

I. ITEMS FOR DISCUSSION

1. [2021-468](#) **BOND ACT-BPL26-1694-Flood Mitigation**

A BOND ACT authorizing the issuance of THREE HUNDRED FIFTY THOUSAND (\$350,000) DOLLARS in bonds of Westchester County to finance Capital Project BPL26 - Flood Mitigation.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS, PUBLIC WORKS & TRANSPORTATION, ENVIRONMENT & HEALTH AND PLANNING, ECONOMIC DEVELOPMENT & ENERGY

Guest: Dave Kvinge, Director of Environmental Planning, Westchester County Planning Department

2. [2021-469](#) **IMA-BPL26-1694-Flood Mitigation-New Castle**

AN ACT authorizing the County of Westchester to enter into an intermunicipal agreement with the Town of New Castle in connection with a flood mitigation project (Capital Project BPL26, Unique ID# 1694).

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS, PUBLIC WORKS & TRANSPORTATION, ENVIRONMENT & HEALTH AND PLANNING, ECONOMIC DEVELOPMENT & ENERGY

Guest: Dave Kvinge, Director of Environmental Planning, Westchester County Planning Department

3. [2021-485](#) **BOND ACT-BPL26-1692-Flood Mitigation**

A BOND ACT authorizing the issuance of TWO HUNDRED SEVENTY THOUSAND (\$270,000) DOLLARS in bonds of Westchester County to finance Capital Project BPL26 - Flood Mitigation.

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS, PUBLIC WORKS & TRANSPORTATION, ENVIRONMENT & HEALTH AND PLANNING,

ECONOMIC DEVELOPMENT & ENERGY

Guest: Dave Kvinge, Director of Environmental Planning, Westchester County Planning Department

4. [2021-487](#) **IMA-BPL26-1692-Flood Mitigation-Yonkers**

AN ACT authorizing the County of Westchester to enter into an intermunicipal agreement with the City of Yonkers in connection with a flood mitigation project (Capital Project BPL26, Unique ID# 1692).

COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS, PUBLIC WORKS & TRANSPORTATION, ENVIRONMENT & HEALTH AND PLANNING, ECONOMIC DEVELOPMENT & ENERGY

Guest: Dave Kvinge, Director of Environmental Planning, Westchester County Planning Department

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

July 23, 2021

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith for your review and approval is a bond act (the "Bond Act") which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to issue up to Three Hundred Fifty Thousand (\$350,000.00) Dollars in bonds of the County to finance a component of capital project BPL26 - Flood Mitigation ("BPL26"). Also attached is an Act authorizing an intermunicipal agreement ("IMA") with the Town of New Castle (the "Town") setting forth the terms of the flood mitigation project.

The Bond Act, in the amount of Three Hundred Fifty Thousand (\$350,000.00) Dollars, would fund up to 50% of the costs associated with design, permitting and construction inspection associated with decommissioning of the dam at Upper Minkel Pond in the Town, including restoration of the area as a wetland floodplain. The project will reduce flood risk for downstream properties associated with the potential failure of the dam as well as provide additional flood storage capacity for large storm events. The project will take approximately twelve (12) months to complete.

The IMA, a copy of which is attached, will set forth the responsibilities of the County and the Town in connection with the project. In accordance with the IMA, the County and the Town will each provide up to fifty (50%) percent of the total cost of the project which is Five Hundred Fifty Thousand (\$550,000.00) Dollars. The County will pay to the Town, on a reimbursement basis, an amount not to exceed Two Hundred Seventy Five Thousand (\$275,000.00) Dollars. Your Honorable Board will note that the bonding request is Three Hundred Fifty Thousand (\$350,000.00) Dollars to include additional County costs for staff hours and administration of the project.

In 2011 your Honorable Board 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.

By Act No. 134-2014, your Honorable Board approved the Stormwater Reconnaissance Plan for the Coastal Long Island Sound Watershed. Upper Minkel Pond is identified as an area of recurring flooding in this plan. Criteria for funding stormwater management (flood mitigation)

projects are also described in the plan, including discretionary fund policy requirements to affirmatively further fair housing. The IMA requires the Town to adopt regulations and policies consistent with the flood mitigation criteria in the Stormwater Reconnaissance Plan for the Saw Mill River - Pocantico River Watershed.

It should be noted that your Honorable Board has previously authorized the County to issue bonds which have financed prior components of this project as set forth in the attached fact sheet.


The Planning Department has advised that based on its review, the above referenced capital project has been classified as a "Type II" action pursuant to the State Environmental Quality Review Act ("SEQR") and its implementing regulations, 6 NYCRR Part 617. Therefore, no further environmental review is required. As you know, your Honorable Board may use such expert advice to reach its own conclusion.

It should be noted that since BPL26 is a "general fund" project, specific components are subject to a Capital Budget Amendment. Section 1 of the Bond Act authorizes an amendment to the County's Capital Budget to the extent the project scope is inconsistent with any details set forth in the current Capital Budget. Accordingly, the Bond Act, in addition to authorizing the issuance of bonds for this project, will also amend the 2021 Capital Budget to reflect the specific location of this project component.

In addition, section 167.131 of the County Charter mandates that a capital budget amendment that introduces a new capital project or changes the location, size or character of an existing capital project be accompanied to the Board of Legislators by a report of the Westchester County Planning Board (the "Planning Board") with respect to the physical planning aspects of the project. Accordingly, the Planning Board Report for BPL26 is annexed.

Based upon the foregoing, I recommend the adoption of the aforementioned Bond Act as well as the Act authorizing the IMA.

Sincerely,



George Latimer
County Executive

GL/ND/DK/jpg
Attachments

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

Your Committee is in receipt of a transmittal from the County Executive recommending approval of a bond act (the “Bond Act”), which if adopted, would authorize the County of Westchester (the “County”) to issue up to \$350,000.00 in bonds to finance a component of capital project BPL26 - Flood Mitigation (“BPL26”). Also attached is an Act authorizing an intermunicipal agreement (“IMA”) with the Town of New Castle (the “Town”) setting forth the terms of the flood mitigation project.

Your Committee is advised that the Bond Act, prepared by the law firm of Hawkins Delafield & Wood LLP, would fund up to 50% of the costs associated with design, permitting and construction inspection associated with decommissioning of the dam at Upper Minkel Pond in the Town, including restoration of the area as a wetland floodplain. The project will reduce flood risk for downstream properties associated with the potential failure of the dam as well as provide additional flood storage capacity for large storm events. The project will take approximately twelve (12) months to complete.

The IMA, a copy of which is attached, will set forth the responsibilities of the County and the Town in connection with the flood mitigation project. In accordance with the IMA, the County and the Town will each provide up to fifty (50%) percent of the total cost of the project which is \$550,000.00. The County will pay to the Town, on a reimbursement basis, an amount not-to-exceed \$275,000.00. Your Honorable Board will note that the bonding request is \$350,000.00 to include additional County costs for staff hours and administration of the project.

Your Committee is advised that this Honorable Board enacted the Westchester County Storm Water Management Law (“SWML”) in 2011 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.

By Act No. 134-2014, this Honorable Board approved the Stormwater Reconnaissance Plan for the Coastal Long Island Sound Watershed. Upper Minkel Pond is identified as an area of recurring flooding in this plan. Criteria for funding stormwater management (flood mitigation) projects are also described in the plan, including discretionary fund policy requirements to affirmatively further fair housing. The IMA requires the Town to adopt regulations and policies consistent with the flood mitigation criteria in the Stormwater Reconnaissance Plan for the Saw Mill River - Pocantico River Watershed.

Your Committee notes that this Honorable Board has previously authorized the County to issue bonds which have financed prior components of this project as set forth in the attached fact sheet.

The Planning Department has advised your Committee that based on its review, the above referenced capital project has been classified as a Type “II” action pursuant to the State Environmental Quality Review Act (“SEQR”) and its implementing regulations, 6 NYCRR Part 617. Therefore, no further environmental review is required. Your Committee has reviewed the annexed SEQRA documentation and concurs with this conclusion.

Your Committee is further advised that since BPL26 is a “general fund” project, specific components are subject to a Capital Budget Amendment. Section 1 of the Bond Act authorizes an amendment to the County’s Capital Budget to the extent the project scope is inconsistent with any details set forth in the current Capital Budget. Accordingly, the Bond Act, in addition to authorizing the issuance of bonds for this project, will also amend the 2021 Capital Budget to reflect the specific location of this project component.

In addition, section 167.131 of the County Charter mandates that a capital budget amendment that introduces a new capital project or changes the location, size or character of an existing capital project be accompanied to the Board of Legislators by a report of the Westchester County Planning Board (the “Planning Board”) with respect to the physical planning aspects of the project. Accordingly, the Planning Board Report for BPL26 is annexed.

Please note that an affirmative vote of two-thirds of the members of your Honorable Board is required in order to adopt the Bond Act, while an affirmative vote of a majority of the voting strength of your Honorable Board is required to adopt the Act authorizing the IMA.

Based on the importance of this project to the County, your Committee recommends favorable action on the annexed Bond Act and Act authorizing the IMA.

Dated: _____, 2021

White Plains, New York

COMMITTEE ON

C:jpg/7.06.21

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: BPL26

NO FISCAL IMPACT PROJECTED

SECTION A - CAPITAL BUDGET IMPACT

To Be Completed by Budget

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

Source of County Funds (check one):

Current Appropriations

Capital Budget Amendment

SECTION B - BONDING AUTHORIZATIONS

To Be Completed by Finance

Total Principal \$ 350,000 PPU 5 Anticipated Interest Rate 0.31%

Anticipated Annual Cost (Principal and Interest): \$ 70,655

Total Debt Service (Annual Cost x Term): \$ 353,275

Finance Department: Interest rates from July 19, 2021 Bond Buyer - ASBA

SECTION C - IMPACT ON OPERATING BUDGET (exclusive of debt service)

To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual): \$ -

Potential Related Revenues (Annual): \$ -

Anticipated savings to County and/or impact of department operations

(describe in detail for current and next four years):

N/A

SECTION D - EMPLOYMENT

As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded: N/A

SECTION E - EXPECTED DESIGN WORK PROVIDER

County Staff

Consultant

Not Applicable

Prepared by: William Brady

Title: Chief Planner

Department: Planning


Date: 7/23/21

Reviewed By: 

Budget Director

Date: 7/26/21

TO: Michelle Greenbaum, Senior Assistant County Attorney
Jeffrey Goldman, Senior Assistant County Attorney

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

DATE: July 20, 2021

SUBJECT: STATE ENVIRONMENTAL QUALITY REVIEW FOR CAPITAL PROJECT:
BPL26 FLOOD MITIGATION

PROJECT/ACTION: Per Capital Project Fact Sheet as approved by the Planning Department on 06-29-2021 (Unique ID: 1694)

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 for the proposed action, because the project or component of the project for which funding is requested may be classified as a **TYPE II action** pursuant to section(s):

- **617.5(c)(27):** conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action.

COMMENTS: The current request is for design only. Construction inspection funds will not be expended unless the County approves funding for the construction of the project. Further environmental review will be conducted following completion of design and prior to approval of construction funding.

DSK/dvw

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Tami Altschiller, Assistant Chief Deputy County Attorney
Gideon Grande, Deputy Budget Director
Lorraine Yazzetta, Associate Budget Director
Anthony Zaino, Assistant Commissioner
William Brady, Chief Planner
Michael Lipkin, Associate Planner
Claudia Maxwell, Associate Environmental Planner

RESOLUTION 21-15

WESTCHESTER COUNTY PLANNING BOARD

Amendment of Planning Board Report on 2021 Capital Project Requests
BPL26 Flood Mitigation

WHEREAS, the County of Westchester has established Capital Project BPL26 Flood Mitigation, a general fund, to provide a share of the cost of funding flood mitigation projects that are proposed by local municipalities and approved by the County; and

WHEREAS, the decommissioning and removal of the Upper Minkel Dam in the Town of New Castle will reduce flood risk for downstream properties, including areas downstream described as Flood Problem Area NWC-1 in the stormwater reconnaissance plan for the Saw Mill and Pocantico rivers drainage basin; and

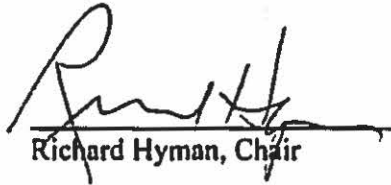
WHEREAS, the project has been reviewed and approved by the County Stormwater Advisory Board and will be subject to further detailed review by County staff; and

WHEREAS, in furtherance of the above, the County Executive will be submitting legislation to the Board of Legislators to amend the Capital Project BPL26, Flood Mitigation, to add the project to Capital Project BPL26 and authorize bonding to fund up to 50% of the project; and

WHEREAS, the project is consistent with the County Planning Board's long-range planning policies set forth in *Westchester 2025 - Policies to Guide County Planning*, in that it will help preserve and protect the County's natural resources and environment, both physical and biotic and will help mitigate the impacts of flooding; now therefore, be it

RESOLVED, that the County Planning Board, pursuant to Section 167.131 of the County Charter, amends its Report on the 2021 Capital Project Requests to include the Capital Project BPL26 Flood Mitigation for the decommissioning and removal of the Upper Minkel Dam in the Town of New Castle.

Adopted this 1st day of June 2021


Richard Hyman, Chair

ACT NO. -20__

BOND ACT AUTHORIZING THE ISSUANCE OF \$350,000 BONDS OF THE COUNTY OF WESTCHESTER, OR SO MUCH THEREOF AS MAY BE NECESSARY, TO FINANCE THE COUNTY'S SHARE OF THE COST OF PREPARATION OF SURVEYS, PRELIMINARY AND DETAILED PLANS, SPECIFICATIONS AND ESTIMATES NECESSARY FOR PLANNING THE DECOMMISSIONING OF THE DAM AT UPPER MINKEL POND IN THE TOWN OF NEW CASTLE; STATING THE ESTIMATED TOTAL COST THEREOF IS \$350,000; STATING THE PLAN OF FINANCING SAID COST INCLUDES THE ISSUANCE OF \$350,000 BONDS HEREIN AUTHORIZED; AND PROVIDING FOR A TAX TO PAY THE PRINCIPAL OF AND INTEREST ON SAID BONDS. (Adopted , 20__)

BE IT ENACTED BY THE COUNTY BOARD OF LEGISLATORS OF THE COUNTY OF WESTCHESTER, NEW YORK (by the affirmative vote of not less than two-thirds of the voting strength of said Board), AS FOLLOWS:

Section 1. Pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (the "Law"), the Westchester County Administrative Code, being Chapter 852 of the Laws of 1948, as amended, to the provisions of other laws applicable thereto, \$350,000 bonds of the County, or so much thereof as may be necessary, are hereby authorized to be issued to finance the County's share of the cost of preparation of surveys, preliminary and detailed plans, specifications and estimates necessary for planning the decommissioning of the dam at Upper Minkel Pond in the Town of New Castle, including restoration of the area as a wetland floodplain; all as set forth in the County's Current

Year Capital Budget, as amended. To the extent that the details set forth in this act are inconsistent with any details set forth in the Current Year Capital Budget of the County, such Budget shall be deemed and is hereby amended. The estimated total cost of said object or purpose, including preliminary costs and costs incidental thereto and the financing thereof is \$350,000. The plan of financing includes the issuance of \$350,000 bonds herein authorized, and any bond anticipation notes issued in anticipation of the sale of such bonds, and the levy of a tax to pay the principal of and interest on said bonds.

Section 2. The period of probable usefulness of the object or purpose for which said \$350,000 bonds authorized by this Act are to be issued, within the limitations of Section 11.00 a. 62 (2nd) of the Law, is five (5) years;

Section 3. Current funds are not required to be provided as a down payment pursuant to Section 107.00 d. 9. of the Law prior to issuance of the bonds authorized herein, or any bond anticipation notes issued in anticipation of the sale of such bonds. The County intends to finance, on an interim basis, the costs or a portion of the costs of said improvements for which bonds are herein authorized, which costs are reasonably expected to be reimbursed with the proceeds of debt to be incurred by the County, pursuant to this Act, in the total amount of \$350,000. This Act is a declaration of official intent adopted pursuant to the requirements of Treasury Regulation Section 1.150-2.

Section 4. The estimate of \$350,000 as the estimated total cost of the aforesaid object or purpose is hereby approved.

Section 5. Subject to the provisions of this Act and of the Law, and pursuant to the provisions of §30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals thereof, and of §§50.00, 56.00 to 60.00 and 168.00 of said Law, the powers and duties

of the County Board of Legislators relative to authorizing the issuance of any notes in anticipation of the sale of the bonds herein authorized, or the renewals thereof, relative to providing for substantially level or declining annual debt service, relative to prescribing the terms, form and contents and as to the sale and issuance of the respective amounts of bonds herein authorized, and of any notes issued in anticipation of the sale of said bonds or the renewals of said notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Commissioner of Finance of the County, as the chief fiscal officer of the County.

Section 6. Each of the bonds authorized by this Act and any bond anticipation notes issued in anticipation of the sale thereof shall contain the recital of validity prescribed by §52.00 of said Local Finance Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the County of Westchester, payable as to both principal and interest by general tax upon all the taxable real property within the County. The faith and credit of the County are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds or the renewals of said notes, and provision shall be made annually in the budgets of the County by appropriation for (a) the amortization and redemption of the notes and bonds to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 7. The validity of the bonds authorized by this Act and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

(a) such obligations are authorized for an object or purpose for which the County is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of this Act or a summary hereof, are not substantially complied with, and an action, suit or proceeding contesting such validity, is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This Act shall take effect in accordance with Section 107.71 of the Westchester County Charter.

* * *

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said County Board of Legislators this day of , 20__.

The Clerk and Chief Administrative Office of the County Board of Legislators County of Westchester, New York

(SEAL)

LEGAL NOTICE

A Bond Act, a summary of which is published herewith, has been adopted by the Board of Legislators on _____, 20__ and approved by the County Executive on _____, 20__ and the validity of the obligations authorized by such Bond Act may be hereafter contested only if such obligations were authorized for an object or purpose for which the County of Westchester, in the State of New York, is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this Notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the publication of this Notice, or such obligations were authorized in violation of the provisions of the Constitution.

Complete copies of the amended Bond Act summarized herewith shall be available for public inspection during normal business hours at the Office of the Clerk of the Board of Legislators of the County of Westchester, New York, for a period of twenty days from the date of publication of this Notice.

ACT NO. _____-20__

BOND ACT AUTHORIZING THE ISSUANCE OF \$350,000 BONDS OF THE COUNTY OF WESTCHESTER, OR SO MUCH THEREOF AS MAY BE NECESSARY, TO FINANCE THE COUNTY'S SHARE OF THE COST OF PREPARATION OF SURVEYS, PRELIMINARY AND DETAILED PLANS, SPECIFICATIONS AND ESTIMATES NECESSARY FOR PLANNING THE DECOMMISSIONING OF THE DAM AT UPPER MINKEL POND IN THE TOWN OF NEW CASTLE; STATING THE ESTIMATED TOTAL COST THEREOF IS \$350,000; STATING THE PLAN OF FINANCING SAID COST INCLUDES THE ISSUANCE OF \$350,000 BONDS HEREIN AUTHORIZED; AND PROVIDING FOR A TAX TO PAY THE PRINCIPAL OF AND INTEREST ON SAID BONDS (adopted on _____, 20__)

object or purpose: to finance the County's share of the cost of preparation of surveys, preliminary and detailed plans, specifications and estimates necessary for planning the decommissioning of the dam at Upper Minkel Pond in the Town of New Castle, including restoration of the area as a wetland floodplain; all as set forth in the County's Current Year Capital Budget, as amended.

amount of obligations to be issued:
and period of probable usefulness: \$350,000; five (5) years

Dated: _____, 20__
White Plains, New York

Clerk and Chief Administrative Officer of the County Board of
Legislators of the County of Westchester, New York

CAPITAL PROJECT FACT SHEET

Project ID:*
BPL26

CBA

Fact Sheet Date:*
05-21-2021

Fact Sheet Year:*
2021

Project Title:*
FLOOD MITIGATION

Legislative District ID:
4, 9

Category*
BUILDINGS, LAND &
MISCELLANEOUS

Department:*
PLANNING

CP Unique ID:
1694

Overall Project Description

This project is intended to provide a share of the cost of funding flood mitigation projects that are proposed by local municipalities and approved by the County. This is a general fund, specific projects are subject to a Capital Budget Amendment.

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Best Management Practices | <input type="checkbox"/> Energy Efficiencies | <input type="checkbox"/> Infrastructure |
| <input checked="" type="checkbox"/> Life Safety | <input type="checkbox"/> Project Labor Agreement | <input type="checkbox"/> Revenue |
| <input type="checkbox"/> Security | <input checked="" type="checkbox"/> Other(FLOOD MITIGATION) | |

FIVE-YEAR CAPITAL PROGRAM (in thousands)

	Estimated Ultimate Total Cost	Appropriated	2021	2022	2023	2024	2025	Under Review
Gross	40,750	20,550	200	0	0	0	0	20,000
Less Non-County Shares	0	0	0	0	0	0	0	0
Net	40,750	20,550	200	0	0	0	0	20,000

Expended/Obligated Amount (in thousands) as of : 6,626

Current Bond Description: This project will fund up to 50% of the costs associated with design, permitting and construction inspection associated with decommissioning of the dam at Upper Minkel Pond in the Town of New Castle, including restoration of the area as a wetland floodplain. The project will reduce flood risk for downstream properties associated with the potential failure of the dam as well as provide additional flood storage capacity for large storm events.	
Financing Plan for Current Request:	
Non-County Shares:	\$ 0
Bonds/Notes:	350,000
Cash:	0
Total:	\$ 350,000

SEQR Classification:
TYPE II

Amount Requested:
350,000

Comments:

Energy Efficiencies:

Appropriation History:

Year	Amount	Description
2009	5,400,000	MAMARONECK AND SHELDRAKE RIVERS BASIN FLOOD DAMAGE REDUCTION STUDY; FOUR LOCAL MUNICIPAL FLOOD PROJECTS
2012	5,000,000	FLOOD MITIGATION PROJECTS TO BE DETERMINED
2013	5,000,000	FLOOD RELATED PROJECTS
2015	150,000	DESIGN OF A STUDY FOR A COUNTYWIDE SYSTEM OF STREAM AND STORM GAUGES
2016	5,000,000	CONTINUATION OF THIS PROJECT
2021	200,000	DESIGN AND INSTALLATION OF A MAINTENANCE GATE AT SPRAIN BROOK, YONKERS

Total Appropriation History:

20,750,000

Financing History:

Year	Bond Act #	Amount	Issued	Description
09	79	900,000	899,501	FLOOD MITIGATION STUDY: MAM'K & SHELDRAKE RIVERS BASIN
09	140	2,441,625	2,441,625	COUNTY PORTION OF FLOOD MITIGATION PROJECT IN COUNTY
17	11	2,974,875	2,502,239	COUNTY PORTION OF FLOOD MITIGATION PROJECT IN COUNTY (AMMENDED)
18	171	70,000	0	FUNDING FOR AN ENGINEERING STUDY TO DEVELOP A SOLUTION FOR FLOODING IN RYE BROOK, AVON CIRCLE AREA
19	108	300,000	0	INITIAL DESIGN OF PROJECT TO MITIGATE FLOODING ALONG THE HUTCHINSON RIVER
19	247	1,000,000	0	RECONSTRUCT THE HILLSIDE AVENUE BRIDGE IN THE VILLAGE OF MAMARONECK

Total Financing History:

7,686,499

Recommended By:

Department of Planning
WBB4

Date
06-29-2021

Department of Public Works
RJB4

Date
06-29-2021

Budget Department
LMY1

Date
06-30-2021

Requesting Department
WBB4

Date
07-01-2021

YONKERS WATERFRONT PLAN, PHASE II (BPL32)

User Department : Planning

Managing Department(s) : Planning ;

Estimated Completion Date: TBD

Planning Board Recommendation: Project has historical implications. Project approved in concept but subject to subsequent staff review.

FIVE YEAR CAPITAL PROGRAM (in thousands)

	Est Ult Cost	Appropriated	Exp / Obl	2021	2022	2023	2024	2025	Under Review
Gross	6,350	6,350							
Non County Share									
Total	6,350	6,350							

Project Description

This project will fund improvements to the Yonkers Waterfront. This project continues Capital Project RYON1 Yonkers Waterfront Plan.

Current Year Description

There is no current year request.

Impact on Operating Budget

The impact on the Operating Budget is the debt service associated with the issuance of bonds.

Appropriation History

Year	Amount	Description	Status
2019	6,350,000	Installation of statues at the Enslaved Africans Rain Garden \$150,000 ; Construction improvements to the Hudson River Museum \$6,200,000.	\$150,000 - PENDING; \$6,200,000 - CONSTRUCTION
Total	6,350,000		

Prior Appropriations

	Appropriated	Collected	Uncollected
Bond Proceeds	6,200,000		6,200,000
Funds Revenue	150,000	150,000	
Total	6,350,000	150,000	6,200,000

Bonds Authorized

Bond Act	Amount	Date Sold	Amount Sold	Balance
158 19	6,200,000			6,200,000
Total	6,200,000			6,200,000

**NEW HOMES LAND ACQUISITION II
(BPL30)**

186	18	3,000,000	12/10/19	2,505,271	
			12/10/19	494,729	
68	19	1,765,000	12/10/19	1,473,935	
			12/10/19	291,065	
70	19	5,225,000	12/10/19	4,363,348	
			12/10/19	861,652	
150	19	2,340,000	10/28/20	2,052,449	(79,325)
			10/28/20	287,575	
			10/28/20	79,302	
171	19	306,000			306,000
182	19	1,375,000			1,375,000
206	20	5,000,000			5,000,000
Total		33,336,350		22,780,785	10,555,565

AN ACT authorizing the County of Westchester to enter into an intermunicipal agreement with the Town of New Castle in connection with a flood mitigation project (Capital Project BPL26, Unique ID# 1694)).

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 New Castle (the “Town”), in substantially the form attached hereto, in connection with a flood mitigation project to be conducted in the Town to mitigate flooding at Upper Minkel Pond.

§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 , 2021 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 NEW CASTLE, a municipal corporation of the State of New York, having an office and place of business at 200 S. Greeley Avenue, Ghappagua, New York 10514

(hereinafter referred to as the “Municipality”).

RECITALS

WHEREAS, in response to serious flooding issues throughout Westchester County (the “County”), the Westchester County Executive (the “County Executive”) and the Westchester County Board of Legislators (the “Board of Legislators”), on February 14, 2011, adopted Law No. 2-2011 known as the Westchester County Storm Water Management Law (the “SWML”) to address this issue and to create a Storm Water Advisory Board (the “SWAB”) to assist County municipalities in addressing flooding; and

WHEREAS, the SWML enables the County to partner with County municipalities 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 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 Saw Mill River - Pocantico River 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 June 23, 2014 by Act No. 120 - 2014; and

WHEREAS, the area of flooding for which the Municipality wishes to participate in the SWML funding program is identified in a study or 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 flood mitigation and/or flood damage reduction project involving the decommissioning of the dam at Upper Minkel Pond in the Town of New Castle, including restoration of the area as a wetland floodplain (the "Project"), and further described herein, to be undertaken by the Municipality.

WHEREAS, the Municipality has prepared designs, specifications and construction documents 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 storm water pipes, and County parkland and other municipal and private property, the County desires at this time to contribute Phase I funding toward the design, specification and construction documents cost of the Project. The Project is located in 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 design, specification and construction documents of the Project in accordance with Schedule "A" and all of the other terms of this Agreement.

The County agrees to finance its share of the design, specification and construction documents for the Project on a cost 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 design, specification and construction documents for the Project. Project design, specification and construction documents costs up to \$550,000.00 shall be paid fifty (50) percent by the County (up to \$275,000.00) and fifty (50) percent by the Municipality; provided, however, that should the total Project design, specification and construction documents costs be less than \$550,000.00, 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. Accordingly, it is recognized and understood that the County's obligation to fund the implementation and construction of the Project ("Phase II funding") is subject to future appropriations and bonding authority from the Board of Legislators and any and all other necessary legal approvals.

The County does not provide or extend any warranty of fitness 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" 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 or Acting 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 properly executed payment vouchers of the County and paid only after approval by the Planning Commissioner and the Commissioner of the Westchester County Department of Public Works and Transportation ("DPWT Commissioner"). All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. 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;

(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 design phases of the Project, including, but not limited to, planning, preliminary design and final design. The Municipality shall submit the design plans, specifications and construction documents at the thirty (30) percent, sixty (60) percent, ninety (90) percent and one hundred (100) percent completion stages to the DPWT Commissioner or his duly authorized representative and to the Planning Commissioner or his duly authorized designee for review, and said design plans and specifications shall be mutually approved by all parties. The Municipality shall fully complete the design plans, specifications and construction documents as set forth in Schedule "A" and submit the same 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 six (6)-month extension of time for completion. In the event that the Municipality fails to complete the scope of work set forth in Schedule "A" and submit the same to

the County in a timely manner as set forth herein, including any six (6)- month extension agreed to between the parties, it shall remit all funds disbursed hereunder to the County within (30) days of receipt of written request unless an extension of time for completion is mutually agreed to between the parties and all necessary legal approvals are obtained 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 "D".

Section 4.1. As further consideration for the County's financial contribution toward the Project, and in order to comply with the terms of the August 2009 Stipulation and Order of Settlement and Dismissal in U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, New York ("Settlement Agreement"), the Municipality certifies that it has adopted municipal zoning code provisions and/or policies which reflect the guidance provided in the Model Ordinance Provisions approved pursuant to the Settlement Agreement 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 further implementation of the Settlement Agreement 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 approved pursuant to the Settlement Agreement, 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 of New Castle
200 S. Greeley Avenue
Chappaqua, New York 10514

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 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) **Actor 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 Indemnatee, 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 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. 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 "B" 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 "C", 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: _____
Norma Drummond, Commissioner
Department of Planning

TOWN OF NEW CASTLE

By: _____
Name:
Title:

Approved by the Board of Legislators of the County of Westchester by Act No. _____ on the _____ day of _____.

Approved by the Municipal Board of the Municipality on the _____ day of _____.

Approved as to form and manner of execution:

Sr. Assistant County Attorney
County of Westchester

CERTIFICATE OF AUTHORITY

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of
(Title)
the _____
(the "Municipality")

a municipal corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporate 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 and that said agreement was duly signed for and on behalf of said Municipality by authority of its Board of _____, 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 _____, 2021, before me personally came _____, whose signature appears above, to me known, and known to me to be the _____ of _____
(Title)

_____, the Municipality described in and which executed the above certificate, who being by me duly sworn did depose and say that he/she, the said _____ of said Municipality resides at _____, and that he/she signed his/her name hereto by order of the Board of _____ of said Municipality.

Notary Public
County of

SCHEDULE "A"

Schedule "A" to be attached hereto

DRAFT

SCHEDULE "B"

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.

- 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.

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.

- 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.

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

SCHEDULE "C"
VENDOR DIRECT PAYMENT TERMS

Westchester County Vendor Direct Program Frequently Asked Questions

1. WHAT ARE THE BENEFITS OF THE ELECTRONIC FUNDS TRANSFER (EFT) ASSOCIATED WITH THE VENDOR DIRECT PROGRAM?

There are several advantages to having your payments automatically deposited into your designated bank account via EFT:

Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your bank account is more secure.

You save time – Money deposited into your bank account is automatic. You save the time of preparing and delivering the deposit to the bank. Additionally, the funds are immediately available to you.

2. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE VENDOR DIRECT?

Yes.

3. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?

Payments are deposited two business days after the voucher/invoice is processed. Saturdays, Sundays, and legal holidays are not considered business days.

4. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT AND WHAT IT IS FOR?

Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on your check stub, and will contain the date that the funds will be credited to your account.

5. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT RECEIVED?

Please contact your Westchester County representative as you would have in the past if there were a discrepancy on a check received.

6. WHAT IF I DO NOT RECEIVE THE MONEY IN MY DESIGNATED BANK ACCOUNT ON THE DATE INDICATED IN THE E-MAIL?

In the unlikely event that this occurs, please contact the Westchester County Accounts Payable Department at 914-995-4708.

7. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?

Whenever you change any information or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-4708 and we will e-mail you a new form.

8. WHEN COMPLETING THE PAYMENT AUTHORIZATION FORM, WHY MUST I HAVE IT SIGNED BY A BANK OFFICIAL IF I DON'T INCLUDE A VOIDED CHECK?

This is to ensure the authenticity of the account being set up to receive your payments.

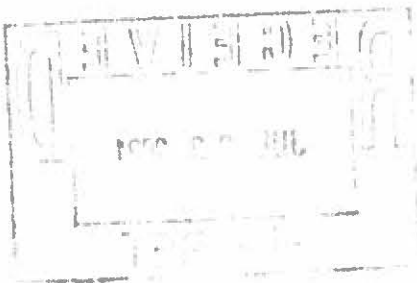
INSERT VENDOR DIRECT FORM

DRAFT

SCHEDULE "D"

County's Discretionary Funding Policy to be attached hereto.

DRAFT



August 2, 2021

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith for your review and approval is a bond act ("Bond Act") which, if adopted by your Honorable Board, would authorize the County of Westchester ("County") to issue up to \$270,000 in bonds of the County to finance a component of capital project BPL26 - Flood Mitigation ("BPL26"). Also attached is an Act authorizing an intermunicipal agreement ("IMA") with the City of Yonkers ("City") setting forth the terms of the flood mitigation project.

The Bond Act, in the amount of \$270,000, would finance the County's up to 50% share of the cost of a flood mitigation project consisting of the rehabilitation of the dam at the Grassy Sprain Reservoir in the City which is expected to reduce flood risk for downstream properties, including areas downstream described as Flood Problem Area YON-1 in the stormwater reconnaissance plan for the Bronx River drainage basin. The project will take approximately twelve months to complete.

The IMA, a copy of which is attached, will set forth the responsibilities of the County and the City in connection with the project. In accordance with the IMA, the County and the City will each provide up to fifty (50%) percent of the total cost of the project which is anticipated to be \$500,000. The County will pay to the City, on a reimbursement basis, an amount not to exceed \$250,000. Your Honorable Board will note that the bonding request is \$270,000 to include additional County costs for staff hours and administration of the project.

In 2011 your Honorable Board 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.

By Act No. 134-2014, your Honorable Board approved the Stormwater Reconnaissance Plan for the Coastal Long Island Sound Watershed. The Grassy Sprain Reservoir is identified as an area of recurring flooding in this plan. Criteria for funding stormwater management (flood mitigation) projects are also described in the plan, including discretionary fund policy requirements to affirmatively further fair housing. The IMA requires the City to adopt regulations and policies consistent with the flood mitigation criteria.

It should be noted that your Honorable Board has previously authorized the County to issue bonds which have financed prior components of this project as set forth in the attached fact sheet.

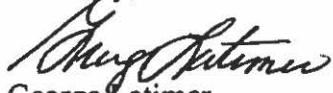
The Planning Department has advised that based on its review, the above referenced capital project has been classified as a "Type II" action pursuant to the State Environmental Quality Review Act ("SEQR") and its implementing regulations, 6 NYCRR Part 617. Therefore, no further environmental review is required. As you know, your Honorable Board may use such expert advice to reach its own conclusion.

It should be noted that since BPL26 is a "general fund" project, specific components are subject to a Capital Budget Amendment. Section 1 of the Bond Act authorizes an amendment to the County's Capital Budget to the extent the project scope is inconsistent with any details set forth in the current Capital Budget. Accordingly, the Bond Act, in addition to authorizing the issuance of bonds for this project, will also amend the 2021 Capital Budget to reflect the specific location of this project component.

In addition, section 167.131 of the County Charter mandates that a capital budget amendment that introduces a new capital project or changes the location, size or character of an existing capital project be accompanied to the Board of Legislators by a report of the Westchester County Planning Board (the "Planning Board") with respect to the physical planning aspects of the project. Accordingly, the Planning Board Report for BPL26 is annexed.

Based upon the foregoing, I recommend the adoption of the aforementioned Bond Act as well as the Act authorizing the IMA.

Sincerely,



George Latimer
County Executive

GL/ND/DK/mg
Attachments

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

Your Committee is in receipt of a transmittal from the County Executive recommending approval of a bond act ("Bond Act"), which if adopted, would authorize the County of Westchester ("County") to issue up to \$270,000 in bonds to finance a component of capital project BPL26 - Flood Mitigation ("BPL26"). Also attached is an Act authorizing an intermunicipal agreement ("IMA") with the City of Yonkers ("City") setting forth the terms of the flood mitigation project.

Your Committee is advised that the Bond Act, prepared by the law firm of Hawkins Delafield & Wood LLP, would finance the County's up to 50% share of the cost of a flood mitigation project consisting of the rehabilitation of the dam at the Grassy Sprain Reservoir in the City which is expected to reduce flood risk for downstream properties, including areas downstream described as Flood Problem Area YON-1 in the stormwater reconnaissance plan for the Bronx River drainage basin. The project will take approximately twelve months to complete.

The IMA, a copy of which is attached, will set forth the responsibilities of the County and the City in connection with the project. In accordance with the IMA, the County and the City will each provide up to fifty (50%) percent of the total cost of the project which is anticipated to be \$500,000. The County will pay to the City, on a reimbursement basis, an amount not to exceed \$250,000. Your Honorable Board will note that the bonding request is \$270,000 to include additional County costs for staff hours and administration of the project.

Your Committee is advised that this Honorable Board enacted the Westchester County Storm Water Management Law ("SWML") in 2011 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.

By Act No. 134-2014, this Honorable Board approved the Stormwater Reconnaissance Plan for the Coastal Long Island Sound Watershed. The Grassy Sprain Reservoir is identified as an area of recurring flooding in this plan. Criteria for funding stormwater management (flood mitigation) projects are also described in the plan, including discretionary fund policy requirements to affirmatively further fair housing. The IMA requires the City to adopt regulations and policies consistent with the flood mitigation criteria in the Stormwater Reconnaissance Plan.

Your Committee notes that this Honorable Board has previously authorized the County to issue bonds which have financed prior components of this project as set forth in the attached fact sheet.

The Planning Department has advised your Committee that based on its review, the above referenced capital project has been classified as a Type "II" action pursuant to the State Environmental Quality Review Act ("SEQR") and its implementing regulations, 6 NYCRR Part 617. Therefore, no further environmental review is required. Your Committee has reviewed the annexed SEQRA documentation and concurs with this conclusion.

Your Committee is further advised that since BPL26 is a "general fund" project, specific components are subject to a Capital Budget Amendment. Section 1 of the Bond Act authorizes an amendment to the County's Capital Budget to the extent the project scope is inconsistent with any details set forth in the current Capital Budget. Accordingly, the Bond Act, in addition to authorizing the issuance of bonds for this project, will also amend the 2021 Capital Budget to reflect the specific location of this project component.

In addition, section 167.131 of the County Charter mandates that a capital budget amendment that introduces a new capital project or changes the location, size or character of an existing capital project be accompanied to the Board of Legislators by a report of the Westchester County Planning Board (the "Planning Board") with respect to the physical planning aspects of the project. Accordingly, the Planning Board Report for BPL26 is annexed.

Please note that an affirmative vote of two-thirds of the members of your Honorable Board is required in order to adopt the Bond Act, while a simple majority of the voting strength of your Honorable Board is required to adopt the Act authorizing the IMA.

Based on the importance of this project to the County, your Committee recommends favorable action on the annexed Bond Act and Act authorizing the IMA.

Dated: _____, 20_____.

White Plains, New York

COMMITTEE ON

s MG 7-21-21

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: BPL26

NO FISCAL IMPACT PROJECTED

SECTION A - CAPITAL BUDGET IMPACT

To Be Completed by Budget

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

Source of County Funds (check one):

Current Appropriations

Capital Budget Amendment

SECTION B - BONDING AUTHORIZATIONS

To Be Completed by Finance

Total Principal \$ 270,000 PPU 30 Anticipated Interest Rate 1.22%

Anticipated Annual Cost (Principal and Interest): \$ 10,720

Total Debt Service (Annual Cost x Term): \$ 321,600

Finance Department: Interest rates from July 21, 2021 Bond Buyer - ASBA

SECTION C - IMPACT ON OPERATING BUDGET (exclusive of debt service)

To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual): \$ -

Potential Related Revenues (Annual): \$ -

Anticipated savings to County and/or impact of department operations

(describe in detail for current and next four years):

N/A

SECTION D - EMPLOYMENT

As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded: 0

SECTION E - EXPECTED DESIGN WORK PROVIDER

County Staff

Consultant

Not Applicable

Prepared by: William Brady

Title: Chief Planner

Department: Planning


Date: 7/26/21

Reviewed By: 

Budget Director

Date: 7/27/21

TO: Michelle Greenbaum, Senior Assistant County Attorney
Jeffrey Goldman, Senior Assistant County Attorney

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

DATE: July 19, 2021

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR CAPITAL PROJECT:
BPL26 FLOOD MITIGATION**

PROJECT/ACTION: Per Capital Project Fact Sheet as approved by the Planning Department on 06-28-2021 (Unique ID: 1692)

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 for the proposed action, because the project or component of the project for which funding is requested may be classified as a **TYPE II action** pursuant to section(s):

- **617.5(c)(2):** replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part.

COMMENTS: The current request is only for the rehabilitation of the emergency relief valve, valve gatehouse and associated roadway.

DSK/dvw

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Tami Altschiller, Assistant Chief Deputy County Attorney
Gideon Grande, Deputy Budget Director
Lorraine Yazzetta, Associate Budget Director
Anthony Zaino, Assistant Commissioner
William Brady, Chief Planner
Michael Lipkin, Associate Planner
Claudia Maxwell, Associate Environmental Planner

RESOLUTION 21- 14

WESTCHESTER COUNTY PLANNING BOARD

Amendment of Planning Board Report on 2021 Capital Project Requests
BPL26 Flood Mitigation

WHEREAS, the County of Westchester has established Capital Project BPL26 Flood Mitigation, a general fund, to provide a share of the cost of funding flood mitigation projects that are proposed by local municipalities and approved by the County; and

WHEREAS, the reconstruction of the dam at the Grassy Sprain Reservoir in the City of Yonkers will reduce flood risk for downstream properties, including areas downstream described as Flood Problem Area YON-1 in the stormwater reconnaissance plan for the Bronx River drainage basin; and

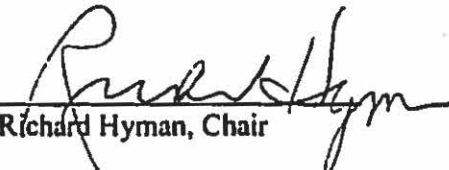
WHEREAS, the project has been reviewed and approved by the County Stormwater Advisory Board and will be subject to further detailed review by County staff; and

WHEREAS, in furtherance of the above, the County Executive will be submitting legislation to the Board of Legislators to amend the Capital Project BPL26 Flood Mitigation to add the project to Capital Project BPL26 and authorize bonding to fund up to 50% of the project; and

WHEREAS, the project is consistent with the County Planning Board's long-range planning policies set forth in *Westchester 2025 - Policies to Guide County Planning*, in that it will help preserve and protect the County's natural resources and environment, both physical and biotic and will help mitigate the impacts of flooding; now therefore, be it

RESOLVED, that the County Planning Board, pursuant to Section 167.131 of the County Charter, amends its Report on the 2021 Capital Project Requests to include the Capital Project BPL26 Flood Mitigation for the reconstruction of the dam at the Grassy Sprain Reservoir in the City of Yonkers.

Adopted this 1st day of June 2021


Richard Hyman, Chair

ACT NO. -20_____

BOND ACT AUTHORIZING THE ISSUANCE OF \$270,000 BONDS OF THE COUNTY OF WESTCHESTER, OR SO MUCH THEREOF AS MAY BE NECESSARY, TO FINANCE THE COUNTY'S SHARE OF THE COST OF A FLOOD MITIGATION PROJECT IN THE COUNTY, STATING THE ESTIMATED MAXIMUM COST THEREOF IS \$270,000; STATING THE PLAN OF FINANCING SAID COST INCLUDES THE ISSUANCE OF \$270,000 BONDS HEREIN AUTHORIZED; AND PROVIDING FOR A TAX TO PAY THE PRINCIPAL OF AND INTEREST ON SAID BONDS. (Adopted _____, 20____)

BE IT ENACTED BY THE COUNTY BOARD OF LEGISLATORS OF THE COUNTY OF WESTCHESTER, NEW YORK (by the affirmative vote of not less than two-thirds of the voting strength of said Board), AS FOLLOWS:

Section 1. Pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (the "Law"), the Westchester County Administrative Code, being Chapter 852 of the Laws of 1948, as amended, an Intermunicipal Agreement between the County and the City of Yonkers, and to the provisions of other laws applicable thereto; \$270,000 bonds of the County, or so much thereof as may be necessary, are hereby authorized to be issued to finance the County's share of the cost of a flood mitigation project consisting of the rehabilitation of the dam at the Grassy Sprain Reservoir in the City of Yonkers which is expected to reduce flood risk for downstream properties, including areas downstream described as Flood Problem Area YON-1 in the stormwater reconnaissance plan for the Bronx River drainage basin, all as set forth in the County's Current Year Capital Budget, as
HDW

amended. To the extent that the details set forth in this act are inconsistent with any details set forth in the Current Year Capital Budget of the County, such Budget shall be deemed and is hereby amended. The total estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and the financing thereof is \$270,000. The plan of financing includes the issuance of \$270,000 bonds herein authorized, and any bond anticipation notes issued in anticipation of the sale of such bonds, and the levy of a tax to pay the principal of and interest on said bonds.

Section 2. The period of probable usefulness of the specific object or purpose for which said \$270,000 bonds authorized by this Act are to be issued, within the limitations of Section 11.00 a.22(a) of the Law, is thirty (30) years;

Section 3. Current funds are not required to be provided as a down payment pursuant to Section 107.00 d. 9. of the Law prior to issuance of the bonds authorized herein, or any bond anticipation notes issued in anticipation of the sale of such bonds. The County intends to finance, on an interim basis, the costs or a portion of the costs of said improvements for which bonds are herein authorized, which costs are reasonably expected to be reimbursed with the proceeds of debt to be incurred by the County, pursuant to this Act, in the maximum amount of \$270,000. This Act is a declaration of official intent adopted pursuant to the requirements of Treasury Regulation Section 1.150-2.

Section 4. The estimate of \$270,000 as the estimated total cost of the aforesaid objects or purposes is hereby approved.

Section 5. Subject to the provisions of this Act and of the Law, and pursuant to the provisions of §30.00 relative to the authorization of the issuance of bond anticipation notes or

the renewals thereof, and of §§50.00, 56.00 to 60.00 and 168.00 of said Law, the powers and duties of the County Board of Legislators relative to authorizing the issuance of any notes in anticipation of the sale of the bonds herein authorized, or the renewals thereof, relative to providing for substantially level or declining annual debt service, relative to prescribing the terms, form and contents and as to the sale and issuance of the respective amounts of bonds herein authorized, and of any notes issued in anticipation of the sale of said bonds or the renewals of said notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Commissioner of Finance of the County, as the chief fiscal officer of the County.

Section 6. Each of the bonds authorized by this Act and any bond anticipation notes issued in anticipation of the sale thereof shall contain the recital of validity prescribed by §52.00 of said Local Finance Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the County of Westchester, payable as to both principal and interest by general tax upon all the taxable real property within the County. The faith and credit of the County are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds or the renewals of said notes, and provision shall be made annually in the budgets of the County by appropriation for (a) the amortization and redemption of the notes and bonds to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 7. The validity of the bonds authorized by this Act and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the County is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of this Act or a summary hereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity, is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This Act shall take effect in accordance with Section 107.71 of the Westchester County Charter.

* * *

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said County Board of Legislators this day of , 20____.

(SEAL)

The Clerk and Chief Administrative Office of the County Board of Legislators County of Westchester, New York

HDW

LEGAL NOTICE

A Bond Act, a summary of which is published herewith, has been adopted by the Board of Legislators on _____, 20____ and approved, by the County Executive on _____, 20____ and the validity of the obligations authorized by such Bond Act may be hereafter contested only if such obligations were authorized for an object or purpose for which the County of Westchester, in the State of New York, is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this Notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the publication of this Notice, or such obligations were authorized in violation of the provisions of the Constitution.

Complete copies of the Bond Act summarized herewith shall be available for public inspection during normal business hours at the Office of the Clerk of the Board of Legislators of the County of Westchester, New York, for a period of twenty days from the date of publication of this Notice.

ACT NO. _____-20_____

BOND ACT AUTHORIZING THE ISSUANCE OF \$270,000 BONDS OF THE COUNTY OF WESTCHESTER, OR SO MUCH THEREOF AS MAY BE NECESSARY, TO FINANCE THE COUNTY'S SHARE OF THE COST OF A FLOOD MITIGATION PROJECT IN THE COUNTY, STATING THE ESTIMATED MAXIMUM COST THEREOF IS \$270,000; STATING THE PLAN OF FINANCING SAID COST INCLUDES THE ISSUANCE OF \$270,000 BONDS HEREIN AUTHORIZED; AND PROVIDING FOR A TAX TO PAY THE PRINCIPAL OF AND INTEREST ON SAID BONDS. (adopted on _____, 20____)

object or purpose: to finance the County's share of the cost of a flood mitigation project consisting of the rehabilitation of the dam at the Grassy Sprain Reservoir in the City of Yonkers which is expected to reduce flood risk for downstream properties, including areas downstream described as Flood Problem Area YON-1 in the stormwater reconnaissance plan for the Bronx River drainage basin, all as set forth in the County's Current Year Capital Budget, as amended.

amount of obligations to be issued:

and period of probable usefulness: \$270,000; thirty (30) years

Dated: _____, 20____
White Plains, New York

Clerk and Chief Administrative Officer of the County Board
of Legislators of the County of Westchester, New York

HDW

3608692.1 044973 LEG

CAPITAL PROJECT FACT SHEET

Project ID:*
BPL26

CBA

Fact Sheet Date:*
05-20-2021

Fact Sheet Year:*
2021

Project Title:*
FLOOD MITIGATION

Legislative District ID:
15, 16

Category*
BUILDINGS, LAND &
MISCELLANEOUS

Department:*
PLANNING

CP Unique ID:
1692

Overall Project Description

This project is intended to provide a share of the cost of funding flood mitigation projects that are proposed by local municipalities and approved by the County. This is a general fund, specific projects are subject to a Capital Budget Amendment.

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Best Management Practices | <input type="checkbox"/> Energy Efficiencies | <input type="checkbox"/> Infrastructure |
| <input checked="" type="checkbox"/> Life Safety | <input type="checkbox"/> Project Labor Agreement | <input type="checkbox"/> Revenue |
| <input type="checkbox"/> Security | <input checked="" type="checkbox"/> Other(FLOOD MITIGATION) | |

FIVE-YEAR CAPITAL PROGRAM (in thousands)

	Estimated Ultimate Total Cost	Appropriated	2021	2022	2023	2024	2025	Under Review
Gross	40,750	20,550	200	0	0	0	0	20,000
Less Non-County Shares	0	0	0	0	0	0	0	0
Net	40,750	20,550	200	0	0	0	0	20,000

Expended/Obligated Amount (in thousands) as of : 6,626

Current Bond Description: This request will provide funding assistance for remaining components of the rehabilitation of the dam at the Grassy Sprain Reservoir in the City of Yonkers. The project will reduce flood risk for downstream properties, including areas downstream described as Flood Problem Area YON-1 in the stormwater reconnaissance plan for the Bronx River drainage basin. This is a general fund capital project, and a Capital Budget Amendment is needed to add the specific project location.

Financing Plan for Current Request:

Non-County Shares:	\$ 0
Bonds/Notes:	270,000
Cash:	0
Total:	\$ 270,000

SEQR Classification:
TYPE II

Amount Requested:
270,000

Comments:

Energy Efficiencies:

Appropriation History:

Year	Amount	Description
2009	5,400,000	MAMARONECK AND SHELDRAKE RIVERS BASIN FLOOD DAMAGE REDUCTION STUDY; FOUR LOCAL MUNICIPAL FLOOD PROJECTS
2012	5,000,000	FLOOD MITIGATION PROJECTS TO BE DETERMINED
2013	5,000,000	FLOOD RELATED PROJECTS
2015	150,000	DESIGN OF A STUDY FOR A COUNTYWIDE SYSTEM OF STREAM AND STORM GAUGES
2016	5,000,000	CONTINUATION OF THIS PROJECT
2021	200,000	DESIGN AND INSTALLATION OF A MAINTENANCE GATE AT SPRAIN BROOK, YONKERS

Total Appropriation History:

20,750,000

Financing History:

Year	Bond Act #	Amount	Issued	Description
09	79	900,000	899,501	FLOOD MITIGATION STUDY: MAM'K & SHELDRAKE RIVERS BASIN
09	140	2,441,625	2,441,625	COUNTY PORTION OF FLOOD MITIGATION PROJECT IN COUNTY
17	11	2,974,875	2,502,239	COUNTY PORTION OF FLOOD MITIGATION PROJECT IN COUNTY (AMMENDED)
18	171	70,000	0	FUNDING FOR AN ENGINEERING STUDY TO DEVELOP A SOLUTION FOR FLOODING IN RYE BROOK, AVON CIRCLE AREA
19	108	300,000	0	INITIAL DESIGN OF PROJECT TO MITIGATE FLOODING ALONG THE HUTCHINSON RIVER
19	247	1,000,000	0	RECONSTRUCT THE HILLSIDE AVENUE BRIDGE IN THE VILLAGE OF MAMARONECK

Total Financing History:

7,686,499

Recommended By:

Department of Planning
WBB4

Date
06-28-2021

Department of Public Works
RJB4

Date
06-29-2021

Budget Department
LMY1

Date
06-29-2021

Requesting Department
WBB4

Date
07-01-2021

FLOOD MITIGATION (BPL26)

User Department : Planning

Managing Department(s) : Planning ;

Estimated Completion Date: TBD

Planning Board Recommendation: Project approved in concept but subject to subsequent staff review.

FIVE YEAR CAPITAL PROGRAM (in thousands)

	Est Ult Cost	Appropriated	Exp / Obl	2021	2022	2023	2024	2025	Under Review
Gross	40,750	20,550	6,626	200					20,000
Non County Share									
Total	40,750	20,550	6,626	200					20,000

Project Description

This project is intended to provide a share of the cost of funding flood mitigation projects that are proposed by local municipalities and approved by the County. This is a general fund, specific projects are subject to a Capital Budget Amendment.

Current Year Description

The current year request funds design and installation of a maintenance gate at Sprain Brook, Yonkers.

Current Year Financing Plan

Year	Bonds	Cash	Non County Shares	Total
2021	200,000			200,000

Impact on Operating Budget

The impact on the Operating Budget is the debt associated with the issuance of bonds.

Appropriation History

Year	Amount	Description	Status
2009	5,400,000	Mamaroneck and Sheldrake Rivers basin flood damage reduction study; Four local municipal flood projects	IN PROGRESS
2012	5,000,000	Flood Mitigation Projects to be Determined	IN PROGRESS
2013	5,000,000	Flood related projects	AWAITING BOND AUTHORIZATION
2015	150,000	Design of a study for a countywide system of stream and storm gauges	AWAITING BOND AUTHORIZATION
2016	5,000,000	Continuation of this project	AWAITING BOND AUTHORIZATION
Total	20,550,000		

Prior Appropriations

	Appropriated	Collected	Uncollected
Bond Proceeds	20,550,000	5,843,364	14,706,636
Total	20,550,000	5,843,364	14,706,636

**FLOOD MITIGATION
(BPL26)**

Bonds Authorized				
Bond Act	Amount	Date Sold	Amount Sold	Balance
79 09	900,000	12/02/10	358,000	499
		12/02/10	(358,000)	
		11/30/11	522,141	
		11/30/11	77,859	
		11/19/15	250,434	
		11/19/15	48,566	
		11/19/15	501	
140 09	2,441,625	10/24/12	740,494	
		10/24/12	75,506	
		10/24/12	6,240	
		12/10/13	852,989	
		12/10/13	104,011	
		12/10/13	2,925	
		11/19/15	334,212	
		11/19/15	64,813	
		11/19/15	669	
		12/15/16	259,766	
		12/15/17	31,948	472,636
		12/15/17	5,866	
		12/15/17	50	
12/15/17	29,606			
12/15/17	5,436			
12/15/17	46			
12/10/18	660,625			
12/10/19	959,846			
12/10/19	189,546			
12/10/19	117,641			
12/10/19	23,231			
04/30/20	478,398			
171 18	70,000			70,000
108 19	300,000			300,000
247 19	1,000,000			1,000,000
Total	7,686,500		5,843,365	1,843,135

AN ACT authorizing the County of Westchester to enter into an intermunicipal agreement with the City of Yonkers in connection with a flood mitigation project (Capital Project BPL26, Unique ID# 1692).

BE IT ENACTED by the County Board of Legislators 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”), in substantially the form attached hereto, in connection with a flood mitigation project to be conducted in the City to mitigate flooding at the Grassy Sprain Reservoir.

§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 one year.

§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 , 2021 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, New York 10701,

(hereinafter referred to as the “Municipality”).

RECITALS

WHEREAS, in response to serious flooding issues throughout Westchester County (the “County”), the Westchester County Executive (the “County Executive”) and the Westchester County Board of Legislators (the “Board of Legislators”), on February 14, 2011, adopted Law No. 2-2011 known as the Westchester County Storm Water Management Law (the “SWML”) to address this issue and to create a Storm Water Advisory Board (the “SWAB”) to assist County municipalities in addressing flooding; and

WHEREAS, the SWML enables the County to partner with County municipalities 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 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, the Municipality wishes to participate in the SWML funding program and has submitted an application to the County for Phase II 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 Bronx River Basin 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 July 14, 2014 by Act No. 124 - 2014; and

WHEREAS, the area of flooding for which the Municipality wishes to participate in the SWML funding program is identified in a study or 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 II funding to the costs of a flood mitigation and/or flood damage reduction project known as Gassy Sprain Dam Rehabilitation (the "Project"), and further described herein, to be undertaken by the Municipality.

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 twelve (12) months commencing upon full execution as evidenced by the date on the top of Page 1 of this Agreement.

ARTICLE II

TERMS OF PAYMENT, EASEMENT 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 storm water pipes, and County parkland and other municipal and private property, the County desires at this time to contribute Phase II funding toward the design, specification and construction documents cost of the Project. The Project is located in the Municipality and consists of flood mitigation and/or flood damage reduction work. The scope of work for this Phase II funding agreement is more fully described in Schedule "A-1", attached hereto and made a part hereof. In consideration for the County's aforesaid contribution, the Municipality represents that it shall complete the construction documents and all aspects of construction activity associated with the Project in accordance with Schedule "A-1" and all of the other terms of this Agreement.

The County agrees to finance the construction of this 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 up to \$250,000 for construction of this Project. The County share of the construction of this Project shall not exceed that amount. Project construction costs up to \$500,000 shall be paid fifty (50) percent by the County (up to \$250,000) and fifty (50) percent by the Municipality; provided, however, should the total Project construction costs be less than \$500,000, 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 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. In addition to, and not in limitation of the insurance requirements set forth herein, 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 elected officials, officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out maintenance, operation, security and/or repair of the Project and of this Agreement and of the acts or omissions hereunder by the Municipality or third parties under the direction or control of the Municipality; 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 maintenance, operation, and/or repair of the Project and 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.

This indemnification provision shall survive termination or expiration of this Agreement.

Section 2.2. The Municipality represents that within one (1) year of the date hereof that the "Flood Mitigation Criteria" 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 or Acting 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 2.3. 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 properly executed payment vouchers of the County and paid only after approval by the Planning

Commissioner and the Commissioner of the Westchester County Department of Public Works and Transportation (“DPWT Commissioner”). All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. 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 2.4. The Municipality agrees to convey to the County, its successors, and assigns a non-exclusive easement(s) (the “Easement(s)”) in, upon, under and over that portion of the Municipality’s property within which the Project is located, which Easement(s) shall be substantially in the form attached hereto and made a part hereof as Schedule “A-2”. The Municipality shall be solely responsible for obtaining any and all easements on non-Municipally-owned property needed in connection with the carrying out of the Project and shall provide copies of said easements to the Planning Commissioner. Said easements shall name Westchester County as a Grantee solely for the purposes of carrying out the work needed to accomplish the Project and said easements shall be for a term equal to or greater than the life of any bonds issued by the County to fund the County’s portion of the Project.

Section 2.5. 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;

(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 phases of the Project construction, including, but not limited to, planning, design, construction and post-construction maintenance. The Municipality shall fully complete the construction of the Project as set forth in Schedule "A-1" on or before twelve (12) 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. In the event that the Municipality fails to complete the scope of work set forth in Schedule "A-1" and submit the same 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 (30) days of receipt of written request unless an extension of time for completion is mutually agreed to between the parties and all necessary legal approvals are obtained 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 "D".

Section 4.1. As further consideration for the County's financial contribution toward the Project, and in order to comply with the terms of the August 2009 Stipulation and Order of Settlement and Dismissal in U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, New York ("Settlement Agreement"), the Municipality certifies that it has adopted municipal zoning code provisions and/or policies which reflect the guidance provided in the Model Ordinance Provisions approved pursuant to the Settlement Agreement 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 further implementation of the Settlement Agreement 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 approved pursuant to the Settlement Agreement, 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:

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 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 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;

(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; and

(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 biphenyls (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. 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 "B" 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 “C”, 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: _____

TOWN/CITY/VILLAGE

By: _____
(Name and Title)

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

Approved by the Board of Acquisition and Contract of the County of Westchester on

Approved by the Municipal Board of the Municipality on the ____ day of _____.

Approved

Assistant County Attorney
County of Westchester

MUNICIPALITY'S ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 2021 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

SCHEDULE "A-1"

Schedule A-1, Project Description, to be attached hereto

SCHEDULE "A-2"

THIS EASEMENT AGREEMENT, made the ___ day of _____, 2021, by

THE CITY OF YONKERS, organized and existing under the laws of the State of New York having an office and place of business at 40 South Broadway, Yonkers, New York 10701, ("Grantor"); and

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/or the "Grantee")

WITNESSETH:

WHEREAS, Grantor is the owner of the fee title of those certain parcels of real property in the City of Yonkers, New York and identified on the tax maps of the City of Yonkers as: Section 4, Block 4473, Lot 1, which real property is more particularly described in Schedule "A-3," which is annexed hereto and made a part hereof (the "Subject Property").

That the Grantor in consideration of the sum of One (\$1.00) Dollar lawful money of the United States, paid by the Grantee, receipt of which is hereby acknowledged, does hereby grant and release unto the Grantee, its successors and assigns, a non-exclusive easement (the "Easement") in, on, over, under and through the Subject Property, as more particularly described in Schedule "A-3," which is attached hereto and made a part hereof for the purpose of accessing certain improvements known as the Project consisting of flood mitigation improvements and described in a separate Intermunicipal Agreement of even date between the Grantor and Grantee, to construct, operate, maintain, repair, replace, inspect, or restore the Project.

The Easement granted herein is subject to the following restrictions:

The Grantor covenants that, until such time as the Bonds (defined below) have matured or been fully redeemed, neither it, nor its successors or assigns, shall do anything, or allow anything to be done, which in the reasonable opinion of the County would injure, endanger, impede use of or impair the Project in any material respect, or the operation thereof, located within the Easement,

The Grantor acknowledges that the easement rights of the County granted herein regarding the Project Improvements constructed in, on, over, under or through the Easement shall encumber such Project Improvements for so long as the bonds of the County (the "Bonds"), which made funds available for said Project are outstanding, pursuant to the terms of the certain inter-municipal agreement by and between the Municipality and the County of even date herewith. The Grantee shall not interfere with or disturb the construction, use, operation, maintenance or repair of any improvements now or hereafter situated within or upon the Project property.

The Easement shall run with the land and the provisions contained herein shall be binding upon and inure to the benefit of and be enforceable by the County, its successors and assigns until the Bonds have matured or been fully redeemed.

TO HAVE AND TO HOLD the Easement granted herein unto the County, its successors and assigns, until such time as the Bonds have matured or been fully redeemed.

IN WITNESS WHEREOF, the Grantor has executed this instrument the day and year first above written.

VILLAGE/TOWN/CITY OF

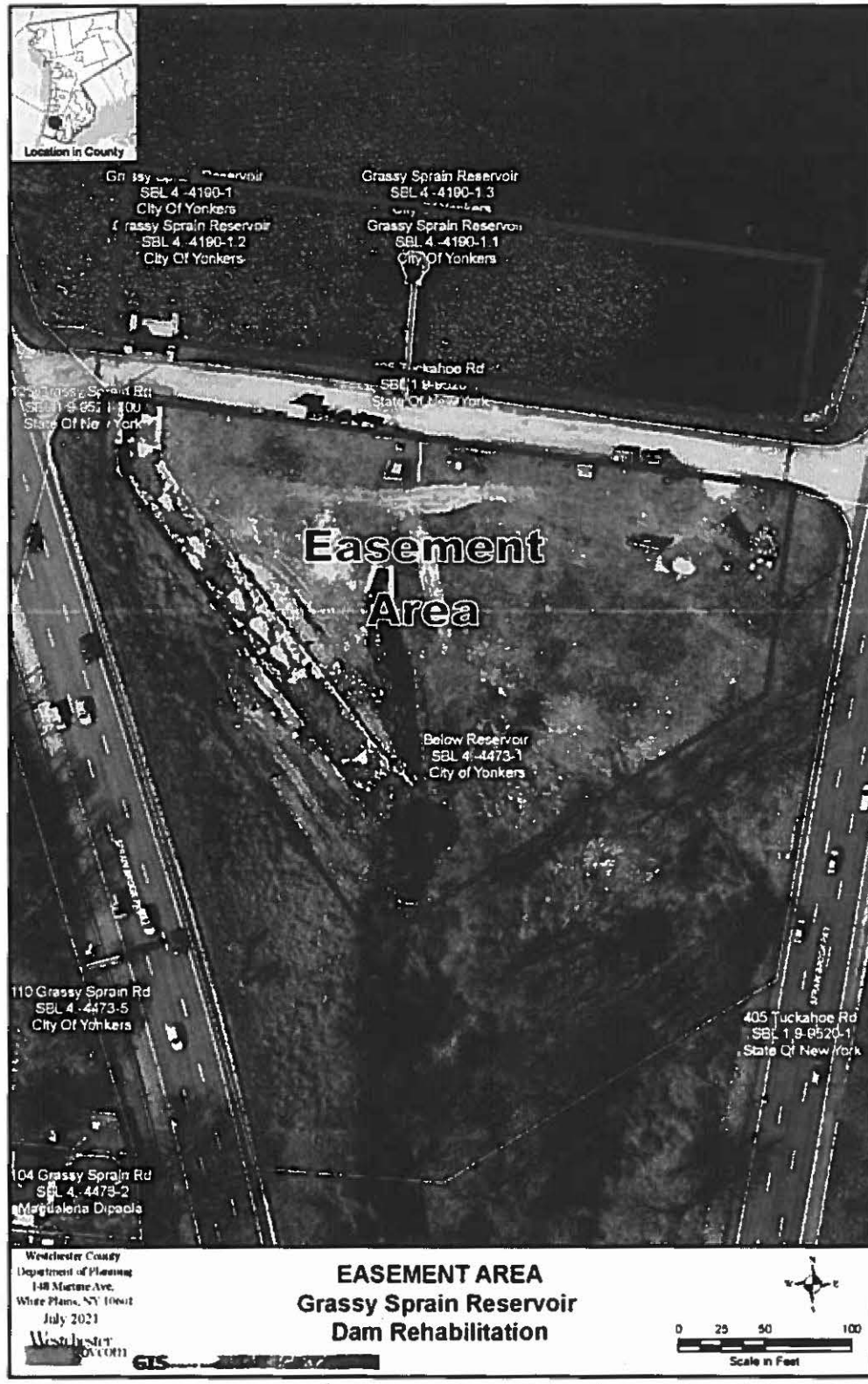
By: _____

COUNTY OF WESTCHESTER

By: _____

Record and Return to:

SCHEDULE "A-3"



MUNICIPALITY'S ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 20__ 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

COUNTY'S ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 200__ 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

SCHEDULE "B"

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.l) 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.

- 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.

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.

- 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.

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.

SCHEDULE "C"
VENDOR DIRECT PAYMENT TERMS

Westchester County Vendor Direct Program Frequently Asked Questions

1. WHAT ARE THE BENEFITS OF THE ELECTRONIC FUNDS TRANSFER (EFT) ASSOCIATED WITH THE VENDOR DIRECT PROGRAM?

There are several advantages to having your payments automatically deposited into your designated bank account via EFT:

Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your bank account is more secure.

You save time – Money deposited into your bank account is automatic. You save the time of preparing and delivering the deposit to the bank. Additionally, the funds are immediately available to you.

2. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE VENDOR DIRECT?

Yes.

3. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?

Payments are deposited two business days after the voucher/invoice is processed. Saturdays, Sundays, and legal holidays are not considered business days.

4. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT AND WHAT IT IS FOR?

Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on your check stub, and will contain the date that the funds will be credited to your account.

5. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT RECEIVED?

Please contact your Westchester County representative as you would have in the past if there were a discrepancy on a check received.

6. WHAT IF I DO NOT RECEIVE THE MONEY IN MY DESIGNATED BANK ACCOUNT ON THE DATE INDICATED IN THE E-MAIL?

In the unlikely event that this occurs, please contact the Westchester County Accounts Payable Department at 914-995-4708.

7. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?

Whenever you change any information or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-4708 and we will e-mail you a new form.

8. WHEN COMPLETING THE PAYMENT AUTHORIZATION FORM, WHY MUST I HAVE IT SIGNED BY A BANK OFFICIAL IF I DON'T INCLUDE A VOIDED CHECK?

This is to ensure the authenticity of the account being set up to receive your payments.

INSERT VENDOR DIRECT FORM

SCHEDULE "D"

County's Discretionary Funding Policy to be attached hereto.

