



Westchester County
Public Works & Transportation
Meeting Agenda

Committee Chair: MaryJane Shimsky

Monday, February 7, 2022

10:00 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations committee

MINUTES APPROVAL

Tuesday, January 25th at 10:00 a.m.

Tuesday, February 1st at 10:00 a.m.

Tuesday, February 1st at 4:00 p.m.

I. ITEMS FOR DISCUSSION

IMA-2002 Equipment Response Vehicle-White Plains

[2022-38](#)

AN ACT authorizing the County of Westchester to renew an intermunicipal agreement with the City of White Plains pursuant to which the County will continue to lease to the City a 2002 equipment response vehicle for an additional five-year term commencing retroactive to October 7, 2021.

**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS
AND PUBLIC WORKS & TRANSPORTATION**

Guest: Department of Public Safety: Capt. William McGuinness

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

George Latimer
County Executive

January 18, 2022

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

Honorable Members of the Board of Legislators:

Transmitted herewith is legislation which, if enacted by your Honorable Board, will authorize the County of Westchester (the "County") to renew an intermunicipal agreement ("IMA") with the City of White Plains (the "City") whereby the County will continue to lease to the City a 2002 equipment response vehicle, as identified in Schedule "A", attached to the proposed Act submitted herewith (the "2002 ERV"), for an additional five (5) year term commencing retroactive to October 7, 2021.

By Act No. 2016-234 approved on July 18, 2016, your Honorable Board authorized the County to enter into an IMA with the City whereby the County would lease to the City a 2002 ERV for use by the City's Department of Public Safety when responding to calls within New York State Counter Terrorism Zone Three ("CTZ 3"), as well as in response to incidents in the City. The term of the IMA commenced on October 7, 2016 and expired on October 6, 2021. Act No. 2016-234 further provided that "[a]t the expiration of the IMA, the 2002 ERV will be transferred back to the County *or authorization for an agreement to continue with the arrangement will be pursued.*" (emphasis supplied).

The lease of the 2002 ERV to the City has enhanced the overall safety and security of both the County and the City. For this reason, the parties now desire to renew the IMA for an additional five (5) year term. New York State General Municipal Law § 119-o (2)(j) authorizes municipalities to renew IMAs "upon conclusion of the terms established" in the original IMA.

Accordingly, authority is hereby requested for the County to renew the IMA with the City for the lease of the County's 2002 ERV, in "AS IS" condition, for an additional five (5) year term commencing retroactive to October 7, 2021 and continuing through October 6, 2026 (the "Renewal Term"). In consideration for the lease of the 2002 ERV during the Renewal Term, the City will pay the County the sum of One (\$1.00) Dollar and, as additional consideration, will man, operate, repair and maintain the 2002 ERV to respond to calls within CTZ-3 and for responses to incidents in the City. As it did under the original IMA, the City will continue to register the 2002 ERV and maintain insurance naming the County as additional insured. The City will also continue to indemnify, hold harmless and defend the County against any claims resulting from its use and/or maintenance of the 2002 ERV. Title to the 2002 ERV shall remain with the County.

The Planning Department has advised that the proposed IMA renewal does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

I believe that the proposed lease renewal is in the best interest of the County and I urge your Honorable Board's approval of the attached legislation.

Very truly yours,

A handwritten signature in black ink, appearing to read "George Latimer", written in a cursive style.

George Latimer
County Executive

GL/TAG/jpg

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

Your Committee is in receipt of a communication from the County Executive recommending approval of an Act which, if approved, would authorize the County of Westchester (the "County") to renew an intermunicipal agreement ("IMA") with the City of White Plains (the "City"), whereby the County will continue to lease to the City a 2002 equipment response vehicle, as identified in Schedule "A" attached to the proposed Act submitted herewith (the "2002 ERV"), for an additional five (5) year term commencing retroactive to October 7, 2021.

By Act No. 2016-234 approved on July 18, 2016, your Honorable Board authorized the County to enter into an IMA with the City whereby the County would lease to the City a 2002 ERV for use by the City's Department of Public Safety when responding to calls within New York State Counter Terrorism Zone Three ("CTZ 3"), as well as in response to incidents in the City. The term of the IMA commenced on October 7, 2016 and expired on October 6, 2021. Act No. 2016-234 further provided that "[a]t the expiration of the IMA, the 2002 ERV will be transferred back to the County *or authorization for an agreement to continue with the arrangement will be pursued.*" (emphasis supplied).

Your Committee is advised that the lease of the 2002 ERV to the City has enhanced the overall safety and security of both the County and the City. For this reason, the parties now desire to renew the IMA for an additional five (5) year term. New York State General Municipal Law § 119-o (2)(j) authorizes municipalities to renew IMAs "upon conclusion of the terms established" in the original IMA.

Accordingly, authority is hereby requested for the County to renew the IMA with the City for the lease of the County's 2002 ERV, in "AS IS" condition, for an additional five (5) year term commencing retroactive to October 7, 2021 and continuing through October 6, 2026 (the "Renewal Term"). In consideration for the lease of the 2002 ERV during the Renewal Term, the City will pay the County the sum of One (\$1.00) Dollar and, as additional consideration, will man, operate, repair and maintain the 2002 ERV to respond to calls within CTZ-3 and for responses to incidents in the City. As it did under the original IMA, the City will continue to register the 2002 ERV and maintain insurance naming the County as additional insured. The City will also continue to indemnify, hold

harmless and defend the County against any claims resulting from its use and/or maintenance of the 2002 ERV. Title to the 2002 ERV shall remain with the County.

The Planning Department has advised that the proposed IMA renewal does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated May 14, 2021, which is on file with the Clerk of the Board of Legislators.

It should be noted that an affirmative vote of a majority of the voting strength of your Honorable Board is required in order to adopt the proposed Act. Your Committee has carefully considered the annexed proposed Act and recommends its adoption.

Dated: _____, 2022
White Plains, New York

COMMITTEE ON

C:JPG 12/23/21

FISCAL IMPACT STATEMENT

SUBJECT: Lease Vehicle to White Plains

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ 1

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

Additional Appropriations

Other (explain)

Identify Accounts: An Act authorizing the County to lease a 2002 Equipment Response Vehicle to the City of White Plains for \$1 per year for a 5-year term.

Potential Related Operating Budget Expenses: Annual Amount \$0.00

Describe: City of White Plains Department of Public Safety will lease a 2002 Equipment Response Vehicle from the County for \$1 per year for a 5-year term.

Potential Related Operating Budget Revenues: Annual Amount \$0.00

Describe: _____

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

Current Year: \$1

Next Four Years: \$1 per year for the next four (4) years.

Prepared by: Siva Gopalkrishna

Title: Director of Administrative Services

Department: Public Safety

Date: January 7, 2022

Reviewed By: 

Budget Director

Date: 1/14/22

AN ACT authorizing the County of Westchester to renew an intermunicipal agreement with the City of White Plains pursuant to which the County will continue to lease to the City a 2002 equipment response vehicle for an additional five-year term commencing retroactive to October 7, 2021.

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

Section 1. The County of Westchester (the "County") is hereby authorized to renew an intermunicipal agreement ("IMA") with the City of White Plains (the "City") whereby the County will continue to lease to the City a 2002 equipment response vehicle, as identified in Schedule "A", attached hereto and made a part hereof (the "2002 ERV"), for use by the City's Department of Public Safety when responding to calls within New York State Counter Terrorism Zone -3 ("CTZ-3") and also for responses to incidents within the City.

§2. The County shall continue to lease the 2002 ERV to the City in "AS IS" condition. In consideration for the City's continued use of the 2002 ERV, the City shall pay the County the sum of One (\$1.00) Dollar and, as additional consideration, shall man, operate, repair and maintain the 2002 ERV to respond to calls within CTZ- 3 and for responses to incidents in the City. The City shall continue to register the 2002 ERV and maintain insurance naming the County as additional insured. The City shall also continue to indemnify, hold harmless and defend the County against any claims resulting from its use and/or maintenance of the 2002 ERV. Title to the 2002 ERV shall remain with the County.

§3. The IMA renewal shall be for a five (5) year term commencing retroactive to October 7, 2021 and will continue through October 6, 2026. At the expiration of the IMA renewal, the 2002 ERV will be transferred back to the County or authorization for an agreement to continue with the arrangement will be pursued.

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

§5. This Act shall take effect immediately.

SCHEDULE "A"

DESCRIPTION OF VEHICLE TO BE LEASED

MAKE: SAULSBURY

MODEL: CYCLONE II 99

YEAR: 2002

VIN # 4EN3BCA8821005702

THIS AGREEMENT made this ___ day of _____ 2022 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 WHITE PLAINS, a municipal corporation of the State of New York having an office and place of business at 255 Main Street, White Plains, New York 10601 (hereinafter referred to as the "City")

WITNESSETH:

WHEREAS, in 2015, the County, through its Department of Public Safety (the "Department"), acquired a 2015 Equipment Response Vehicle for Hazardous Devices and determined that its existing 2002 Equipment Response Vehicle for Hazardous Devices (the "2002 ERV" or the "Vehicle") no longer met the Department's needs but would benefit the City's Department of Public Safety for use in connection with calls in New York State Counter Terrorism Zone - 3 ("GTZ-3") which covers Westchester County, as well as in response to incidents in the City; and

WHEREAS, on October 7, 2016, the County entered into an intermunicipal agreement with the City (the "IMA") pursuant to which the County leased to the City the 2002 ERV for a term commencing on October 7, 2016 and continuing through October 6, 2021; and

WHEREAS, the lease of the 2002 ERV to the City has enhanced the overall safety and security of both the County and the City and, for this reason, the parties now desire to renew the IMA for an additional five (5) year term.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto covenant and agree as follows:

1. **2002 ERV**: The County hereby renews its lease to the City of the County's 2002 ERV, as further identified in Schedule "A," annexed hereto and made a part hereof.

2. **CONSIDERATION**: In consideration for the renewal of the lease of the County's 2002 ERV to the City, the City agrees to pay the County the sum of One (\$1.00) Dollar. As additional consideration, the City shall continue to man, operate, repair and maintain the 2002 ERV, as needed, to respond to calls within CTZ - 3, as determined by the Commissioner/Sheriff of the Department ("DPS Commissioner"). Such assistance will enhance the overall safety and security of County and City residents. The City shall also have the ability to use the 2002 ERV for incidents not involving CTZ-3.

3. **STORAGE**: The City agrees to continue to store the 2002 ERV at its facilities in the City. The City shall notify the County of the location at which the 2002 ERV is garaged.

4. **TITLE**: The City acknowledges that, at the time of execution of this renewal Agreement, it remains in possession of the 2002 ERV and that title to the 2002 ERV remains in the name of the County. Title to the 2002 ERV shall continue to remain in the name of the County during the term of this lease renewal. The 2002 ERV shall be registered in the City's name during the entire term of this renewal Agreement. The County may place, or cause to be placed upon the 2002 ERV, identification symbols denoting ownership by the County. Such marking shall be affixed in accordance with the County's directions and which shall not be removed by the City.

The City shall execute, or cause to be executed, any documents deemed necessary by the County including, but not limited to, Uniform Commercial Code and release of lien forms to enable the County to file, register or record this lease or any other document deemed desirable by the County to protect the County's title to the 2002 ERV. The City shall keep the 2002 ERV free and clear of all levies, liens and encumbrances.

5. **DISCLAIMERS**: The County makes no warranties of any kind, either directly or indirectly, express or implied, as to the condition of the 2002 ERV or any part thereof, including but not limited to, the 2002 ERV's durability, merchantability or fitness for any particular

purpose, except that the County warrants that it has title to the 2002 ERV at the time of delivery. The City accepts the 2002 ERV "AS IS" in all respects.

6. **TERM:** The term of this renewal Agreement shall commence retroactive to October 7, 2021 and continue for a period of five (5) years thereafter, unless terminated sooner in accordance with the provisions hereinafter set forth. In such event, this Agreement will terminate and the City will take all action appropriate and necessary to return the 2002 ERV to the County in a timely fashion.

7. **EXTERIOR AND INTERIOR ADVERTISING:** No exterior or interior advertising may be placed upon the 2002 ERV. The City may apply lettering and/or insignia to the 2002 ERV with the prior written approval and sign-off on design sketch by the Commissioner of the Westchester County Department of Public Works and Transportation (the "DPWT Commissioner").

8. **CHARGES, FEES AND EXPENSES:** The City shall be responsible for the payments for any charges, inspection fees, or other costs, including gross receipts taxes, highway use taxes, or vehicle excise taxes imposed upon the 2002 ERV or the operation thereof, whether such taxes, charges, fees or other costs are levied against the City or the County. In addition, the City shall pay all expenses, except titling, in connection with the use and operation of the 2002 ERV during the term of this Agreement including, but not limited to, fuel, oil, grease, repairs, maintenance, or other expenses thereof.

9. **INSPECTION/ACCESS:** The County shall have the right to inspect the 2002 ERV on two (2) days' notice to the City. The County shall make reasonable efforts, however, not to unduly interfere with the operations or maintenance schedules of the City. County inspectors shall be allowed on the premises where the 2002 ERV is stored without the necessity of written permission, after identifying to the City their status as County employees. The making of any inspections shall begin promptly upon presentation of the 2002 ERV and be carried through to completion as expeditiously as possible. In addition to the County, the City shall also permit any authorized representative of the State, Federal or other governmental agency to inspect the 2002 ERV as well as all relevant data and records. The City shall also permit the above named

persons to audit the books, records and accounts of the City relating to the 2002 ERV covered by this Agreement, as may be deemed necessary by the aforementioned persons.

The County reserves the right to designate a specific time and place for inspection of the 2002 ERV in accordance with this paragraph "9". The City shall comply with any such direction from the County.

10. **REPAIRS, PARTS AND REQUIREMENTS:** The City shall make all necessary repairs to the 2002 ERV, at its own cost and expense, to ensure, among other considerations, safe operation and continuity of the services contemplated hereunder. The design, quality and component part of repairs will conform to all applicable requirements and to all applicable standards. Rebuilt parts or units must be factory replacement parts, parts purchased from a reputable supply house which deals in replacement parts or rebuilt parts equal to or better than those originally installed in the 2002 ERV.

11. **MAINTENANCE:** The City, at its own cost and expense, shall maintain the 2002 ERV in good working order and repair in accordance with the manufacturer's manual, instructions and/or warranty requirements and as directed by the DPWT Commissioner. In the event of a dispute regarding maintenance, alteration, or repair of the 2002 ERV, the reasonable and good faith determination of the DPWT Commissioner shall be final. The City shall maintain the 2002 ERV in a manner whereby the 2002 ERV shall be kept clean and have exteriors free of grime, cracks and breaks, dents and damaged paint that detract from the overall appearance of the 2002 ERV. In addition, the interior must be maintained clean and free from torn upholstery, headliner or floor covering, damaged or broken seats and sharp edges.

The County shall have the right to inspect the 2002 ERV and the City' records with respect thereto as shall be reasonably necessary to confirm the City's proper maintenance of the 2002 ERV, on two (2) days' notice at a location in the City. The City shall, as promptly as possible, correct any unsatisfactory items reported by such inspections. The DPWT Commissioner may reasonably order repairs to be made at any time to ensure that the 2002 ERV is safe and dependable in accordance with the requirements of this Agreement.

Should the 2002 ERV require repair attributable to such circumstances, including, but not limited to, motor vehicle accidents, fires or repair attributable to other circumstances, the costs of which are otherwise covered by an insurance policy, the City shall use its best efforts, within ten (10) days, to get the 2002 ERV inspected by an insurance adjuster. Once the 2002 ERV has been so inspected, or if the cost of repair is not covered by an insurance policy, the City shall immediately make all necessary repairs, subject to the availability of required materials and supplies, to ensure that the 2002 ERV is safe and operable.

The City shall not perform any material alteration to the 2002 ERV without the County's prior written consent. All repairs, additions and improvements made to the 2002 ERV, in particular such repairs, additions and improvements which are meant to be permanently affixed to the 2002 ERV, shall belong to the County and shall become part of the 2002 ERV. All such repairs, additions and improvements shall be reported to the County. If the County consents, any alterations may be removed from the 2002 ERV prior to their return to the County upon the termination of this Agreement.

If the 2002 ERV is in any manner improperly maintained, or if the City fails to make necessary repairs as heretofore provided, the County may, in addition to any other rights or remedies it may have now or hereafter existing at law or in equity, repossess the 2002 ERV with or without a court order or other process of law, wherever it may be located, and effectuate the necessary repairs, provided however, that the City may defeat such right of the County to repossess the 2002 ERV by curing the default complained of within ten (10) days or, if not within such notice period, by promptly commencing to correct the default and diligently pursuing all necessary and appropriate action to affect such cure. The City waives any and all claims against the County with respect to such taking of possession and agrees to remit the cost of any County repairs within thirty (30) days of receipt of a County claim therefor.

The City will be permitted to operate the 2002 ERV with retreaded tires and/or batteries, but retreaded tires will not be permitted on the front wheels of the 2002 ERV under any conditions.

12. INSPECTIONS AND COMPLIANCE WITH LAW: The City shall maintain the 2002 ERV so that it will pass all applicable inspections by the New York State Department of Transportation, New York State Department of Motor Vehicles and the Federal government or agencies authorized by those governments to make such inspections. The City shall be responsible for all costs incurred in enabling the 2002 ERV to successfully pass each inspection. The City shall comply with all governmental laws, regulations and rules with respect to the use, maintenance and operation of the 2002 ERV. In case any part of such unit shall be required to be changed or replaced, or in a case any additional or other part is required to be installed on such unit in order to comply with laws, regulations, requirements and rules, the City agrees to make such changes, additions and replacements; and the City agrees to maintain the 2002 ERV in full compliance with such laws, regulations, requirements and rules during the term of this Agreement. The provisions of this Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the Laws of the State of New York and applicable Federal laws, including without limitation, certification and assurance requirements of the Federal Transit Administration.

The City shall ensure that any persons authorized to drive the 2002 ERV are properly licensed in accordance with applicable law.

13. REPORTS:

(a) The City shall prepare and deliver to the DPS Commissioner at least annually, or as requested by the County, all information which is needed by the County to prepare any reports required to be filed with any Federal, State or other regulatory authority or agency by reason of the ownership by the County of the 2002 ERV or the leasing of the 2002 ERV to the City or operation of the contracted service. Such information shall include, without limitation, the mileage of the 2002 ERV and the number of passengers using the 2002 ERV.

(b) The City shall maintain reports of all maintenance and repairs performed on the Vehicle in accordance with Paragraphs 11 and 12 hereof, and such reports shall be available and subject to inspection by the County upon the County's request, within two days of such request.

(c) The City shall conform its reports to any format reasonably requested by the DPS Commissioner.

14. **INDEMNIFICATION AND INSURANCE:** In addition to and not in limitation of the insurance provisions contained in Schedule "B" attached hereto and made a part hereof, the City 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 City shall indemnify and hold harmless the County, its 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 of the use and/or maintenance of the Vehicle by the City or third parties under the direction or control of the City; and

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

(c) In the event the City 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 City 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.

15. **ASSIGNMENT:** The City shall not assign, transfer or encumber its leasehold interest in the Vehicle under this Agreement without the prior written consent of the County. The City shall not, without the prior written consent of the County, surrender possession or control of, or suffer or allow the Vehicle to pass out of its possession or control, except for the purpose of performing repairs and maintenance.

16. **TERMINATION:** (a) In the event the City defaults in the performance of any term, condition or covenant herein contained, the County at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or other lawful remedy, may

terminate this Agreement upon ten (10) days written notice to the City, provided however, that the City may defeat such termination notice by curing the default complained of within such notice period or, if not within such notice period, by promptly commencing to correct the default and diligently pursuing all necessary and appropriate action to affect such cure. Upon a second default by the City, the County at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement upon written notice to the City.

(b) Either party, upon forty-five (45) days notice to the other party, may terminate this Agreement in whole or in part when it deems termination to be in its best interest.

Upon termination, all rights of the City to the use of the Vehicle shall absolutely cease and terminate as though this Agreement had never been made, but the City shall remain liable as hereinafter provided; and thereupon the County may, by its agents, enter upon the premises where the Vehicle may be located and take possession of the Vehicle and thenceforth hold, possess and enjoy the same free from any right of the City or its successors or assigns, to use the Vehicle for any purposes whatsoever; but the County shall, nevertheless, have the right to recover from the City any damages and expenses in addition thereto, including reasonable attorneys' fees, which the County shall have sustained by reason of the breach of any covenant of this Agreement. The County shall take immediate possession of the Vehicle leased hereunder, wherever found, with or without process of law, and the County shall not be responsible for any damages which the City sustains by virtue of said act.

17. **REPOSSESSION:** Immediately upon expiration or termination of this Agreement, the City will, at its sole cost and expense, at the request of the County, deliver possession of the Vehicle to the County at any location within Westchester County as the County may designate whereupon the City shall affect such delivery within twenty-four (24) hours of receipt of such designation in writing from the County to the City. For the purpose of delivering possession of the Vehicle to the County as above required, the City shall, at its own expense and cost:

(a) Forthwith deliver such Vehicle to a location within Westchester County as the County may designate; and

(b) The City is hereby obligated to deliver the Vehicle in complete and operable condition as set forth in Paragraph "18"; and

(c) If the City fails to deliver the Vehicle, the County has the right to repossess the Vehicle without notice or demand, with or without a court order or other process of law, wherever it may be located and the City waives all claims against the County with respect to such taking of possession.

"Possession" in this paragraph is defined to include both the taking of the Vehicle into the County's physical custody, and/or the mailing and/or personal delivery to the City of a notification in writing that the County elects to take constructive possession of the Vehicle wherever located.

18. **WEAR AND TEAR:** Upon expiration or termination of this Agreement, the City shall deliver the Vehicle to the County in accordance with Paragraph "17", complete and operable, excepting normal wear and tear.

19. **LOSS, THEFT, DAMAGE OR DESTRUCTION AND SETTLEMENT:** The City shall bear all risks of damage, loss, theft, or destruction, partial or complete, of the Vehicle or any portion, thereof, including acts of its employees and servants. Any resultant replacement, repairs, or substitution of parts of the Vehicle, shall be at the sole cost and expense of the City. In the event of any loss, theft, or destruction of the Vehicle or damage thereof, the City shall promptly notify the DPWT Commissioner both by phone and in writing and dispose of the Vehicle and records in accordance with instructions from the County. In all instances, the City shall either repair the Vehicle to the same standard or condition required under this Agreement, or, subject to prior written approval of the County, replace the entire Vehicle with another vehicle of comparable condition and specifications which is acceptable to the DPWT Commissioner, at the City's sole expense.

Replacement of the entire Vehicle shall be at the County's sole discretion. Should the County instruct the City to replace the Vehicle lost, stolen, damaged or destroyed, the City shall do so at its sole expense. Upon acceptance and placing in service of the replaced Vehicle by the

City, title to said replacement Vehicle shall be vested in the County. Should the County elect not to have a Vehicle replaced by the City, the County shall be entitled to any settlement proceeds that the City may receive, including but not limited to insurance proceeds plus the City' insurance policy deductible amount and salvage value, if any. Said proceeds shall be made payable to the County either by credit against any claims due and owing the City or by a direct payment at the County's sole option. The City shall not accept such settlement proceeds without first giving the County an opportunity to have the Vehicle inspected by its own adjuster and without first obtaining the County's prior written consent to such settlement amount.

In addition to, and not in limitation of, the insurance provisions contained in Paragraph "14" hereof, the City shall obtain, pay for, and maintain at all times comprehensive automobile liability and collision insurance against all risks or damage, loss, theft, or destruction, partial or complete of the Vehicle or any portion, including acts of its employees and servants, for the duration of this Agreement or any renewal thereof. The City shall furnish the County with written evidence from its insurer of the within described insurance coverage satisfactory to the County which will include the County and any other party in interest designated as an additional insured, and no cancellation or material change in any of the insurance required under the terms of this Agreement shall be effective except upon thirty (30) days advance written notice to the County from the Insurer. The City shall not take any action to cancel or materially change any of the insurance required under this Agreement without the County's prior written approval of such cancellation or change. The maintenance of insurance under this Paragraph shall not relieve the City of any liability under this Paragraph where damage, loss or destruction is greater than the insurance coverage.

The County shall not be liable for any special, incidental or consequential damages or for loss, damage or expense directly or indirectly arising from the City's use of or inability to use the Vehicle, or for personal injury or loss or destruction of other property, or from any other cause connected with this Agreement whatsoever.

20. NO CLAIMS FOR INTERRUPTED SERVICE: The City shall not make any claim against the County whatsoever by reason of damage to or loss of the Vehicle or any part(s) thereof, or by reason of any interruption, from whatever cause, in the use, operation or possession of the Vehicle or any part(s) thereof.

21. **NON-WAIVER**: The remedies in this Agreement provided in favor of the County shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor provided by law. The failure of the County to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

22. **NOTIFICATION**: Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given, furnished or filed with a party by another party shall be in writing and shall be delivered by hand or sent by registered or certified mail postage prepaid, to the respective address as set forth below, or to such other address as the respective parties hereto may designate in writing:

To the County:

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

and to

Commissioner
Westchester County Department of Public Safety
Saw Mill River Parkway
Hawthorne, NY 10532

with a copy to:

Office of the County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the City:

City of White Plains
255 Main Street
White Plains, New York 10601

Notices shall be effective on the date of receipt. Either party to the Agreement may redesignate the recipient or change the address of the recipient of notification hereunder by written notification to the other party to this Agreement of such change.

23. **NON-DISCRIMINATION:** The City expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The City acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

24. **SEVERABILITY:** This Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein or by other written agreement. If any provision herein is invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.

25. **ENFORCEMENT:** This Agreement shall not be enforceable until signed by the parties and approved by the Office of the County Attorney.

26. **GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE COUNTY OF WESTCHESTER:

By: _____
Hugh J. Greechan, Jr., P.E.
Commissioner of Public Works
and Transportation

By: _____
Thomas A. Gleason
Acting Commissioner - Sheriff of Public Safety

THE CITY OF WHITE PLAINS:

By: _____
Name and Title

Approved by the Westchester County Board of Legislators by Act No. _____ at a meeting duly held on the _____ day of _____, 2022.

Approved as to form and manner of execution:

Sr. Assistant County Attorney
County of Westchester

DRAFT

ACKNOWLEDGMENT

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.

On the _____ day of _____ in the year 2022 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

DRAFT

SCHEDULE "A"

DESCRIPTION OF VEHICLE TO BE LEASED

MAKE: SAULSBURY
MODEL: CYCLONE II 99
YEAR: 2002
VIN # 4EN3BCA8821005702

DRAFT

SCCHEDULE "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.web.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.

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