


July 7, 2021

TO: Hon. Benjamin Boykin, Chair
Hon. Alfreda Williams, Vice Chair
Hon. MaryJane Shimsky, Majority Leader
Hon. Margaret Cunzio, Minority Leader

FROM: George Latimer 
Westchester County Executive

RE: Message Requesting Immediate Consideration: **IMA (Amended) with Tarrytown – County’s RiverWalk Trail.**

This will confirm my request that the Board of Legislators allow submission of the referenced communication to be submitted to the Board of Legislators July 12, 2021 Agenda.

Transmitted herewith for your consideration is an Act which, if approved by your Honorable Board, would authorize the County of Westchester (“County”) to amend Act No. 104-2015 which authorized the County to enter into an inter-municipal agreement (“IMA”) with the Village of Tarrytown (“Village”) in connection with the construction of a portion of the County’s RiverWalk Trail.

Therefore, since this communication is of the utmost importance, it is respectfully submitted that the County Board of Legislators accepts this submission for July 12, 2021 “blue sheet” calendar.

Thank you for your prompt attention to this matter.

George Latimer
County Executive

July 7, 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 consideration is an Act which, if approved by your Honorable Board, would authorize the County of Westchester ("County") to amend Act No. 104-2015 which authorized the County to enter into an inter-municipal agreement ("IMA") with the Village of Tarrytown ("Village") in connection with the construction of a portion of the County's RiverWalk Trail (the "Project"), in order to retroactively change the commencement date of the IMA from the date of execution, to June 15, 2015.

By way of background, the Westchester RiverWalk is a planned 51.5-mile multi-faceted pathway paralleling the Hudson River in Westchester. When completed, it will link village centers, historic sites, parks and river access points via a connection of trails, esplanades and boardwalks. RiverWalk spans 14 municipalities in Westchester and is part of the Hudson River Valley Greenway system. RiverWalk is a work in progress that is being developed through a series of projects constructed by the County, local municipalities and other entities, including private developers.

By Act No. 104-2015 (the "Act"), your Honorable Board authorized the County to enter into an IMA with the Village, pursuant to which the County agreed to provide the Village with \$470,000.00 in funding to assist the Village in constructing an approximately .25 mile long segment of the RiverWalk trail over a portion of riverfront property located in the Village known as Losee Park (the "Property"). The Act further authorized the Village to convey to the County an easement in, upon, under and over a portion of the Property in order to facilitate the County's issuance of bonds to pay for the Project. Pursuant to the Act, the County was authorized to undertake the design of the improvements, while the Village was authorized to undertake the construction portion. The Act also provided that the term of the IMA would commence upon execution thereof and terminate upon the retirement of the bonds sold to fund the design and construction of the Project.

Although the Project has since been fully completed, due to an administrative oversight, the IMA was never executed. The Village would now like to be paid the \$470,000.00 it is owed by the County for the design and construction costs. However, the County is unable to pay the Village because Act No. 104-2015 authorized the term of the IMA to commence upon execution, and the IMA was never executed. In order to remedy this problem, authority is respectfully requested to retroactively amend Act No. 104-2015 for the limited purpose of changing the commencement

date of the IMA from the date of execution, to June 15, 2015, the date the Act was originally approved by your Honorable Board. Except as specifically amended hereby, the remaining terms and conditions in Act No. 104-2015 shall remain in full force and effect.

The Department of Planning has advised that in accordance with SEQR, the Village of Tarrytown Board of Trustees classified the original project as an Unlisted action, conducted coordinated review (which included the County as an involved agency), and issued a Negative Declaration for the project on March 16, 2015. Since the proposed amendment does not involve nor will result in any physical changes to the project, which has already been completed, the Negative Declaration remains valid and no further environmental review is required.

I believe this proposal is in the best interest of the County, and I urge your Honorable Board's approval of the attached legislation.

Sincerely,



George Latimer
County Executive

GL/ND/JPG
Attachments

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

Your Committee is in receipt of a communication from the County Executive recommending the adoption of an act (the "Act") which, if approved by your Honorable Board, would authorize the County of Westchester ("County") to amend Act No. 104-2015 which authorized the County to enter into an inter-municipal agreement ("IMA") with the Village of Tarrytown ("Village") in connection with the construction of a portion of the County's RiverWalk Trail (the "Project"), in order to retroactively change the commencement date of the IMA from the date of execution, to June 15, 2015.

By way of background, the Westchester RiverWalk is a planned 51.5-mile multi-faceted pathway paralleling the Hudson River in Westchester. When completed, it will link village centers, historic sites, parks and river access points via a connection of trails, esplanades and boardwalks. RiverWalk spans 14 municipalities in Westchester and is part of the Hudson River Valley Greenway system. RiverWalk is a work in progress that is being developed through a series of projects constructed by the County, local municipalities and other entities, including private developers.

By Act No. 104-2015 (the "Act"), your Honorable Board authorized the County to enter into an IMA with the Village, pursuant to which the County agreed to provide \$470,000.00 in funding to assist the Village in constructing an approximately .25 mile long segment of the RiverWalk trail over a portion of riverfront property located in the Village known as Losee Park (the "Property"). The Act further authorized the Village to convey to the County an easement in, upon, under and over a portion of the Property in order to facilitate the County's issuance of bonds to pay for the Project. Pursuant to the Act, the County was authorized to undertake the design of the improvements, while the Village was authorized to undertake the construction portion. The Act also provided that the term of the IMA would commence upon execution thereof and terminate upon the retirement of the bonds sold to fund the design and construction of the Project.

Your Committee is advised that although the Project has since been fully completed, due to an administrative oversight, the IMA was never executed. The Village would now like to be

paid the \$470,000.00 it is owed by the County for the design and construction costs. However, the County is unable to pay the Village because Act No. 104-2015 authorized the term of the IMA to commence upon execution, and the IMA was never executed. In order to remedy this problem, authority is respectfully requested to retroactively amend Act No. 104-2015 for the limited purpose of changing the commencement date of the IMA from the date of execution, to June 15, 2015, the date the Act was originally approved by your Honorable Board.

Your Committee is advised that except as specifically amended hereby, the remaining terms and conditions in Act No. 104-2015 shall remain in full force and effect.

The Department of Planning has advised that in accordance with SEQR, the Village of Tarrytown Board of Trustees classified the original project as an Unlisted action, conducted coordinated review (which included the County as an involved agency), and issued a Negative Declaration for the project on March 16, 2015. Since the proposed amendment does not involve nor will result in any physical changes to the project, which has already been completed, the Negative Declaration remains valid and no further environmental review is required. A copy of the SEQR documentation is annexed hereto. Your Committee concurs with this conclusion.

It should be noted that an affirmative vote of a majority of the members of your Honorable Board is required in order to adopt the attached Act. Based on the foregoing, your favorable action on the annexed Act is most respectfully requested.

Dated: _____, 2021
White Plains, New York

COMMITTEE ON

FISCAL IMPACT STATEMENT

SUBJECT: Riverwalk IMA, Tarrytown

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

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

Additional Appropriations

Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount \$ -

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount \$ -

Describe: _____

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

Current Year: No change to current financial plan as this IMA was previously authorized

Next Four Years: _____

Prepared by: Gideon Grande

Title: Deputy Director

Department: Budget

Date: July 7, 2021

Reviewed By: 

Budget Director

Date: 7/7/21

TO: Jeffrey Goldman, Senior Assistant County Attorney
Department of Law

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



DATE: June 23, 2021

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR AMENDMENT OF
ACT FOR TARRYTOWN RIVERWALK**

The Planning Department has reviewed the above referenced action with respect to the State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617 (SEQR).

The action involves an amendment to Act 104-2015, which authorized the County to enter into an intermunicipal agreement (IMA) with the Village of Tarrytown for the development of the RiverWalk trail through the Village's Losee Park. The amendment will modify the authorized commencement date of the IMA from the date of execution to June 15, 2015, the date the Act was approved by the County Board of Legislators.

In accordance with SEQR, the Village of Tarrytown Board of Trustees classified the original project as an Unlisted action, conducted coordinated review (which included the County as an involved agency), and issued a Negative Declaration for the project on March 16, 2015. Since the proposed amendment does not involve nor will result in any physical changes to the project, which has already been completed, the Negative Declaration remains valid and no further environmental review is required.

Please do not hesitate to contact me if you have any questions regarding this matter.

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Tami Altschiller, Assistant Chief Deputy County Attorney
David Vutera, Associate County Attorney
Anthony Zaino, Assistant Commissioner
Claudia Maxwell, Associate Environmental Planner

ACT NO. 2021 - _____

AN ACT authorizing the County of Westchester to amend Act No. 104 -205 which authorized the County to enter into an inter-municipal agreement with the Village of Tarrytown in connection with the construction of a portion of the County's RiverWalk Trail, in order to retroactively change the commencement date of the IMA from the date of execution, to June 15, 2015.

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

Section 1. Section 4 of Act No. 104-2015 is hereby deleted in its entirety and the following inserted in its place:

§4. The IMA shall commence on June 15, 2015 and terminate upon the retirement of the bonds sold to fund the design and construction of this portion of the RiverWalk Trailway.

§2. Except as specifically amended hereby, the remaining terms and conditions in Act No. 104-2015 shall remain in full force and effect.

§3. This Act shall take effect immediately.

THIS INTERMUNICIPAL 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 VILLAGE OF TARRYTOWN, a municipal corporation of the State of New York, having an office and place of business at 1 Depot Plaza, Tarrytown, New York 10591 (hereinafter referred to as the "Municipality")

WHEREAS, Section 244-b of the General Municipal Law authorizes municipalities to enter into agreements for the joint operation and maintenance of recreation facilities; and

WHEREAS, the Municipality is the owner of certain riverfront real property known as Losee Park, more particularly shown on Schedule "A" (the "Property"), which is attached hereto and made a part of this Agreement; and

WHEREAS, the Municipality desires to make a portion of the Property available as more particularly shown on Schedule "A" to be developed as part of a trailway known as RiverWalk, a recreational trailway running along the Hudson River to be used by the general public for recreational purposes such as walking, running, biking, and other similar activities; and

WHEREAS, the County agrees to provide funding to assist the Municipality in making improvements to the Property to construct the approximately 0.25 mile long trailway segment and related improvements in the "Proposed Easement Area" as shown on Schedule "A" (the "Easement Area"), and:

WHEREAS, final plans and specifications will be developed as part of this project by the County and approved by the Municipality, and;

WHEREAS, the Municipality has agreed to grant an easement to the County for bonding purposes and for the construction and use of the Trailway and related improvements; and

WHEREAS, as consideration for the County's contribution towards the Trailway, the Municipality will comply with the terms of Article IV of this Agreement to affirmatively further fair and affordable housing within the Municipality and County in accordance 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 (the "Settlement Agreement").

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

ARTICLE I
GRANT OF EASEMENT

Section 1.0. The Municipality hereby grants and conveys to the County, its successors, and assigns a non-exclusive easement (the "Easement") in, upon, under and over that portion of the Property depicted on Schedule "A" as the Easement Area prepared by the Westchester County Department of Planning and to be legally described at a future date mutually by the County and Municipality, solely for the purpose of utilizing the Easement Area. The portion of the Trailway within the Easement Area shall be constructed in accordance with the final design plans and specifications which will be developed at a future date by the County with the approval of the Municipality. The Easement Area, as described in Schedule "A" shall not impede the Municipality's use and enjoyment of its property including, but not limited to, utilizing any and all of the Easement Area for special municipal events, concerts, fireworks or any similar event or activity.

ARTICLE II
IMPROVEMENTS TO THE PROPERTY

Section 2.0. The County shall issue bonds (the "Bonds") and pay to the Municipality an amount not to exceed Four Hundred Seventy Thousand (\$470,000.00) Dollars to finance a portion of the design and construction of the Trailway, which Trailway shall be open to all County residents subject to the conditions set forth herein. The Municipality shall construct the Trailway and the County shall reimburse the Municipality for its construction costs according to the plans and specifications that will be developed by the County and approved by the County Commissioner of Planning or his duly authorized representative (the "Planning Commissioner") and by the Municipality, as set forth herein.

Section 2.1. The Municipality shall not deviate from the approved plans without the prior written consent of the Planning Commissioner and the County Commissioner of Public Works and Transportation (the "DPWT Commissioner") which shall not be unreasonably withheld or delayed. The Municipality shall be responsible for procuring construction of the improvements, such procurement to be in full compliance with all applicable laws, rules and regulations.

Section 2.2. Following the Municipality's receipt of a payment requisition from a contractor performing work on the Trailway, the Municipality shall have the project engineer/architect review the same and certify that the work claimed in the requisition has been performed as per the approved plans & specifications. The County may also inspect the work at any time. The certified requisition will then be forwarded to the Planning Commissioner to process payment.

Any and all requests for payment shall be submitted by the Municipality on properly executed payment vouchers of the County and paid only after approval by the Planning Commissioner and DPWT Commissioner. The County shall use its best efforts to make payment to the Municipality within thirty (30) days of receipt of properly completed vouchers. Provided that the requisition reflects work in connection with approved plans and specifications, then the County shall not be entitled to withhold payment. In no event shall final payment be made to the Municipality prior to completion of all improvements, the submission of reports and the approval

of same by the Planning and DPWT Commissioners.

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.

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

Section 2.3. Both the Municipality and the County shall have the right to enter the Trailway to inspect construction. However, both parties shall take all necessary safety precautions in doing so and shall conduct such inspections in such a way as to minimize any interference with the construction activity.

ARTICLE III

RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY AND COUNTY IN CONNECTION WITH THE TRAILWAY

Section 3.0. The Municipality shall construct and maintain the Trailway and all improvements thereon in good working order and repair and shall keep it in clean, sightly and safe condition. It is understood and agreed that such maintenance and repair shall be performed by the Municipality when necessary and when needed to correct hazardous conditions. The Municipality, at its sole cost and expense, shall maintain and operate the Trailway in accordance with the current County Park policies and as set forth in Schedule "B" attached hereto and made a part hereof. It is recognized and understood by all parties that the County shall not be liable for operating or maintaining the Trailway. The Municipality shall regulate the use of the Trailway by the general public so that such use remains in accordance with this Agreement and all applicable laws and regulations. The Trailway may only be used for the intended recreational purposes and no other purpose.

Section 3.1. The County will, with all reasonable promptness, inspect the Trailway after receiving written notice from the Municipality that the Municipality considers the Trailway to be

completed. The Trailway shall not be considered completed for purposes of this Agreement until the County has inspected the Trailway and has determined to its satisfaction that the Trailway has been completed in accordance with the approved plans.

Section 3.2. The Municipality shall, at its sole cost and expense, continuously throughout the term of this Agreement, provide reasonable and adequate security and safety at the Trailway through the Municipality's police department or other agency designated to provide such police services.

Section 3.3. The Municipality shall, at its own cost and expense, promptly comply with all statutes, ordinances, rules, orders, regulations, codes and requirements of the Federal, State, County and local governments and all insurance requirements applicable to the Trailway or any part thereof or applicable to this Agreement. After construction is completed, the Westchester County Commissioner of Parks, Recreation and Conservation (the "Parks Commissioner") shall be entitled to enter the Property, or any part thereof, at any and all times for any and all purposes, without the need to obtain the consent or permission of the Municipality.

Section 3.4. The County shall have no responsibility for the Trailway other than that set forth above. Except for the amount of funding to be provided by the County under Section 2.0 above, the Municipality shall be responsible for all costs in relation to the Property and this entire Agreement, 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 except as herein otherwise expressly set forth.

ARTICLE IV

FAIR AND AFFORDABLE HOUSING CONDITIONS

Section 4.0. As further consideration for the County's financial contribution of \$470,000.00 toward the Trailway project the Municipality hereby commits to the County that it is in compliance with the following terms and conditions in connection with its commitment to affirmatively further fair housing:

- (a) Municipality 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 demonstrates a commitment by the Municipality 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;
- (b) Municipality will offer 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 ; and
- (c) Municipality will actively further implementation of the Settlement Agreement through its land use regulations and other affirmative measures to assist the development of affordable housing.

Municipality agrees to market housing units that affirmatively further fair housing in accordance with the County's Affirmative Fair Housing Marketing Plan approved pursuant to the Settlement Agreement, throughout the period of affordability.

The County shall have audit rights that will extend to all documents, reports, and records which relate to the Municipality's commitment to affirmatively further fair housing.

Section 4.1. Nothing in this Agreement is intended to affect the County's interest in the Trailway project or release the Municipality from its obligations under the law with respect to affordable AFFH units.

Section 4.2. 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 Inter-Municipal Agreement.

ARTICLE V
INSURANCE

Section 5.0 In addition to, and not in limitation of the insurance requirements contained in Schedule "C" entitled "Standard Insurance Provisions", attached hereto and made a part hereof, the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the 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 of the construction, maintenance, operation, security and/or repair of the Trailway and 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 the construction, maintenance, operation, security and/or repair of the Trailway and this Agreement and to bear all other costs and expenses related thereto.

ARTICLE VI
MUNICIPALITY REPRESENTATIONS

Section 6.0 The Municipality covenants that Municipality has sufficient fee ownership of the Easement Area and has all legal authority, rights and interests necessary to make and assign the Easement granted herein. Provided the County abides by the provisions set forth in this Agreement, the County shall have non-exclusive quiet and peaceful enjoyment of the Easement, except as otherwise provided for in this Easement Agreement.

Section 6.1 During construction of the Trailway, the Municipality shall not permit any lien of mechanics or materialmen to be placed against the Easement Area. If any such lien is asserted, the Municipality agrees to cause the discharge of same within sixty (60) days of actual notice thereof or written notice from the County, whichever is sooner, by filing a bond

reasonably acceptable to the County or otherwise as the County may direct. In the event the Municipality fails to discharge said lien, the County, in addition to any other right or remedy to which it may be entitled, may, without further notice or inquiry as to the validity or amount of the lien, cause such lien to be discharged in such manner as it may deem advisable, including but not limited to payment of the amount claimed by the lien claimant, and any and all costs incurred by the County, including, without limitation, reasonable attorney's fees, shall be charged to and paid by the Municipality.

ARTICLE VII

NOTICES

Section 7.0. All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses set forth below (except where this Agreement designates notice to a particular County Commissioner and then only to that Commissioner and a copy to the County Attorney) or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner of Planning
County of Westchester
148 Martine Avenue, Room 432
White Plains, New York 10601

Commissioner of Parks, Recreation and Conservation
County of Westchester
450 Saw Mill River Road
Ardsley, New York 10502

Commissioner of Public Works and Transportation
County of Westchester
148 Martine Avenue, Room 528
White Plains, New York 10601

with copies to:

County Attorney
148 Martine Avenue, Room 600
White Plains, New York 10601

To the Municipality:
The Village of Tarrytown
1 Depot Plaza
Tarrytown, New York 10549
Attn: Village Administrator

ARTICLE VIII
MISCELLANEOUS

Section 8.0. Any purported delegation of duties or assignment of rights by either party to this Agreement without the prior express written consent of the other party is void.

Section 8.1. The failure of the County to insist upon strict performance of any term, condition or covenant herein shall not be deemed a waiver of any rights or remedies that the County may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants herein.

Section 8.2. In the event that the Municipality materially defaults in performing the improvements to the Property as per this Agreement, 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 ninety (90) days notice to the Municipality; provided, however, that the Municipality may defeat such notice by curing the default complained of within such notice period, or, if any such default is not curable within such notice period by promptly commencing to cure the default and diligently pursuing all necessary and appropriate action to effect such cure. In the event this Agreement is terminated, the Municipality shall have one hundred eighty (180) days from the effective termination date to pay the County, as liquidated damages, the full amount paid by the County pursuant to this Agreement with apportioned and proportionate set offs for work actually completed, if any.

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. This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

Section 8.7. In the event that any one or more provisions, sections, subsections, clauses or words of this Agreement are for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid section, subsection, clause or word has not been contained herein.

Section 8.8. The Municipality agrees to observe and obey any and all Federal, State and local laws, rules and regulations, and to require its officers, agents, employees, contractors, and suppliers to observe and obey the same.

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

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

Section 8.14. Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Under this Agreement, it is recognized and understood that the County encourages the Municipality to do similarly.

Section 8.15. Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns, including but not limited to the general public, any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein. Notwithstanding the

foregoing, only the Municipality or County, and not any third parties, shall be entitled to seek the enforcement of the provisions of this Agreement.

Section 8.16. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New York applicable to agreements made and to be performed wholly within such State.

Section 8.17. The Parties agree that the County shall cause this Agreement to be recorded. At any Party's request, additional copies of this Agreement shall be executed in the form and manner required for recording.

ARTICLE IX

TERMINATION OR EXTINGUISHMENT OF EASEMENT

Section 9.0. If for any reason the Easement granted herein is terminated or extinguished prior to the defeasance of all Bonds issued by the County for this project, the Municipality shall have the obligation to reimburse the County which reimbursement (hereinafter referred to as the "Reimbursable Amount") shall be an amount equal to the unamortized value of the construction costs from the date of the termination or extinguishment of this Easement Agreement as depreciated on a straight-line basis over a period of fifteen (15) years beginning on the date on which the first of any bonds issued to construct the Trailway are sold (the "Bond Sale Date"). The Reimbursable Amount shall be forwarded by the Municipality to the County by wire transfer (in same day funds) two business days prior to the bond call date. The County shall give the Municipality notice of the Bond Sale Date within thirty (30) calendar days after the Bond Sale Date.

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

ARTICLE X

TERM

Section 10.0. The term of this Agreement shall commence retroactive to June 15, 2015 and shall terminate upon the retirement of the bonds sold to fund the design and construction of this portion of the RiverWalk Trailway, unless terminated sooner in accordance with the provisions of this Agreement.

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 of Planning

THE VILLAGE OF TARRYTOWN

By: _____
Hon. Thomas D. Butler Jr.
Mayor
Village of Tarrytown

Approved by the Board of Legislators of the County of Westchester by Act No. 104 – 2015 on the 15th day of June, 2015, as amended by Act No. 2021 - ____, approved by the Board of Legislators of the County of Westchester on the ____ day of _____, 2021.

Approved by the Municipality's Board of Trustees on the ____ day of _____, 20__.

Approved as to form and manner of execution:

Approved as to form:

Assistant County Attorney
The County of Westchester

Village Attorney
Village of Tarrytown

**UNIFORM CERTIFICATE OF ACKNOWLEDGMENT
(County)**

STATE OF NEW YORK)

ss.:

COUNTY OF WESTCHESTER)

On this _____ day of _____, 20____ 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.

NOTARY PUBLIC

**UNIFORM CERTIFICATE OF ACKNOWLEDGMENT
(MUNICIPALITY)**

STATE OF NEW YORK)

ss.:

COUNTY OF WESTCHESTER)

On this _____ day of _____, 20____ 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.

NOTARY PUBLIC

CERTIFICATE OF AUTHORITY
(Municipality)

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

_____ *(Name of Municipality)*
(the "Municipality") a corporation duly organized in good standing under the

_____ *(Law under which organized, e.g., the New York Municipality Law, Municipality Law, General Municipal Law)*
named in the foregoing agreement that _____

_____ *(Person executing agreement)*
who signed said agreement on behalf of the Municipality was, at the time of execution
_____ of the Municipality,

_____ *(Title of such person),*
that said agreement was duly signed for on behalf of said Municipality by authority of its

_____ *(Municipality Board, Municipality Board, Municipality Council)*
thereunto duly authorized, and that such authority is in full force and effect at the date hereof.

(Signature)

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

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

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

Notary Public County

SCHEDULE "A"

Map of Property and Easement Area

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SCHEDULE "B"

TERMS AND CONDITIONS OF OPERATION OF RIVERWALK TRAILWAY IN LOSEE PARK, VILLAGE OF TARRYTOWN

At all times when the park is open the Municipality will be responsible for the general supervision of the park.

The RiverWalk Trailway portion of the park must be open at no charge to all Westchester County residents during all hours of operation of the park. If the Municipality opts to charge a fee for use of any other part of the park improved by the County, such proposed fees shall be subject to prior County approval. Such fees charged to non residents of the Municipality shall not exceed double the fees charged to Municipal residents. Revenue generated from the park may be kept by the Municipality to offset operating expenses.

On the portion of the park improved by the County, all advertising and signage to be utilized by the Municipality in connection with the operation of the park shall be subject to the prior written approval of the Commissioner of Parks, Recreation and Conservation ("Commissioner"), which shall not be unreasonably withheld, and shall be provided to the County in advance for review.

The Municipality shall acknowledge the County's role in improving the park on any signs or written material describing ownership or construction of the park.

The Municipality is responsible for:

The payment of all utility costs associated with the park.

Litter and refuse removal

Vandalism repair and or replacement

Mowing - Grass will be cut regularly from April through October. Litter must be picked up prior to cutting grass.

Trimming - String trimming of site amenities (benches, fences, goals, etc.) will occur regularly from April through October.

Garbage/Litter Control – Garbage cans will be installed as part of the RiverWalk improvements. Litter must be picked up and garbage cans emptied regularly.

Leaf Collection/ Removal - Leaves will be removed from all paved surface areas in the autumn and removed from the site.

All benches, bridges, fences, signs, light posts, etc. will be kept in good order and repair.

All acts of vandalism/graffiti will be repaired and removed in a timely manner.

All trees and plantings in the park will be kept in a safe and aesthetic condition. Hazardous trees will be removed in a timely manner. Invasive vines and vegetation shall be removed on a yearly basis as to not affect the health of the trees in the park.

The Municipality's Superintendent of Recreation & Parks will manage the working relationship with the County.

The Municipality shall not sell, offer for sale nor permit the sale of any food, commodity, ware or merchandise of any kind, nature or description in the park without the written consent of the Commissioner, which shall not be unreasonably withheld.

Any new improvements undertaken in the portion of the park improved pursuant to this Agreement shall be undertaken only with the prior written consent of the Commissioner, which shall not be unreasonably withheld.

The Municipality agrees to participate in the County's Pride in Parks performance based management program.

WCDP/pn

Revised October 26, 2007

SCHEDULE "C"

STANDARD INSURANCE PROVISIONS (MUNICIPALITY)

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County.

The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, 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 County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. 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 and adjusted with the County.

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 any operations under the Agreement, 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 County of Westchester.

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 "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 (9/07) 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 affidavit form WC/DB-100 (revised 9/07), sign and notarize the form, and send to the NYS Workers' Compensation Board for (stamped) approval. The stamped approval (valid for 1 year) should then be provided to the County of Westchester with all other insurance documentation.

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

(b) Employer's Liability with minimum limit of \$100,000.00.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000.00 for bodily injury and \$100,000.00 for property damage or a combined single limit of \$1,000,000.00 (c.s.l.), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

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

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000.00 per occurrence for bodily injury and a minimum limit of \$100,000.00 per occurrence for property damage or a combined single limit of \$1,000,000.00 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

- (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 of Westchester (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 of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse

against the County of Westchester (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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