

LOCAL LAW INTRO. NO. – 2025

A LOCAL LAW authorizing the County of Westchester to amend a lease agreement with the Westchester Children's Museum for the operation of a children's museum on approximately 21,390 square feet of County property in order to extend the term an additional twenty (20) years and to amend and clarify certain other provisions of the lease agreement.

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

Section 1. The County of Westchester ("County") is hereby authorized to enter into an amended and restated lease agreement ("Amended and Restated Lease") with the Westchester Children's Museum ("Children's Museum") for the operation of a children's museum on approximately 21,390 square feet of County property in Playland Park, Rye, New York (the "Leased Premises") in order to extend the term an additional twenty (20) years for a new termination date of December 13, 2045. Lease fees shall be paid at the rate of \$1 per year for the term and the Children's Museum shall pay all costs and expenses in connection with the Amended and Restated Lease at its sole cost and expense and shall make all required repairs to the Leased Premises, including all exterior and structural repairs. Additionally, the Children's Museum shall make capital improvements over the remaining term of the Amended and Restated Lease to the Leased Premises totaling approximately Ten Million Dollars (\$10,000,000). All improvements shall be subject to the approval of the County's Department of Parks, Recreation and Conservation and the Department of Public Works.

§2. The County Executive or his authorized designee is authorized and empowered to execute all instruments and to take all actions reasonably necessary to effectuate the purposes of this Local Law.

§3. This Local Law shall take effect immediately.

day of **THIS RESTATED AND AMENDED LEASE AGREEMENT** made this
, 2025 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" or the "Landlord"),

and

WESTCHESTER CHILDREN'S MUSEUM, an educational corporation having an office and place of business 100 Playland Parkway, Rye, New York 10580 (hereinafter referred to as the "Lessee" or the "Children's Museum").

WITNESSETH:

WHEREAS, the County, acting through its Department of Parks, Recreation and Conservation, and Lessee executed a ten (10) year lease dated January 25, 2017 (the "Initial Lease Document") for approximately 23,856 square feet of property which was formerly utilized as a men's bathhouse at Playland Park, Rye, New York for the operation of a children's museum; and

WHEREAS, pursuant to Chapter 83 of the 2003 Laws of the State of New York, as amended by Chapter 376 of the Laws of 2010 ("State Law"), the Leased Premises were discontinued as parkland and the County was authorized to enter into a Lease with the Lessee for a term not in excess of thirty (30) years, subject to certain conditions and

WHEREAS, the County and Lessee desire to restate and amend the Initial Lease Document and extend the Term of the lease from ten years to thirty years which mirrors the term authorized by the State Law; and

NOW, THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree the Initial Lease Document shall be amended and restated in its entirety and as more particularly set forth herein, as follows:

ARTICLE 1

DESCRIPTION AND USE

1.1 The County hereby leases to the Lessee and the Lessee hereby accepts from the County all those certain premises formerly the men's bathhouse located at Playland Park, Rye, New York ("Lease"), consisting of the premises as more particularly defined on Schedule "A" annexed hereto (hereinafter the "Leased Premises"), and made a part hereof.

1.2 The Lessee shall occupy and use the Leased Premises for the operation of a children's museum, which shall be made available to the general public on an equitable basis.

1.3 Pursuant to the State Law, the Lessee agrees as follows:

- (a) Should the Leased Premises cease to be operated as a children's museum, the Lease shall immediately terminate and the Leased Premises shall revert to the County for public park and recreational purposes;
- (b) The children's museum shall be made available to the general public on an equitable basis; and
- (c) Where availability of public facilities is limited, the use of such facilities must be determined by a reservation policy, administered by the Children's Museum in conjunction with the County, which provides priority use to the general public.

ARTICLE 2

TERM

2.1. The lease term ("Lease Term") shall be deemed to have commenced at 12:00 a.m. on December 14, 2015, (the "Commencement Date"), and shall terminate at 11:59 p.m. on December 13, 2045, unless sooner terminated in accordance with the terms contained in this Lease.

ARTICLE 3

FEES

3.1 As consideration for the rights granted to the Lessee pursuant to Article "1", supra, the Lessee shall pay to the County during the term hereof the following:

- (a) Beginning with the Commencement Date and continuing through the Lease Term, the annual sum of ONE DOLLAR, payable in advance on the anniversary of the Commencement Date.
- (b) In addition to the aforesaid fees payable to the County, Lessee shall be solely responsible for and shall pay and discharge, when due and payable, any and all real property assessments, water meter and sewer rents, utility charges, all other utilities, internet, telephone, refuse removal and recycling, sprinkler servicing, dehumidifier servicing, burglary and fire protection services, exterminator services, etc. and all other charges which may become due and payable to any party Lessee contracts with in connection with the Leased Premises during the term of this Lease.

3.2 It is the intention of the parties hereto that all costs, expenses and obligations of every kind relating to the Leased Premises or the Children's Museum (except as otherwise specifically provided in this Lease) which may arise or become due during the Lease Term, shall be paid by the Lessee, and that the County shall be indemnified by the Lessee against such costs, expenses and obligations.

3.3 Notwithstanding anything to the contrary contained herein, for the period of December 14, 2025 to December 13, 2030 ("Five Year Period"), the County shall provide propane (LNG) and electricity services (collectively the "LNG/Electricity Utilities") to the Children's Museum at a cost of \$1,500.00 per month ("Utility Fee") payable to the County monthly on the first day of the month. The Utility Fee shall be adjusted yearly starting December 14, 2026 by the percentage change in the Consumer Price Index over the immediately preceding calendar year. "Consumer Price Index" means the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, All Items, New York, New York – Northeastern New Jersey Area, all urban consumers (1982-84 = 100), or a successor index ("CPI"). At the end of the Five Year Period and on each five (5) year anniversary from the Five Year Period thereafter through the Lease Term, the Commissioner of the County's Department of Parks, Recreation and Conservation or his/her duly authorized designee (collectively the "Commissioner"), in his/her sole discretion, whether or not the County will continue providing the LNG/Electricity Utilities to Lessee. If it is determined that the County shall continue to provide PNG/Electricity Utilities to the Children's Museum the new monthly fee for the LNG/Electricity Utilities shall be calculated at that time by the Commissioner in his/her sole discretion (subject to ongoing annual CPI adjustments). . If it is determined that such utilities will be discontinued then the Children's Museum must procure and contract for LNG/Electricity Utilities directly.

3.4 All fees due to the County under the Lease shall be payable at the Office of the Commissioner when due, or at such other office as the County may designate by notice. An interest charge shall be assessed on any late or overdue payment at a rate of 1.5% per month.

3.5 All fees due to the County in this Article 3 shall be considered additional rent.

ARTICLE 4

ACCOUNTS

4.1 The Lessee shall keep the books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Commissioner, and shall permit inspection of said books and records by the County as often as deemed necessary in the opinion of the Commissioner. The Lessee shall, within one hundred twenty (120) days of the end of each calendar year, submit a certified, audited annual report, or as required by the Commissioner, a profit and loss statement of operations under the terms of this Lease, in a form considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Commissioner. The County, its employees and agents, shall have the right to inspect the Lessee's operation at any time and for any reason provided such inspections shall not unreasonably interfere with Lessee's business operations.

ARTICLE 5

PROPOSED ALTERATIONS

5.1.1 The parties acknowledge and agree that, as of the date hereof, the Lessee has invested a total of FOUR MILLION SIX HUNDRED FIVE THOUSAND (\$4,605,000.00) DOLLARS in capital improvements to the Leased Premises.

The parties further acknowledge and agree that during the remaining Lease Term, the Lessee shall invest a minimum of an additional TEN MILLION (\$10,000,000.00) DOLLARS in future capital improvements.

5.1.2 Lessee may make capital improvements which comprise changes or alterations to the interior or exterior of the Leased Premises (collectively “Proposed Alterations”), subject to Landlord’s prior written approval and subject to necessary legal approvals, if any. Lessee, at its own expense, shall engage an engineer to prepare plans of any Proposed Alterations in sufficient detail to demonstrate that same are in compliance with Applicable Laws, and then current construction techniques and applicable engineering standards and requirements. All such plans shall be delivered to the Commissioner for the County’s review and approval.

Landlord shall notify Lessee within sixty (60) days after receipt of any such plans of its approval or disapproval of the proposed plans, and, in the event of its disapproval, shall specifically identify Landlord’s objection and state its reasons therefor, in which event Lessee shall have the right to re-submit revised plans for Landlord’s approval, and Landlord shall notify Lessee within thirty (30) days after receipt of any such revised plans of its approval or disapproval of the revised plans, and, in the event of its disapproval, shall specifically identify Landlord’s objection and state its reasons therefor. The parties agree that Lessee shall have the right to continue to submit further revised plans to Landlord until the revised plans are approved.

Any Proposed Alterations pursuant to this Article 5 shall be subject to the following conditions which Lessee covenants to observe and perform:

(a) Any structural change or alteration shall be conducted under the supervision of a licensed architect or engineer selected by Lessee.

(b) All changes and alterations shall be of such a character that, when completed, the value and utility of the changes and alterations shall not be less than the value and utility thereof immediately prior to any such change or alteration.

(c) All work done in connection with any change or alteration shall be done in a good and workmanlike manner and will be of the highest quality and will be consistent with the overall quality of the materials and workmanship employed throughout the Leased Premises.

(e) Copies of all “as built” drawings, if applicable, (which shall be deemed to include final architectural and engineering plans with field notations thereon) and equipment and building system operating and maintenance manuals, for the Proposed Alterations, shall be delivered to the Commissioner to complete the County’s records. Final “as built” drawings must be signed and sealed by a licensed New York design professional.

5.1.3 All Proposed Alterations shall comply with all applicable laws, ordinances, regulations or orders of any Federal, State, Municipal or other public authority affecting the same, including Local, County, and State building and fire codes, New York's State Environmental Quality Review Act (“SEQRA”) and all requirements of the New York Board of Fire Underwriters or other similar bodies having jurisdiction. All work will be subject to further environmental review pursuant to SEQRA, and Lessee shall cooperate with the County in connection with the preparation of any necessary environmental assessment and other supporting documentation necessary to carry out the improvements in accordance with SEQRA.

In addition, Lessee shall ensure that any contractors or consultants engaged by it to perform any work pursuant to this Lease, including Proposed Alterations, repairs and/or maintenance, in addition to any prior approvals required by the County hereunder, shall comply with the material terms and conditions of the Lease including but not limited to providing the required insurance naming the County as additional insured as set forth in Schedule “B”, as applicable to the work being performed by said contractor or consultant.

5.2 Proposed Alterations shall be scheduled so that there shall be no interruption in the use of Playland Park. Any determination with respect to whether particular items of work should be deemed complete shall be made by the Commissioner in good faith after taking into consideration the customary practices and procedures employed at similar facilities throughout the area.

5.3.1 Lessee shall further comply with any County laws and regulations concerning permitting and construction on County property, which now exist or shall hereafter be enacted or promulgated, including, but not limited to any acts, rules or regulations establishing a County building code and its enforcement and administration (the “County Code”) and ensure that its permitted use(s), and any modifications thereto, comply with the County Code, including, but not limited, where applicable, filing an application for and obtaining any and all permits required by the County Code and being subject to inspections and County approvals as required by the County Code.

5.4.1 The County shall cooperate with and assist the Lessee in obtaining any necessary permits and approvals including when reasonably necessary or appropriate authorizing application for such permits in the name of or on behalf of the County. Nothing contained herein shall be construed to obligate the County to expend any money or pay any permit fees, charges or penalties (whether or not such permit shall be held in the name of the County), it being the intent of the parties that all cost and obligations incurred in obtaining any necessary permits or approvals shall be borne solely by the Lessee.

5.4.2 The Lessee, at its sole cost and expense, shall apply for and obtain all permits as may be required.

5.5 Title to the improvements and to all supplies and materials expended or utilized in connection with the construction of any Proposed Alterations or repairs shall be vested in the County immediately upon their incorporation into the Leased Premises. Except as expressly set forth herein to the contrary, title to any equipment which is incorporated into the improvements and permanently affixed to the Leased Premises shall vest in the County immediately upon its installation.

5.6 During construction of an Proposed Alterations, and in addition to inspections performed in accordance with the County Code, the County may, from time to time, and at reasonable times, inspect the facilities being modified hereunder, provided that conduct of

such inspection shall not interfere with Lessee's construction activities. In the event that during such construction, the County reasonably determines that the construction is not being performed substantially in accordance with approved plans or the County Code, then the County shall give prompt written notice to the Lessee, specifying in detail the particular deficiency, omission, or other respect in which the County claims construction is not in accord with the approved plans or the County Code and the Lessee shall remedy the deficiency within a commercially reasonable time. In the event the Lessee disputes the County's objection that the construction is not being performed in accordance with the approved plans then the Lessee may respond in writing within five (5) business days setting forth with specificity the reason or reasons why it believes the construction conforms to the plans. Within a reasonable time thereafter the Commissioner, after such reasonable consultation and review as he may deem appropriate, shall advise the Lessee in writing as to whether the County's original objection shall be withdrawn, upheld or modified.

5.7 Before the Lessee or any contractor employed by Lessee undertakes any construction activities hereunder, the person responsible for performing the work shall furnish a performance and payment bond in form reasonably satisfactory to the County, having as surety a United States Treasury Listed surety company authorized to do business in New York and of recognized responsibility, in an amount equal to the estimated cost of construction as estimated by Lessee's architect or general contractor and approved as to amount by the County. Said bond shall be conditioned, without exception or proviso, upon the completion in accordance with the terms of this Lease and, substantially in accordance with the approved plans, in compliance with all applicable legal requirements, free and clear of all liens; and shall also be conditioned for the payment of the entire cost thereof.

ARTICLE 6

LIENS

6.1 Except as otherwise expressly provided herein, Lessee will not create or permit to be created, and will discharge within thirty (30) days after notice of the filing thereof, any lien, encumbrance or charge upon the Leased Premises or any equipment affixed to thereof,

having priority over or parity with the estate, title, right and/or interest of the County in the Leased Premises or such equipment.

ARTICLE 7

FOOD AND BEVERAGE HANDLING

7.1 If a restaurant or cafeteria is to be constructed at the Leased Premises, the Lessee's employees shall wear clean, washable uniforms or clothing and shall wear caps or nets where required. The employees shall be clean in their habits and shall thoroughly wash their hands before beginning work and immediately after each trip to the lavatories and shall keep them clean throughout the entire work period. The food service establishment shall at all times comply with New York State Department of Health laws, rules and regulations and the Lessee shall obtain all required food permits.

7.2 All food and beverages shall be clean, fresh, pure, of first class quality and safe for human consumption.

7.3 The Leased Premises and all equipment and materials used by the Lessee shall at all times be clean, sanitary and free from rubbish, refuse, dust, dirt, offensive or unclean material, flies and other insects, rodents and vermin. All apparatus, utensils, devices, machines and piping used by the Lessee shall be constructed so as to facilitate the cleaning and inspection thereof and shall be properly cleaned after each period of use. All trays, dishes, crockery, glassware, cutlery and other equipment of such type shall be properly cleaned and sanitized before each use. No chipped or cracked dishes, crockery, or glassware shall be used. The County reserves the right to require other sanitizing procedures that it deems reasonable and necessary.

ARTICLE 8

QUALITY AND PRICE

8.1 The Lessee warrants that admission fees, products, food and beverages shall be made available to the public at reasonable prices and further warrants that they shall be of first quality. For purposes of this Lease, "reasonable prices" shall mean prices that are comparable to prices for similar items sold at museums within a fifteen (15) mile radius of the Leased Premises. The County reserves the right of final approval on all prices charged for products, food and beverages and on the items to be offered for sale at the Leased Premises.

ARTICLE 9

EQUIPMENT

9.1 Lessee shall install all equipment necessary for the proper operation of the Children's Museum and shall make full payment for the same, and shall maintain all equipment, fixed and expendable, in good order and repair at Lessee's sole cost and expense during the term of this Lease. Plans and specifications for any additional and fixed equipment shall be submitted to the Commissioner for approval before being installed at the Leased Premises, and the installation shall be subject to inspection and approval of the Commissioner.

9.2 All air conditioning, fire sprinkling, electrical, plumbing and ventilating equipment, apparatus and devices, any and all fixtures, and all structural and non-structural physical improvements approved by the Commissioner for installation at the Leased Premises shall, immediately upon installation, be deemed to be attached to the realty and shall become property of the County to the same extent as if the same had been installed by the County prior to the commencement of the Lease.

9.3.1 The Lessee agrees to supply, maintain and replace at the sole cost and expense of Lessee all equipment required for the proper operation of the Children's Museum including, without limitation, food preparation equipment, serving equipment, eating utensils, dishes, glasses, barware, linens, and uniforms. All such equipment must be of first quality and approved by the Commissioner before being delivered to the Leased Premises.

9.3.2 Title to equipment that is affixed to the Leased Premises shall vest immediately in the County upon installation. Title to equipment provided by Lessee and not

affixed to the Leased Premises shall remain in Lessee, and such equipment shall be removed by Lessee at the termination or expiration of this Lease except as otherwise provided for herein. Should any such property remain on the Leased Premises after such expiration or termination, Commissioner may deal with such as though same had been abandoned and charge all cost and expense incurred in the removal thereof to Lessee. Lessee's obligation to observe and perform all of the terms and covenants and conditions of this Lease shall survive the expiration or other termination hereof.

ARTICLE 10

MAINTENANCE AND ALTERATIONS

10.1.1 (a) Lessee, at its sole cost and expense, shall keep the Leased Premises in clean and in good order and shall make all required repairs to the Leased Premises, including all exterior and structural repairs.

(b) Except as otherwise provided for herein, Lessee, at its sole cost and expense, shall further maintain and keep the area within fifteen (15) feet of the boundaries of the Leased Premises (the "Buffer Area"), clean and in good order, and shall make all required repairs in and to the Buffer Area, except for structural repairs which shall be the responsibility of the County.

(c) Notwithstanding anything to the contrary contained elsewhere herein, the County shall provide snow removal and salting services at no cost to the Lessee in the following areas of the Leased Premises and immediately adjacent to the Leased Premises: 1) Loading dock area; 2) the two (2) stairs located at rear of the Leased Premises; 3) the two (2) door areas located at the sides of the Leased Premises; and 4) Shoveling and salting of a footpath from the main boardwalk to the front door of the Leased Premises.

10.1.2 In the event Lessee fails to commence to maintain, clean, repair, replace, rebuild or repaint within a period of thirty (30) days after written notice from the County requesting such work, or in the event Lessee fails to diligently continue to completion any such work, the County may, at its sole option, and in addition to any other remedies available to it, enter the Leased Premises and clean, repair, replace, rebuild or repaint all or any part of the

Leased Premises or the improvements thereon at the cost and expense of Lessee. However, if in the sole opinion of the County, the failure of Lessee to perform such maintenance endangers the safety of the public, the employees or the property of the County, and the County states same in its notice, the County may, at its sole option, and in addition to any other remedies available to it, enter the Leased Premises and performs such maintenance at any time after giving of notice. Lessee agrees to pay all costs and expense associated with such maintenance.

10.2 The Lessee acknowledges that it does not and shall not have any claim against the County, its agents, or contractors for interference in or interruption of its operations as a result of any improvements made by the County. The County shall use reasonable efforts to minimize such interruptions or interference in operations without waiving its right to make improvements to the Playland Park property or its buildings.

10.3 It is the intention of the parties hereto that the Lessee shall pay all costs associated with the maintenance and repair of the Leased Premises, including, but not limited to costs of any necessary capital improvements/repairs to the exterior or interior of the Leased Premises, as well as routine maintenance. Any such capital improvements/repairs shall be subject to the prior approval of the County.

10.4 All upkeep and maintenance required to be performed by Lessee shall be subject to approval of the Commissioner in his or her sole discretion. Copies of all maintenance agreements and schedules shall be provided to Commissioner prior to commencement of any work other than routine maintenance such as cleaning.

10.5 The Parties acknowledge that the County may propose a one-time capital project of up to \$1,000,000.00 to fund exterior repairs to the Leased Premises, including but not limited to roof repairs. Notwithstanding anything to the contrary contained elsewhere herein, the County, may in its sole discretion and subject to the receipt of all necessary legal appropriations and approvals including those approvals from the County Board of Legislators and Board of Acquisition and Contract, perform such work.

ARTICLE 11
MANAGEMENT

11.1 The Lessee shall employ a manager to supervise and manage the Children's Museum. The Lessee shall employ a sufficient number of trained, knowledgeable personnel to insure the safe and proper operation of the Children's Museum. The Lessee shall provide, and its employees shall wear, appropriate employee identification and, if required by the Commissioner, uniforms. Employee identification and apparel shall be subject to the approval of the Commissioner.

11.2 The operation of the Children's Museum shall be conducted in an orderly and proper manner so as not to annoy, disturb or offend others using the County's park facilities. The Lessee shall immediately remove the cause of any objection made by the Commissioner regarding the demeanor, conduct and appearance of any Lessee employees, invitees or business guests.

ARTICLE 12
ASSIGNMENT

12.1 The Lessee shall not assign, sublet, subcontract or otherwise dispose of this Lease, or any right, duty or interest herein, without the prior written consent of the Commissioner, nor shall this Lease be transferred by operation of law, it being the purpose and spirit of this instrument to grant this Lease and privilege solely to the Lessee named herein. No assignment, subcontracting, subletting or other such disposition of this Lease, either with or without such consent of the Commissioner, shall serve to relieve the Lessee of its obligations hereunder.

ARTICLE 13
INSURANCE, DAMAGE, DESTRUCTION

13.1 To safeguard the interest and property of the County, the County in its own name as the insured, will procure and maintain throughout the term of this Lease insurance protection for fire and extended risks on the structure and improvements of which the Leased Premises are a part. Lessee agrees that it will reimburse County for the proportionate share of insurance premium costs applicable to the Leased Premises upon the presentation to Lessee of a bill.

13.2 In the event the Leased Premises or any building or structure thereon, are wholly or partially destroyed by any cause not the fault of the Lessee, the County shall have the option, exercisable for a period of sixty (60) days, to repair, rebuild or restore the damaged or destroyed premises. If the County elects to repair or restore the premises, the Lessee shall be entitled, during the period commencing with the date of damage and ending upon the completion of repairs by the County, and at the discretion of the Commissioner, to a reduction in fees payable to the County based upon the extent to which the Lessee's operations are prevented or diminished during such period.

13.3 If the County elects not to repair or restore the Leased Premises, it shall promptly so notify the Lessee, in which event the Lessee shall have the option, at its sole cost and expense, of repairing and restoring the premises or of forthwith, upon written notice, terminating this Lease.

13.4 If such damage results from any act or omission of the Lessee, then this Lease shall continue in full force and effect, without any abatement or reduction in fees payable hereunder, and the Lessee, at its sole cost and expense, shall repair the damage and return the Leased Premises to the condition existing at the commencement of the term hereof. Upon the failure of the Lessee to make such repairs, the County may repair such damage at the Lessee's cost and expense.

13.5 Lessee shall ensure that the County is named as an additional insured on all insurance obtained by any contractor(s) performing any work, including but limited to construction work, at the Leased Premises. All contracts pertaining to any work at the Leased Premises shall provide that the County shall be indemnified and held harmless against and from all liability arising from the work in a form reasonably acceptable to the County. All contracts pertaining to any work shall make the County a third party beneficiary thereunder so as to afford to the County the same rights and remedies afforded to the Lessee for breach of contract.

ARTICLE 14

INDEMNIFICATION

14.1 In addition to, and not in limitation of, the insurance requirements contained in Schedule "B" entitled "Standard Insurance Provisions", attached hereto and made a part hereof, the Lessee 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 Lessee 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 acts or omissions of the Lessee or third parties under the direction or control of the Lessee; and

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

(c) in the event the Lessee 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 Lessee 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 Lease.

ARTICLE 15
BANKRUPTCY

15.1 If at any time during the term of this Lease, any petition in bankruptcy shall be filed by or against the Lessee or if the Lessee shall be adjudicated a bankrupt; or if a Receiver shall be appointed to take possession of the Lessee's property; or if the Lessee shall make any assignment for the benefit of creditors, this Lease shall, at the option of the County, immediately cease, terminate and expire. Nothing hereunder shall relieve the Lessee from any liability incurred under this Lease and the Lessee covenants and agrees to yield and deliver to the County possession of the Leased Premises promptly and in good condition on the date of the cessation of this Lease, whether such cessation be by termination, expiration or otherwise.

ARTICLE 16
TERMINATION

16.1 In the event that the Lessee 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 might have, may terminate this Lease upon thirty (30) days' written notice to Lessee. The Lessee shall have the notice period to cure such default. If such default remains uncured, County, at its sole option, may extend the period to cure. Upon the expiration of the extension, absent further extension, termination becomes effective.

16.2 In the event that the County defaults in the performance of any term, condition or covenant herein contained, the Lessee, at its option and in addition to any other remedy it might have, may terminate this Lease upon ninety (90) days' written notice to County. The County shall have the notice period to cure such default. If such default remains uncured, Lessee, at its sole option, may extend the period to cure. Upon the expiration of the extension, absent further extension, termination becomes effective.

16.3 In the event of termination, Lessee agrees to peaceably surrender the Leased Premises to County. Upon such surrender, the County may re-enter and reoccupy the Leased Premises and use any property of the Lessee located at the Leased Premises on the date of termination.

16.4 No holding over by Lessee after the termination or expiration of this Lease shall operate to extend or renew this Lease for any further term whatsoever. Continued occupancy thereof by Lessee shall constitute trespassing by Lessee. In addition to any other remedy available to the County, any holding over by Lessee without the written consent of the County shall make Lessee liable to the County for damages equal to a good faith estimate made by the Commissioner of the actual value of the leasehold over time.

ARTICLE 17

MISCELLANEOUS PROVISIONS

17.1 **LEGAL COMPLIANCE:** The Lessee shall, at its sole cost and expense, procure and maintain in full force and effect for the term of this Lease, all permits and approvals from all applicable governmental authorities. The Lessee shall further obey, perform and comply with any and all federal, state and local laws, rules, regulations, orders, ordinances and requirements of every kind and nature affecting the Leased Premises, which now exist or shall hereafter be enacted or promulgated, including, but not limited to, local zoning, SEQRA, state or County executive orders, and requirements of the New York Board of Fire Underwriters, the New York Fire Insurance Rating Organization or other entity with similar functions. All repairs and improvements will comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

17.2 **NON-DISCRIMINATION:** The Lessee 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 Lease, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Lessee 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.

17.3 FORCE MAJEURE: Neither the County nor the Lessee, as the case may be, shall be deemed in breach hereof if it is prevented from performing any of the obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, public health emergencies, utility service disruptions, or any similar other circumstances not within its reasonable control.

17.4 INSPECTION: The Commissioner shall be entitled to enter the Leased Premises for the purposes of inspecting, observing and monitoring any aspect of Lessee's operations. The Lessee shall also permit inspection of same by any federal, state, County or municipal officer having jurisdiction. The Lessee, at its sole cost and expense, shall promptly remedy any and all violations issued as a result of such inspection.

17.5 FLAMMABLES: The Lessee shall not use or store any explosives, toxic materials or flammables on or about the Leased Premises.

17.6 ADVERTISING: All signs, advertising and promotions to be employed by the Lessee in connection with operation of the Concession shall be subject to prior written approval of the Commissioner.

17.7 CONDEMNATION: In the event that the space assigned to Lessee hereunder, or such a substantial part thereof so as to render impossible the operation of the Children's Museum, be taken by eminent domain, this Lease shall terminate on the date upon which title vests in the condemnor and neither party shall have any liability to the other on account of such termination. The parties agree that this clause shall not be interrupted or

construed to permit the County, acting solely for itself, to exercise any power of eminent domain with respect to Lessee's property without just compensation.

17.8 UTILITY AND SEWER LINES: The County reserves the right to lay, erect, construct, use, operate and maintain utility and sewer lines in, through, under and across the Leased Premises provided that such activity does not unreasonably interfere with the operation of the Children's Museum.

17.9 RISK OF OPERATION: The Lessee assumes all risks in the operation of the Children's Museum. The Lessee shall comply with any and all rules and regulations prescribed by the County for the operation of the Leased Premises. Upon request, the County shall furnish a copy of such rules and regulations to the Lessee.

17.10 AMBIGUITY: In the event of any ambiguity in any of the terms of this Lease, it shall not be construed for or against any party hereto based on which party was the author of the term in question.

17.11 BEST MANAGEMENT PRACTICES: In addition to all the other requirements of this Lease, the Lessee recognizes and understands that it is an essential element of this Lease that the Lessee insure that any work it does under this Lease, including but not limited to any plans, specifications, drawings, designs, management and advice, complies with the County's policy of Best Management Practices for Water Quality Protection. Therefore, the Lessee shall, at a minimum, incorporate the NYS Department of Environmental Protection (hereinafter "NYSDEC") technical standards for erosion and sediment control contained in the document, "*New York Standards and Specifications for Erosion and Sediment Control*," as the same may be amended from time to time. In addition, the Lessee shall incorporate for the design of water quality and water quality controls (post-construction stormwater control practices), the NYSDEC standards detailed in the "*New York State Stormwater Management Design Manual*," as the same may be amended from time to time. Both documents should be obtained from the NYSDEC website to insure that the Lessee has the latest versions of such documents. In addition, the Lessee shall apply these standards to ALL work done for the County, regardless of

the size of the project. For example, if the State standards applies only to projects of 1 acre or greater and the County's project is less than one acre, then the Lessee shall utilize the State standard for the larger project. To the extent that there is any conflict between the County standards and the standards required by any other regulatory agency, the Lessee shall utilize the stricter standard. The Lessee shall determine if the project shall require any permits from regulatory agencies, including, but not limited to, permits that concern stormwater management. To the extent that the services rendered by the Lessee involve design of the project and to the extent that any permits are required for the project, the Lessee shall complete the permit application and prepare the necessary information required by the permitting agency, including, but not limited to, the preparation of a Stormwater Pollution Prevention Plan. To the extent that the services rendered by the Lessee involve Construction Management, the County shall require such consultant to review plans and specifications and inspect the construction site to insure that the aforementioned standards are being met.

17.12 REQUIRED SCHEDULES: Attached hereto and forming parts hereof are the schedules listed below. Simultaneous with its execution of this Lease, the Lessee shall provide the County with a completed copy of each schedule. The Lessee agrees that the terms of each of these schedules has been accepted and agreed-to by the Lessee by virtue of its execution of this Lease, and the Lessee represents and warrants that it has completed each of these schedules accurately and completely.

1.) Schedule "C" — "Business Enterprises Owned and Controlled by Women or Persons of Color". 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 women or persons of color in contracts and projects funded by all departments of the County.

2.) Schedule "D" — "Required Disclosure of Relationships to County". In the event that any information provided in Schedule "D" must be changed during the term of this Lease, the Lessee agrees to notify the County in writing within ten (10) business days and provide an updated version of the schedule.

3.) Schedule “E” — “Criminal Background Disclosure”. This schedule is required pursuant to Executive Order No. 1-2008.

4.) Schedule “F” — “Questionnaire Regarding Business Enterprises Owned and Controlled by Service-Disabled Veterans”

The County believes it is a laudable goal to provide business opportunities to veterans who were disabled while serving our country, and wants to encourage the participation in County contracts of certified business enterprises owned and controlled by service-disabled veterans. This schedule is required as part of the County’s program to encourage the participation of such business enterprises in County contracts, and in furtherance of Article 3 of the New York State Veterans’ Service Law.

17.13 REMEDIES CUMULATIVE: The failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of payment of any fee due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

17.14 TAXES: It is the intention of the County and the Lessee that the Lease Fees herein referred to shall be net to the County in each year of the Lease Term and that all costs, expenses and obligations of every kind relating to the Leased Premises (except as otherwise specifically provided in this Lease) which may arise or become due during the Lease Term, including, but not limited to, any and all real property assessments or taxes, water meter and sewer rents, utility charges, shall be paid by the Lessee without set-off and the Lessee shall indemnify the County against such costs, expenses and obligations

17.15 APPROVALS: This Lease shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

17.16 CHOICE OF LAW: This Lease shall be performed and enforceable in Westchester County, New York, and shall be governed by the laws of the State of New York.

ARTICLE 18

NOTICES

18.1 NOTICES: All notices of any nature referred to in this Lease shall be in writing and sent by registered or certified mail postage pre-paid to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Westchester County Executive
Michaelian Office Building, Room 900
148 Martine Avenue
White Plains, New York 10601

with copies to:

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

and

Commissioner
Department of Public Works and Transportation
Michaelian Office Building, Room 500
148 Martine Avenue
White Plains, New York 10601

and

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

To the Lessee:

Westchester Children's Museum
100 Playland Parkway
Rye, New York 10580

ARTICLE 19
ENTIRE AGREEMENT

19.1 This Lease and its Schedules constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, comments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

[NO FURTHER TEXT ON THIS PAGE. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

THE COUNTY OF WESTCHESTER

By _____
Name:
Title:

WESTCHESTER CHILDREN'S MUSEUM

By _____
Name:
Title:

Approved by the Board of Legislators of the County of Westchester by Local Law No. 9 - 2011 approved on the 8th day of August, 2011 and on the 24th day of August, 2011, and by Local Law ____ -2024 on the ____ Day of _____, 2024.

Approved by the Board of Acquisition and Contract of the County of Westchester on the 11th day of July, 2013 and on the ____ of _____, 2024.

Approved:

Sr. Assistant County Attorney
The County of Westchester

c.:JPI/PRC/Children's.Museum.Amended&Restated.Lease.3.31.25

ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 20____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgment

CERTIFICATE OF AUTHORITY

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

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

a corporation duly organized and in good standing under the (Law under which organized, e.g., the New York Business Corporation Law) named in the foregoing agreement; that

(Person executing agreement)

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

(Title of such person)

of the Corporation and that said agreement was duly signed for and on behalf of said Corporation by authority of its Board of Directors, 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 the _____ day of _____ in the year 20____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgement

SCHEDULE “A”

Description of Leased Premises

DRAFT

SCHEDULE "B"

STANDARD INSURANCE PROVISIONS **Children's Museum at Playland**

1. Prior to commencing work, and throughout the term of the Agreement, the Lessee 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. Lessee 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 Lessee 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 Lessee 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 Lessee 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 Lessee to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Lessee from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Lessee 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 Lessee'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 Lessee until such time as the Lessee shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Lessee 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 Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

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

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

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

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

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

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

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

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

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

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

- e) Abuse and Molestation Liability, either by separate policy of insurance or through endorsement to the General Liability Policy or Professional Liability Policy. (Limits

of \$3,000,000.00 per occurrence. This insurance shall include coverage for the following, including coverage for client on client, counselor client, and third parties:

- i. Misconduct
 - ii. Abuse (including both physical and sexual)
 - iii. Molestation
- f) Pollution Control Liability, either by separate policy of insurance or through endorsement to the General Liability Policy or Automobile Policy. Minimum Limit: \$1,000,000.00. This insurance shall indicate the following coverages:
 - (i) Transit
 - (ii) Sudden and Accidental
 - (iii) Clean-up
- g) Builder's Risk –Contractor at their own cost and expense shall provide and maintain a Builder's Risk Form, All Risk Insurance Contract. The coverage shall be written for 100% of the completed value of the construction work, with the County of Westchester named as loss payee as its interest may appear
- h) Owners Protective Liability Policy naming the County as insured, with a minimum limit of liability per occurrence of \$3,000,000 (**All work requiring elevated work and/or the use of scaffolding** where applicable, or as determined by the Director, Risk Management)

If applicable:

- i) Crane, Rigging, & Crane Operator (Rigger Liability) Insurance with a minimum limit of liability per occurrence of \$5,000,000 for bodily injury and a minimum limit of \$500,000 per occurrence for property damage or a combined single limit of \$5,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured.
- j) Installation Floater coverage may suffice for construction work not requiring Builders Risk Coverage and shall serve to insure materials, tools, and equipment of the contractor while such items are in transit and/or in the process of being installed.

3. All policies of the Lessee 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 Lessee.

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SCHEDULE “C”

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County’s program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A “business enterprise owned and controlled by women or persons of color” means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability company, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise (“MBE”) or women business enterprise (“WBE”) pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term “persons of color”, as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered “yes” based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered “Yes” above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (*please check off below all that apply*)

_____ Black persons having origins in any of the Black African racial groups

_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

_____ Native American or Alaskan native persons having origins in any of the original peoples of North America

_____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "D"

REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

- 1.) Are any of the employees that the Consultant will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

- 2.) Are any of the owners of the Consultant or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

- 3.) Do any County officers or employees have an **interest**¹ in the Consultant or in any approved subconsultant that will be used for this contract?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

[NO FURTHER TEXT ON THIS PAGE]

¹ "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

SCHEDULE “E”

CRIMINAL BACKGROUND DISCLOSURE

INSTRUCTIONS

Pursuant to Executive Order 1-2008, the County is required to maintain a record of criminal background disclosure from all persons providing work or services in connection with any County contract, including leases of County-owned real property and licenses:

- a.) If any of the persons providing work or services to the County in relation to a County contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County contract; and
- b.) If any of the persons providing work or services to the County in relation to a County contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure (“Persons Subject to Disclosure”) include the following:

- a.) Consultants, Contractors, Licensees, Lessees of County-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, Subcontractors, Sublessees, or Sublicensees who are providing services to the County, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

Under Executive Order 1-2008, it is the duty of every County Consultant, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.¹ Accordingly, the attached Criminal Background Disclosure Form and Certification must be completed and agreed-to as part of this Agreement.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from the disclosure requirements of Executive Order 1-2008. If translation services are required by the Consultant, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Consultant, Contractor, Licensee, or Lessee.

¹ For these disclosures, a “crime” or “pending criminal charge” includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal charge(s) will not automatically result in a denial of a person's right to work on a County contract, right to be on County property, or license, but may, if the County determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any part of his/her conviction history or any pending criminal charge(s) for any reason, he/she may be prohibited from working or being on County property without any risk assessment. If it is later determined that a Person Subject to Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a County contract, be on County property, or license may be terminated at any time.

Please further note that, pursuant to Executive Order 1-2008, and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County has the right to bar a Person Subject to Disclosure from providing work or services to the County or from being on County property if any such person has:

- a.) A conviction of a crime(s);
- b.) A pending criminal proceeding for a crime(s); or
- c.) Refused to answer questions concerning his/her criminal background

Please finally note that any failure by a County Consultant, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1-2008 may be considered by the County to be a material breach and shall be grounds for immediate termination by the County of the related County contract.

Exemptions

Executive Order 1-2008 exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a County contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify the Procuring Officer². The Procuring Officer will then determine whether the Person(s) Subject to Disclosure are actually exempt, and provide written notification of his/her determination. If the Procuring Officer determines that a Person Subject to Disclosure is not exempt, the Procuring Officer will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

² Procuring Officer" shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(1)(a) of the Laws of Westchester County, the Purchasing Agent.

Subconsultants, Subcontractors, Sublessees, or Sublicensees

Under Executive Order 1-2008, it is your duty to ensure that any and all approved subconsultants, subcontractors, sublessees, or sublicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subconsultant, subcontractor, sublessees, or sublicensees can be approved to perform work on a contract.

New Persons Subject to Disclosure

Under Executive Order 1-2008, you have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the County with any other updates that may be necessary to comply with the disclosures required by Executive Order 1-2008.

PLEASE CONTINUE TO THE

Criminal Background Disclosure Form and Certification

BEGINNING ON THE NEXT PAGE

CRIMINAL BACKGROUND DISCLOSURE

FORM AND CERTIFICATION

If this form is being completed by a subconsultant, subcontractor, sublessee, or sublicensee, please consider all references in this form to "consultant, contractor, lessee, or licensee" to mean "subconsultant, subcontractor, sublessee, or sublicensee" and check here: _____

By executing this Agreement, I, as the signatory for the Contractor, certify that I am a principal or a representative of the Consultant, Contractor, Lessee, or Licensee and I am authorized to agree to and provide this completed Criminal Background Disclosure Form and Certification. I certify that each Person Subject to Disclosure has been asked the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**
- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer **either** of the questions above are as follows:

If none, check this box: ☐

1. _____
2. _____
3. _____

(If more space is needed, please attach separate pages labeled "REFUSED to Answer - Continued.")

I certify that the names and titles of Persons Subject to Disclosure who answered "Yes" to **either of the** questions above are as follows:

If none, check this box: ☐

1. _____
2. _____
3. _____

(If more space is needed, please attach separate pages labeled "YES Answers - Continued")

Each Person Subject to Disclosure listed above who has either **been convicted of a crime(s)** and/or **is subject to a pending criminal charge(s)** must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has **been convicted of a crime(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

A Person Subject to Disclosure who **is subject to a pending criminal charge(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By executing this Agreement, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto County property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into County property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.

It is further understood and agreed that the consultant, contractor, lessee, or licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the County as necessary to comply with the requirements of Executive Order 1-2008.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE “F”

For Informational Purposes Only

**QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES
OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS**

The County believes it is a laudable goal to provide business opportunities to veterans who were disabled while serving our country, and wants to encourage the participation in County contracts of certified business enterprises owned and controlled by service-disabled veterans. As part of the County's program to encourage the participation of such business enterprises in County contracts, and in furtherance of Article 3 of the New York State Veterans' Service Law, we request that you answer the questions listed below.

The term “Certified Service-Disabled Veteran-Owned Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is a certified service-disabled veteran-owned business enterprise under Article 3 of the New York State Veterans' Service Law.

1. Are you a business enterprise that is owned and controlled by a service-disabled veteran in accordance with the standards listed above?

_____ No
_____ Yes

2. Are you certified with the State of New York as a Certified Service-Disabled Veteran-Owned Business?

_____ No
_____ Yes

If you are certified with the State of New York as a Certified Service-Disabled Veteran-Owned Business, please attach a copy of the certification.

[NO FURTHER TEXT ON THIS PAGE]