

**ACT NO. \_\_\_\_ - 2024**

**AN ACT** authorizing the County of Westchester to enter into an easement agreement with the Croton Falls Fire District to accept an easement over approximately 18,945 ± sq. ft. (0.43 ± acres) of land at 40 Sun Valley Drive, Croton Falls, New York in the Town of North Salem for the County to undertake, install and maintain certain storm water facilities.

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

**Section 1.** The County of Westchester (the “County”) is hereby authorized to enter into an easement agreement (the “Easement Agreement”) with the Croton Falls Fire District to accept an easement over approximately 18,945 ± sq. ft. (0.43 ± acres) of land located at 40 Sun Valley Drive, Croton Falls, New York in the Town of North Salem identified on the official tax maps for the Town of North Salem as Section 1, Block 11734, Lot 68 (the “Parcel”) for the County to undertake, install and maintain certain erosion, sediment control, grading and storm water work and facilities necessary for the installation of a County communication facility for governmental and/or public safety communication purposes.

**§2.** The term of the Easement Agreement shall commence upon execution and shall continue for a term that is coterminous with the County’s lease agreement, including any renewals thereof, with the Croton Falls Fire District for the County to construct, install, maintain and operate a County communication facility on the Parcel.

**§3.** The County Executive or his authorized designee is empowered to execute any and all documents necessary and appropriate to effectuate the purposes hereof.

**§4.** This Act shall take effect immediately.

**Schedule "C"**

**STORM WATER EASEMENT**

This Storm Water Easement Agreement (the "Easement Agreement") made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Commencement Date") by and between

**CROTON FALLS FIRE DISTRICT**, a political subdivision of the State of New York and a district existing pursuant to the laws of the State of New York, having an office and place of business at 301 Titicus Road, North Salem, New York 10560, as the party of the first part ("Grantor"),

and

**COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business at 148 Martine Avenue, White Plains, New York, 10601, as the party of the second part ("Grantee or County"),

(Grantor and the Grantee or County may be referred to individually as a "Party" or collectively as the "Parties")

**WITNESSETH:**

**WHEREAS**, Grantor is the title owner of a certain parcel located at 40 Sun Valley Drive, Croton Falls, New York, in the Town of North Salem, identified as Section 1, Block 11734, Lot 68 on the Official Tax Maps for the Town of North Salem (the "Parcel"); and

**WHEREAS**, the Grantor, as the party of the second part, acquired the Parcel by a deed from Michael Furio, as party of the first part, dated April 15, 1964 which was recorded in the Westchester County Clerk's Office on May 8, 1964 at Liber 6400, Page 382; and

**WHEREAS**, the Parties entered into a lease agreement, dated \_\_\_\_\_, pursuant to which the County was granted the certain rights in the Parcel, including the right to install, maintain and operate certain public safety radio communication equipment on the Parcel (the "Lease Agreement"); and

**WHEREAS**, in the Lease Agreement, the County agreed to install certain erosion, sediment control, grading and storm water work and facilities at the Parcel according to the term set forth in the Lease Agreement (the "Storm Water Facilities"); and

**WHEREAS**, in the Lease Agreement, the Parties agreed that upon completion of the installation of the Storm Water Facilities, the Parties would execute and the County would record this Easement Agreement to provide a written easement in the Parcel for the County's construction, operation and maintenance of the Storm Water Facilities.

**NOW, THEREFORE**, for good and valuable consideration, the Parties hereto agree as follows:

1. **Easement Grant.**

A. **Easement.** The Grantor hereby grants to the County, and its officers, elected officials, employees, agents, contractors, and subcontractors (the "County Parties"), a non-exclusive easement on, over, in, through and upon that portion of the Parcel identified and described in the metes and bounds description attached hereto and made a part hereof as Schedule "A" and as shown on the map, which is attached hereto and made a part hereof as Schedule "B" (the "Easement") to install, construct, reconstruct, maintain, operate and repair the Storm Water Facilities located within the Easement as shown in Schedule "B". The County's maintenance of the Storm Water Facilities shall be according to commonly accepted best management practices for storm water maintenance. The County shall not be responsible for any damage to the Storm Water Facilities caused by the acts of the District, its agents, its other tenants or licensees or subtenants or sublicensees on the Parcel, or third parties under the direction and control of the District for which the District shall indemnify the County with respect thereto.

B. **Access.** The Parties acknowledge that the Easement shall include the right to enter and cross the Easement at all times to fulfill the purposes and exercise the rights set forth in this Easement Agreement.

C. **Further Assurances.** With respect to the legal description of the Easement which is being granted herein, if any de-minimis additions, changes or corrections are required due to accurate survey or field conditions, such additions, changes or corrections may be made by the County or the Grantor, subject to the approval of the other Party to this Agreement. Approvals, if any, for the County will be by the Commissioner of the Department of Public Works and Transportation and for the Grantor, by its authorized representative, such approval not to be unreasonably withheld or delayed. Such additions, changes or corrections shall also be made to reflect such facts as an accurate survey of final construction and installation may disclose. Any additions, changes or corrections to the legal descriptions of the Easement herein shall be duly recorded by appropriate instrument approved by the Parties (such approval not to be unreasonably withheld) prepared and filed by the County or the Grantor in a timely manner in the Westchester County Clerk's Office, with copies to the other Parties.

2. **Perpetual Right of the County and County Parties.**

A. The Easement shall include the right of the County and the County Parties:

(i) to install, construct, reconstruct, maintain, operate and repair the Storm Water Facilities within the Easement, and

(ii) to freely ingress to and egress from the Easement, for the purposes of installing, constructing, reconstructing, maintaining, operating and repairing the Storm Water Facilities without any molestation or hindrance or without becoming or being held liable for trespass, in each case, from and by the Grantor and its successors, assign, or legal representatives.

3. **Term.** The term ("Term") of this Easement Agreement shall commence upon the Commencement Date and shall continue for a term that is coterminous with the Lease Agreement, including any renewals thereof. Upon the expiration or termination of the Lease Agreement, this Easement Agreement shall terminate unless otherwise agreed to in writing between the Parties.

Upon the termination of this Easement Agreement, the Grantee shall, at its sole cost and expense, remove all of its equipment, materials, supplies and refuse from the Easement. In addition, upon the termination of this Easement Agreement, the County shall have no further right or obligation to install, construct, maintain, operate or repair the Storm Water Facilities.

4. **Terms, Conditions and Restrictions on the Easement.**

A. Access to the Parcel is currently via a locked gated and closed to public traffic. In order to maintain the County's right of Access, the District shall provide the County with a key or combination to the lock at the gate or the County shall be permitted to add a County lock to a multi-lock arrangement approved by the District for the gate so that the County can have free access to the to the Easement to exercise its rights under this Easement Agreement.

B. Grantor further covenants that it, and any third parties under its direction and control, shall not injure, damage, endanger or impair the County Storm Water Facilities or the operation thereof. The Grantor agrees to and shall indemnify the County for any damage to the Storm Water Facilities caused by the acts of the Grantor, its agents or third parties under its direction or control, the Grantor.

C. The County shall prosecute all work and use the Easement, in compliance with all applicable federal, state and local laws, rules, regulations, codes, permits and ordinances.

D. The grant of this Easement to Grantee shall be subject and subordinate to: (i) all mortgages which may now or hereafter affect the Parcel and to all renewals, modifications, consolidations, replacements and extensions thereof and (ii) all covenants and restrictions of record affecting the Easement, if any, to the extent that same are in force and effect.

3. **Costs.** Except as otherwise provided in this Easement Agreement, the County shall pay all costs and expenses of performing all County work in the Easement, including but not limited to any permit fees, filing fees, construction costs and maintenance costs. The County shall promptly pay, when due, all claims for labor and material furnished, or alleged to have been furnished, to or for the County and all County Parties in the performance of County work that are or may be secured by any mechanics' or materialmens' liens against the Parcel or any interest of Grantor in the Parcel. At the County's expense, the County shall promptly cause any such liens which do attach to the Parcel to be promptly discharged or bonded over after the liens are filed. The County shall indemnify Grantor from all such liens as provided in Section 5 below.

4. **Insurance.**

A. At the time of execution of this Easement Agreement, the County is self-insured and the Grantor accepts the letter evidencing such self-insurance, which is annexed to this Easement Agreement as Schedule "C". If the County changes from a self-insurance program to a traditional insurance program, then the County shall forward certificates of General Liability coverage naming the District as an additional insured.

B. No County contractor or subcontractor shall perform work at the Easement unless and until it procures, maintains and provides the County Director of Risk Management and the

Grantor with proof of insurance as required in the Standard Insurance Provisions set forth in Schedule "D", which is attached hereto and made a part hereof, and such insurance names the "Croton Falls Fire District" as an additional insured as set forth in Schedule "D".

5. **Indemnification by the County.** To the fullest extent permitted by law, the County shall indemnify, defend and hold harmless the Grantor from and against any and all claims, damages, fines, causes of action, judgments, penalties, costs, liabilities, reasonable attorneys' fees, losses and awards caused by (i) a breach by the County of its obligations under this Easement Agreement, (ii) the willful, intentional, negligent or reckless acts or omissions of the County or any of the County Parties in, on, through or under the Easement, or (iii) the use, possession, enjoyment, or operation of the Easement by the County or any of the County Parties.

6. **Indemnification by Grantor.** To the fullest extent permitted by law, the Grantor shall indemnify, defend and hold harmless the County and all County Parties from and against any and all claims, damages, fines, causes of action, judgments, penalties, costs, liabilities, reasonable attorneys' fees, losses and awards that may arise as a result of (i) a breach by Grantor of its obligations under this Easement Agreement, or (ii) the willful, intentional, negligent or reckless acts or omissions of the Grantor or third parties under the direction or control of the Grantor in, on, through or under the Easement.

7. **Representations.** The Grantor represents that, as of the date of execution of this Easement Agreement, the Grantor is seized of the Parcel in fee simple (subject to all matters of record), and has good and sufficient right, title and interest to convey the Easement. Provided the County abides by the provisions set forth in this Easement Agreement, the County and County Parties shall have non-exclusive quiet and peaceful enjoyment of the Easement, as otherwise provided for in this Easement Agreement.

8. **Notices.** All notices of any nature referred to in this Easement Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the Grantor:           Commissioner  
                                  Croton Falls Fire District  
                                  301 Titicus Road  
                                  North Salem, New York 10560

To County:                Commissioner, Department of Public Works  
                                  County of Westchester  
                                  148 Martine Avenue, Room 518  
                                  White Plains, New York 10601

And to:

Chief Information Officer  
Michaelian Office Building  
148 Martine Avenue, Room 312  
White Plains, New York 10601

with a copy to:

Westchester County Attorney  
Department of Law  
148 Martine Avenue, 6<sup>th</sup> Floor  
White Plains, NY 10601

Either Party may, from time to time, change its address by written notice to the other party at its then current address.

9. **Enforcement.** The Parties shall have the right to enforce this Easement Agreement by any proceeding at law or in equity against any person or persons violating or attempting to violate this Easement Agreement, to restrain said violation, to require specific performance and/or to recover damages, and to recover any legal fees incurred in connection with such proceeding. Failure by either Party to enforce any provision herein contained shall not be deemed a waiver of the right to do so thereafter.

10. **Non-Waiver Provision.** The failure of the either Party to insist upon strict performance of any term, condition or covenant herein shall not be deemed a waiver of any rights or remedies that the Party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants herein.

11. **No Damages.** Neither Grantor nor the County shall be liable for any consequential, incidental or indirect damages (including, but not limited to, lost profits, lost revenues or loss of business opportunity, whether or not such party was aware or should have been aware of possibility of those damages) or punitive, special, exemplary or other damages that are not direct damages.

12. **No Personal Liability.** No member, director, officer, employee of Grantor or the County and no public official of the County or County Parties shall be liable personally under or by reason of this Easement Agreement or any of its covenants, articles, terms, or provisions, nor shall any member, officer, or employee of Grantor or the County or County Parties be sued individually for damages or other relief on account of any breach of this Easement Agreement by Grantor or the County or County Parties.

13. **Entire Agreement.** This Easement 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, 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.

14. **Severability.** The invalidity of any provisions, articles, paragraphs, portions, or clauses of this Easement Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement.

15. **Headings.** The headings herein are for convenience only and not to be construed as part of this Easement Agreement or as a limitation of the scope of the particular section to which the heading refers.

16. **Recitals.** The recitals are hereby incorporated by reference.

17. **No Lease.** This Easement Agreement is not a lease and does not grant the County rights of a tenant.

18. **Successors and Assigns.** All covenants, terms and conditions contained herein shall at all times run with the land and shall extend to and bind each party hereto, its legal representatives, successors and assigns.

19. **No Third Party Beneficiary Rights.** Nothing herein is intended or shall be construed to confer upon or give any third party any rights, remedies or basis for reliance upon, under or by reason of this Easement Agreement, except in the event that specific third party rights are expressly granted herein.

20. **Governing Law.** This Easement Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New York.

21. **Recording.** The Parties agree that the County, at its sole cost and expense, shall cause this Easement Agreement to be recorded and indexed to the deed to which it refers. At any Party's request, additional copies of this Easement Agreement shall be executed by Grantor and County and delivered by one to the other.

22. **Multiple Counterparts.** This Easement Agreement may be executed in a number of identical counterparts but all counterparts shall constitute one and the same agreement. This Easement Agreement shall not be binding or effective until executed by Grantor and County and approved by the Office of the County Attorney

**TO HAVE AND TO HOLD** the above granted Easement unto the party of the second part, its successors and assigns forever.

**IN WITNESS WHEREOF**, the parties have executed this instrument the day and year first above written.

**GRANTOR**

**CROTON FALLS FIRE DISTRICT**

By: \_\_\_\_\_

**GRANTEE**

**COUNTY OF WESTCHESTER**

By: \_\_\_\_\_  
County Executive

Approved:

\_\_\_\_\_  
Associate County Attorney  
The County of Westchester

\_\_\_\_\_  
Date

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Authorized by the Westchester County Board of Legislators at a meeting held on \_\_\_\_\_ by Act  
No. \_\_\_\_\_.

Authorized by the Westchester County Board of Acquisition and Contract by Resolution adopted  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.









**SCHEDULE A**  
**Metes and Bounds Description of Easement**



**SCHEDULE B**  
**Easement Drawings**



**SCHEDULE C**  
**Self-Insurance Letter (County)**

**SCHEDULE "D"**  
**STANDARD INSURANCE PROVISIONS**  
**(Applicable to County contractors and subcontractors)**

1. Prior to commencing work and throughout the term of performance of the work, the County shall require in writing that its contractor(s) and subcontractor(s) 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, and shall provide evidence of such insurance to the County of Westchester (the "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 (the "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 Contractor and identify the Agreement.

If at any time any of the polices 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 Contractor 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 of Westchester for approval by the Director. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Lease agreement, at the election of the District, may be declared suspended, discontinued or terminated.

Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Lease Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor 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 Contractor's negligent acts or omissions under the Lease 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 Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the Director.

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

2. The Contractor shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Lease 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 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) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.l) per occurrence and a \$2,000,000.00 aggregate limit naming the "County of Westchester" and the "Croton Falls Fire District" 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.
- (iii) Products and Completed Operations.

(c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" and the "Croton Falls Fire District" 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.

All Contracts involving the use of explosives, demolition and/or underground work shall provide proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000.00 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 and name the "County of Westchester" and the "Croton Falls Fire District" as additional insured:

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



3. All policies of the Contractor 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 Contractor.