

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

Your Committee is in receipt of a communication from the County Executive recommending the approval of an Act which, if approved, would authorize the County of Westchester (the “County”), acting by and through its Department of Senior Programs and Services (the “Department”), to enter into grant agreements (the “Grant Agreements”) with the New York State Office for the Aging (“NYSOFA”) to accept grant funds made available to the County under Titles III-B, III-C & the Nutrition Services Incentive Program (“NSIP”), III-D and III-E of the Older Americans Act (“OAA”), in the total aggregate not-to-exceed amounts set forth below. The Grant Agreements will be for a term commencing retroactive to January 1, 2022 and continuing through December 31, 2022, except for the grant agreement for NSIP which will commence retroactive to October 1, 2021 and continue through September 30, 2022. Additionally, authority is requested to enter into inter-municipal agreements (“IMAs”) with the municipalities listed in Exhibit “A”, attached to the Act (the “Municipalities”), for services to be funded with the grants received from NYSOFA under the Grant Agreements in the total aggregate not-to-exceed amounts set forth below, for terms corresponding to the term of each grant.

Grant Amounts

Title III-B	Title III-C & NSIP	Title III-D	Title III-E
\$1,032,706	\$2,125,627	\$62,698	\$568,047

IMAs

Title III-B	Title III-C & NSIP	Title III-D	Title III-E
\$230,021	\$1,407,785	\$0	\$0

Your Committee is advised that the services to be provided under the IMAs with the funds received from the OAA for Titles III-B and III-C & NSIP are: (i) nutrition services such as congregate and home delivered meals; and (ii) nutrition education; equipment; supplies; vehicle expenses; and transportation services (the “Services”). Your Committee is further advised that a portion of the grant funds under Title III-B and Titles III-C & NSIP service programs will be used directly by the Department for Area Agency Administration and that no services will be provided under IMAs with the funds received under the OAA for Titles III-D and III-E. Instead, this funding will be allocated for contracts with non-municipal agencies to provide various services to seniors.

Your Committee is advised that the Department has complied with the Westchester County Procurement Policy and Procedures (the "Policy"), noting that the Grant Agreements with NYSOFA do not constitute a procurement, and that the IMAs are exempt from the Policy pursuant to section 3(a) iii thereof which exempts the procurement of contracts with ". . . any State and any political subdivision, agency or instrumentality thereof." The IMAs are also exempt pursuant to section 3(a) xix of the Policy, which exempts "any procurement for the purpose of entering into a contract with persons to provide direct services to senior citizens."

Notwithstanding that procurement for these services are exempt from the Policy, these Services are funded with Federal grant monies and as such are, pursuant to Section 13 of the Policy, subject to Federal procurement requirements. The Federal procurement regulations (2 CFR§ 200.320), require that contracts in amounts greater than \$10,000 and up to \$250,000, be procured by obtaining price or rate quotations from an adequate number of qualified sources, unless the such contracts are deemed to be "non-competitive" procurements. Because the Services are being provided directly by the respective Municipalities using their own resources (i.e., senior centers, buses, food service providers, equipment, etc.), it has been determined that these Services constitute non-competitive procurements in accordance with 2 CFR§ 200.320 (c)(2), in that due to the nature and extent of the services being provided, the Services are only available from those single sources.

Your Committee notes that this Honorable Board passed similar authorizing legislation pursuant to Act No. 82 - 2021. However, the existing authorization expired on December 31, 2021 and a new authorization will be needed to enter into new agreements.

The Planning Department has advised that based on its review, the proposed agreements with NYSOFA and the proposed IMAs do not meet the definition of an "action" under the State Environmental Quality Review Act, 6 NYCRR part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators.

Your Committee has been advised that the passage of the attached Act requires an affirmative vote of a majority of the members of your Honorable Board.

Your Committee believes that adoption of the proposed Act is necessary to effectively carry out this worthwhile program. Accordingly, after due consideration, your Committee recommends adoption of the annexed Act.

Dated: April 18, 2022
White Plains, New York

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Y. H. O.
Manciphan
Lancey B. ...
Tedat J. ...
Celine ...

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Manciphan
Lancey B. ...

C:\jpg\3-08-22

COMMITTEE ON

Budget & Appropriations

Seniors & Youth

Dated: April 18, 2022
White Plains, New York

The following members attended the meeting remotely, pursuant to Chapter 56 of the New York State Laws of 2022, and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Committee(s) on:

Budget & Appropriations

Mary Jane Schmitt

Walter R. Maher

Sam J. ...

Catherine F. Parker

Jeff Rein

David J. Jablonski

Seniors & Youth

David J. Jablonski

FISCAL IMPACT STATEMENT

SUBJECT: IIIB - excluding NR & Yonkers I & A Svcs

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 1636516

Total Current Year Revenue \$ 1032706

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 101-24-4957

263-85-T686

Potential Related Operating Budget Expenses:

Annual Amount \$ 603810

Describe: County Match Funds

Potential Related Revenues: Annual Amount \$ 1032706

Describe: Funding received from the Federal Government under the Older American's Act.

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

Current Year: The Department would not be able to provide Transportation, Legal Services, Homemaker, and In-Home Contact & Support to Seniors in Westchester.


Next Four years:

Estimated to be same as above each year.

Prepared by: Sandra Brown

Title: Director of Program Development II

Department: Senior Programs & Svcs.

BJO
Reviewed By: 

Budget Director

3/23/22

If you need more space, please attach additional sheets.

FISCAL IMPACT STATEMENT

SUBJECT: IIIC1/NSIP NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 1620452

Total Current Year Revenue \$ 1386770

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 101-24-4957

263-85-T941

Potential Related Operating Budget Expenses: Annual Amount \$ 233682

Describe: County Match Funds

Potential Related Revenues: Annual Amount \$ 1386770

Describe: Funding received from the Federal Government under the Older American's Act.

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

Current Year: The Department would not be able to provide seniors with Congregate Meals, Nutrition Education, Senior Center Recreation and Education and supplement regional kitchen equipment, repairs and supplies as needed.

Next Four years:

Estimated to be same as above each year.

Prepared by: Sandra Brown

Title: Director of Program Development II

Department: Senior Programs & Svcs.

SB
Reviewed By: 

Budget Director

3/23/02

If you need more space, please attach additional sheets.

FISCAL IMPACT STATEMENT

SUBJECT: IIIC2/NSIP NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 829677

Total Current Year Revenue \$ 738857

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 101-24-4957

263-85-T942

Potential Related Operating Budget Expenses: Annual Amount \$ 90820

Describe: County Match Funds

Potential Related Revenues: Annual Amount \$ 738857

Describe: Funding received from the Federal Government under the Older American's Act.

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

Current Year: The Department would not be able to provide Home Delivered Meals, Nutrition Education Nutrition Counseling and supplement regional kitchen equipment, supplies, repairs and vehicle expenses as needed.


Next Four years:

Estimated to be same as above each year.

Prepared by: Sandra Brown

Title: Director of Program Development II

Department: Senior Programs & Svcs.

2/10
Reviewed By: 

Budget Director

3/23/20

If you need more space, please attach additional sheets.

FISCAL IMPACT STATEMENT

SUBJECT: IIID NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 94452

Total Current Year Revenue \$ 62698

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 101-24-4957

263-85-T943

Potential Related Operating Budget Expenses: Annual Amount \$ 31754

Describe: County Match Funds

Potential Related Revenues: Annual Amount \$ 62698

Describe: Funding is received from the Federal Government under the Older American's Act.

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

Current Year: The Department would not be able to provide Health & Wellness and Chronic Disease Self-Management programs to seniors in Westchester County.

Next Four years:

Estimated to be same as above each year.

Prepared by: Sandra Brown

Title: Director of Program Development II

Department: Senior Programs & Svcs.

SJB
Reviewed By: _____

Budget Director

3/23/22

If you need more space, please attach additional sheets.

FISCAL IMPACT STATEMENT

SUBJECT: IIIE NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 789910

Total Current Year Revenue \$ 568047

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: 101-24-4957

263-85-T448

Potential Related Operating Budget Expenses: Annual Amount \$ 221863

Describe: County Match Funds

Potential Related Revenues: Annual Amount \$ 568047

Describe: Funding received from the Federal Government under the Older American's Act.

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

Current Year: The Department would not be able to provide services under the National Family Caregiver Program; including caregiver and grandparent information, assistance, counseling, support groups, training and public information, assisted transportation and personal locator services.


Next Four years:

Estimated to be same as above each year.

Prepared by: Sandra Brown

Title: Director of Program Development II

Department: Senior Programs & Svcs.

RP
Reviewed By: 

Budget Director

3/23/22

If you need more space, please attach additional sheets.

ACT NO. – 2022

AN ACT authorizing the County of Westchester to enter into grant agreements with the New York State Office for the Aging to accept grant funds under Titles III-B, III-C, Nutrition Services Incentive Program (“NSIP”), III-D and III-E of the Older Americans Act and also to enter into inter-municipal agreements with local municipalities for services to be funded by Titles III-B, III-C & NSIP grants under the Older Americans Act.

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

Section 1. The County of Westchester (the “County”) be and hereby is authorized to enter into grant agreements (the “Grant Agreements”) with the New York State Office for the Aging (“NYSOFA”) to accept grant funds made available to the County under Titles III-B, III-C & NSIP, III-D and III-E of the Older Americans Act (“OAA”), in the total aggregate not-to-exceed amounts set forth below. The Grant Agreements will be for a term commencing retroactive to January 1, 2022 and continuing through December 31, 2022, except for the grant agreement for NSIP, which will commence retroactive to October 1, 2021 and continue through September 30, 2022:

Grant Amounts

Title III-B	Title III-C & NSIP	Title III-D	Title III-E
\$1,032,706	\$2,125,627	\$62,698	\$568,047

§2. The County is further authorized to enter into inter-municipal agreements (“IMAs”) with the municipalities listed in Exhibit “A”, attached hereto and made a part hereof, for services to be funded by grants received by the County from NYSOFA under OAA, in the total aggregate not-to-exceed amounts set forth below, for retroactive terms corresponding to the term of each grant.

IMAs

Title III-B	Title III-C & NSIP	Title III-D	Title III-E
\$230,021	\$1,407,785	\$0	\$0

§3. The contract amounts for each IMA shall be determined at the discretion of the Commissioner of the Department of Senior Services and Programs.

§4. The services to be provided under the IMAs with the funds received under the OAA for Titles III-B and III-C & NSIP shall include: nutrition services such as congregate and home delivered meals; nutrition education; equipment; supplies; vehicle expenses; and transportation services.

§5. There will be no services provided under IMAs with the funds received under the OAA for Titles III-D and III-E. Instead, this funding will be allocated for contracts with non-municipal agencies to provide various services to seniors.

§6. The County Executive or his authorized designee is hereby empowered to execute all instruments and take all actions reasonable and necessary to effectuate the purposes hereof.

§7. This Act shall take effect immediately.

EXHIBIT "A"

LIST OF MUNICIPALITIES AND SERVICES

GRANT: III-B <u>SERVICES</u>	GRANTS: III-C-1, III-C-2 & NSIP <u>SERVICES</u>
Transportation	Meals and Other-Regional Kitchen Equipment, Supplies, Repairs & Vehicle Expenses
Town of Cortlandt	Town of Cortlandt
Town of Eastchester	Town of Eastchester
Town of Greenburgh	Town of Greenburgh
Town of Mamaroneck	Town of Mamaroneck
Village/Town of Mount Kisco	Village/Town of Mount Kisco *
Town of Mount Pleasant	Town of Mount Pleasant
City of Mount Vernon	City of Mount Vernon *
City of New Rochelle	City of New Rochelle
Town of Ossining	Town of Ossining
City of Peekskill	City of Peekskill *
Village of Port Chester	Village of Port Chester
Town of Somers	Town of Somers
City of White Plains	City of White Plains
City of Yonkers	City of Yonkers
Town of Yorktown	Town of Yorktown *

Note:

- ALL municipalities listed above under Title III-B will provide Transportation Services
- ALL municipalities listed above under III-C-1, III-C-2 & NSIP will provide Meals, EXCEPT that ONLY those marked with an asterisk (*) will also provide Other-Regional Kitchen Equipment, Supplies, Repairs & Vehicle Expenses

TITLE III-B

THIS AGREEMENT made this _____ day of _____, 2022 by and between:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (hereinafter referred to as the "County")

and

_____ a municipal corporation organized under the laws of the State of New York, having an office and principal place of business at _____

_____ (hereinafter referred to as the "Municipality")

WITNESSETH:

WHEREAS, the County has been awarded a grant by the New York State Office for the Aging pursuant to Title III-B of the Older Americans Act to provide Nutrition Site Transportation and Supportive Services Transportation to elderly residents of the County (the "Program"); and

WHEREAS, the Municipality desires to perform said services upon the terms and conditions hereinafter set forth, and the County desires the Municipality to perform said services upon such terms and conditions.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and agreements contained herein, the parties agree as follows:

1. The Municipality shall provide the Program, as more particularly described in Schedule "C" which is attached hereto and made a part hereof (the "Work"). All Work must be performed in accordance with the Standard Assurances in Schedule "C" and with the terms of the approved Standard Assurances in the Four Year Plan and/or Annual Update to the Four Year Plan (collectively the "Plan") attached hereto and made a part hereof in the form of Schedule "F." The Municipality shall also comply with the terms in Schedules "A", "B", "D", "E" and "F", which are attached hereto and made a part hereof. It is expressly understood and agreed by the parties hereto that all schedules to this Agreement are subject to the approval of and modification by the New York State Office for the Aging ("NYSOFA") and the County, as necessary.

The Municipality warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to inaccuracy of the service's or product's operations in processing date/time data (including but not limited to calculating, comparing, and sequencing) various time/date transitions including leap year calculations. The Municipality accepts responsibility for damages resulting from any delays, errors or untimely performances resulting therefrom, including but

not limited to the failure or untimely performance of such services.

2. For the Work to be performed pursuant to Paragraph "1," the Municipality shall be paid an amount not to exceed \$ _____, payable on a monthly basis, at the unit cost amount indicated in Schedule "B" for actual services provided as data entered in the NYSOFA Client Statewide Data System ("PEERPLACE") or other NYSOFA approved electronic reporting system, after the County has received approval from NYSOFA and the County has received any and all supporting documentation the County may require and the same has been approved by the Commissioner of the Department of Senior Programs and Services or her duly authorized designee (the "Commissioner").

The County may, in its discretion, if it shall deem such payment to be required in furtherance of the Program, pay the Municipality prior to receipt of payment or approval therefore by NYSOFA, provided that, in the event NYSOFA subsequently fails or refuses to pay the County, or if such expense is not a proper expenditure under the Program, the Municipality shall reimburse the County for such payment made to the Municipality, or, the County, in its discretion, may deduct such amount from future payments due and owing the Municipality under this Agreement.

The Municipality shall contribute \$ _____ to the Work, as a match.

Any and all requests for payment to be made, including any requests for partial payment made in proportion to the Work completed, shall be submitted by the Municipality on properly executed payment vouchers of the County and paid only after approval by the Commissioner. All payment vouchers must be accompanied by a numbered invoice and/or the appropriate required back-up documentation approved by the Department of Senior Programs and Services. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall final payment be made to the Municipality prior to the completion of all services, the submission of reports and the approval of same by the Commissioner.

The Municipality shall, at no additional charge, furnish all labor, services, materials, goods, equipment and any other things necessary to complete the Work, unless specific additional charges are expressly permitted under this Agreement. It is recognized and understood that even if specific additional charges are expressly permitted under this Agreement, in no event shall total payment to the Municipality exceed the not-to-exceed amount set forth above.

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

3. Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Municipality as are reasonably pertinent to this Agreement to substantiate the

basis for payment. The County will not withhold payment pursuant to this paragraph for more than thirty (30) days after payment would otherwise be due pursuant to the provisions of this Agreement, unless the County shall find cause to withhold payment in the course of such audit or the Municipality fails to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

In addition to any general audit rights to which the County may be entitled hereunder, the County also reserves the right to audit the Municipality's performance under this Agreement. Such audit may include requests for documentation or other information which the Commissioner may, in her discretion, deem necessary and appropriate to verify the information provided by the Municipality as required by Paragraph "4." The County may also make site visits to the location(s) where the services to be provided under this Agreement are performed in order to review Municipality's records, observe the performance of services and/or to conduct interviews of staff and patrons, where appropriate and not otherwise prohibited by law.

The Municipality agrees to maintain appropriate records and to retain them for at least six years after final payment is made. The Municipality agrees to provide access to all books, documents and all pertinent materials related to the contract for examination to authorized representatives of the Administration on Aging/Administration for Community Living (AoA/ACL) of the United States Department of Health and Human Services ("HHS"), the New York State Comptroller or his representatives, staff of NYSOFA, and/or the County.

4. The term of this Agreement shall commence on January 1, 2021 and expire on December 31, 2021, unless terminated sooner pursuant to the provisions hereof.

The Municipality shall report to the County on its progress toward completing the Work, as the Commissioner may request, and shall immediately inform the Commissioner in writing of any cause for delay in the performance of its obligations under this Agreement.

5. The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to the County's receipt of funds from NYSOFA to operate the Program, and that no liability shall be incurred by the County beyond the monies made available from NYSOFA for this Agreement. The Municipality agrees that the County shall not be liable for any of the payments hereunder unless and until the County Commissioner of Finance has received said funds or said funds have been made available to said commissioner.

If, for any reason, the full amount of said funds is not paid over or made available to the County by NYSOFA, the County may terminate this Agreement immediately or reduce the amount payable to the

Municipality, in the discretion of the County. The County shall give prompt notice of any such termination or reduction to the Municipality. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

In addition, the parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

6. The Municipality shall comply, at its own expense, with the provisions of all applicable Federal, State and local laws, regulations, rules, executive orders, policies, orders, notices, and related guidance, as such provisions may be amended from time to time, (such Federal provisions being "Federal Requirements").

In addition, the Municipality shall cause to be prominently posted, on the site where services hereunder are to be provided, a statement regarding non-discrimination, which statement shall be similar in form to the following:

“In compliance with Section 504 of the Rehabilitation Act of 1975 and Title VI of the 1964 Civil Rights Act and New York State Executive Law and orders, no persons will be denied service or access to service based upon race, creed, color, national origin, religion, marital status, sexual orientation, genetic predisposition, carrier status, or handicapping condition.”

Without limiting any of the foregoing, the Municipality specifically agrees to the following:

- (a) Regarding access to records and access to sites where the Work is performed:
 - i.) In compliance with 45 C.F.R. 75.364(a), the Municipality agrees to provide the County, HHS and its awarding agency, the Comptroller General of the United States, any inspectors general, or any of the duly authorized representatives of any of these listed parties, access to any documents, papers, or other records which are pertinent to this Agreement in order to make audits, examinations, excerpts, and transcripts, as well as provide timely and reasonable access to the Municipality’s personnel for the purpose of interview and discussion related to such documents. The Municipality agrees to allow the above-listed parties to reproduce, excerpt, and/or transcribe such documents, papers, and other records by any means whatsoever. The Municipality also agrees to allow the above-listed parties such other access to records as may be necessary for compliance with applicable Federal Requirements.
 - ii.) In accordance with 45 C.F.R. 75.364(c), all of the above-described rights of access to records shall last for as long as the records are retained by the Municipality. The Municipality shall retain all such records for at least as long as is required under 45 C.F.R. 75.361.
 - iii.) In compliance with 45 C.F.R. § 75.342(e), the Municipality agrees to permit HHS to make site visits as needed.
- (b) Regarding recovered materials:
 - i.) The Municipality agrees to comply with all applicable requirements of 45 C.F.R. 75.331; Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and as further amended (42 U.S.C. § 6962); 40 C.F.R. Part 247, the United States Environmental Protection Agency’s “Comprehensive Procurement Guideline for Products Containing Recovered Materials”; and Executive Order 12873.
- (c) Regarding the procurement of subcontracts finance in whole or in part with the Funds:
 - i.) The Municipality agrees to comply with 45 C.F.R. 75.330 in procuring any subcontract financed in whole or in part with the Funds.
- (d) The Municipality agrees to comply with and/or assist the County in complying with any and all applicable requirements of HHS.

The Municipality hereby represents and warrants that it has all information it needs regarding the Federal Requirements concerning reporting, patent rights, copyrights, and rights in data, and the

Municipality understands and acknowledges that all such requirements and regulations are hereby incorporated into this Agreement by reference, and shall prevail over any conflicting term(s) of this Agreement.

7. The Municipality expressly agrees neither it nor any Municipality, subcontractor, employee or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County or Section 291 of the New York State Human Rights Law. The Municipality 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.

8. (a) There shall be no partisan political activity in connection with this Agreement, including (i) candidate endorsements (ii) registration activities which are partisan in nature (iii) scheduled meetings of services recipients with public officials or candidates unless event is open on an equal basis to all candidates and officials regardless of policy views or partisan affiliation. This does not preclude the legitimate right of elected officials and other community leaders to visit programs in their areas.

(b) The Municipality shall refrain and prevent the use by others under its control of official authority, influence or coercion to interfere with or affect elections or nominations for political office.

(c) The Municipality shall refrain from and prohibit any others receiving funds under this Agreement from attempting to coerce or advise other persons to contribute anything of value to a party, committee, organization, agency or person for political purposes, nor engage in any other partisan activities under its auspices. The Municipality shall refrain from using funds to advance any partisan effort.

(d) The Municipality shall ensure that any services to be provided under this Agreement shall be secular in nature and scope and in no event shall there be any sectarian or religious services, counseling, proselytizing, instruction or other sectarian, religious influence undertaken in connection with the provision of such services. The Municipality shall refrain from using funds to advance any sectarian effort.

9. (a) As a material element of this Agreement, the Municipality agrees to fully comply with the provisions required by NYSOFA concerning equal access to services, non-discrimination and concentration of services on target populations, as more fully set forth in the Plan.

(b) Attached hereto and forming a part of Schedule "E" is the "Participant Contribution Standards." The Municipality shall provide participants an opportunity to voluntarily contribute to the cost of the service received, as appropriate. The Municipality shall use all collected contributions to expand the service for which the contributions were given to supplement the funds received under the Older Americans Act (OAA).

(c) The Municipality shall assist participants in taking advantage of benefits under other programs and assure that the services provided are coordinated and do not unnecessarily duplicate services provide by other sources.

10. Statistical information and supporting documentation concerning the Work conducted hereunder shall be provided to the County by the Municipality on request of the County.

The Municipality shall provide the County with timely information needed to satisfy reporting requirements as specified by NYSOFA. Documentation of reports and expenses shall include, without limiting the right to require additional documentation: invoices for all purchases, payroll time records, payroll records for local support contribution, municipal payment vouchers for governmental agencies and canceled checks for private agencies, as required.

The Programmatic monthly reporting system for Service Delivery Information and Service Recipient Information must be submitted electronically in PEERPLACE or other NYSOFA approved electronic reporting system. . Until further notice, the Municipality is required to mail in the PEERPLACE MONTHLY ELECTRONIC PAPER REPORT and/or other approved reporting measure, signed by the staff member responsible for the report. The reports should be received by the County no later than the tenth (10th) day of the following month and/or entered on the website at the same time. The Municipality understands and agrees that submission of the monthly report by the deadline set forth above constitutes a material element of this Agreement. The County reserves the right to withhold payment to Municipality for its failure to submit the monthly report by the deadline, until such time as the monthly report is received by the County. Repeated failures by Municipality to submit the monthly report by the stated deadline will constitute a material breach of this Agreement justifying termination for cause as provided in Paragraph "16" hereof.

The Municipality shall furnish the County with copies of all insurance certificates, food contracts, rental agreements, and transportation agreements relating to the services provided by the Municipality hereunder, as applicable.

11. The Municipality agrees to procure and maintain insurance naming the County as additional

insured, as provided and described in Schedule "A," entitled "Standard Insurance Provisions," which is attached hereto and made a part hereof. In addition to, and not in limitation of, the insurance provisions contained in Schedule "A," the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Municipality; and

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

(c) In the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

(d) the municipality may provide proof of self-insurance in lieu of insurance policies.

12. The Municipality agrees that any Program, public information materials, or other printed or published materials on the work of the Program which is supported with Title III-B funds will give due recognition to NYSOFA, the Westchester County Department of Senior Programs and Services, and HHS.

13. The Municipality shall be solely responsible for any over expenditure of funds and the County shall not be responsible for any over expenditure.

14. The Municipality shall provide adequate qualified and trained personnel for supervision and fiscal management of the Program.

15. The Municipality and the County agree that the Municipality and its officers, employees, agents, contractors, consultants and/or subcontractors are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Municipality covenants and agrees that neither the Municipality nor any of its officers, employees, agents, contractors, consultants, and/or subcontractors will hold themselves out as, or claim to

be, officers or employees of the County or any department, agency or unit thereof.

16. (a) The County, upon ten (10) days' notice to the Municipality, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Municipality shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "B." Upon receipt of notice that the County is terminating this Agreement in its best interests, the Municipality shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Municipality shall direct any approved subcontractors to do the same.

In the event of a dispute as to the value of the work rendered by the Municipality prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such Work rendered by the Municipality. The Municipality shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by the Municipality of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Municipality of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Municipality. Without limiting the foregoing, upon written notice to the Municipality, repeated breaches by the Municipality of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

17. 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 of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any of the Work or the payment of any fee or reimbursement 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.

18. If equipment costing One Thousand Dollars (\$1,000) or more is purchased with any Federal or State funds provided under this Agreement, at the end of this Agreement, the County reserves the right to require that the Municipality turn the equipment over to the County. The Municipality understands, acknowledges, and agrees that it shall have no ownership interest in such equipment.

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

To the County: Commissioner
Department of Senior Programs and Services
9 South First Avenue, 10th Floor
Mount Vernon, New York 10550-3414

with a copy to: County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Municipality: _____

20. (a) The Municipality represents and warrants that it, its principals, and affiliates (as defined in 2 C.F.R. Part 180) are not currently debarred or suspended and the Municipality agrees to complete the "Certification Regarding Debarment and Suspension," which is attached hereto and forming a part of Schedule "D." The Municipality agrees that it shall immediately notify the County if it, its principals, and/or affiliates is/are debarred or suspended, or its, its principals', and/or affiliates' debarment or suspension appears likely. The Municipality further agrees to comply, and to require its subcontractors to comply, with the debarment and suspension regulations in 2 C.F.R. Part 376, as well as the applicable requirements of 2 C.F.R. Part 180.

The Municipality represents and warrants that it is not currently excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits, by virtue of being on the United States General Service Administration's the Excluded Parties List System (EPLS), available at <http://www.sam.gov> as part of the System for Awards Management (SAM). The Municipality agrees that it shall immediately notify the County if it is so-excluded, or its exclusion appears likely.

The Municipality represents and warrants that it is not currently on any debarment, suspension, or exclusion list of New York State or any political subdivision thereof, and has not been

found non-responsible by New York State or any political subdivision thereof. The Municipality agrees that it shall immediately notify the County if it is added to any debarment, suspension, or exclusion list of New York State or any political subdivision thereof, or its addition to such lists appears likely. The Municipality agrees that it shall immediately notify the County if it is found non-responsible by New York State or any political subdivision thereof, or such a finding of non-responsibility appears likely.

The Municipality understands and acknowledges that the County is relying upon the Municipality's above-described representations and warranties.

Without limiting any of the foregoing, the Municipality certifies that, to the best of its knowledge and belief, it is and will be in compliance with 2 C.F.R. Part 376, regarding nonprocurement debarment and suspension concerning public (Federal, State or local) transactions. If necessary, the Municipality will submit an explanation of why it cannot provide this certification.

21. The Municipality represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Municipality, to solicit or secure this agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Municipality), any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

22. This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments 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.

23. The Municipality shall ensure that where the State or local public jurisdiction requires licensure or certification for the provision of social services, the Municipality and its approved subcontractors providing such services under the approved the Plan shall be so licensed or certified. Workers delivering services must be appropriately qualified, selected trained and supervised.

24. All records or recorded data of any kind compiled by the Municipality in completing the Work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Municipality may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Municipality are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Municipality hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Municipality agrees to assist the County, if required, in perfecting these rights. The Municipality shall provide the County with at least one copy of each deliverable.

The Municipality agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Municipality agrees to enable the County's continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

25. The Municipality shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Municipality shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Municipality that for the purposes of this Agreement, all Work performed by a County-approved subcontractor shall be deemed Work performed by the Municipality and the Municipality shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

If the Municipality enters into subcontracts for the performance of work pursuant to this contract, the Municipality shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the County under this contract or the Area Agency Plan as approved by NYSOFA. It shall be the responsibility of the Municipality to monitor and assess the

activities performed under such subcontracts, and to ensure that these activities are provided in accordance with all applicable requirements contained in this contract and federal and state law.

The Municipality agrees that, to the extent it or its subcontractors, if any, maintains personal information relating to applicants or recipients of services pursuant to the contract, such information will be kept confidential and shared with the County; or with other entities upon the consent of applicant, recipient or an authorized representative of the applicant or recipient; or as required by federal or state laws.

26. Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

27. The Municipality recognizes that this Agreement does not grant the Municipality the exclusive right to perform the Work for the County and that the County may enter into similar agreements with other municipalities on an "as needed" basis.

28. The Municipality hereby represents that, if operating under an assumed name, it has filed the necessary certificate pursuant to New York State General Business Law Section 130.

29. All payments made by the County to the Municipality will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct program. The Municipality acknowledges that it is already enrolled in the Vendor Direct Program, and hereby agrees to immediately notify the County's Finance Department in writing if the EFT Authorization Form on file must be changed, and provide an updated paper version of the document.

30. This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent

of the parties prior to the determination of such invalidity or unenforceability.

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

IN WITNESS WHEREOF, the County of Westchester and the Municipality have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By _____
Mae Carpenter, Commissioner
Department of Senior Programs and Services

MUNICIPALITY:

Municipality: _____

By _____

(Signature)

(Name)

(Title)

Approved by the Westchester County Board of Legislators pursuant to Act No. _____ - 2022
adopted on _____, 2022.

Approved as to form and manner of execution:

Assistant County Attorney
The County of Westchester

CERTIFICATE OF AUTHORITY
(MUNICIPALITY)

I, _____,
(Official other than official signing contract)

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

a Municipal Corporation duly organized and in good standing under the laws of the State of New York that _____
(Person executing agreement)

who signed said agreement on behalf of the _____
(Name of Municipality)

was, at the time of execution _____ of the Municipal Corporation
(Title of such person)

and that said agreement was duly signed for and on behalf of said Municipal Corporation by authority of its governing board, 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)

On the _____ day of _____ in the year 2022 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 officer described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is an officer of said municipal corporation; that he/she is duly authorized to execute said certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to such authority.

Date: _____ Notary Public

SCHEDULE "A"

INSURANCE PROVISIONS (Municipality)

1. Prior to commencing work, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

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

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

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

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

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
 - i. Premises - Operations.
 - ii. Broad Form Contractual.
 - iii. Independent Contractor and Sub-Contractor.
 - iv. Products and Completed Operations.

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

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

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 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:
 - (i) Owned automobiles.
 - (ii) Hired automobiles.
 - (iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

DRAFT

INSERT SCHEDULES "B" & "C"

DRAFT

SCHEDULE "D"

Certification Regarding Debarment And Suspension

1) As required by Federal Executive Order 12549, and prescribed by federal regulations, including 48 C.F.R. Subpart 9.4, the Municipality certifies that it, and its principals:

(a) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal Offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Municipality is unable to certify to any of the statements in this paragraph, the Municipality shall attach an explanation to this certification.

Date: _____

Signature

TITLE

Organization

SCHEDULE “E”

NEW YORK STATE OFFICE FOR THE AGING

Contributions and Other Program Income Policy

DRAFT

SCHEDULE "F"

NEW YORK STATE OFFICE FOR THE AGING

STANDARD ASSURANCES

ATTACHMENT A,
The 2022-23 ANNUAL UPDATE to the 2020-24 FOUR YEAR PLAN,
April 1, 2022- March 31, 2023

DRAFT

TITLE III-C & NSIP

THIS AGREEMENT (“Agreement”), made this _____ day of _____, 2022 by and between:

THE COUNTY OF WESTCHESTER, a corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (hereinafter referred to as the “County”)

and

_____ a municipal corporation organized under the laws of the State of New York, having an office and place of business at _____

_____ (hereinafter referred to as the “Municipality”)

WITNESSETH:

WHEREAS, the County, acting by and through its Department of Senior Programs and Services (“Department”), has been awarded a grant by the New York State Office for the Aging (“NYSOFA”), pursuant to Titles III-C1, III-C2 and the Nutrition Services Incentive Program (“NSIP”) of the Older Americans Act, to provide various social and nutrition services to elderly residents of the County (the “Programs”); and

WHEREAS, the Municipality desires to conduct the Programs and the County desires the Municipality to provide the Programs pursuant to the terms and conditions set forth herein; and

WHEREAS, the County has been authorized by the Westchester County Board of Legislators to enter into the Agreement for the Programs.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and agreements contained herein, the parties agree as follows:

1. The Municipality shall provide the Programs, as more particularly described in Schedule “C” (the “Services”). All Services must be performed in accordance with the terms of the Standard Assurances in Schedule “C” and the Standard Assurances in the approved Four Year Plan and/or

Annual Update to the Four Year Plan (collectively the "Plan) attached hereto and made a part hereof in the form of Schedule "H." It is expressly understood and agreed by the parties hereto that all schedules to this Agreement applicable to the New York State Office for the Aging ("NYSOFA") and all schedules applicable to the County are subject to the approval of and modification of each, as necessary.

2. Payment for the Services to be provided for Title III-C1 shall be made for expenses actually incurred and paid by the Municipality at the rate set forth in Schedule "B." Payment for the Services to be provided for Title III-C2 shall be made for expenses actually incurred and paid by the Municipality at the rate set forth in Schedule "B." The total aggregate amount to be paid for the Services rendered by the Municipality under this Agreement shall not exceed \$ _____, subject to appropriation, payable on a monthly basis, in accordance with Schedule "B" that is attached hereto and made a part hereof. Payment shall be made for actual services provided as data entered in NYSOFA Client Statewide Data System ("PeerPlace") or other NYSOFA approved electronic reporting system, after the County has received approval from NYSOFA and the County has received any and all supporting documentation the County may require and the same has been approved by the Department's Commissioner or her duly authorized designee (the "Commissioner").

The County may, in its discretion, if it shall deem such payment to be required in furtherance of the Program, pay the Municipality prior to receipt of payment or approval therefore by NYSOFA, provided that, in the event NYSOFA subsequently fails or refuses to pay the County, or if such expense is not a proper expenditure under the Program, the Municipality shall reimburse the County for such payment made to the Municipality, or, the County, in its discretion, may deduct such amount from future payments due and owing the Municipality under this Agreement.

The Municipality shall contribute an aggregate amount of \$ _____ to the Services, as a match for the III-C1 and/or III-C2 Programs.

Any and all requests for payment to be made, including any requests for partial payment made in proportion to the Services completed, shall be submitted by the Municipality on properly executed payment vouchers of the County and paid only after approval by the Commissioner. All

payment vouchers must be accompanied by a numbered invoice and/or the appropriate required back-up documentation approved by the Department. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall final payment be made to the Municipality prior to the completion of all Services, the submission of reports and the approval of same by the Commissioner.

The Municipality shall, at no additional charge, furnish all labor, services, materials, goods, equipment and any other things necessary to complete the Services, unless specific additional charges are expressly permitted under this Agreement. It is recognized and understood that even if specific additional charges are expressly permitted under this Agreement; in no event shall total payment to the Municipality exceed the not-to-exceed amount set forth above.

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

3. Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Municipality as are reasonably pertinent to this Agreement to substantiate the basis for payment. The County will not withhold payment pursuant to this paragraph for more than thirty (30) days after payment would otherwise be due pursuant to the provisions of this Agreement, unless the County shall find cause to withhold payment in the course of such audit or the Municipality fails to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

In addition to any general audit rights to which the County may be entitled hereunder, the County also reserves the right to audit the Municipality's performance under this Agreement. Such audit may include requests for documentation or other information which the Commissioner may, in her discretion, deem necessary and appropriate to verify the information provided by the Municipality as required by Paragraph "4." The County may also make site visits to the location(s) where the Services to be provided under this Agreement are performed in order to review Municipality's records, observe the performance of services and/or to conduct interviews of staff

and patrons, where appropriate and not otherwise prohibited by law.

The Municipality agrees to maintain appropriate records and to retain them for at least six years after final payment is made. The Municipality agrees to provide access to all books, documents and all pertinent materials related to the contract for examination to authorized representatives of the Administration on Aging/Administration for Community Living (AoA/ACL) of the United States Department of Health and Human Services (“HHS”), the New York State Comptroller or his representatives, staff of NYSOFA, and/or the County.

4. Under this Agreement, the term of the Title III-G Programs shall commence retroactive to January 1, 2022 and continue through on December 31, 2022, and the term for the NSIP Program shall commence retroactive to October 1, 2021 and continue through September 30, 2022, unless terminated sooner pursuant to the provisions hereof.

The Municipality shall report to the County on its progress toward completing the Services, as the Commissioner may request, and shall immediately inform the Commissioner in writing of any cause for delay in the performance of its obligations under this Agreement.

5. The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to the County’s receipt of funds from NYSOFA to operate the Program, and that no liability shall be incurred by the County beyond the monies made available from NYSOFA for this Agreement. The Municipality agrees that the County shall not be liable for any of the payments hereunder unless and until the County Commissioner of Finance has received said funds or said funds have been made available to said commissioner.

If, for any reason, the full amount of said funds is not paid over or made available to the County by NYSOFA, the County may terminate this Agreement immediately or reduce the amount payable to the Municipality, in the discretion of the County. The County shall give prompt notice of any such termination or reduction to the Municipality. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

In addition, the parties recognize and acknowledge that the obligations of the County under

this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

6. The Municipality shall comply, at its own expense, with the provisions of all applicable Federal, State and local laws, rules, regulations executive orders, policies, orders, notices and related guidance, as specified in the Plan, as such provisions may be amended from time to time, (such Federal provisions being "Federal Requirements").

In addition, the Municipality shall cause to be prominently posted, on the site where services hereunder are to be provided, a statement regarding non-discrimination, which statement shall be similar in form to the following:

"In compliance with Section 504 of the Rehabilitation Act of 1975 and Title VI of the 1964 Civil Rights Act and New York State Executive Law and orders, no persons will be denied service or access to service based upon race, creed, color, national origin, religion, marital status, sexual orientation, genetic predisposition, carrier status, or handicapping condition."

Without limiting any of the foregoing, the Municipality specifically agrees to the following:

(a) Regarding access to records and access to sites where the Services are performed:

- i.) In compliance with 45 C.F.R. 75.364(a), the Municipality agrees to provide the County, HHS and its awarding agency, the Comptroller General of the United States, any inspectors general, or any of the duly authorized representatives of any of these listed parties, access to any documents, papers, or other records which are pertinent to this Agreement in order to make audits, examinations, excerpts, and transcripts, as well as provide timely and reasonable access to the Municipality's personnel for the purpose of interview and discussion related to such documents. The Municipality agrees to allow the above-listed parties to reproduce, excerpt, and/or transcribe such documents, papers, and other records by any means whatsoever. The Municipality also agrees to allow the above-listed parties such other access to records as may be necessary for compliance with applicable Federal Requirements.
- ii.) In accordance with 45 C.F.R. 75.364(c), all of the above-described rights of access to records shall last for as long as the records are retained by the Municipality. The Municipality shall retain all such records for at least as long as is required under 45 C.F.R. 75.361.
- iii.) In compliance with 45 C.F.R. § 75.342(e), the Municipality agrees to permit HHS to make site visits as needed.

(b) Regarding recovered materials:

- i.) The Municipality agrees to comply with all applicable requirements of 45 C.F.R. 75.331; Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and as further amended (42 U.S.C. § 6962); 40 C.F.R. Part 247, the United States Environmental Protection Agency's "Comprehensive Procurement Guideline for Products Containing Recovered Materials"; and Executive Order 12873.

(c) Regarding the procurement of subcontracts financed in whole or in part with the Funds:

- i.) The Municipality agrees to comply with 45 C.F.R. 75.330 in procuring any subcontract financed in whole or in part with the Funds.

(d) The Municipality agrees to comply with and/or assist the County in complying with any and all applicable requirements of HHS.

The Municipality hereby represents and warrants that it has all information it needs

regarding the Federal Requirements concerning reporting, patent rights, copyrights, and rights in data, and the Municipality understands and acknowledges that all such requirements and regulations are hereby incorporated into this Agreement by reference, and shall prevail over any conflicting term(s) of this Agreement.

The Municipality understands that the County has relied upon all materials and representations it has provided to the County concerning the Services and this Agreement in, a.) considering, among other things, whether the Municipality is capable of successfully performing under the terms and conditions of this Agreement; the Municipality's integrity and ethics; whether executing this Agreement with the Municipality is in compliance with public policy; the Municipality's record of past performance; and the Municipality's financial, administrative, and technical resources and capacity, b.) consequently determining that the Municipality is a responsible contractor, and c.) awarding this Agreement to the Municipality.

It is the intent and understanding of the County and Municipality that each and every provision required by law, contract, or other proper authority to be included in this Agreement shall, for all intents and purposes, be considered and deemed included herein. The Municipality understands and acknowledges that for each and every such provision that has, through mistake or otherwise, either not been inserted in writing or been inserted in writing in an incorrect form, the Municipality hereby consents to amending this Agreement in writing, upon receipt of notice from the County, for the purpose of inserting or correcting the provision in question.

7. The Municipality expressly agrees neither it nor any contractor, subcontractor, employee or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County or Section 291 of the New York State Human Rights Law. The Municipality 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.

8. (a) There shall be no partisan political activity in connection with this Agreement, including (i) candidate endorsements (ii) registration activities which are partisan in nature (iii) scheduled meetings of services recipients with public officials or candidates unless event is open on an equal basis to all candidates and officials regardless of policy views or partisan affiliation. This does not preclude the legitimate right of elected officials and other community leaders to visit programs in their areas.

(b) The Municipality shall refrain and prevent the use by others under its control of official authority, influence or coercion to interfere with or affect elections or nominations for political office.

(c) The Municipality shall refrain from and prohibit any others receiving funds under this Agreement from attempting to coerce or advise other persons to contribute anything of value to a party, committee, organization, agency or person for political purposes, nor engage in any other partisan activities under its auspices. The Municipality shall refrain from using funds to advance any partisan effort.

(d) The Municipality shall ensure that any Services to be provided under this Agreement shall be secular in nature and scope and in no event shall there be any sectarian or religious services, counseling, proselytizing, instruction or other sectarian, religious influence undertaken in connection with the provision of such Services. The Municipality shall refrain from using funds to advance any sectarian effort.

9. (a) The Municipality acknowledges (i) that this Agreement may be funded in whole or in part with funds to be provided to the County under State or Federal program grants, (ii) that the County cannot insure that all of such funds as are presently earmarked by the County for use in connection with this Agreement will ultimately be delivered to the County by the relevant grantor, and (iii) that the County's obligation to pay the Municipality for expenditures which are to be reimbursed with such funds extends only to the extent that such funds are actually received by the County.

(b) The County shall have the right to terminate or modify this Agreement based on changes in the availability of State and/or Federal Funds.

10. (a) As a material element of this Agreement, the Municipality agrees to fully comply with the provisions required by NYSOFA concerning equal access to services, non-discrimination and concentration of services on target populations, as more fully set forth in the Plan.

(b) Attached hereto and forming a part of Schedule "G" is the "Participant Contribution Standards." The Municipality shall provide participants an opportunity to voluntarily contribute to the cost of the service received, as appropriate. The Municipality shall use all collected contributions to expand the service for which the contributions were given to supplement the funds received under the Older Americans Act (OAA).

(c) The Municipality shall assist participants in taking advantage of benefits under other programs and assure that the services provided are coordinated and do not unnecessarily duplicate services provided by other sources.

11. Statistical information and supporting documentation concerning the Services conducted hereunder shall be provided to the County by the Municipality on request of the County. The Municipality shall provide the County with timely information needed to satisfy reporting requirements as specified by NYSOFA. Documentation of reports and expenses shall include, without limiting the right to require additional documentation: invoices for all purchases, payroll time records, payroll records for local support contribution, municipal payment vouchers for governmental agencies and canceled checks for private agencies, as required.

The Programmatic monthly reporting system for Service Delivery Information and Service Recipient Information must be submitted electronically in PeerPlace or other NYSOFA approved electronic reporting system. Until further notice, the Municipality is required to mail in the PeerPlace MONTHLY ELECTRONIC PAPER REPORT and/or other approved reporting measure, signed by the staff member responsible for the report. The reports should be received by the County no later than the tenth (10th) day of the following month and/or entered on the website at the same time. The Municipality understands and agrees that submission of the monthly report by the deadline set forth above constitutes a material element of this Agreement. The County reserves the right to withhold payment to Municipality for its failure to submit the monthly report by the deadline, until such time as the monthly report is received by the County. Repeated failures

by Municipality to submit the monthly report by the stated deadline will constitute a material breach of this Agreement justifying termination for cause as provided in Paragraph "17" hereof.

The Municipality shall furnish the County with copies of all insurance certificates, food contracts, rental agreements, and transportation agreements relating to the services provided by the Municipality hereunder, as applicable.

12. The Municipality agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "A," entitled "Standard Insurance Provisions," which is attached hereto and made a part hereof. In addition to, and not in limitation of, the insurance provisions contained in Schedule "A," the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Municipality; and

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

c) in the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

13. The Municipality agrees that any Program, public information materials, or other printed or published materials on the Services of the Program which is supported with Title III-C funds will give due recognition to NYSOFA, the Westchester County Department of Senior

Programs and Services, and HHS.

14. The Municipality shall be solely responsible for any over expenditure of funds and the County shall not be responsible for any over expenditure.

15. The Municipality shall provide adequate qualified and trained personnel for supervision and fiscal management of the Program.

16. The Municipality and the County agree that the Municipality and its officers, employees, agents, contractors, consultants and/or subcontractors are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Municipality covenants and agrees that neither the Municipality nor any of its officers, employees, agents, contractors, consultants, and/or subcontractors will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

17. (a) The County, upon ten (10) days' notice to the Municipality, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Municipality shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "B." Upon receipt of notice that the County is terminating this Agreement in its best interests, the Municipality shall stop Services immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Municipality shall direct any approved subcontractors to do the same.

In the event of a dispute as to the value of the Services rendered by the Municipality prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such Services rendered by the Municipality. The Municipality shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by the Municipality of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Municipality of written notice thereof, the County, in addition

to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Services provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Municipality. Without limiting the foregoing, upon written notice to the Municipality, repeated breaches by the Municipality of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

18. 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 of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any of the Services or the payment of any fee or reimbursement 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.

19. If equipment costing \$1,000.00 or more is purchased with any Federal or State funds under this Plan, and the equipment is no longer needed for activities supported by such Programs, NYSOFA /County reserve the right to select a recipient for and approve the transfer to such recipient of such equipment, which must be used for services to older adults. The Municipality understands, acknowledges, and agrees that it shall have no ownership interest in such equipment.

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

To the County: Commissioner
 Department of Senior Programs and Services
 9 South First Avenue, 10th Floor
 Mount Vernon, New York 10550-3414

with a copy to: County Attorney
 Michaelian Office Building, Room 600

148 Martine Avenue
White Plains, New York 10601

To the Municipality:

21. (a) The Municipality represents and warrants that it, its principals, and affiliates (as defined in 2 C.F.R. Part 180) are not currently debarred or suspended and the Municipality agrees to complete the "Certification Regarding Debarment and Suspension," which is attached hereto and forming a part of Schedule "D." The Municipality agrees that it shall immediately notify the County if it, its principals, and/or affiliates is/are debarred or suspended, or its, its principals', and/or affiliates' debarment or suspension appears likely. The Municipality further agrees to comply, and to require its subcontractors to comply, with the debarment and suspension regulations in 2 C.F.R. Part 376, as well as the applicable requirements of 2 C.F.R. Part 180.

The Municipality represents and warrants that it is not currently excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits, by virtue of being on the United States General Service Administration's the Excluded Parties List System (EPLS), available at <http://www.sam.gov> as part of the System for Awards Management (SAM). The Municipality agrees that it shall immediately notify the County if it is so-excluded, or its exclusion appears likely.

The Municipality represents and warrants that it is not currently on any debarment, suspension, or exclusion list of New York State or any political subdivision thereof, and has not been found non-responsible by New York State or any political subdivision thereof. The Municipality agrees that it shall immediately notify the County if it is added to any debarment, suspension, or exclusion list of New York State or any political subdivision thereof, or its addition to such lists appears likely. The Municipality agrees that it shall immediately notify the County if it is found non-responsible by New York State or any political subdivision thereof, or such a finding of non-responsibility appears likely.

The Municipality understands and acknowledges that the County is relying upon the Municipality's above-described representations and warranties.

Without limiting any of the foregoing, the Municipality certifies that, to the best of its knowledge and belief, it is and will be in compliance with 2 C.F.R. Part 376, regarding nonprocurement debarment and suspension concerning public (Federal, State or local) transactions. If necessary, the Municipality will submit an explanation of why it cannot provide this certification.

(b) The Municipality agrees to complete the "Certification Regarding Drug-Free Workplace Requirements," which is attached hereto and forming a part of Schedule "E," in order to help ensure compliance with 41 U.S.C. § 8101 et seq. and 2 C.F.R. Part 382.

(c) The Municipality agrees to complete the "Certification Regarding Lobbying," which is attached hereto and forming a part of Schedule "F," in compliance with 45 C.F.R. Part 93, and to otherwise comply with 45 C.F.R. Part 93 and 31 U.S.C. § 1352.

22. This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments 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.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

23. The Municipality shall ensure that where the State or local public jurisdiction requires licensure or certification for the provision of social services, the Municipality and its approved subcontractors providing such services under the approved the Plan shall be so licensed or certified. Workers delivering services must be appropriately qualified, selected trained and supervised.

24. All records or recorded data of any kind compiled by the Municipality in completing

the Services described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Municipality may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Commissioner. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Municipality are to be considered "Services made for hire." If any of the deliverables do not qualify as "Services made for hire," the Municipality hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Municipality agrees to assist the County, if required, in perfecting these rights. The Municipality shall provide the County with at least one copy of each deliverable.

The Municipality agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Municipality agrees to enable the County's continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

25. The Municipality shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Municipality shall not subcontract any part of the Services without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Services under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Municipality that for the purposes of this Agreement, all Services performed by a County-approved subcontractor shall be deemed Services performed by the Municipality and the Municipality shall insure that such subcontracted Services is subject to the material terms and

conditions of this Agreement.

If the Municipality enters into subcontracts for the performance of Services pursuant to this contract, the Municipality shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the County under this contract or the Area Agency Plan as approved by NYSOFA. It shall be the responsibility of the Municipality to monitor and assess the activities performed under such subcontracts, and to ensure that these activities are provided in accordance with all applicable requirements contained in this contract and federal and state law.

The Municipality agrees that, to the extent it or its subcontractors, if any, maintains personal information relating to applicants or recipients of services pursuant to the contract, such information will be kept confidential and shared with the County; or with other entities upon the consent of applicant, recipient or an authorized representative of the applicant or recipient; or as required by federal or state laws.

26. Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

27. The Municipality recognizes that this Agreement does not grant the Municipality the exclusive right to perform the Services for the County and that the County may enter into similar agreements with other contractors on an "as needed" basis.

28. The Municipality hereby represents that, if operating under an assumed name, it has filed the necessary certificate pursuant to New York State General Business Law Section 130.

29. All payments made by the County to the Contractor will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct Program. The Contractor acknowledges that it is already enrolled in the Vendor Direct Program and hereby agrees to immediately notify the County's Finance Department in writing if the EFT Authorization Form on file must be changed, and provide an updated paper version of the document.

30. This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

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

IN WITNESS WHEREOF, the County of Westchester and the Municipality have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By _____
Mae Carpenter, Commissioner
Department of Senior Programs and Services

MUNICIPALITY

By _____

(Signature)

(Name)

(Title)

Approved by the Westchester County Board of Legislators pursuant to Act No. __ – 2022 adopted on the _____ day of _____, 2022.

Approved as to form and manner of execution:

Assistant County Attorney
The County of Westchester

DRAFT

ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 2022 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.

Signature and Office of individual
taking acknowledgement

DRAFT

CERTIFICATE OF AUTHORITY
(MUNICIPALITY)

I, _____,
(Official other than official signing contract)

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

a Municipal Corporation duly organized and in good standing under the laws of the State of New York that _____
(Person executing agreement)

who signed said agreement on behalf of the _____
(Name of Municipality)

was, at the time of execution _____ of the Municipal Corporation
(Title of such person)

and that said agreement was duly signed for and on behalf of said Municipal Corporation by authority of its governing board, 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 _____)

On the _____ day of _____ in the year 2022 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 officer described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is an officer of said municipal corporation; that he/she is duly authorized to execute said certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public
Date:

SCHEDULE "A"

STANDARD INSURANCE PROVISIONS

(Municipality)

1. Prior to commencing Services, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

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

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

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

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

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
- i. Premises - Operations.
 - ii. Broad Form Contractual.
 - iii. Independent Contractor and Sub-Contractor.
 - iv. Products and Completed Operations.

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

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

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

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

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

-2-

INSERT SCHEDULES "B" and "C"

DRAFT

SCHEDULE "D"

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

1) In order to assure compliance with 2 C.F.R. Part 180, 2 C.F.R. Part 376, and other applicable law, the Municipality certifies that it, its principals, and affiliates

(a) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Municipality is unable to certify to any of the statements in this paragraph, the Municipality shall attach an explanation to this certification.

Municipal Contracting Entity's Name

Authorized Signature

Name: _____

Title: _____

Date: _____

SCHEDULE "E"
Certification Regarding
Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988, 41 U.S.C. § 701, et seq. *See* 48 C.F.R. Subpart 23.5.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs;

and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e) and (f).

Organization

Authorized Signature
Date

Title

SCHEDULE "F"

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____
(Name and Title of Municipality/Subcontractor)
hereby certify, to the best of my knowledge and belief, on behalf of

(Name of Firm)
that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying efforts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLb, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed 31, U.S.C. § 1352. Any
Form C-2 Continued

person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Municipality, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Municipality understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Municipality's Authorized Official

Name of Municipality's Authorized Official

Title of Municipality Authorized Official

Date

SCHEDULE "G"

NEW YORK STATE OFFICE FOR THE AGING

Contributions and Other Program Income Policy

DRAFT

SCHEDULE "H"

NEW YORK STATE OFFICE FOR THE AGING

STANDARD ASSURANCES

ATTACHMENT A

The 2022-23 ANNUAL UPDATE to the 2020-24 THE FOUR-YEAR PLAN

April 1, 2022- March 31, 2023

DRAFT