

ACT NO. 2024- _____

AN ACT authorizing the County of Westchester to accept all necessary property rights from the City of New Rochelle in connection with the County's rehabilitation of the Glen Island Bridge.

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

Section 1. The County of Westchester (the "County") is hereby authorized to accept all necessary property rights from the City of New Rochelle or the current owner of record (the "City"), including but not limited to, a temporary easement substantially in the form attached hereto, in connection with the County's rehabilitation of the Glen Island Bridge (Capital Project RGI04).

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

§3. This Act shall take effect immediately.

TEMPORARY EASEMENT AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT (the “Easement Agreement”), dated as of _____, 2024, between the **CITY OF NEW ROCHELLE** (hereinafter the “Grantor”), a municipal corporation of the State of New York, having a place of business at City Hall, 515 North Avenue, New Rochelle, New York 10801, and the **COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having a place of business at 148 Martine Avenue, White Plains, New York, 10601 (hereinafter the “County” or “Grantee”). The Grantor and the Grantee may be collectively referred to hereinafter as the “Parties” or individually as “Party”.

WHEREAS, the Grantor owns that certain property located adjacent to Glen Island, City of New Rochelle, Westchester County, New York; and

WHEREAS, the Grantee has undertaken a capital project in connection with the rehabilitation of the Glen Island Bridge (the “Bridge”), which serves as a means of ingress and egress to the County-owned Glen Island Park (the “Project”), which Project requires the use of the Grantor’s property as a construction access and staging area; and

WHEREAS, Grantor’s property is also needed as a site for the construction of a temporary bridge to enable access to Glen Island Park while the Bridge is being rehabilitated; and

WHEREAS, the Project is being financed with County Bonds (“the “County Bonds”); and

WHEREAS, Grantor desires to cooperate with Grantee in its effort to undertake this Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Grant. In connection with the Project identified as Glen Island Bridge Rehabilitation III, Grantor hereby grants to Grantee, its successors, assigns, employees, invitees, agents, independent contractors and subcontractors (“Grantee’s Representatives”), a non-exclusive temporary easement to access in, on, upon, across, through and over (the “Easement”) the following:

Parcel consisting of approximately .53 acres being a portion of tax Lot 0001 in tax Block 490, Section 2, as shown on the Tax Map of the City of New Rochelle, situated in the City of New Rochelle, County of Westchester, State of New York

(hereinafter the “Premises” or “Easement Area”), all as more particularly described in the Right-of-Way Property Description and Map which are attached hereto and incorporated herein as Schedule “A”.

With respect to the property descriptions for the Easement granted hereunder, if any additions, changes or corrections are required due to accurate survey or field conditions, such additions, changes or corrections may be made by either Party subject to the approval of the other Party in writing. Such approval for the Grantee will be by the Commissioner of Public Works and Transportation and for the Grantor will be by the City Manager, such approval not to be unreasonably withheld or delayed. Such additions, changes or corrections shall also be made to reflect such facts as an accurate survey of final construction and installation may disclose. Any additions, changes or corrections to the legal description of the Easement shall be duly recorded by appropriate instrument prepared and filed by the Grantee in a timely manner in the Westchester County Clerk’s Office, with a copy to the Grantor. In the event any additions, changes or corrections to the legal description of the Easement are undertaken, the consideration will be adjusted proportionately.

2. Use. The Grantee shall have the right to use the Easement Area as a construction access and staging area and for purposes of providing ingress and egress to the Project and to Glen Island. The Easement Area shall also serve as a financeable property interest to enable Grantee to issue County Bonds in accordance with the New York State Local Finance Law.

3. Term and Fee. The term (“Term”) of this Easement Agreement shall commence upon execution of this instrument by both parties (the “Commencement Date”) and shall expire upon completion of the Project.

In consideration for the grant of this Easement by Grantor to Grantee, Grantee will pay to the Grantor the sum of One (\$1.00) Dollar lawful money of the United States, receipt of which is hereby acknowledged.

4. Title. Grantor covenants that Grantor has the right, title and interest to grant the Easement and reserves unto itself such right, title or interest in and to the Premises. Provided the Grantee abides by the provisions set forth in this Easement Agreement, the Grantee, and Grantee’s Representatives shall have non-exclusive quiet and peaceful enjoyment of the Easement for the Term.

5. Subject and Subordinate. The grant of this Easement to Grantee shall be subject and subordinate to: (i) all ground or underlying leases and to all mortgages and deeds of trust and existing liens, encumbrances and agreements which may now or hereafter affect such leases or the real property of which the Easement Area forms a part, and to all renewals, modifications, consolidations, replacements and extensions thereof ; and (ii) all easements, covenants and restrictions of record affecting the Easement Area, if any, which may now or hereafter be in effect.

6. Restoration of Premises; Maintenance and Repair. The Grantee, at its sole cost and expense, shall at all times during this Agreement keep and maintain the Premises in reasonably clean condition and in good order and shall make all reasonable repairs caused by Grantee or Grantee Representatives. Grantee shall stake, secure, fence, and/or barricade the Easement Area during times construction is not underway, and provide all other safety and security measures necessary to protect the public and property during construction.

Upon expiration or termination of this Easement Agreement, Grantee agrees, at its sole cost and expense, to fully repair and restore the Premises to a condition that is similar or better than the condition that existed at or immediately prior to the commencement of this Easement Agreement, to the reasonable satisfaction of the New Rochelle Commissioner of Parks and

Recreation ("City Commissioner"). In addition, at the sole cost and expense of the Grantee, Grantee shall fully repair and restore any and all damage to the Premises caused by Grantee, its officers, employees, agents, invitees, independent contractors or subcontractors.

Upon expiration or termination of this Easement Agreement, at the sole cost and expense of the Grantee, Grantee shall restore to substantially the condition that existed prior to the Commencement of this Easement Agreement, the soil, sod, plants, shrubs, trees, sidewalks, pavement, curbs, gutters, flagging and any and all other facilities and equipment that may be or have been disturbed at the Premises as a result of Grantee's use of the Premises to the reasonable satisfaction of the City Commissioner. Grantee shall also perform backfilling, grading, seeding and replacement of shrubs and trees at its sole cost and expense to restore the Easement Area to the reasonable satisfaction of the City Commissioner. Upon request, Grantee shall provide Grantor with copies of all maintenance, performance, restoration, and repair records relating to the Easement Area. In the event Grantee shall fail to timely make such repairs, Grantee shall pay the Grantor for actual damages sustained by the Grantor directly related to a failure to timely make a repair as reasonably determined by the Grantor, subject to appropriation by Grantee's Board of Legislators. If such a request for payment is made, Grantor shall provide Grantee with written proof of such actual damages sustained, including, but not limited to, photographs and estimates prepared by duly licensed contractors. Grantee shall be responsible for obtaining all permits, licenses and approvals necessary for performing the Project or related work under this Agreement at its sole cost and expense.

Grantee shall be solely responsible and liable for any loss, claim, injury, damage to persons or property occurring within or outside the Easement Area directly arising out of Grantee's or Grantee Representatives negligent or willful acts or omissions during the Project, and/or during the maintenance, repair or restoration of the Premises, except to the extent such claim, injury or damages results from the negligence or willful misconduct of the Grantor, or its officers, employees, agents, independent contractors or subcontractors.

7. Right of Entry. Grantor reserves unto itself, its employees, agents, successors and assigns, the right to enter and cross the Easement Area at all times and for any purpose, using reasonable efforts not to interfere with Grantee's use of the Easement Area and if

avoidance is not possible, limiting to the extent possible the amount of time such limitations of Grantor's use takes place, and will ensure that the Project is not damaged.

8. Expiration of Term. Upon the expiration or termination of this Easement Agreement, the Grantee shall, at its sole cost and expense, remove all of its equipment, materials, supplies and refuse from the Premises.

9. Insurance. In connection with the use by the Grantee of the Easement Area, the Grantee agrees to self-insure all liability for bodily injury and death and property damage under the Grantee's self-insurance program in accordance with Local Law 6-1986 and Chapter 295 of the Laws of Westchester County. Attached hereto as Schedule "C" is a written assurance from the Grantee of its decision to self-insure. Further, if the Grantee changes from a self-insurance program to a traditional insurance program then the Grantee shall forward certificates of General Liability coverage naming the Grantor as an additional insured. The Grantee represents that the Grantee's Contractors will be required to maintain the Grantor as an additional insured on the Contractor's insurance.

10. Indemnification. To the fullest extent permitted by law, the Grantee, its successors or assigns, shall indemnify, defend and hold harmless the Grantor, its employees, officers, successors and assigns (collectively the "Indemnitees") from and against any and all third party claims, lawsuits, damages, fines, causes of action, judgments, penalties, costs, liabilities, settlements, fees and expenses (including reasonable attorneys' fees, court costs and disbursements), losses and awards directly arising out of or as a direct result of (i) this Easement, (ii) construction, reconstruction or maintenance work done by or on behalf of Grantee on or around the Easement Area; (iii) the use, possession, enjoyment or operation of the Easement Area, by Grantee or any of its employees, invitees (including the general public), agents, employees or contractors , (iv) any negligent or willful act or omission by Grantee or anyone acting under the direction or control of the Grantee, or (v) any violation of law or default hereunder. This provisions shall survive the expiration or termination of this Agreement.

11. Default. If Grantee shall not keep or perform the respective terms, covenants or conditions imposed upon it pursuant to the terms of this Agreement, and such default shall continue for a period of thirty (30) calendar days after written notice thereof from the Grantor

(or, in connection with any default not susceptible to being cured with due diligence within thirty (30) days, such longer period of time as may be necessary to complete the same in good faith with due diligence, provided that the cure of such default is promptly commenced and diligently pursued), or in the case of an emergency or hazardous condition, the Grantee fails to proceed promptly to cure the same after service of such written or oral notice, then the Grantee shall be in breach of this Agreement. Upon any breach of this Agreement by the Grantee which is not remedied prior to the expiration of the applicable cure period, the Grantor shall have the right to cancel, terminate or rescind this Agreement, and/or exercise any and all rights and remedies that are available at law or in equity.

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

13. No Lease. This Easement Agreement is not a lease and does not grant the Parties rights of a tenant. Under no circumstances shall this Easement Agreement be construed as granting either Party any rights, title or interest of any kind or character in, on, or about the Easement Areas, land, or premises of the Grantor, other than as expressly provided herein.

14. Compliance with Law. Each Party, at its sole cost and expense, shall comply with all Federal, State and local laws, regulations and ordinances applicable to it and to its activities, and shall procure and maintain, in full force and effect for the term of this Easement Agreement, all applicable permits, licenses and approvals from all governmental authorities having jurisdiction required for the lawful operation of this Easement Agreement.

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

as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner of Public Works and Transportation
County of Westchester
148 Martine Avenue, Room 518
White Plains, New York 10601

With a copy to:

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

To the Grantor:

City Manager
City of New Rochelle
City Hall
515 North Avenue
New Rochelle, New York 10801

With a copy to:

Corporation Counsel
City of New Rochelle
City Hall
515 North Avenue
New Rochelle, New York 10801

16. Entire Agreement. This Easement Agreement, including all Exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings, if any, with respect thereto. The Parties have made no prior representations with respect to the subject matter of this Easement Agreement and have given no warranties with respect to the subject matter hereof except as provided herein. This Easement Agreement may not be modified, changed or supplemented nor may any obligations hereunder be waived, except by written instrument signed by the Parties hereto.

17. Severability. Invalidation of any one of the provisions of this Easement Agreement by judgment or court order shall not affect the validity of any other provision, which shall remain in full force and effect.

18. Singular and Plural Form. Whenever the sense of this Easement Agreement may make it necessary or appropriate, any singular word or term used herein shall include the plural and any masculine word or term shall include the feminine and/or neuter genders and visa versa.

19. Assignment. Grantee shall not assign or transfer this Easement Agreement or any interest herein without the prior written consent of the Grantor, which consent shall not be unreasonably delayed, withheld or conditioned, subject to the appropriate governmental and legal approvals.

20. No Third Party Rights. Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns, including but not limited to the general public, any rights, remedies or basis for reliance upon, under or by reason of this Easement Agreement, except in the event that specific third party rights are expressly granted herein.

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

22. Recording. The Parties agree that the Grantee, at its sole cost and expense, shall cause this Easement Agreement to be recorded in the records of the Westchester County Clerk and shall terminate at the expiration of the Term or earlier termination as set forth herein.

23. Multiple Counterparts. This Easement Agreement may be executed in a number of identical counterparts but all counterparts shall constitute one and the same agreement. This Easement Agreement shall not be binding or effective until duly executed by Grantor and Grantee and delivered by one to the other.

24. Enforceability. This Easement Agreement shall not be enforceable until executed by both Parties and approved by the Office of the Westchester County Attorney and City Manager.

IN WITNESS WHEREOF, the Parties have executed this instrument on the day and date first above mentioned.

CITY OF NEW ROCHELLE

By: _____

Name:

Title:

COUNTY OF WESTCHESTER

By: _____

Name:

Title:

Authorized by the County Board of Legislators by Act. No. 2024-____ on the ____ day of _____, 2024.

Approved:

Sr. Assistant County Attorney
The County of Westchester

Date

Corporation Counsel
City of New Rochelle

Date

SCHEDULE "A"

LEGAL DESCRIPTION

A Temporary Construction Easement being a portion of a parcel consisting of approximately .53 acres being a portion of tax Lot 0001 in tax Block 490, Section 2, as shown on the Tax Map of the City of New Rochelle, situated in the City of New Rochelle, County of Westchester, State of New York and more specifically described below:

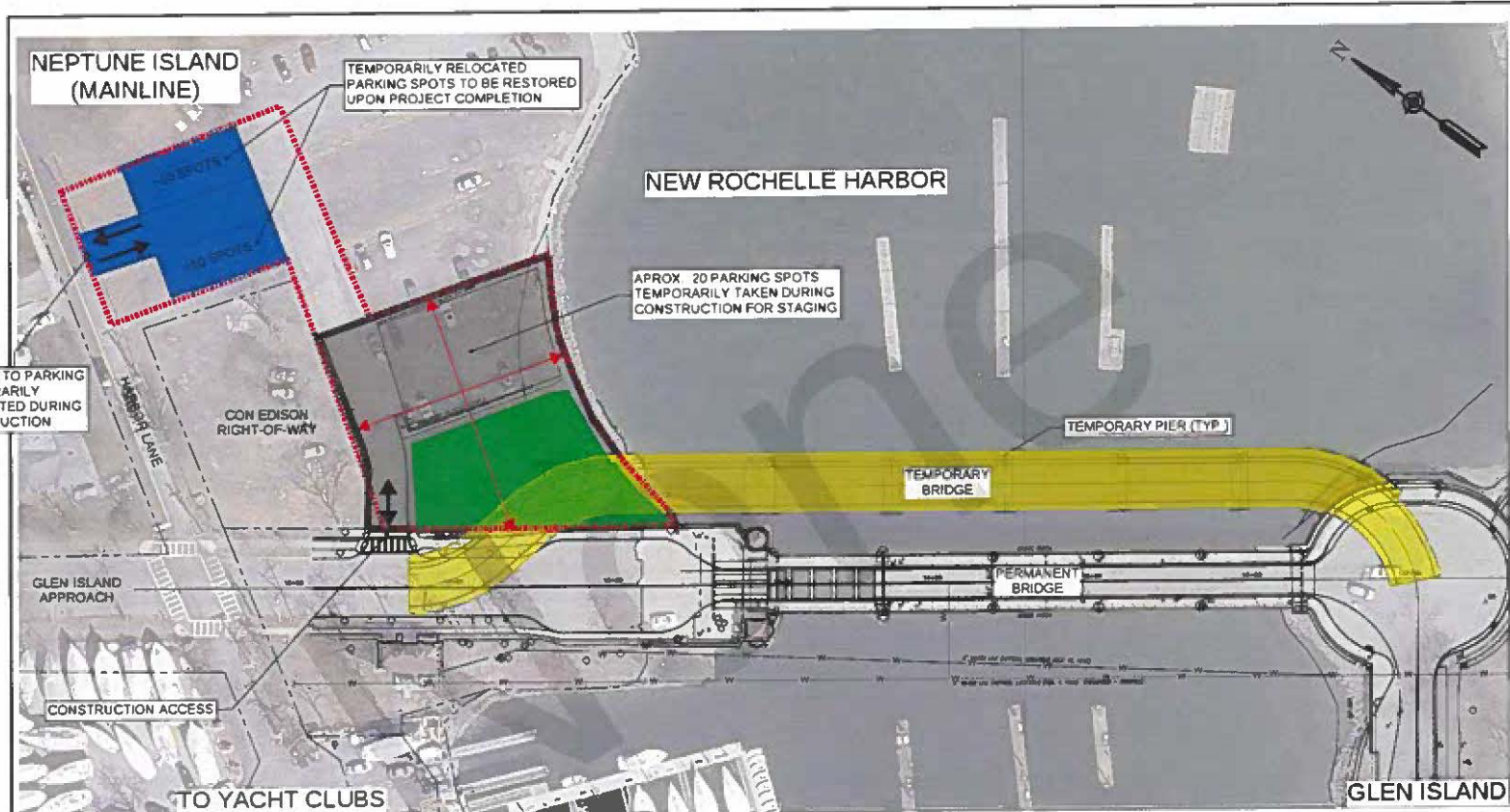
PARCEL NO. ___:

Beginning at a point

DRAFT

MAP
To be attached

DRAFT



LEGEND

- CITY OF NEW ROCHELLE RIGHT-OF-WAY / TEMPORARY EASEMENT FOR CONTRACTOR STAGING AND LAYOUT AREA ~23,000 SF (0.53 ACRES)
- PARKING LOT, DRIVEWAY AND SIDEWALK TO BE RESTORED AFTER CONSTRUCTION WITH ASPHALT & NEW BUMPER BLOCKS
- GRASSY SLOPE TO BE RESTORED AFTER CONSTRUCTION WITH ASPHALT REPAIRING
- TEMPORARY ACCESS TO PARKING DURING CONSTRUCTION
- TEMPORARY BRIDGE FOOTPRINT
- PROPOSED LIMIT OF TEMPORARY EASEMENT AREA

PRELIMINARY DRAFT - FOR INTERNAL REVIEW ONLY

DATE OF: _____
 CHECKED BY: _____
 MADE BY: _____

REVISION	DATE	MADE BY	APPROVED BY	REASON

WESTCHESTER COUNTY, NEW YORK
 DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION
 DIVISION OF ENGINEERING
 REHABILITATION OF GLEN ISLAND APPROACH BRIDGE
 OVER NEW ROCHELLE HARBOR
 NEW ROCHELLE, NEW YORK

CONTRACT NO. 20-117
 SHEET NO. 07/09/2021
 DATE 07/09/2021
 SCALE 1"=50'

SCHEDULE "B"
Grantees' Self Insurance Letter
(SAMPLE ONLY)

DATE: _____, 2023

TO: CITY OF NEW ROCHELLE
City Hall
515 North Avenue
New Rochelle, New York 10801

Dear Sir or Madam:

This letter is being provided as evidence of the County of Westchester's financial security in support of any indemnity contained in the Temporary Construction Easement Agreement between the County of Westchester and the City of New Rochelle.

The County of Westchester is self-funding its casualty and liability exposures in accordance with Local Law 6-1986 that amended the Laws of Westchester County to add a new Chapter 295 providing for the establishment and management of a liability and casualty reserve fund. Contribution to this dedicated reserve fund is actuarially determined and funded on an annual basis.

Current assets exceed Ten Million Dollars (\$10,000,000.00)

Sincerely,

Risk Management

Description:
Temporary Construction Easement Agreement for Parcel ____