

AN ACT authorizing the County of Westchester to enter into an inter-municipal agreement with the Town of Rye in connection with making improvements to the bathhouse located in Rye Town Park.

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

Section 1. The County of Westchester (“County”) is hereby authorized to enter into an inter-municipal agreement (“IMA”) with the Town of Rye (“Town”), in connection with making the required improvements to the bathhouse structure (“Property”) located at the Rye Town Park in the City of Rye, including making such bathhouse fully compliant with the Americans with Disabilities Act, as well as restoring and renovating the deteriorated bathhouse interiors (“Project”), pursuant to capital project BLA1A - Parkland and Historical Preservation Program (“BLA1A”).

§2. The County will contribute an amount not to exceed \$427,000 for the design, construction management and construction of the Project payable following submission by the Town of properly executed payment vouchers, along with supporting documentation. Should the Project costs exceed the amount contributed by the County, the Town shall be solely responsible for any additional amount. In exchange for the County’s contribution towards such improvements, the Town shall grant access to all county residents on the same terms as any Town resident.

§3. In order to give the County, the necessary interest in real property to be able to issue bonds towards the Project, the Town will lease the Property where the Project is located to the County for a term commencing upon execution and continuing for a period at least equal to the life of any County bonds issued to fund the Project, which is estimated to be fifteen (15) years.

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

§5. This Act shall take effect immediately.

INTER-MUNICIPAL AGREEMENT

THIS AGREEMENT, made the _____ day of _____, 20____, by and between:

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

and

THE TOWN OF RYE, a municipal corporation of the State of New York, having an office and place of business at 222 Grace Church Street, 3rd Floor, Port Chester, NY 10573 (hereinafter referred to as the “Municipality” or the “Town”)

RECITALS

WHEREAS, the Municipality is the owner of certain real property commonly known as the Rye Town Park (“Park” or “Rye Town Park”), as indicated in the attached Schedule “A”; and

WHEREAS, the County desires to assist the Municipality by providing funding towards needed improvements to the bathhouse structure (the “Property”) located at the Park, including making such bathhouse fully compliant with the Americans with Disabilities Act, as well as restoring and renovating the deteriorated bathhouse interiors (the “Project”); and

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

ARTICLE I

TERM

Section 1.0. The recitals are hereby incorporated by reference into the body of this Agreement.

Section 1.1. Except as provided for in this Agreement, the term of this Agreement shall be for a period commencing upon execution of this Agreement and continuing for a period at least

equal to the life of any County bonds issued to fund the Project, unless terminated sooner in accordance with the provisions of this Agreement (“Term”).

ARTICLE II
IMPROVEMENTS TO THE PROPERTY

Section 2.0. The Municipality shall complete the Project in accordance with all applicable laws including, but not limited to, those governing public bidding. All work on the Project shall be in conformance with the plans and specifications prepared by the Municipality, which plans shall be subject to review and approval by the County Commissioner of Planning or his/her authorized designee (“Planning Commissioner” or the “Commissioner”). The Municipality shall not deviate from the approved plans and specifications without the prior written consent of the Commissioner. It is recognized and understood that the Municipality’s compliance with those plans and specifications is a critical element of this Agreement. However, the County will not be obliged to incur any additional expense beyond the amount set forth in Section 2.1 below. After design of the site preparation plans and specifications is complete, they shall be delivered to the Commissioner for approval. The County shall, at all times, have the right to inspect the work. If the County believes that the work is not in compliance with the plans and specifications, it shall notify the Municipality in writing within twenty (20) days after such inspection.

Section 2.1. The County will contribute an amount not to exceed Four Hundred and Twenty-Seven Thousand and 00/100 (\$427,000.00) Dollars for the design, construction management and construction of the Project, payable following submission by the Town of properly executed payment vouchers, along with supporting documentation as may be requested by the Commissioner. Should the Project costs exceed the amount contributed by the County, the Municipality shall be solely responsible for any additional amount. In exchange for the County’s contribution towards such improvements, the Town shall grant access to all county residents as more particularly set forth in Section 4.1 below. It is also recognized and understood that the County’s sole responsibility shall be to provide an amount not to exceed \$427,000 towards the Project and the Municipality shall assume all other responsibilities for all other costs and expenses relating to the Park and the Project.

The Municipality shall maintain accurate records and books of account in which shall be entered all matters relating to this Agreement, including all income, expenditures, assets, and liabilities thereof and all income, expenditures, and payments to any and all contractors or subcontractors involved in the operation, management, maintenance, supervision, development, repair, and security of the Park. Such books and records shall be maintained in accordance with generally accepted accounting principles, consistently applied and shall be kept at a location within Westchester County. The County shall have the right to inspect, examine, and copy such books and records of the Municipality at all reasonable times during normal business hours at the office of the Municipality.

ARTICLE III
LEASE OF PROPERTY

Section 3.0. Subject to the terms and conditions of Section 2.0, the Municipality hereby leases to the County the exclusive right to use and occupy the Property that the Municipality owns for the purposes of issuing bonds for the Municipality to construct the improvements thereon, it being understood and recognized that this lease shall be for a period of the term of the bonds issued for the Project, which term is anticipated to be fifteen (15) years.

Section 3.1. It is recognized and understood that the aforementioned lease is solely to give the County the necessary interest in real property to be able to issue bonds for the Project and the County shall have no responsibilities or duties under the Agreement other than to provide the funding set forth in Section 2.1 above.

ARTICLE IV
RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY

Section 4.0. In addition to, and not in limitation of the insurance requirements contained in Schedule “B” entitled “Standard Insurance Provisions”, attached hereto and made a part hereof, the Municipality agrees that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence or intentional or willful misconduct of the County, its elected officials, officers, employees and agents during a County sponsored event:

(a) the Municipality shall indemnify and hold harmless the County, its elected officials, officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the maintenance, operation, security and/or repair of the Property and this Agreement and of the acts or omissions hereunder by the Municipality or third parties under the direction or control of the Municipality; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action brought against the Indemnities (defined in Section 4.0(c) below) directly or indirectly arising out of the Project, the maintenance, operation, security and/or repair of this Property and this Agreement and to bear all other costs and expenses related thereto; and

(c) the Municipality shall defend, indemnify and hold harmless the County, its officials, officers, employees and agents (the "Indemnitees") from and against, any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss, that may be imposed upon or incurred by or asserted against any of the Indemnities by reason of any of the following:

- (i) Work. Any construction, repair, alteration, addition, replacement, restoration or improvement work done by or on behalf of Municipality in, on or about the Property or any part thereof;
- (ii) Use. The use, occupation, condition, operation, maintenance, management, supervision or development of or providing security for all or any portion of the Property, or the affected portion thereof, by or on behalf of the Municipality, including without limitation, any liability with respect to the maintenance of streets or sidewalks adjoining the Property and any violations imposed by any governmental authorities in respect of any of the foregoing;
- (iii) Act or Failure to Act of Municipality. Any act performed by, or any failure to perform any act required to be performed by the Municipality, a third party under its direction or control, or any of the Municipality's officers, agents, contractors, servants, employees, lessees or invitees in connection with this Agreement or the Property;
- (iv) Accidents, Injury to Person or Property. Any accident, injury, (including death at any time resulting therefrom) or damage to any person, including, without limitation, employees of the Municipality or any Indemnitee unless arising from the negligent, intentional or willful conduct of an Indemnitee, or property occurring in, on, or about the Property or any part thereof, or in,

on or about any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto; or

- (v) Breach of Municipality's Obligation. Any failure or refusal on the part of the Municipality to perform its obligations pursuant to this Agreement; or
- (vi) Municipality's Obligations. The Municipality's failure, within any applicable grace period, to perform or comply with any of the covenants, terms or conditions contained in this Agreement on the Municipality's part to be kept, observed, performed or complied with within any applicable grace period.

The Municipality shall promptly notify the County in writing of any claims made or any suits instituted against the Municipality of which it has knowledge arising from its performances hereunder or in connection with this Agreement or in connection with the Property.

Section 4.1. The Municipality shall have sole authority and control over the development, operation, management, maintenance, and security of the Property, including the Project, at the Municipality's sole cost and expense. Subject to Section 4.9, the Municipality shall have sole authority and control over the scheduling in the Property. The Property shall be operated as a town park, but shall be available to all Westchester County residents in accordance with the terms and conditions of Schedule "D". To the extent any fees are charged for the use of Park, the fees charged to non-residents of the Municipality who are County residents will not exceed double the amount of fees charged to the Municipality's residents.

Section 4.2. The Municipality shall, at its sole cost and expense, continuously throughout the term of this Agreement, provide reasonable and adequate security and safety at the Property, including the Project, through the Municipality's police department or other agency designated to provide such police services.

Section 4.3. The Municipality shall, at its sole cost and expense, operate, manage, maintain, repair and properly supervise the Property, including the Project, it being understood and agreed that such operation, management, maintenance, supervision, development, and repair shall be performed by the Municipality to the satisfaction of the Planning Commissioner. The Municipality shall defend and indemnify the County from any liability that may arise from any failure of the Municipality to perform its obligations under this Paragraph. The Municipality shall,

at its own cost and expense, keep any and all refuse in containers and remove and dispose of same as required by the Planning Commissioner.

Section 4.4. Following construction of improvements on the Property, those improvements shall be available to the public as required by this Agreement although the Municipality shall have sole discretion to schedule the use of same as appropriate.

Section 4.5. The Municipality shall, at its own cost and expense, promptly comply with all statutes, ordinances, rules, orders, regulations, codes and requirements of the Federal, State, County and local governments and all insurance requirements applicable to the Property or any part thereof or applicable to this Agreement. After construction is completed, the Commissioner shall be entitled to enter the Property, or any part thereof, at any and all times for any and all purposes related to the Project, without the need to obtain the consent or permission of the Municipality.

Section 4.6. All advertising and signage, excluding hours of operation and other similar informational signage, to be utilized by the Municipality in connection with the operation of the Property shall be subject to the prior written approval of the Planning Commissioner and shall be provided to the County in advance for review. The Municipality shall acknowledge the County's contribution toward improvement of the Property on any signs erected at the Property and on any other publications, documents, etc. mentioning the Property.

Section 4.7. In the event the Municipality does not comply with a provision in this Article IV, the County shall have the right to cure such noncompliance upon thirty (30) days' notice from the County to the Municipality, except in emergencies when such notice period in the County's sole and unreviewable judgment shall be shorter. The cost to cure such noncompliance shall be borne by the Municipality. The failure of the Municipality to reimburse the County for the cost to cure such compliance within thirty (30) days of a written notice demanding such reimbursement shall be deemed a material breach of this Agreement.

Section 4.8. After completion of the Project, the Municipality shall not install any fixtures or make any additions, development, improvements or alterations to the Property, other than routine maintenance or repair, without the prior written consent of the Commissioner, which

shall not be unreasonably withheld. Any such additions, development, improvements or alterations shall be made at the Municipality's sole cost and expense unless otherwise agreed to by the County and the Municipality. The Municipality shall submit all plans and specifications for all such additions, development, improvements and alteration to the County for approval. All such additions, development, improvements and alteration shall be completed in a thoroughly workmanlike manner and shall immediately become annexed to and be made a part of the Property.

Section 4.9. Notwithstanding Section 4.1 herein, the County within normal operating hours, subject to capacity and availability, shall have the right to schedule events at or use the Property (which events or use otherwise being permitted pursuant to the terms of this Agreement) with the written consent of the Municipality, which consent shall be provided in good faith and not unreasonably withheld, so long as the County provides for the payment of all costs and provision of adequate insurance in regard to the proposed use.

Section 4.10. It is understood and agreed between the parties that the Property is for the use and benefit of the public as part of a public park as set forth in this Agreement. Reservations for the use of the Property, or any portion thereof, shall be made through the Municipality. All residents of the County, subject to capacity and availability, shall have access to the Property, subject to the provisions of Section 4.1 hereof.

Section 4.11. Except for the amount of funding to be provided by the County under Section 2.1 above, the Municipality shall be responsible for all costs in relation to the Property and this entire Agreement, and, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the County be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder except as herein otherwise expressly set forth.

Section 4.12. The Municipality shall pay any and all taxes, assessments, special assessments, personal property and intangible taxes, gross receipts, sales, use or occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees, and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, arising from the use or ownership of the Property

which shall or may be assessed levied, charged, confirmed, or imposed upon or become payable out of or become a lien on the Property or any part thereof.

Section 4.13. (i) The Project shall be subject to the generally-applicable ordinances, rules and regulations of the Planning Commissioner, as may be amended from time to time by the Commissioner (the "County rules"). The Municipality may develop new ordinances, rules and regulations for the Property, which shall be subject to the approval of the Planning Commissioner (the "Municipality rules"), which shall not be unreasonably withheld or delayed. To the extent the Municipality rules regulate the same subject matter as the County rules and are at least as strict as the County rules, the Municipality rules shall supersede the County rules. Otherwise, the County rules shall apply to the Property.

(ii) The Property shall be subject to the Laws of Westchester County including, but not limited to, sections 765.351 through 765.358. The Municipality may not enact laws, acts, rules, regulations or ordinances affecting the Property that supersede the Laws of Westchester County.

(iii) The Municipality acknowledges and agrees that there shall be no activity referred to in section 765.354 of the Laws of Westchester County, to wit: no tree clearing, tree removal or the removal of a specimen tree, a protected tree, the excavation or alteration of the existing grade within the dripline of a tree or the removal(s) of any tree(s) on slopes of 25% or more, unless the Municipality complies with the applicable provisions of section 765.355 of the Laws of Westchester County. If the Municipality undertakes an activity referred to in section 765.354 pursuant to section 765.355, it shall replace said trees at the direction of and to the satisfaction of the Planning Commissioner.

(iv) The provisions of this Section 4.13 of this Agreement shall remain in full force and effect during the Term of this Agreement unless modified by the mutual agreement of the parties hereto.

Section 4.14. The Municipality shall act as the lead agency for meeting the requirements of the State Environmental Quality Review Act ("SEQR") and its implementing regulations, 6 NYCRR Part 617 for any activity which requires SEQR compliance, that is undertaken pursuant to this Agreement, unless otherwise directed by the County.

ARTICLE V
FAIR AND AFFORDABLE HOUSING CONDITIONS

Section 5.0. The Municipality hereby commits to the County that it is in compliance with the terms and conditions set forth in the County’s Discretionary Funding Policy annexed hereto and forming a part hereof as Schedule “C”. The County acknowledges that the Municipality is currently in compliance with the Policy.

Section 5.1. As further consideration for the County’s financial contribution toward the Project, the Municipality certifies that it has adopted municipal zoning code provisions and/or policies which reflect the guidance provided in the Model Ordinance Provisions and the Municipality is committed to affirmatively further fair housing, including a ban on local residency requirements and preferences and other selection preferences that do not affirmatively further fair housing, except to the extent provided in the Model Ordinance Provisions which the Town has adopted.

Section 5.2. The Municipality agrees to offer to the County a Right of First Refusal to retain and/or purchase any and all land acquired in rem to be used for housing that affirmatively furthers fair housing (“AFFH”).

Section 5.3. The Municipality agrees to continue to be in compliance with above mentioned County Discretionary Funding Policy during the term of this Agreement.

Section 5.4. The Municipality further agrees to market housing units that affirmatively further fair housing in accordance with Westchester County’s Affirmative Fair Housing Marketing Plan throughout the period of affordability.

Section 5.5. Nothing in this Agreement is intended to affect the County’s interest in the Project or release the Municipality from its obligations under the law with respect to affordable AFFH units.

Section 5.6. Should the Municipality fail to abide by any of the above conditions, the Municipality shall, upon thirty (30) days written notice by the County, refund any funds paid to the Municipality under this Agreement.

ARTICLE VI

INSURANCE

Section 6.0. The Municipality shall procure and maintain insurance coverage naming the County as additional insured for so long as the County has a lease of the Property in the amounts specified in Schedule “B” attached hereto.

ARTICLE VII

RESPONSIBILITIES OF THE COUNTY

Section 7.0. The County shall have no responsibility for the Property other than that set forth above.

ARTICLE VIII

NOTICES

Section 8.0. All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, to the respective addresses set forth below (except where this Agreement designates notice to a particular County Commissioner and then only to that Commissioner and a copy to the County Attorney) or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County: Commissioner of Planning
 County of Westchester
 148 Martine Avenue, Room ____
 White Plains, New York 10601

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

To the Municipality: Town of Rye
 222 Grace Church Street, 3rd Floor
 Port Chester, NY 10573

ARTICLE IX
MISCELLANEOUS

Section 9.0. Any purported delegation of duties or assignment of rights by either party to this Agreement without the prior express written consent of the other party is void.

Section 9.1. In the event that the Municipality materially defaults in the performance of any term, condition, or covenant herein contained, the County, at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement upon ninety (90) days' notice to the Municipality; provided, however, that the Municipality may defeat such notice by curing the default complained of within such notice period, or, if any such default is not curable within such notice period by promptly commencing to cure the default and diligently pursuing all necessary and appropriate action to effect such cure. In the event this Agreement is terminated, the Municipality shall have one hundred eighty (180) days from the effective termination date to pay the County, as liquidated damages, the full amount paid by the County pursuant to this Agreement.

Section 9.2. It is mutually understood and agreed that the terms, covenants, conditions and agreements herein contained shall be binding upon the parties hereto and upon their respective successors, legal representatives and assigns. Nothing in this Agreement shall act to confer third-party beneficiary rights on any person or entity not a party to this Agreement.

Section 9.3. This Agreement and its attachments constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. This Agreement shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties, and approved by the Office of the County Attorney.

Section 9.4 It is recognized and understood that the Municipality is not an agent of the County and in accordance with such status, the Municipality, its consultant(s), its subcontractor(s), and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement neither hold themselves out as, nor claim to be acting in the

capacity of officers, employees, agents, representatives or servants of the County, nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges derived from workers compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Section 9.5. This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

Section 9.6. In the event that any one or more provisions, sections, subsections, clauses or words of this Agreement are for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid section, subsection, clause or word has not been contained herein.

Section 9.7. The Municipality agrees to observe and obey any and all Federal, State and local laws, rules and regulations, and to require its officers, agents, employees, contractors, and suppliers to observe and obey the same.

Section 9.8. This Agreement shall be deemed executory only to the extent of funds appropriated and made available for the purpose of this Agreement and no liability on account thereof shall be incurred by the County beyond the amount of such appropriated funds.

Section 9.9. All covenants, stipulations, promises, agreements and obligations of the Municipality and the County contained herein shall be deemed to be stipulations, promises, agreements and obligations of the Municipality and the County and not of any member, officer or employee of the Municipality or the County in his individual capacity and no recourse shall be had for any obligation or liability herein or any claim based thereon against any member, officer or employee of the Municipality or the County or any natural person executing this Agreement.

Section 9.10. The parties each agrees to execute and deliver such further instruments and to obtain such additional authority as may be required to carry out the intent and purpose of this Agreement.

Section 9.11. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement binding upon all the parties hereto.

Section 9.12. Failure of any party to insist upon strict performance of any term, condition or covenant of this Agreement shall not be deemed to constitute a waiver or relinquishment of such term, condition or covenant for the future right to insist upon and to enforce by injunction or by other legal or appropriate remedy strict compliance by any other party with such term, condition or covenant.

Section 9.13. Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Under this Agreement it is recognized and understood that the County encourages the Municipality to do similarly.

Section 9.14. In the event that all or any part of the Property shall be taken in a condemnation proceeding, or by right of eminent domain, or by agreement by any governmental authority authorized to exercise such rights, then, and in any such event, any such condemnation proceeds payable to the County for its interest in the Property shall be distributed to the County.

Section 9.15. The Municipality represents that it has all requisite power and authority to execute, deliver and perform this Agreement, and this Agreement has been duly authorized by all necessary parties. The County represents that this Agreement has been approved by the Board of Legislators of the County of Westchester on the _____, 2024 by Act No. _____-2024. These authorities are both attached hereto and made a part hereof as Schedule "E".

Section 9.16. The headings in this Agreement are for reference purposes only and shall not be used in construing the terms of this Agreement.

[NO FURTHER TEXT/SIGNATURE PAGE FOLLOWS]

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

THE COUNTY OF WESTCHESTER

By _____
Blanca P. Lopez, MS
Commissioner of Planning

THE TOWN OF RYE

By _____
(Name and Title)

Approved by the Board of Legislators of the County of Westchester pursuant to Act No. ____ - 2024.

Approved by Resolution of the Town Board of the Town of Rye on the ____ day of _____, 20____.

Approved:

Sr. Assistant County Attorney
County of Westchester
IMA BLA1A (2648) Rye Town Park Bathhouses Turf Field.FIN.11.14.2024

MUNICIPALITY'S ACKNOWLEDGMENT

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

On this _____ day of _____ 20__ , before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she is the _____ of _____, the municipal corporation described in and which executed the within instrument, who being by me duly sworn did depose and say that he/she executed the same in his/her capacity, and that by his/her signature(s) on the instrument, the municipal corporation executed the instrument.

Notary Public County

**CERTIFICATE OF AUTHORITY
(Municipality)**

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

certify that I am the _____ of the
(Title)

(Name of Municipality)

(the "Municipality"), a corporation duly organized and in good standing under the

(Law under which organized, e.g., the New York Village Law, Town Law, General Municipal Law)

named in the foregoing agreement; that _____,
(Person executing agreement)

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

_____ of the Municipality, and that said
(Title of such person),

agreement was duly signed for and on behalf of said Municipality by authority of its

_____, thereunto duly authorized and
(Town Board, Village Board, City Council)

that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)

ss.:

COUNTY OF WESTCHESTER)

On this _____ day of _____ 20____, before me, the undersigned, 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 above certificate and acknowledged to me that he/she executed the above certificate in his/her capacity as _____ of _____,

(Title)

(Municipality)

the municipal corporation described in and which executed the within instrument.

Notary Public County

SCHEDULE "A"
(PROPERTY DESCRIPTION)

DRAFT

SCHEDULE "B"
STANDARD 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.

- 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.

SCHEDULE "C"

WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING IMPLEMENTATION PLAN August 9, 2010

**Appendix (D-2)(1): Discretionary Funding Allocation Policy
as approved January 10, 2012**

DISCRETIONARY FUNDING POLICY

In August 2009, Westchester County entered into a Stipulation and Order of Settlement and Dismissal in *U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, New York* (the "Settlement Agreement"). Beginning on March 1, 2012, the grant of discretionary intermunicipal funding, including but not limited to County Open Space funds and CDBG funding, ("Discretionary Funding") to municipalities eligible under the Settlement Agreement ("Recipient Eligible Municipalities") shall be conditioned, as appropriate, upon the Recipient Eligible Municipality's commitment to affirmatively further fair housing within its borders. This policy does not apply to municipalities in Westchester County other than the Recipient Eligible Municipalities.

Each Recipient Eligible Municipality shall be required to commit to the County, in writing, that it is in compliance with the following terms and conditions in connection with its commitment to affirmatively further fair housing:

- (a) Recipient Eligible Municipality has adopted municipal zoning code provisions and/or policies which reflect the guidance provided in the Model Ordinance Provisions approved pursuant to the Settlement Agreement and demonstrate a commitment by the Recipient Eligible Municipality to affirmatively further fair housing, including a ban on local residency requirements and preferences and other selection preferences that do not affirmatively further fair housing, except to the extent provided in the Model Ordinance Provisions;
- (b) Recipient Eligible Municipality will offer the County a Right of First Refusal to retain and/or purchase any and all land acquired in rem to be used for housing that affirmatively furthers fair housing; and
- (c) Recipient Eligible Municipality will actively further implementation of the Settlement Agreement through its land use regulations and other affirmative measures to assist the development of affordable housing.

Such commitments by Recipient Eligible Municipality shall be stated in the funding agreement between the County and the Recipient Eligible Municipality.

The funding agreement will also provide that housing units that affirmatively further fair housing must be marketed in accordance with Westchester County's Affirmative Fair Housing Marketing Plan approved pursuant to the Settlement Agreement, throughout the period of affordability.

Applications for Discretionary Funding submitted by non-municipal entities will be reviewed to determine whether or not such entity is acting as an agent of a municipality for purposes of the project for which funding is sought. If such entity is deemed to be acting in the capacity of agent for a municipality, the application will be subject to a review of the agent-municipality's compliance with the policy of affirmatively furthering fair housing stated above. The determination as to whether an agency relationship exists will be based on the principles of law relating to agency relationships in New York State, and the fact that the non-municipal entity/applicant may be required by local municipal codes to obtain municipal approvals or abide by municipal processes for such approvals in connection with such application will not be determinative of the agency relationship. Westchester County will provide notice of all non-municipal applications for funding to the local municipality in which the funding is proposed to be spent.

The County's audit rights under any grant of or funding agreement for Discretionary Funding will extend to all documents, reports, and records which relate to the Recipient Eligible Municipality's commitment to affirmatively further fair housing as described herein. Should Recipient Eligible Municipality fail to abide by any of the above conditions, Recipient Eligible Municipality will be obliged, upon thirty (30) days written notice by the County, to refund any Discretionary Funding paid to the Recipient Eligible Municipality.

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SCHEDULE "D"
TERMS OF PARK OPERATION

SCHEDULE "E"
COPIES OF COUNTY AUTHORIZATION (ACT)

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