

**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 (the “Act”) which would authorize the County of Westchester (the “County”), acting by and through its Department of Senior Programs and Services (the “Department”), to enter into inter-municipal agreements (“IMAs”) with the City of Yonkers and the City of New Rochelle, acting by and through their respective Offices for the Aging (the “Municipalities”), pursuant to which the Municipalities will provide outreach and other services to seniors to be funded with County tax dollars. The term of the proposed IMAs will commence retroactive to January 1, 2022 and continue through December 31, 2022. In no event will the total aggregate not-to-exceed amount payable for both IMAs exceed the sum of \$30,000, payable pursuant to approved budgets.

Your Committee is advised that the services to be provided under the IMAs include the Livable Communities Regional Hosts services that provide outreach to residents to participate in and access programs and services provided by the Department; and public information/education that is provided through meetings, educational forums and events at which residents are educated and informed about the Department’s myriad programs and services that are designed to enhance the quality of life for Westchester seniors to allow them to remain in their homes and community.

Your Committee notes that this Honorable Board passed similar authorizing legislation pursuant to Act No. 80 - 2021. However, the existing authorization expired on December 31, 2021 and a new authorization will be needed to enter into new agreements.

Your Committee is informed that the IMAs are exempt from procurement pursuant to section 3(a)iii of the Westchester County Procurement Policy and Procedures (the “Policy”) which exempts contracts with “. . . any State and any political subdivision, agency or instrumentality thereof.” They 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.”

The Planning Department has advised that based on its review, 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 has been advised 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

[Handwritten signatures in blue ink: Ty H. O., Nancy Barr, Samuel Z. ...]

[Handwritten signatures in blue ink: Joe Al..., Nancy Barr, Samuel Z. ...]

COMMITTEE ON

C/jpg/3/07/22

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
COMMITTEE**

Klaus R. Maher

Jeff Pei

Mary Jane Skimchy

David Q. Jabrot

Catherine F. Parker

**SENIORS & YOUTH
COMMITTEE**

David Q. Jabrot

FISCAL IMPACT STATEMENT

SUBJECT: County Funds

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 \$ 30000

Total Current Year Revenue \$ 30000

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 263 85 T686 4380

Potential Related Operating Budget Expenses: Annual Amount \$ 0

Describe: _____

Potential Related Revenues: Annual Amount \$ 30000

Describe: Funds received from the County for various programs and services for Westchester County senior citizens.

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

Current Year: The Department would not be able to provide senior services including Livable Communities Outreach and public information/education

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.

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 inter-municipal agreements with the City of Yonkers and the City of New Rochelle for the provision of outreach and other services to seniors to be funded with County tax dollars

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 inter-municipal agreements (“IMAs”) with the City of Yonkers and the City of New Rochelle, acting by and through their respective Offices for the Aging (the “Municipalities”), pursuant to which the Municipalities will provide outreach and other services to seniors to be funded with County tax dollars, for a term commencing on January 1, 2022 and continuing through December 31, 2022, in a total aggregate amount not-to-exceed \$30,000, payable pursuant to approved budgets.

§2. The services to be provided under the IMAs will include Livable Communities Regional Host services which provides outreach to residents to participate in and access programs and services provided by the Department; and public information/education that is provided through meetings, educational forums and events at which residents are educated and informed about the Department’s myriad programs and services that are designed to enhance the quality of life for Westchester seniors to allow them to remain in their homes and community.

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

§4. 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.

§5. This Act shall take effect immediately.

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

CITY OF YONKERS, a municipal corporation organized under the laws of the State of New York, having an office and principal place of at 435 Riverdale Avenue, Yonkers, New York 10705 (hereinafter referred to as the "Municipality")

WITNESSETH:

WHEREAS, the County desires to provide Livable Community Regional Host Services to elderly residents of the County (hereinafter the "Program"); and

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

WHEREAS, the Municipality is an agency duly licensed to provide such services and the County desires to retain the Municipality to provide such services.

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 services as described in Schedule "C", which is attached hereto and made a part hereof (the "Work"). The Municipality shall also comply with the terms and complete all documents set forth in Schedule "A". Schedules "A" and "B" are attached to and form a part of this Agreement. It is expressly understood and agreed by the parties hereto that all schedules to this Agreement are subject to the approval of the County.

2. For the Work performed pursuant to Paragraph 1, the Municipality shall be paid an amount not to exceed TWENTY THOUSAND DOLLARS (\$20,000), subject to appropriations and payable pursuant to an approved budget amount indicated in Schedule "B" that is attached hereto and made a part hereof, after 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"). Payment shall be made only for expenses actually incurred and paid by the Municipality, which shall be subject to downward adjustment by the County based upon actual program services rendered by the Municipality during the term of the Agreement. The foregoing obligation of the County is conditioned upon compliance by the Municipality with all the terms and conditions contained in this Agreement.

The County and the Municipality understand and acknowledge that the Municipality may, during the term of this Agreement, wish to seek a modification to the Budget. The County and the Municipality agree that the Municipality may seek a Budget modification by submitting a request either, a.) in writing, if the Budget is attached to this Agreement, or b.) through the Vendor Portal's Budget Module, if the Budget is a Repository Document. The Municipality understands, acknowledges, and agrees that no Budget modification shall take effect unless and until the Commissioner has consented to that Budget modification request; that the Commissioner shall not be required to consent to any Budget modification request; and that all decisions by the Commissioner regarding Budget modification requests are final.

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. 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.

All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating.

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. The term of this Agreement shall commence on or about January 1, 2022 and expire on or about December 31, 2022, unless terminated sooner pursuant to the provisions hereof.

Payment shall be made on a monthly basis, upon submission by the Municipality of claims or vouchers and such supporting documentation as the County may require, and approval of the same by the Commissioner of the Westchester County Department of Senior Programs and Services or her authorized designee (the "Commissioner").

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.

4. The Municipality shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances and any amendments thereto.

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."

5. 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. 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.

6. (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 ensure that any services to be provided under this Application 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.

7. 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.

8. The Municipality must attempt to provide service to low income minority older individuals in at least the same proportion as the population of low income minority older individuals bears to the population of older individuals in the area served by such Municipality.

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

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 applicable.

The Programmatic monthly reporting system for Service Delivery Information and Service Recipient Information must be submitted using our electronic based system. Until further notice, Municipality is required to mail in the PEERPLACE 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 "14" hereof.

The Municipality shall furnish the County with copies of all insurance agreements relating to the services provided by the Municipality hereunder.

10. The Municipality shall comply with the insurance requirements set forth as part of Schedule "A". In addition to, and not in limitation of, the insurance provisions of this Agreement, 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 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 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.

11. The Municipality agrees that any Program, public information materials, or other printed or published materials on the work of the Programs which is supported with County funds will give due recognition to the Westchester County Department of Senior Programs

12. The Municipality shall be solely responsible for any over expenditure of funds and the County shall not be responsible or liable for any such over expenditure.

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

14. (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 in accordance with the Budget attached hereto as 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.

15. The failure of the County to insist, in any one or more instances, upon a strict performance of any of the terms, covenants, agreements and conditions of this Agreement, shall not be considered as a waiver or relinquishment for the future of such covenant, but the same shall continue and remain in full force and effect.

16. 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 Municipality:

City of Yonkers
435 Riverdale Avenue
Yonkers, New York 10705

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

17. 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.

18. 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 County's Vendor Direct Program and agrees that if there are any change to the information contained in the authorization forms it will notify the Westchester County Finance Department directly.

19. This base 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. If there is a conflict between the terms of this base agreement and the terms of any attachment, the terms of this base agreement will prevail.

20. This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

21. This Agreement shall be governed by the laws of New York State.

[SIGNATURE PAGE FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE COUNTY OF WESTCHESTER

By: _____
Mae Carpenter, Commissioner
Dept. Senior Programs and Services

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:

Sr. Assistant County Attorney
The County of Westchester

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; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

DRAFT

Signature and Office of individual taking acknowledgement

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)

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"

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

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

CITY OF NEW ROCHELLE a municipal corporation organized under the laws of the State of New York, having an office and principal place of at 515 North Avenue, New Rochelle, New York 10801 (hereinafter referred to as the "Municipality")

WITNESSETH:

WHEREAS, the County desires to provide Livable Community Regional Host Services to elderly residents of the County (hereinafter the "Program"); and

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

WHEREAS the Municipality is an agency duly licensed to provide such services and the County desires to retain the Municipality to provide such services.

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 services as described in Schedule "C", which is attached hereto and made a part hereof (the "Work"). The Municipality shall also comply with the terms and complete all documents set forth in Schedule "A". Schedules "A" and "B" are attached to and form a part of this Agreement. It is expressly understood and agreed by the parties hereto that all schedules to this Agreement are subject to the approval of the County.

2. For the Work performed pursuant to Paragraph 1, the Municipality shall be paid an amount not to exceed TEN THOUSAND DOLLARS (\$10,000) subject to appropriations and payable pursuant to an approved budget amount indicated in Schedule "B" that is attached hereto, and made a part hereof, after 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"). Payment shall be made only for expenses actually incurred and paid by the Municipality, which shall be subject to downward adjustment by the County based upon actual program services rendered by the Municipality during the term of the Agreement. The foregoing obligation of the County is conditioned upon compliance by the Municipality with all the terms and conditions contained in this Agreement.

The County and the Municipality understand and acknowledge that the Municipality may, during the term of this Agreement, wish to seek a modification to the Budget. The County and the Municipality agree that the Municipality may seek a Budget modification by submitting a request either, a.) in writing, if the Budget is attached to this Agreement, or b.) through the Vendor Portal's Budget Module, if the Budget is a Repository Document. The Municipality understands, acknowledges, and agrees that no Budget modification shall take effect unless and until the Commissioner has consented to that Budget modification request; that the Commissioner shall not be required to consent to any Budget modification request; and that all decisions by the Commissioner regarding Budget modification requests are final.

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. 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.

All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating.

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. The term of this Agreement shall commence on or about January 1, 2022 and expire on or about December 31, 2022, unless terminated sooner pursuant to the provisions hereof.

Payment shall be made on a monthly basis, upon submission by the Municipality of claims or vouchers and such supporting documentation as the County may require, and approval of the same by the Commissioner of the Westchester County Department of Senior Programs and Services or her authorized designee (the "Commissioner").

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.

4. The Municipality shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances and any amendments thereto.

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."

5. 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. 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.

6. (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 ensure that any services to be provided under this Application 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.

7. 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.

8. The Municipality must attempt to provide service to low income minority older individuals in at least the same proportion as the population of low income minority older individuals bears to the population of older individuals in the area served by such Municipality.

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

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 applicable.

The Programmatic monthly reporting system for Service Delivery Information and Service Recipient Information must be submitted using our electronic based system. Until further notice, the Municipality is required to mail in the PEERPLACE 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 "14" hereof.

The Municipality shall furnish the County with copies of all insurance agreements relating to the services provided by the Municipality hereunder.

10. The Municipality shall comply with the insurance requirements set forth as part of Schedule "A". In addition to, and not in limitation of, the insurance provisions of this Agreement, 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 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 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.

11. The Municipality agrees that any Program, public information materials, or other printed or published materials on the work of the Programs which is supported with County funds will give due recognition to the Westchester County Department of Senior Programs

12. The Municipality shall be solely responsible for any over expenditure of funds and the County shall not be responsible or liable for any such over expenditure.

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

14. (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 in accordance with the Budget set forth 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.

15. The failure of the County to insist, in any one or more instances, upon a strict performance of any of the terms, covenants, agreements and conditions of this Agreement, shall not be considered as a waiver or relinquishment for the future of such covenant, but the same shall continue and remain in full force and effect.

16. 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 Municipality:

City of New Rochelle
515 North Avenue
New Rochelle, NY 10801

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

17. 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.

18. 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 County's Vendor Direct Program and agrees that if there are any change to the information contained in the authorization forms it will notify the Westchester County Finance Department directly.

19. This base 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. If there is a conflict between the terms of this base agreement and the terms of any attachment, the terms of this base agreement will prevail.

20. This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

21. This Agreement shall be governed by the laws of New York State.

[SIGNATURE PAGE FOLLOWING]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE COUNTY OF WESTCHESTER

By: _____
Mae Carpenter, Commissioner
Dept. Senior Programs and Services

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:

Sr. Assistant County Attorney
The County of Westchester

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.

INSERT SCHEDULES "B" & "C"

DRAFT