

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

Your Committee is in receipt of a communication from the Chairman of the Board of Legislators in cooperation with the County Executive recommending the adoption of an Act which, if approved by your Honorable Board, would authorize the County of Westchester (the "County") to enter into an inter-municipal agreement ("IMA") with the City of New Rochelle (the "City"), acting by and through its Police Department (the "PD"), pursuant to which the City will provide its National Night Out (the "Program") within the period from January 1, 2021 through December 31, 2021. The County will pay the City a total amount not to exceed Two Thousand One Hundred Thirty-Two (\$2,132.00) Dollars, payable in full upon execution of the agreement, in accordance with an approved budget.

Pursuant to the IMA, the PD will provide the Program on August 3, 2021. The Program is a community-building campaign that promotes police-community partnerships and neighborhood camaraderie to make neighborhoods safer, more caring places. National Night Out enhances the relationship between neighbors and law enforcement, while creating a sense of community. Furthermore, the Program provides an opportunity to bring police and neighbors together under positive circumstances.

One component of the Program is the PD's "Open House" event. Over 1,500 members of the New Rochelle Community are expected to attend the event and participate in tours of the Police Headquarters, tours of the Long Island Sound with their Harbor Unit, a live K-9 presentation, a drone demonstration, and a Police Helicopter fly-over. There will also be children's activities, including a bouncy house, inflatable slide, dunk tank, clowns, coloring books, face painting and knockerball.

Your Committee has determined that there is a clear and overwhelming need for the Program. Accordingly, your Committee recommends authorizing the County to enter into the IMA.

The Department of Planning has advised that the proposed IMA does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. No environmental review is required. Your Committee concurs with this conclusion.

Your Committee has been advised that passage of the attached Act requires an affirmative vote of a majority of the members of your Honorable Board. Your Committee has carefully considered this proposed legislation authorizing the above-mentioned inter-municipal agreement and recommends its approval.

Dated: June 28, 2021
White Plains, New York

Catherine Borgra (A)

S/MG/6-4-21

Vedat Jabli

Ken Miller

Arthur Parker

Alfred Williams

Nancy & Ben

Margaret A. Cyo

Ruth Baker

Benjamin Boyfina

COMMITTEE ON:

David Lubin

Budget & Appropriations

Margaret Cummo (A)

Mary Jane Walsh

R. J. Starik

Benjamin Boyfina

Colin O'Rourke

Nancy & Ben

Public Safety

AN ACT authorizing the County to enter into an inter-municipal agreement with the City of New Rochelle ("City"), acting by and through its Police Department, pursuant to which the City will provide its National Night Out program within the period from January 1, 2021 through December 31, 2021 for a total amount not to exceed \$2,132

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

Section 1. The County of Westchester (the "County"), is hereby authorized to enter into an inter-municipal agreement with the City of New Rochelle (the "City"), acting by and through its Police Department (the "PD"), pursuant to which the City will provide its National Night Out program within the period from January 1, 2021 through December 31, 2021, for a total amount not to exceed Two Thousand One Hundred Thirty-Two (\$2,132.00) Dollars, payable in full upon execution of the agreement, in accordance with an approved budget.

§2. The City shall submit a written report, including statistics, to the County, of the program. Evaluations will be based on the extent to which objectives of the program were accomplished.

§3. The Chair of the Board of Legislators or his designee (the "Chair") is hereby authorized to execute and deliver all documents and take such actions as the Chair deems necessary or desirable to accomplish the purposes hereof.

§4. This Act shall take effect immediately.

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, (hereafter the “County”),

and

THE CITY OF NEW ROCHELLE, a New York municipal corporation, acting by and through its **POLICE DEPARTMENT** having an office and principal place of business at 515 North Avenue New Rochelle, NY 10801, (hereafter the “Municipality”).

FIRST: The Municipality shall provide a National Night Out program as described in Schedule “A” attached hereto and made a part hereof (the “Program”). The Program will operate on August 3, 2021.

SECOND: The term of this Agreement shall be from January 1, 2021 through December 31, 2021, unless terminated earlier pursuant to the provisions of this Agreement.

THIRD: For the services to be performed pursuant to Paragraph “FIRST,” the County will pay the Municipality a total amount not to exceed Two Thousand One Hundred Thirty-Two (\$2,132.00) Dollars for the Program. Payment shall be made upon execution of this Agreement. No extra payment shall be made by the County to the Municipality for out-of-pocket expenses or disbursements made in connection with the services rendered under this Agreement, as all costs and expenses for said services are deemed to be included in the fee set forth above.

FOURTH: The Municipality shall, at no additional charge, furnish all labor, services, materials, tools, equipment and other appliances necessary to complete the services contracted for under this Agreement. It is recognized and understood that in no event shall total payment to the Municipality exceed the not-to-exceed amount set forth above.

FIFTH: The Municipality shall report to the County on its progress toward completing the Work, as the Chairman of the Board, the County Executive or their duly authorized designee may request, and shall immediately inform the Chairman and/or County Executive in writing of any cause for delay in the performance of its obligations under this Agreement. No later than thirty (30) days after the end of the term of the Agreement, the Municipality will submit to the Chair of the Board a written performance measurement report which shall provide details about the Program, including the number of participants in each activity.

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

SIXTH: 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.

SEVENTH: (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, and Municipality shall reimburse to the County the amount of the lump-sum payment, pro-rated to the time remaining in the term of this Agreement. 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 Chairman, 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 Chairman 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.

EIGHTH: INSURANCE AND INDEMNIFICATION: All personnel and vehicles engaged in the Work shall at all times remain and be deemed the employees and property of the Municipality. The Municipality shall provide proof of insurance as set forth in the insurance requirements of Schedule "B" of this Agreement. Notwithstanding the foregoing, if the Municipality is self-insured for all or a portion of the insurance required by Schedule "B, it may provide proof of

such self-insurance in a form acceptable to the County's Director of Risk Management. However, to the extent the Municipality is self-insured and carries excess liability, the County shall be named as an additional insured to that policy.

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

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

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

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

NINTH: The Municipality expressly agrees that 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.

TENTH: The Municipality shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including, but not limited to, those applicable to the Municipality as an employer of labor. The Municipality shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the Work hereunder.

ELEVENTH: 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. Attached hereto and forming a part hereof as Schedule "C" is a Questionnaire entitled Business Enterprises Owned and Controlled by Persons of Color or Women. The Municipality agrees to complete the questionnaire attached hereto as Schedule "C," as part of this Agreement.

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

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

The Municipality agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Municipality agrees to enable the County's continued use of the deliverable, or to modify or replace

it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

THIRTEENTH: 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. All subcontracts for the Work shall expressly reference the subcontractor's duty to comply with the material terms and conditions of this Agreement and shall attach a copy of the County's contract with the Municipality. The Municipality shall obtain a written acknowledgement from the owner and/or chief executive of subcontractor or his/her duly authorized representative that the subcontractor has received a copy of the County's contract, read it and is familiar with the material terms and conditions thereof. The Municipality shall include provisions in its subcontracts designed to ensure that the Municipality and/or its auditor has the right to examine all relevant books, records, documents or electronic data of the subcontractor necessary to review the subcontractor's compliance with the material terms and conditions of this Agreement. For each and every year for which this Agreement continues, the Municipality shall submit to the Commissioner a letter signed by the owner and/or chief executive officer of the Municipality or his/her duly authorized representative certifying that each and every approved subcontractor is in compliance with the material terms and conditions of the Agreement.

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

FIFTEENTH: Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

SIXTEENTH: 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 delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), as 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. Notices shall be sent to the following:

To the County: Hon. Benjamin Boykin II, Chairman
Westchester County Board of Legislators
Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, New York 10601

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

To the Municipality: City of New Rochelle Police Department
475 North Avenue
New Rochelle, NY 10801

with a copy to: Corporation Counsel
City of New Rochelle
515 North Avenue
New Rochelle, NY 10801

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

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

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

NINETEENTH: The Municipality shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The Municipality shall also use all reasonable means to avoid any appearance of impropriety.

Attached hereto and forming a part hereof as Schedule "D" is a questionnaire entitled "Required Disclosure of Relationships to County." The Municipality agrees to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the term of this Agreement, Municipality agrees to notify County in writing within ten (10) business days of such event. The Municipality shall also have each approved subcontractor complete this questionnaire and shall advise the subcontractor of the duty to report any changes to the information contained therein to the Municipality within ten (10) business days of such event and such information shall be forwarded by the Municipality to the County.

TWENTIETH: Pursuant to Act No. 56-1999, no County procuring officer may award or recommend for award any contract not subject to competitive bidding to a party that does not execute a certification in substantially the form attached hereto and forming a part hereof as Schedule "E." Therefore, the Municipality agrees, as part of this Agreement, to complete the form attached hereto as Schedule "E."

TWENTY-FIRST: This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State

of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Westchester.

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

TWENTY-SECOND: All payments made by the County to the Municipality will be made by electronic funds transfer 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 changes to the information contained in the authorization forms it will notify the Westchester County Finance Department directly.

TWENTY-THIRD: The County believes it is a laudable goal to provide business opportunities to veterans who were disabled while serving our country, and wants to encourage the participation in County contracts of certified business enterprises owned and controlled by service-disabled veterans. As part of the County's program to encourage the participation of such business enterprises in County contracts. Therefore, the Contractor agrees, as part of this Agreement, to complete the form attached hereto as Schedule "F".

TWENTY-FOURTH: This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

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

THE COUNTY OF WESTCHESTER

By: _____
Benjamin Boykin II
Chairman, Board of Legislators

THE MUNICIPALITY

By: _____
Name:
Title:

Authorized by the Westchester County Board of Legislators by Act No. _____ duly adopted on the
day of _____, 20____.

Approved as to form and manner of execution

Sr. Assistant County Attorney
County of Westchester

ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

RPL § 309-a; NY CPLR § 4538

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 in good standing under the

(Law under which organized, e.g., the New York Village Law, Village 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,
(Title of such person),

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

(Village Board, Village Board, Municipality Council)

thereunto duly authorized, and that such authority is in full force and effect at the date hereof.

(Signature)

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

On this _____ day of _____, 20____, before me personally came _____
_____ whose signature appears above, to me known, and know to be the
_____ of _____,
(title)

the municipal corporation described in and which executed the above certificate, who being by
me duly sworn did depose and say that he, the said _____
resides at _____, and that he is
the _____ of said municipal corporation.
(title)

Notary Public County

SCHEDULE "A"
SCOPE OF SERVICES:

The Municipality shall provide its annual National Night Out "Open House" event for over 1,500 members of the New Rochelle Community are expected to attend the event and participate in tours of the Police Headquarters, tours of the Long Island Sound with their Harbor Unit, witnessed a live K-9 presentation, a Police Helicopter fly over, a drone demonstration and, with over 50 Community Service Agencies present, will provide valuable information and giveaways.

National Night Out is an annual community-building campaign that promotes police-community partnerships and neighborhood camaraderie to make our neighborhoods a safe and more caring place to live. National Night Out enhances the relationship between New Rochelle youths and all residents and the New Rochelle Police Department while bringing back a true sense of community. Furthermore, it provides a great opportunity to bring police and community together in a very positive setting. There will also be a number of activities for the children, including a bouncy house, inflatable slide, dunk tank, clowns, coloring books, face painting and knocker ball.

SCHEDULE "B"
STANDARD INSURANCE PROVISIONS

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. f

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"
QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES
OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.

- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**

- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (*please check off below all that apply*)

_____ Black persons having origins in any of the Black African racial groups

_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

_____ Native American or Alaskan native persons having origins in any of the original peoples of North America

_____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

Name and Title of person completing questionnaire: _____

Signature: _____

Notary Public

Date

SCHEDULE "D"
REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

A potential County contractor must complete this form as part of the proposed County contract.

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

3.) Do any County officers or employees have an **interest¹** in the Contractor or in any approved subcontractor that will be used for this contract?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

Name: _____

Title: _____

Date: _____

¹ "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

SCHEDULE "E"
CERTIFICATION REGARDING BUSINESS DEALINGS
WITH NORTHERN IRELAND

A. The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.

B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.

D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Contractor is in violation of paragraph "A," the County shall review such information and give the Contractor opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Contractor in default, and/or terminate this Agreement. In the event of any such

termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the County the difference between the contract price for the uncompleted portion of this Agreement and the cost to the County of completing performance of this Agreement either by itself or by engaging another Contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Contractor plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

Agreed:

Name of Contractor: _____

By (Authorized Representative): _____

Title: _____ Date: _____

