

LOCAL LAW INTRO NO. 2024 - _____

A LOCAL LAW authorizing the County of Westchester to enter into a lease agreement with the Croton Falls Fire District for the County to lease a portion of District-owned real property located at 40 Sun Valley Drive, Croton Falls, New York in the Town of North Salem for a period of twenty (20) years with the County having the option to renew the lease for an additional ten (10) year renewal period.

NOW, THEREFORE, 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 a lease agreement (the “Lease Agreement”) with the Croton Falls Fire District to lease approximately 6,430 ± sq. ft. (0.15 ± acres) of the District-owned real property (the “County Leased Premises”), located at 40 Sun Valley Drive, Croton Falls, New York in the Town of North Salem, identified on the official tax maps for the Town of North Salem as Section 1, Block 11734, Lot 68 (the “Parcel”) for the County to construct, install, maintain and operate a County communication facility, including a 12’ wide gravel access road to the facility, for public safety and/or governmental radio communication purposes.

§2. The Lease Agreement shall be for a term commencing upon execution and continuing for a period of twenty (20) years unless sooner terminated as provided for in the Lease Agreement, with the County having the option to renew the Lease Agreement upon the same terms and conditions for an additional ten (10) year renewal period.

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

§4. This Local Law shall take effect immediately.

Lease Agreement

This Lease Agreement ("Lease" or "Agreement") made this ____ day of _____, 2024 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, NY 10601 (hereinafter referred to as the "County"),

and

THE CROTON FALLS FIRE DISTRICT, a political subdivision of the State of New York and a district existing pursuant to the laws of the State of New York, having an office and place of business at 301 Titicus Road, North Salem, New York 10560 (hereinafter referred to as the "District").

The "County" and the "District" may be referred to herein collectively as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, the District is the title owner of certain real property located at 40 Sun Valley Drive, Croton Falls, New York in the Town of North Salem, identified on the Official Tax Maps for the Town of North Salem as Section 1, Block 11734, Lot 68 (the "Parcel"); and

WHEREAS, pursuant to a lease, dated December 6, 1999, as amended, (the "District/Crown Lease") the District leases approximately 5,000 square feet of the Parcel ("Crown Leased Premises") to Crown Atlantic Company, LLC ("Crown") for the construction and maintenance of a communication facility consisting of a free standing antenna support structure (the "Crown Tower") and related equipment for wireless communication purposes (collectively, the "Crown Communication Facility") pursuant to a certain lease dated December 6, 1999, as amended by a certain first amendment to the lease dated July 14, 2020 (collectively referred to as the "Crown Lease."); and

WHEREAS, the County seeks to improve public safety radio coverage in the area surrounding the Parcel in order to support public safety and governmental communication systems, including for police, fire, EMS, County transportation systems; and

WHEREAS, the County wishes to lease from the District a certain portion of the Parcel as defined herein to construct, install, maintain and operate thereon public safety radio communication equipment, including, but not limited to, a free standing antenna support structure (the "County Tower"), an equipment shelter (the "County Shelter"), a generator (the "County Generator"), a load bank (the "County Load Bank"), radio antennas and related equipment within a fenced enclosed County compound (collectively, the "County Communication Facility") as well as a County driveway leading to the County Communication Facility; and

WHEREAS, the Parties acknowledge that the County's radio communication equipment on the Parcel will be mutually beneficial to the Parties in that it will provide strengthened radio communication for emergency responders.

NOW, THEREFORE, for the promises made herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, the Parties agree as follows:

1. **Leased Premises.** The District leases to the County, for the Term and subject to the provisions set forth herein, approximately 6,430± sq ft. (0.15 ± acres) square feet of the Parcel more particularly described in the metes and bounds description attached hereto and made a part hereof as Schedule "A" (the "County Leased Premises"), for the construction, installation, operation, maintenance, use, repair and management on the County Leased Premises of public safety communication equipment, including a County Tower, County Shelter, County Generator, County Load Bank, radio antennas and related equipment within the County Communication Facility and the installation on the County Leased Premises of a 12' wide gravel access road to the County Communication Facility (the "County Driveway") (collectively, the "Equipment and Improvements"), all as generally shown in the drawings and map survey attached hereto and made a part hereof as Schedule "B".

The County's rights under this Agreement shall also include the following:

(i) the right to use related District provided infrastructure, if any, (the "Infrastructure") including but not limited to utility lines, roadways, curb cuts, lawns and appurtenances presently existing or hereafter erected or placed thereon in accordance with the terms and provisions of this Agreement,

(ii) the right to install, and, thereafter, maintain and use, wires, cables, conduit, pipes and other connections (a) from the public right-of-way to the Parcel, (b) over, under or along the Parcel to the County Leased Premises and (c) on the County Leased Premises to the Equipment and Improvements on the County Leased Premises ("Utilities"),

(iii) the nonexclusive right to use the surface area, currently graveled, located on the Parcel contiguous to the County Driveway, seven days per week, twenty-four hours per day, on foot or motor vehicles, including trucks and trailers to access the County Leased Premises ("Gravel Access"),

(iv) the nonexclusive right of Access to the Parcel as set forth in Paragraph 10 of this Agreement and shown in Schedule "B", and

(v) the nonexclusive right to use the area beyond the County Leased Premises within the "Limits of Disturbance" line as marked in Schedule "B" for the purpose of (a) constructing and installing the Equipment and Improvements, (b) installing the Storm Water Facilities, and (c) performing maintenance and repair work as necessary from time to time on the Equipment and Improvements ("Construction/Maintenance Area"). The maintenance of the Storm Water Facilities will be through the execution of the Storm Water Easement as set forth in Paragraph 2 below.

The County Leased Premises, Infrastructure, Utilities, Gravel Access, Access, and Construction/Maintenance Area are hereinafter referred to collectively as the "Site".

2. **Storm Water Facilities.** The District grants to the County the right to install the erosion, sediment control, grading and storm water work and facilities (collectively, the "Storm Water Facilities") as depicted in Schedule "B". Upon completion of the Storm Water Facilities, the Parties agree to execute the Storm Water Easement attached hereto and made a part hereof as Schedule "C," (the "Storm Water Easement"), and the County will record the executed Storm Water Easement with the Westchester County Clerk's Office. The County shall have no obligation to install or construct any other erosion, sediment control, grading and storm water work and facilities on the Parcel or on any other parcel. The County does not guarantee the performance or effectiveness of the Storm Water Facilities.

3. **Crown Consent.** The District and the County acknowledge that they have entered into a Conditional Consent and Covenant Agreement with Crown, dated November 30, 2023, (the "Consent Agreement"), in which Crown consented to the County's construction, installation, maintenance, repair, use and operation of the County Communication Facility, a copy of which is attached hereto as Schedule "D" and incorporated herein by reference. In the event of a conflict between this Agreement and the Crown Lease, the District and the County shall act in good faith and undertake to promptly obtain appropriate permission for the County to perform under this Agreement.

4. **Relocation of District Equipment.** The District may relocate its antennas from the Crown Tower to the County Tower subject to the following: (A) the District and County entering into a license agreement mutually agreed upon between the Parties for the District to become a licensee on the County Tower, and (B) the District modifying or obtaining Federal Communication Commission (FCC) license(s) as needed for the operation of its antennas and equipment on the County Tower.

5. **Lease Term.** This Lease shall commence as of the date first set forth at the top of this Lease (the "Commencement Date") and continue for a term of twenty (20) years thereafter and expire on the twentieth anniversary from the Commencement Date (the "Term") unless sooner terminated as provided for herein. The County shall have the option to renew this Lease upon the same terms and conditions as set forth herein for an additional ten (10) year renewal period provided, at the time of exercising the renewal, it is in compliance with the terms of this Lease and provided it notifies the District of its intention to exercise its option to renew the Lease at least thirty (30) days prior to the expiration of the twenty (20) year term (the twenty (20) year term and ten (10) year renewal are referred to collectively as the "Term.").

6. **Rent.** The County shall have no obligation to pay the District rent for the Term of this Lease, but shall comply with the terms and conditions of this Lease.

7. **Equipment and Improvements.**

A. The County, at its sole cost and expense, shall undertake and complete the following on the Site:

- (i) The County shall be solely responsible for construction, installation, use, repair maintenance, and management of the Equipment and Improvements installed on the County Leased Premises for the Term of the Agreement.
- (ii) The County shall be solely responsible for the maintenance and fueling of the County Generator installed on the County Leased Premises for the Term of the Agreement.
- (iii) The County shall be responsible for securing the rights necessary for the Utilities and to use the poles and install the necessary electricity, fiber and connections from the street or public right of way to the poles on the Site and/or to the County Leased Premises for the Term of the Agreement.
- (iv) The County shall be solely responsible for the installation of the Storm Water Facilities as set forth in this Agreement and for the repair and maintenance of the Storm, Water Facilities as set forth in Storm Water Easement Agreement.

B. The County shall be permitted to install, maintain, and operate a County Shelter in which it will store climate controlled radio equipment cabinets with enclosed equipment and new AC electrical circuits needed to power the climate controlled radio cabinets and enclosed equipment.

C. The District shall provide the County with possession of the County Leased Premises and the use of the non-exclusiv areas of the Parcel as set forth in Paragrpah 1 above upon execution of this Lease.

5. **Use.** The County shall use and occupy the Site for public safety and/or governmental radio communication purposes only. The right to use and occupy the Site shall extend to the County, its officers, elected officials, employees, agents, contractors, subcontractors, subtenants, licensees, and invitees.

6. **Installation.** The County has submitted and the District has approved the design and construction plans for the Equipment and Improvements., which are attached in Schedule "B". All County contractors shall be properly qualified to perform their respective trades. All work on the County Tower or antennas shall be performed by a communications rigging contractor and/or personnel of the County trained in the proper installation of radio communications equipment. All contractors and personnel retained to perform Equipment and Improvements pursuant to this

Agreement shall conduct themselves in accordance with all applicable State and local laws when on the Site. The County shall require that all contractors maintain in full force and effect all applicable permits, licenses and approvals, if any, for the proper installation and construction of the Equipment and Improvements. The District reserves the right to eject from the Site any contractor or personnel who does not act in accordance with State or local law.

7. **Removal of Obstructions.** The County has the right to remove obstructions, including, but not limited to trees and vegetation, which may encroach upon, interfere with or present a hazard to the County's Access and use of the Site. The County shall be responsible for disposing of any materials related to the removal of obstructions.

8. **Area Maintenance.** The County, at its sole cost and expense, shall keep the County Leased Premises in clean and good order for the duration of this Agreement, reasonable wear and tear and damage to trees and shrubbery excepted. The County shall repair and maintain the Storm Water Facilities according the terms set forth in the Storm Water Easement.

9. **Repair and Maintenance of Equipment and Improvements.** The County, at its sole cost and expense, shall maintain, repair and replace the Equipment and Improvements, except for any damage to the Equipment and Improvements caused by the acts of the District, its agents, its other tenants or licensees or subtenants or sublicensees on the Parcel, or third parties under the direction and control of the District for which the District shall indemnify the County with respect thereto.

10. **Access.** The Parcel is described in Liber 6400, page 382 in the book of Deeds recorded in the Division of Land Records in Westchester County Clerk's Office, which Deed includes an easement to the Parcel, which easement was modified by an Easement Agreement by and between Joflo of North Salem, Inc. and the Croton Falls Fire District, dated July 21, 2000, filed with the Division of Land Records in the Westchester County Clerk's Office at Control No. 402360371 (the "Existing Easements"). The County's leased rights hereunder shall include the non-exclusive right to use the Existing Easements for ingress to and egress from the Parcel, seven days per week, twenty-four hours per day, on foot or motor vehicles, including trucks and trailers, together with the right to install, repair, replace and maintain utility wires, poles, cables, fiber, conduit, pipes and other connections over, under, along the Existing Easements and any right-of-way extending from the nearest public right-of-way to the Parcel and any necessary connections between antennas and other equipment in the County Leased Premises (hereinafter collectively referred to as "Access").

The District acknowledges that as the Grantee of the Existing Easements it has the right to plow, keep clear and maintain the Existing Easements. If the County is unable to access the County Leased Premises due to the fact the District has failed to plow, clear or maintain the Existing Easements, the County through its contractor or subcontractor shall have the right, but not the obligation, to plow, clear or maintain the Existing Easements in order to gain access to the County Leased Premises. In addition, the County through its contractor or subcontractor shall also have the right, but not the obligation, to plow, clear or maintain the Gravel Access referred to in Paragraph 1(iii) and the County Driveway referred to in Paragraph 1 in order to gain access to the Site.

In the event any public utility or telecom company is unable to use the described Existing Easements or other right-of-way, the District hereby agrees to use its best efforts to grant an additional right-of-way either to the County or directly to the public utility or telecom company at no cost and in a location reasonably acceptable to the District, the County and the public utility or telecom company.

The Access to the Parcel is currently via a locked gate and closed to public traffic. In order to maintain the County's right of Access, the District shall provide the County with a key or combination to the lock at the gate or the County shall be permitted to add a County lock to a multi-lock arrangement approved by the District for the gate so that the County can have free access to the Site.

Should any damage occur to the Existing Easements during the County's installation of Equipment and Improvements, the County shall repair such damage at the conclusion of its installation to the same or better condition that existed prior to the County's installation of the Equipment and Improvements.

11. **Quiet Enjoyment.** The County, upon compliance with the terms set forth herein shall peaceably and quietly have, hold and enjoy the County Leased Premises and the rights provided for in this Agreement during the Term of this Agreement without hindrance by District or anyone claiming by, through or under District, subject to the terms of this Lease.

12. **Non-Interference.** The County hereby acknowledges that the Crown occupies a portion of the Parcel and operates the Crown Communication Facility on the Parcel. From and after the Commencement Date and continuing until the District/Crown Lease terminates or expires, County agrees that it shall not use, nor shall the County permit its lessees, licensees, employees, invitees, third parties or agents to use, any portion of the the County Leased Premises or County Tower in any way which causes harmful interference (as defined in Title 47 of the Code of Federal Regulations for the particular type of radio service or equipment being interfered with) to the equipment operating on or from the Crown Communication Facility or impedes the operation of such equipment in any meaningful way ("County Harmful Interference"). Upon written notice from Crown of County Harmful Interference, Crown, the District and the County shall reasonably cooperate to resolve the County Harmful Interference. In addition, if necessary, the County agrees to take whatever steps are necessary to resolve the County Harmful Interference, including ceasing the operation of any interfering equipment (except for intermittent testing) within a reasonable period of time after receiving written notice, as may be necessary until the County Harmful Interference is resolved. Notwithstanding the foregoing, the County shall not be required to cease operation of any interfering equipment if doing so jeopardizes public safety. . All facilities and operations shall comply with all federal, state and local laws, rules and regulations pertainin to non-interference, including without limitation those of the Federal Communications Commission (FCC), as well as any FCC public guidance, written policies and decisions. The covenants made by the Parties in this section shall continue until the Lease terminates or expires.

13. **Frequencies.** The County agrees to operate its Equipment within the frequencies approved and authorized by the FCC. The County shall have the right to modify its Equipment to eliminate any County Harmful Interference referred to above.

The District agrees that should the elimination of interference to or from the County Communication Facility require modification of equipment at the Crown Communication Facility, and such modification will not materially reduce the performance of such equipment, the District will cooperate with the County, and/or take reasonable efforts to cause the owner of such equipment to cooperate with such modification at the County's sole cost and expense.

14. **Ownership of Equipment and Improvements.** All Equipment and Improvements within the County Communication Facility and the Storm Water Facilities shall remain the County's property for the Term of the Agreement. All Equipment and Improvements within the County Communication Facility shall remain the County's property following termination of this Agreement, and, upon termination of this Agreement, shall be removed from the Site in accordance with Section 15.

15. **Removal of Equipment.**

(a) Within ninety (90) business days of the expiration or termination of this Lease, the County shall, at its sole cost and expense, remove all of its Equipment and Improvements within the County Communication Facility or any replacement thereof installed at a later date.

(b) Any Equipment and Improvements within the County Communication Facility or other property not removed by the County within ninety (90) business days of expiration or termination shall be deemed to be abandoned. The District may thereafter, with no penalty to the District, remove such Equipment and Improvements by either returning it to the County or storing it in a warehouse located within Westchester. Such removal shall be at the sole cost of the County. The District shall have no affirmative obligation to remove such property.

(c) Unless otherwise indicated in writing by the County, removal of the Equipment and Improvements within the County Communication Facility shall include, but not be limited to, the County Tower, County Shelter, County Generator, County Load Bank, antennas, antenna mounts, cables, cable hangers, and cable entry ports including the fencing around the County Communication Facility.

16. **Inspection.** Authorized representatives of the District shall be entitled to inspect County Leased Premises. The County shall also permit inspection of same by any federal, state or municipal officer or employee having jurisdiction. The County, at its sole cost and expense, shall promptly remedy any and all violations of any law, rule or regulation issued as a result of such inspection or otherwise. The County shall promptly transmit copies of all citations or documentation of the violation and evidence of payment and/or remedy to the District.

17. **Modification To The Site.** The drawings in Schedule "B" generally depict the planned, initial installation of equipment, including antennas, within the County Communication Facility. The County shall have the right to modify or add new equipment or antennas within the County Communication Facility for public safety or governmental communications systems without having to modify Schedule "B" so long as any such new or modified equipment does not materially interfere with or impact the performance, operation or capabilities of any equipment or antennas presently located within the Crown Communication Facility as set forth in Paragraph 12 of this Agreement. The County shall notify the District at least thirty (30) days prior to undertaking

any modifications or additions that would materially affect equipment located outside of the County Communication Facility. The Parties further agree that they shall cooperate in good faith to ensure that any new or modified equipment or antennas to be installed are coordinated and do not interfere with any equipment or antennas already located at the Parcel. The County shall only be required to modify Schedule "B" to show additions or changes that would materially affect equipment located outside of the County Communication Facility and, if modification of Schedule "B" is required, such modification shall be provided to the District via letter.

18. **Inflammables/Hazardous Materials.** With the exception of fuel for the generator and batteries, the County shall not use or store any explosives, toxic materials or flammables, including but not limited to illuminating oils, candles, oil lamps, turpentine or benzene, on the Parcel. With exception of fuel for the generator and batteries, the County shall not use or store any hazardous materials, hazardous wastes or hazardous substances as those terms are defined by federal, state or local law, statute, rule or regulation, at the Parcel (collectively, "Hazardous Materials"). The County shall indemnify and hold the District harmless from any and all claims, damages, fines, judgments, penalties, costs, liability or losses, including reasonably attorney's fees, resulting from the release of any Hazardous Materials on the Parcel caused by the County or any person acting under the County. The District shall not use or store any Hazardous Materials on the Parcel. The District shall indemnify and hold the County harmless from any and all claims, damages, fines, judgments, penalties, costs, liability or losses, including reasonably attorney's fees, resulting from the present or release of any Hazardous Materials on the Parcel, unless caused by the County or persons acting under the County.

19. **Assignment.** The County may not assign or otherwise dispose of this Agreement or any or any right, license, duty or interest herein, without the prior written consent of the District. Any assignment without the required consent shall be void.

Notwithstanding the above, the County shall have the right to sublet space on the County Tower or in the County Shelter to any interested third parties provided such use is for only public safety and governmental communications systems, and the County requires the sublessee comply with Paragraph 12 above.

20. **Condemnation.** In the event the County Leased Premises assigned to the County hereunder or a substantial part thereof is taken by eminent domain so as to render the performance of this Agreement impossible, this Agreement shall terminate on the date on which title vests in the condemnor and neither Party shall have any liability to the other on account of such termination.

21. **Fire/Damage/Destruction.** In the event the County Leased Premises becomes unfit for use or occupancy due to damage by fire or other casualty, the County may terminate this Agreement upon thirty (30) days written notice to the District. If such damage to the County Leased Premises is not caused by the County, and same is repaired or restored to substantially the condition that existed prior to the casualty, whether by County, in its sole discretion, or the District (the District having no obligation to do so), the District will permit the County to reinstall and thereafter operate its equipment for the balance of the Term of the Agreement, subject to the terms and conditions hereof. If such damage results from any act or omission of the County, this

Agreement shall continue in full force and effect and the County, at its sole cost and expense, shall promptly repair the damage and return the damaged portion of the County Leased Premises to the condition existing at the commencement of the Term hereof.

22. **Sale of Parcel.** If at any time during the Term, the District decides to convey all or part of the Parcel of which the County Leased Premises is part, then such sale shall be under and subject to this Lease and the County's rights hereunder, including, but not limited to, the County's right to use (i) the Existing Easements to Access the Site and (ii) the Gravel Access to access the County Driveway.

23. **Termination.** In the event that there is a default by the County with respect to any of the provisions of this Agreement, the District shall give the County written notice of such default. After receipt of such notice, the County shall have thirty (30) days to cure such default, provided, however, the County shall have an extended period if the default cannot with due diligence be cured with said thirty (30) day period and the County commences to cure within such thirty (30) day period and thereafter continuously and diligently pursues the cure to completion (it being intended in connection with a default not susceptible of being cured with due diligence within such thirty (30) day period, that the County's time to cure the same shall be extended for such period as may be necessary to complete the same with due diligence). The District may not maintain any action or effect any remedies for default against the County unless and until the County has failed to cure the same within such time period.

In the event that there is a default by the District with respect to any of the provisions of this Agreement, the County shall give the District written notice of such default. After receipt of such notice, the District shall have thirty (30) days to cure such default, provided, however, the District shall have an extended period if the default cannot with due diligence be cured with said thirty (30) day period and the District commences to cure within such thirty (30) day period and thereafter continuously and diligently pursues the cure to completion (it being intended in connection with a default not susceptible of being cured with due diligence within such thirty (30) day period, that the District's time to cure the same shall be extended for such period as may be necessary to complete the same with due diligence). The County may not maintain any action or effect any remedies for default against the District unless and until the District has failed to cure the same within such time period.

The District agrees that, in addition to any other lawful remedy, the County shall be entitled to specific performance and injunctive relief in order to enforce the terms of this Agreement.

The County, upon six (6) months written notice to the District, may terminate this Agreement without cause when it deems such termination to be in its best interest, and the Parties shall have no further obligation hereunder.

24. **Insurance.** The County agrees at all times during the Agreement that it will self-insure all liability for bodily injury and death and/or property damage under the County's self-insurance program in accordance with Local Law 6-1986 and Chapter 295 of the Laws of Westchester County. Such self-insurance shall insure against all costs, damages, expenses and/or any payment of any and all claims, accidents and injuries, and all damages whatsoever caused to

any person or any property in or about the Site. Attached hereto as Schedule "E" is a written assurance from the County of its self-insurance status. Further, if the County changes from a self-insurance program to a traditional insurance program then the County shall forward certificates of General Liability coverage naming the District as an additional insured.

The County shall cause each contractor or subcontractor performing County work at the Site to procure, maintain and provide the County Director of Risk Management and the District with proof of insurance as required in the Standard Insurance Provisions as described in Schedule "F", which is attached hereto and made a part hereof, and such insurance names the "Croton Falls Fire District" as an additional insured as set forth in Schedule "F".

25. **Liens.** The County shall not permit any mechanic's or other lien to be filed against the Parcel for the Equipment and Improvements furnished by the County to the County Leased Premises in connection with the Countys' performance under this Agreement. In the event such lien is placed upon the Parcel in connection with the Equipment and Improvements to the County Leased Premises pursuant to this Agreement, the County shall remove the lien within sixty (60) days of receipt of notice of the filing.

26. **Risk of Operation.** The County represents that it has examined the Site and has determined it to be suitable for its intended use. The County accepts this Agreement and the Lease granted hereunder for the use of the Site without any representations or warranties from the District as to its suitability for any purpose, state of repair or quality or for any other matter whatsoever.

27. **Individual Liability.** No member, director, officer, elected official or employee of the District or the County shall be liable personally under or by reason of this Agreement or any of its covenants, articles, terms, or provisions, nor shall any member, officer, elected official, or employee of the District or the County be sued individually for damages or other relief on account of any breach of this Agreement by the District or the County.

28. **Independent Contractor/No Partnerships.** The District and its officers, elected officials, employees, agents, contractors, subcontractors and/or consultants 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 District covenants and agrees that neither the District nor any of its officers, elected officials, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

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

This Agreement will not be deemed as creating a partnership, joint venture or fiduciary relationship between the County and the District.

29. **Representations and Warranties.** The District represents and warrants that it is seized of good and sufficient title and interest to the Parcel and Site and has full authority to enter into and execute this Agreement and to perform all of its obligations under the Agreement. The District further represents that (a) there are no aspects of title that might interfere with or be adverse to the County's interest in and intended use of the Site, (b) there are no pending or other liens or encumbrances against the Site or the District's title thereto, (c) there are no contracts, commitments, leases, or licenses outstanding relating to the Parcel to which the full enjoyment and exercise of any rights granted to the County in this Agreement might be diminished, encumbered or impaired, (d) that the County's Leased Premises does not encroach upon Crown's Leased Premise, and (e) there is not now outstanding and there has not been any claims, threatened or pending relating to the Parcel or the rights herein granted which might in any way interfere with the full enjoyment and exercise of any rights granted to the County under this Agreement. The District agrees to indemnify, defend and hold harmless the County from and against any and all costs, expenses, liabilities, judgments or awards, including without limitation court costs and reasonable attorney's fees, arising out of any breach by the District of any representation, covenant or warranty specified in this Agreement.

30. **Indemnification.** In addition to and not in limitation of the insurance requirements contained in Paragraph 24 of this Agreement, the County agrees, that except for the amount, if any, of damage attributable to, caused by or resulting from the sole willful or intentional misconduct or negligent or reckless acts or omissions of the District, its officers, elected officials, employees and agents ("District Indemnitees"), the County shall indemnify and hold harmless the District Indemnitees from and against any and all liability, claims, demands, costs, judgments, fees and reasonable attorneys' fees or loss arising directly or indirectly out of the willful or intentional misconduct or negligent or reckless acts or omissions under this Agreement or at the Site of the County, its officers, elected officials, employees, agents, contractors or subcontractors and its tenants or sublessors on the County Tower.

The District agrees that, except for the amount, if any, of damage contributed to, caused by or resulting from the sole willful or intentional misconduct or negligent or reckless acts or omissions of the County, its elected officials, officers, employees or agents (the "County Indemnitees"), the District shall indemnify and hold harmless the County Indemnitees from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys' fees or loss arising directly or indirectly out of the willful or intentional misconduct or negligent or reckless acts or omissions under this Agreement or at the Site of the District, its officers, employees, agents, contractor, subcontractors or third parties under the direction and control of the District.

31. **Compliance with Law.** The County shall and shall cause its contractors and subcontractors, each at its own expense, to comply with the provisions of all applicable local, state and federal laws, rules and regulations, orders and ordinances and other legal requirements. The County shall, or shall cause its contractors and subcontractors, each at its own expense, to obtain any and all licenses and permits necessary to undertake the Equipment and Improvements. The District shall, in its capacity as fee owner, execute, deliver or file any applications and supporting materials for certificates, permits, licenses and other approvals that may be required to carry out

the Equipment and Improvements under this Lease and the County's installation of the Utilities. The District shall waive all fees that the District would otherwise be entitled to.

The District agrees to be named applicant if requested by the County and execute all documents necessary to petition for approvals necessary for the County's use under this Agreement. The District shall cooperate with the County to obtain such approvals.

32. **Electricity.** The electricity consumed by the County for its Equipment and Improvements installed at the County Leased Premises shall be an expense of the County.

33. **Governing Law.** This Agreement has been executed in the State of New York and it is intended by the Parties hereto that the laws of such State shall govern its construction and interpretation. The Parties agree that the forum for any action under this Agreement shall be in a Federal or State court located in the County of Westchester, State of New York.

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.

34. **Recordings.** The District acknowledges that the County in its discretion may record a Memorandum of this Lease with the Westchester County Clerk's Office. The District shall execute such Memorandum promptly upon the County's request.

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

To the County: Commissioner of Public Works and Transportation
Michaelian Office Building, Roo 312
148 Martine Avenue
White Plains, New York 10601

And to: Chief Information Officer
Michaelian Office Building
148 Martine Avenue, Room 312
White Plains, New York 10601-3311

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

To the District: Commissioner
Croton Falls Fire District
301 Titicus Road
North Salem, New York 10560

With a copy to: Hogan, Rossi & Liguori Law Firm.
3 Starr Ridge Road, Suite 200
Brewster, NY 10509

36. **Non-Waiver.** The failure of either Party to insist upon strict performance of any term, condition or covenant herein shall not be deemed a waiver of any rights or remedies that the Party may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants herein.

37. **Headings.** The headings herein are inserted for the convenience of the Parties only and shall not be deemed to be a part of this Agreement.

38. **Recitals.** The recitals are hereby incorporated by reference.

39. **Complete Agreement.** This Agreement represents the complete agreement between the County and the District, and excludes all prior, contemporaneous and subsequent agreements, whether written or oral. The terms of this Agreement shall not be modified except by written agreement between the Parties, executed in the same manner as this Agreement.

40. **Full Approval and Execution Required.** This Agreement shall not be enforceable until it has been approved by the Westchester County Board of Legislators, the Westchester County Board of Acquisition and Contract, the County Attorney and the District and signed by both parties.

41. **Counterparts.** 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.

42. **Subordination.**
This Lease, and all rights of the County hereunder, are and shall be subject and subordinate in all respects to all present and future mortgages of the District which may now or hereafter affect the County Leased Premises. The foregoing shall extend to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such mortgages, provided that the District gives the County timely notice of such mortgage and the name and address of the entity that holds such mortgage for purposes of notice herein. This Section shall be self-operative and no further instrument of subordination shall be

required. In confirmation of such subordination, the County shall promptly execute and deliver any instrument in a reasonable time, in recordable form if required, that the District, or the holder of any superior mortgage or any of their respective successors in interest may request to evidence such subordination, within thirty (30) days of the District's request

Notwithstanding the foregoing, upon the County's written request, upon entering into a mortgage, the District shall obtain from any existing or future mortgagee, a non-disturbance agreement in form and substance reasonably satisfactory to the County whereby the holder of such mortgage agrees that the County, upon complying with the terms of this Lease on its part to be observed and complied with, shall lawfully and quietly hold, occupy and enjoy the County Leased Premises during the Term of this Lease, without hindrance or interference from anyone claiming by or through said mortgagee and that said mortgagee shall respect the County's rights under the Lease and upon succeeding to the District's interest in the Lease, shall observe and comply with all of the District's duties under the Lease, and that the County's Lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE COUNTY OF WESTCHESTER

By _____
Commissioner
Department of Public Works and Transportation

THE CROTON FALLS FIRE DISTRICT

By _____
Name:
Title:

Approved on the _____ day of _____, 2024 by the County Board of Legislators by
Local Law Intro No. _____

Approved on the _____ day of _____, 2024 by the County Board of Acquisition and
Contract.

Approved:

Associate County Attorney
County of Westchester
s/n/DOIT/Sun Valley/Lease agreement.docx

DISTRICT'S ACKNOWLEDGEMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF WESTCHESTER)

On this _____ day of _____, 20____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/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.

NOTARY PUBLIC

(CFFD)

(Officer other than officer signing contract)

(Title)

(Name of Political Subdivision)

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

(Person executing agreement)

(Title of such person).

(District Board, Village Board, City Council)

(Signature)

COUNTY OF WESTCHESTER)

NOTARY PUBLIC

COUNTY'S ACKNOWLEDGEMENT

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

On the _____ day of _____ in the year 2024 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

Schedule "A"
Metes and Bounds Description of the County Leased Premises

DRAFT

Schedule “B”

Drawings

DRAFT

Schedule “C”

Storm Water Easement Agreement

DRAFT

Schedule “D”

Conditional Consent and Covenant Agreement

DRAFT

**Schedule “E”
Self Insurance Letter**

DRAFT

Schedule "F"

STANDARD INSURANCE PROVISIONS

(Applicable to County contractors and subcontractors)

1. Prior to commencing work and through out the term of performance of the work, the County shall require in writing that its contractor(s) and subcontractor(s) 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, and shall provide evidence of such insurance to the County of Westchester (the "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 (the "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 Contractor 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 Contractor 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 of Westchester for approval by the Director. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Lease agreement, at the election of the District, may be declared suspended, discontinued or terminated.

Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Lease Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor 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 Contractor's negligent acts or omissions under the Lease 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 Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Contractor 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 Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

2. The Contractor shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Lease 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 Worker's 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.l) per occurrence and a \$2,000,000.00 aggregate limit naming the "County of Westchester" and the "Croton Falls Fire District" 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.
- (iii) Products and Completed Operations.

c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" and the "Croton Falls Fire District" 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 \$1,000,000.00 for bodily injury and a minimum limit of \$100,000.00 per occurrence for property damage or a combined single limit of \$1,000,000.00 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" and the "Croton Falls Fire District" as additional insured:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

(e) If applicable, Owners Protective Liability Policy naming the "County of Westchester" and the "Croton Falls Fire District" as insured, with a minimum limit of liability per occurrence of \$3,000,000. This coverage shall be required when the work requires the use of scaffolding or as determined by the Director of Risk Management.

(f) If applicable, Crane, Rigging, & Crane Operator (Rigger Liability) Insurance with a minimum limit of liability per occurrence of \$5,000,000 for bodily injury and a minimum limit of \$500,000 per occurrence for property damage or a combined single limit of \$5,000,000 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" and the "Croton Falls First District" as additional insured.

3. All policies of the Contractor 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 Contractor.