

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

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Your Committee is in receipt of a communication from the County Executive recommending the adoption of a Local Law that would authorize the County of Westchester (“County”) to amend an intermunicipal agreement (“IMA”) with the City of Mount Vernon (“City”) in order to transfer to the County responsibility for the design and construction of the improvements to the property known as Memorial Field comprised of approximately 12 acres and located on Sandford Boulevard (the “Property”).

On January 5, 2009, your Honorable Board adopted Local Law No. 2-2009 authorizing the County to enter into the IMA with the City in order to lease the Property from the City for a term of fifteen (15) years. Your Honorable Board also adopted Bond Act No. 4-2009 authorizing the issuance of \$1,300,000 in County bonds to finance the design of the improvements to the Property. Subsequently, your Honorable Board adopted Bond Act No. 50-2010 authorizing the issuance of \$9,700,000 in County bonds to finance design and construction of these improvements.

The parties executed the IMA, and pursuant to the terms thereof the City became responsible for undertaking the design and construction of improvements to the Property, and the County was required to reimburse the cost of the design and construction of those improvements up to an amount not to exceed \$9,700,000. The IMA provided that the City could not deviate from the County-approved plans without the County’s consent. Pursuant to the IMA the improvements included, but were not limited to: demolition of existing structures, stands and courts; construction of an illuminated synthetic turf football/soccer field; a natural turf

illuminated soccer field; grandstands for 4,000 people; all-weather track; illuminated basketball court; new buildings to include a ticket booth, concession stand, bathrooms, press box with restroom and elevator, service building and locker rooms; replacement of concrete sidewalk; installation of chain link fencing; and associated infrastructure, site-work and landscaping (the "Project"). The IMA specifically provided that following construction, the City would be responsible for the operation, maintenance, scheduling and security of the Project at its own expense. In addition, the IMA required that the Project would be available to all Westchester County residents.

In consideration of the County's contribution toward the Project, the IMA required the City to accept "as is" the transfer of ownership of the following County roads and any related right-of-way totaling approximately 2.32 miles (collectively, the "Transferred Roads"). The Transferred Roads are: Midland Ave. from Eastchester/Mount Vernon line to Yonkers line; Fulton Ave. from Columbus Ave. to Fulton Ave. Bridge; Fulton Ave. from Bridge Abutment to Bridge Abutment (only road section to be transferred; bridge structure to remain under County jurisdiction); East Lincoln Ave. from Pelham line to Marion Ave.; East Lincoln Ave. from Marion Ave. to North Columbus Ave.; South Fifth Ave. from Sandford Blvd. to West Third St.; South Fifth Ave. from West Third Street to West First Street; South Fifth Ave. from Bronx line to Sandford Blvd.; Kimball Pl. from Columbus Ave. to DEF Transfer Station; and Yonkers Avenue Bridge from east end of bridge to Mount Vernon/Yonkers line (only road section will be transferred; bridge structure will remain under County jurisdiction). The City was also required to accept certain other County roads and any related right-of-way totaling approximately 1.95 miles following their rehabilitation by the County to improve them to a pavement condition rating of 80 (collectively, the "Improved Roads"). The Improved Roads are: Sandford Blvd. from

Hutchinson Blvd. to South Fulton Ave.; Sanford Blvd. from South Fulton Ave. to Bronx line; Broad St. Viaduct from Yonkers line to Locust St. (only road section will be transferred; bridge structure will remain under County jurisdiction); and Columbus Ave. from Sanford Blvd. to South Fulton Ave. The City immediately assumed full responsibility and all costs for the repair, maintenance and operation of the Improved Roads, including, without limitation, snow and ice removal and all policing functions. According to the Department of Public Works and Transportation, the County transferred ownership of the Improved Roads to the City in 2009.

The County subsequently reimbursed the City a total of \$3,400,000, consisting of \$1,300,000 for design and \$2,100,000 for 25% of construction. However, the City violated the IMA by not constructing the Project, allowing unauthorized tennis courts to be constructed on the Property, and issuing a license to Kela Tennis to operate a tennis concession. The City also permitted approximately 18,000 tons of unknown dirt and debris to be dumped on the Property, resulting in a May 2017 New York State Department of Environmental Conservation (“NYSDEC”) Consent Order requiring the City to perform testing and remediation of the Property.

As your Honorable Board is aware, pursuant to Act No. 2018-117 approved on July 16, 2018, the County Attorney was authorized to initiate legal action against the City, Richard Thomas, individually and as mayor of the City, Deborah Reynolds, individually and as Comptroller of the City, and any other responsible party in connection with the Project. The County and the City subsequently negotiated a proposed IMA amendment to resolve the outstanding issues and complete the Project. On September 12, 2018, the City Council passed a resolution to transfer complete control over construction of the Project to the County.

Accordingly, authority of your Honorable Board is hereby requested to amend the IMA in the form attached to the proposed Local Law. The amendment will not require the County to incur any expense beyond the \$9,700,000 previously authorized by your Honorable Board. No County obligations will arise under the amendment until the City has remediated the Property to the full satisfaction of the NYSDEC and the County. The City will be responsible for all liability arising prior to the date of the amendment from its license agreement with Kela Tennis, the Consent Order, and the dirt and debris that were dumped on the Property.

The amendment will transfer to the County responsibility for procuring final design services and construction of the Project. The County will also control all funds provided for the Project by the State of New York or other governmental entities other than the City. Importantly, the amendment will require the City to allow a forensic audit of its records with respect to how it spent previous County disbursements. The County will select the auditor and pay the fees associated therewith. The City will refund to the County all funds that were paid by the County but not spent.

The following clarification is made to Paragraph 4 of the First Amendment to the IMA: Paragraph 4 amends Section 2.2 of the IMA to require the City to refund any funds advanced by the County to the City that were not expended pursuant to the approved plans for Memorial Field. The City must make such refund no later than six (6) months from the commencement of public bidding by the County for the Project. Paragraph 4 provides that this six-month period may be modified by the County and the Mayor of the City, in writing, if the City needs additional time to make any refund due to the County. This means that the Mayor may make a

written request to the County to modify the six-month period proposing a reasonable time when the City will make such refund to the County. Any refunds made by the City to the County shall be used for improvements to Memorial Field as the funds were intended under the IMA.

Under the amendment, the City will defend and indemnify the County for all claims and liabilities related to hazardous material on the Property or the violation of environmental laws, rules and regulations. The amendment will require the County to defend and indemnify the City for: any claims related to the construction on the Property; use of the Property; any act or failure to act by the County or third parties under its direction and control; any accident or injury to persons or property; and any failure or refusal of the County to perform its obligations under the IMA. All other terms and conditions of the IMA will remain in full force and effect.

As your Honorable Board is aware, no action may be taken with regard to the proposed legislation until the requirements of State Environmental Quality Review Act ("SEQRA") have been met. According to the Department of Planning, the City of Mount Vernon Recreation Department classified the overall project as a Type I action and issued a Negative Declaration on April 27, 2010. The City undertook coordinated review and the County was included as an involved agency. Since the proposed amendment to the IMA will merely address existing violations and transfer oversight from the City to the County, the City's Negative Declaration remains valid and no further environmental review is required. A copy of the Department of Planning's analysis is attached. Your Committee concurs with this conclusion.

Based on the foregoing, your Committee believes that the Local Law is in the best interest of the County and therefore recommends its adoption, noting that it requires the affirmative vote of two-thirds of the members of your Honorable Board.

Dated: 11/16, 2018  
White Plains, New York

Carl Park  
DLV  
David J. Tubish  
L.B. 11/16

Carl Park  
Carl Park  
David J. Tubish  
DLV  
David J. Tubish

COMMITTEE ON

C:DLV

Parks, Planning &  
Economic Development

Budget & Appropriations

# FISCAL IMPACT STATEMENT

SUBJECT: IMA City of Mt. Vernon

NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$                   -

Total Current Year Revenue \$                   -

Source of Funds (check one):  Current Appropriations  Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: \_\_\_\_\_

Potential Related Operating Budget Expenses: Annual Amount \_\_\_\_\_

Describe: \_\_\_\_\_

Potential Related Operating Budget Revenues: Annual Amount \_\_\_\_\_

Describe: Local Law authorizing the County to amend an intermunicipal agreement with the City of Mt. Vernon in order to transfer to the County responsibility for the design and construction of the improvements to Memorial Field.

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

Current Year: \_\_\_\_\_

Next Four Years: \_\_\_\_\_

Prepared by: Debra Ogden

Title: Sr. Budget Analyst

Department: Budget


Date: October 17, 2018

Reviewed By: *[Signature]*

Budget Director

Date: 10/15/18

TO: David Vutera  
Associate County Attorney

FROM: David S. Kvinge, AICP, RLA, CFM   
Director of Environmental Planning

DATE: October 16, 2018

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR MEMORIAL FIELD  
MOUNT VERNON IMA AMENDMENT**

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Pursuant to your request, the Planning Department has reviewed the above referenced action with respect to the State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617 (SEQR).

The action involves an amendment to an intermunicipal agreement (IMA) with the City of Mount Vernon for the redevelopment of Memorial Field Stadium, a municipal park located on Sanford Boulevard in Mount Vernon, which is owned by the City of Mount Vernon. The agreement, which was executed in 2010, provided for County funding assistance, under the County's Westchester Legacy Program (capital project BLA01), towards the cost of design and construction of the redevelopment project and the City would be responsible for all aspects of undertaking the project. The City has since violated the terms of the agreement and has not completed the redevelopment of the park as agreed upon. To resolve the matter, amendments to the IMA are proposed that would transfer the responsibility for administering and managing the design and construction of the project from the City to the County. The City would be responsible for remediating the property and for liabilities associated with actions that were conducted by the City since 2010 that were in violation of the agreement.

Pursuant to SEQR, the City of Mount Vernon Recreation Department classified the overall project as a Type I action and issued a Negative Declaration for the project on April 27, 2010. The City undertook coordinated review and the County of Westchester was included as an involved agency. Since the proposed amendments to the agreement will merely address/rectify existing violations and transfer project oversight responsibilities from one government entity to another, the City's Negative Declaration remains valid and no further environmental review is required for the current action. If, during the course of remediation and final design, the project is altered and is significantly different from the scope of work described in the IMA and included in the City's review, then additional environmental review may be required to comply with SEQR prior to construction.

Please do not hesitate to contact me if you have any questions regarding this matter.



DSK/cnm

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cc: Andrew Ferris, Chief of Staff  
Paula Friedman, Assistant to the County Executive  
Kathleen O'Connor, Commissioner of Parks, Recreation and Conservation  
Hugh Greechan, Commissioner of Public Works and Transportation  
Norma Drummond, Commissioner of Planning  
Tami Altschiller, Assistant Chief Deputy County Attorney  
Anthony Zaino, Assistant Commissioner  
William Brady, Chief Planner  
Claudia Ng Maxwell, Associate Environmental Planner

**LOCAL LAW NO. \_\_\_ - 2018**

**A LOCAL LAW** authorizing the County of Westchester to amend an intermunicipal agreement with the City of Mount Vernon in order to transfer to the County responsibility for the design and construction of the improvements to the property known as Memorial Field comprised of approximately 12 acres and located on Sandford Boulevard.

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

**Section 1.** The County of Westchester (the “County”) is authorized to amend an intermunicipal agreement (“IMA”) with the City of Mount Vernon in order to transfer to the County responsibility for the design and construction of the improvements to the property known as Memorial Field comprised of approximately 12 acres and located on Sandford Boulevard.

**§2.** The amendment to the IMA shall be substantially similar to the form attached hereto as Schedule A. All other terms and conditions of the IMA shall remain in full force and effect.

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

**§4.** This Local Law shall take effect immediately.

SCHEDULE "A"

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AMENDMENT TO INTERMUNICIPAL AGREEMENT

THIS FIRST AMENDMENT made this        day of        , 2018 by and

between:

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

and

**THE CITY OF MOUNT VERNON**, a municipal corporation of the State of New York, having an office and place of business located at 1 Roosevelt Square, Mount Vernon, New York 10550 (hereinafter the "Municipality")

**W I T N E S S E T H:**

**WHEREAS**, on December 24, 2008, the County and the Municipality executed an agreement (the "Agreement") whereby the County agreed to assist in funding certain improvements to Municipality-owned property known as Memorial Field located on Sandford Boulevard in the Municipality and consisting of approximately twelve (12) acres (the "Property"); and

**WHEREAS**, the improvements to the Property were to include but not be limited to the design, permitting, construction management and construction of an illuminated synthetic turf football/soccer field; a natural turf illuminated soccer field; grandstands for 4,000 people; an all-weather track; an illuminated basketball court; and new buildings to include a ticket booth, concession stand, bathrooms, press box with restroom and elevator, service building and locker rooms; along with the replacement of concrete sidewalk and the installation of chain link fencing; as well as associated infrastructure, site-work and landscaping, and other associated equipment and appurtenances as more particularly described in plans and specifications approved by the County Commissioner of Parks, Recreation and Conservation or the Commissioner's duly authorized designee (the "Project"); and

**WHEREAS**, pursuant to the Agreement, the Municipality was responsible for completing the improvements in accordance with County-approved plans, which included an 8-lane track, but has failed to do so; and

**WHEREAS**, the Municipality has deviated materially from the plans approved by the County Commissioner of Parks, Recreation and Conservation; and

**WHEREAS**, the County advanced the Municipality \$3,400,000, consisting of \$1,300,000 for design and \$2,100,000 representing 25% of the estimated cost of construction,

and the expenditure of a portion of the \$2,100,000 allocated for construction was not pursuant to the plans approved by the County Commissioner of Parks, Recreation and Conservation; and

**WHEREAS**, an expense may only be paid from County Funds if it is incurred pursuant to the plans approved by the Commissioner of Parks, Recreation and Conservation as described in the Agreement; and

**WHEREAS**, the Municipality permitted approximately 18,000 tons of unknown dirt and debris to be dumped on the Property, resulting in a May 2017 New York State Department of Environmental Conservation (“NYSDEC”) Consent Order requiring the Municipality to perform testing and remediation; and

**WHEREAS**, on June 1, 2018, the Mount Vernon City Council (the “City Council”) unanimously passed a resolution to transfer complete control over construction of the Project to the County; and

**WHEREAS**, the County agrees with the City Council that it is in the best interest of all stakeholders involved in the Project, including the residents of Mount Vernon, that the County be allowed to assume responsibility for completing construction of the Project; and

**WHEREAS**, the County wishes to assume responsibility for completing construction of the Project;

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. Section 2.0 of the Agreement is deleted and replaced with the following:

**Section 2.0.** The County shall design and construct the Project in accordance with all applicable laws, including but not limited to, those governing public bidding. All work on the Project shall be in conformance with the plans and specifications previously submitted by the Municipality and approved by the County Commissioner of Parks, Recreation and Conservation (the “Parks Commissioner”) under this Agreement. To the extent the County wishes to materially modify the aforesaid plans and specifications previously approved by the Parks Commissioner, the County shall consult the Municipality. However, the County shall not be obliged to incur any additional expense beyond the amount set forth in Section 2.2 below. The Municipality shall, at all times, grant the County full and unfettered access to the Property and the Municipality’s surrounding roadways in order to allow the County to complete the Project pursuant to this Agreement. Further, the Municipality shall cooperate fully with the County in order to allow the County to complete the Project. Notwithstanding any of the preceding, no County obligations shall arise under this First Amendment until the Municipality has remediated the Property to the full satisfaction of NYSDEC and the County. The Municipality shall be responsible for any liability arising prior to the date of this First Amendment, including but not limited to claims arising under the Municipality’s licensing agreement with Kela Tennis, the May 2017 NYSDEC Consent Order, and the approximately 18,000 tons of dirt and debris that were dumped on the Property. This provision should not be construed to avoid the Municipality’s responsibility for any liability arising from events or conditions that the Municipality caused or created prior to

this First Amendment or that the Municipality causes or creates subsequent to this First Amendment.

2. Section 2.1 of the Agreement is deleted and replaced with the following:

**Section 2.1.** The County shall be responsible for procuring final design services and construction of the Improvements and such procurements and Improvements shall be in full compliance with all applicable federal, state and local laws, rules and regulations, including but not limited to the Americans with Disabilities Act.

3. Section 2.2 of the Agreement is amended to add the following after the second sentence.

The County shall control all funds provided by New York State and all other governmental entities other than the Municipality for the design and construction of the Project.

4. Section 2.2 of the Agreement is amended to add the following after the last sentence:

Within thirty (30) days of execution of this Agreement, the Municipality shall allow a forensic audit of its books and records with respect to the Project by an independent, New York State Certified Public Accountant. The scope of the audit will be limited to how prior County disbursements to the Municipality for the Project and Municipality disbursements for the Project were spent. The County shall select the auditor and pay the fees associated with the audit. The Municipality shall cooperate fully with the auditor by allowing for the inspection of all books and records in the possession or control of the Municipality and by providing all such other information in the possession or control of the Municipality as the auditor reasonably determines necessary to complete the audit. No later than six (6) months from the commencement of public bidding by the County under this First Amendment, the Municipality shall refund to the County all funds that the County advanced to the Municipality that the Municipality did not expend pursuant to the plans approved by the Parks Commissioner. The County and the Mayor of the Municipality may modify the schedule for the return of the aforesaid funds by agreement in writing.

5. The first sentence of Section 4.1 of the Agreement is deleted and replaced with the following:

Following construction of the Project by the County, the Municipality shall have sole authority and control over the development, operation, management, maintenance and security of the Property, including the Project, at the Municipality's sole cost and expense.

6. Article IV is amended to add the following:

**Section 4.16.** ENVIRONMENTAL INDEMNIFICATION.

- A. The Municipality represents and warrants and guarantees to the County as follows:

- (i) Except with respect to the subject of the May 2017 NYSDEC Consent Order, the Municipality has no knowledge of, and has not received any notice of, any condition at, on, under or related to, the Property (or ground or surface waters associated therewith), or migrating or threatening to migrate to or from the Property presently, or potentially posing a significant hazard to human health or the environment, such conditions being defined as “Hazardous Materials” below; and
- (ii) Except with respect to the subject of the May 2017 NYSDEC Consent Order, the Municipality has no knowledge of, and has not received any notice of, any condition at, on, under or related to the Property (or ground or surface waters associated therewith), or migrating or threatening to migrate to or from the Property presently, which may have a material effect on the value of the Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements (as defined below); and

B. Definitions. For the purposes of this Agreement and this Section 4.16, the following definitions will apply:

- (i) “Hazardous Materials” will mean any substance:
  - (a) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or
  - (b) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601(14), 42 U.S.C. § 9602, and any “hazardous waste” as defined in or listed under the United States Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901(5), 42 U.S.C. § 6921; or
  - (c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or
  - (d) the presence of which, on the Property, causes or threatens to cause a nuisance on the Property or to nearby properties, or poses or threatens to pose a hazard to the health and safety of persons on, about or nearby the Property; or
  - (e) the presence of which on nearby properties would constitute a trespass by the owner of the Property; or
  - (f) which contains, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; or

(h) which contains, without limitation, polychlorinated bipheynols (PCBs), asbestos, or urea formaldehyde foam insulation.

(ii) "Environmental Requirements" will mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

C. The Municipality hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages (as defined below), arising out of or in any way connected with the Municipality's use of the Property. Environmental Damages will mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including, without limitation, reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" at, on, under or related to the Property (or ground or surface water associated therewith) or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property, regardless of when the existence of such Hazardous Materials or the violation of Environmental Requirements arose, including, without limitation:

(i) damages for personal injury, death or injury to property or natural resources occurring on or off the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;

(ii) fees incurred for the service of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials and the violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the Property or any other related property or otherwise expended in connection with such conditions;

(iii) liability to any third person or governmental agency to indemnify such person or agency for the costs expended in connection with the items referenced in subsection (ii) herein; and

(iv) diminution in the value of the Property and damages for loss of business from restriction on the use of the Property or any part thereof.



- D. The Municipality hereby acknowledges and agrees, pursuant to the terms of this section, that it will defend and indemnify the County for any damages arising out of the approximately 18,000 tons of dirt and debris that the Municipality allowed to be deposited on the Property, resulting in the May 2017 NYSDEC Consent Order.
- E. The Municipality hereby acknowledges and agrees, pursuant to the terms of this section, that it will defend and indemnify the County for any damages arising out of the demolition of the grandstands on the Property.

All of the provisions of this Section 4.16 shall survive the expiration or other termination of this Agreement.

7. The Agreement is amended to add Article IV.A, which states as follows:

**ARTICLE IV.A**  
**RESPONSIBILITIES OF THE COUNTY**

**Section 4.A.0.** In addition to requiring the County's contractors to include the Municipality as an additional insured party in every insurance policy where the County is also included as an insured party, the County agrees that, with respect to the following provisions under this section, except for the amount or percentage, if any, of damage contributed to, caused by or resulting from the negligence or intentional or willful misconduct of the Municipality, its elected officials, officers, employees and agents:

(a) the County shall indemnify and hold harmless the Municipality, its elected officials, officers, employees and agents 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 acts or omissions under this Agreement by the County or third parties under the direction or control of the County; and

(b) the County shall provide defense for and defend any and all claims, demands or causes of action brought against the Indemnitees (defined in Section 4.A.0(c) below) directly or indirectly arising out of the acts or omissions described in Section 4.A.0.(a); and

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

- (i) Work. Any construction, repair, alteration, addition, replacement, restoration or improvement work done by or on behalf of the County in, on or about the Property or any part thereof;
- (ii) Use. The use, occupation, condition, operation, maintenance, management, supervision or development of or providing security for all or any portion of

the Property, or the affected portion thereof, by or on behalf of the County, including, without limitation, any liability with respect to the maintenance of streets or sidewalks adjoining the Property and any violations imposed by any governmental authorities in respect of any of the foregoing;

- (iii) Act or Failure to Act of Municipality. Any act performed by, or any failure to perform any act required to be performed by the County, a third party under its direction or control, or any of the County's officers, agents, contractors, servants, employees, lessees or invitees in connection with this Agreement or the Property;
- (iv) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any person, including, without limitation, employees of the County or any Indemnatee—unless arising from the negligent, intentional or willful conduct of an Indemnatee—or property occurring in, on or about the Property or any part thereof, or in, on or about any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto (for which the Municipality is a fee owner or occupant of the Property, or has or would have responsibility pursuant to this Agreement or under applicable law); or
- (v) Breach of County's Obligation. Any failure or refusal on the part of the County to perform its obligations pursuant to this Agreement; or
- (vi) County's Obligations. The County's failure, within any applicable grace period, to perform or comply with any of the covenants, terms or conditions contained in this Agreement on the County's part to be kept, observed, performed or complied with within any applicable grace period.

**Section 4.A.1.** The County shall promptly notify the Municipality in writing of any claims made or any suits instituted against the County of which it has knowledge arising from its performance hereunder or in connection with this Agreement or in connection with the Property.

8. Except as otherwise provided herein, all other terms and conditions of the Agreement shall remain in full force and effect.

9. This First Amendment shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

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

**THE COUNTY OF WESTCHESTER**

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By: \_\_\_\_\_

**CITY OF MOUNT VERNON**

By: \_\_\_\_\_

Authorized and approved by the Westchester County Board of Legislators, at a meeting duly held on the \_\_\_ day of \_\_\_\_\_, 2018 by Act No. \_\_-2018.

Authorized and approved by the Board of Acquisition and Contract of the County of Westchester, at a meeting duly held on the \_\_\_ day of \_\_\_\_\_, 2018.

Authorized and approved by the City Council of the City of Mount Vernon, at a meeting duly held on the \_\_\_ day of \_\_\_\_\_, 2018.

Approved as to form and  
Manner of execution:

\_\_\_\_\_  
Associate County Attorney  
County of Westchester

**MUNICIPALITY'S ACKNOWLEDGEMENT**

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

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally came \_\_\_\_\_,  
to me known, and known to me to be the \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, the municipal corporation described in and which executed the within  
instrument, who being by me duly sworn did depose and say that he/she, the said \_\_\_\_\_  
\_\_\_\_\_ resides at \_\_\_\_\_ and that he/she is the  
\_\_\_\_\_ of said municipal corporation.

\_\_\_\_\_  
Notary Public        County

**CERTIFICATE OF AUTHORITY**  
(Municipality)

I, \_\_\_\_\_, certify that I am the  
*(Officer other than officer signing contract)*

\_\_\_\_\_ 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, Town Law, General Municipal Law)*

named in the foregoing agreement that \_\_\_\_\_, who signed said  
*(Person executing agreement)*

agreement on behalf of the Municipality, was, at the time of execution \_\_\_\_\_ of  
*(Title of such person),*

the Municipality, that said agreement was duly signed for on behalf of said Municipality by

authority of its \_\_\_\_\_ thereunto duly authorized,  
*(Town Board, Village Board, City Council)*

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 \_\_\_\_\_, 2018, 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/she is the \_\_\_\_\_ of said municipal corporation.  
*(Title)*

\_\_\_\_\_  
Notary Public      County