

ID68520

March 19, 2019

TO: Honorable Board of Acquisition and Contract

FROM: Kathleen M. O'Connor  
Commissioner

RE: Authority to enter into (1) a temporary license with the City of New York (the "City"), acting by and through the Department of Environmental Protection (the "NYCDEP"), pursuant to which the NYCDEP, at its sole cost, will construct an access road over approximately 0.022 acres of real property located in the Village of Pleasantville designated as Section, Block and Lot No. 99.14-1-1 on the Tax Maps for the Village of Pleasantville, to access the Catskill Aqueduct and use 0.030 and 0.012 acres on said real property for construction staging purposes, for a term of one (1) year.

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Authority is hereby requested for the County of Westchester (the "County"), acting by and through its Department of Parks, Recreation and Conservation (the "Department"), to enter into a license agreement with the City, acting by and through the NYCDEP, pursuant to which the NYCDEP, at its sole cost, will 1) construct an access road over approximately 0.022 acres of County-owned real property located in the Village of Pleasantville designated as Section, Block and Lot No. 99.14-1-1 on the Tax Maps for the Village of Pleasantville (the "County Parcel") in order to gain to access the Catskill Aqueduct and 2) use approximately 0.030 and 0.012 acres on the County Parcel for construction staging purposes, for a term of one (1) year.

The Westchester County Park Commission acquired the County Parcel in 1928 for the future construction of the Saw Mill River Parkway. The Saw Mill River Parkway was never constructed on the County Parcel. Years later, the State Legislature transferred the Saw Mill River Parkway to the East Hudson Parkway Authority and then to the New York State Department of Transportation. The County parcel, however, was never taken by the State. The County Parcel is a land-locked parcel that has never been open to public use. It is a residual parcel of the County.

Moreover, the County trunk sewer and manholes run through the County Parcel and onto the City's adjacent parcel, which is identified as section, block and lot no. 99.14-1-14 on the Tax Maps for the Village of Pleasantville (the "City Parcel"). In addition, the County Parcel contains an existing easement running to the City (the "City Existing Easement").

The NYCDEP has requested the temporary license in order to expand the City Existing Easement by constructing an access road from Washington Avenue, over the City Parcel, over the County Parcel, connecting to the City Existing Easement (the "Access Road") for ingress and egress purposes to and from the Catskill Aqueduct.

The City will be responsible for the maintenance and repair of the Access Road with the exception of snow and ice removal.

Indemnification is provided for in the License Agreement.

The City will agree (a) that except for the amount, if any, of damage attributable to, caused by or resulting from the negligent acts of the County, the City shall indemnify, defend and hold harmless the County, its officers, elected officials, employees, and agents from and against any and all liability, claims, demands, costs, judgments, fees and attorneys' fees or loss arising directly or indirectly out of the License Agreement or out of the performance or failure to perform by the City or third Parties under the direction and control of the City; and (b) to provide defense for, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the License Agreement and to bear all other costs and expenses related thereto.

The City also will agree to indemnify, hold harmless and defend the County from and against any and all suits, actions, proceedings, fines, claims, arising from or alleged to arise from a violation of any all federal, state, and local laws, rules and regulations, unless and except to the extent such violation shall have been caused by the fault of the County.

The City also will agree to defend, indemnify and hold harmless the County, its officers, elected officials, employees, and agents, at City's sole expense, from and against any and all liability, claims, lawsuits, demands, costs, judgments, fees and attorneys' fees or loss arising directly or indirectly out of any claim or lawsuit by any person or entity seeking to enforce any right, covenant, condition, easement and other restriction of record, including but not limited to the right of reverter in the Indenture, dated December 14, 1928, duly recorded in the Westchester County Clerk's Office at Liber 3072, page 168 (the "1928 Indenture")

The City will grant to the County, its officers, employees, agents and contractors a license to enter upon, use and occupy the portion of the Access Road located on the City Parcel upon completion of construction for the purpose of accessing the County Parcel and/or servicing, maintaining and repairing the County Trunk Sewer and Manholes. The County will agree that, except for the amount, if any, of damage attributable to, caused by or resulting from the negligent acts of the City, the County shall indemnify, defend and hold harmless the City, its officers, elected officials, employees, and agents 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 performance or failure to perform by the County or third parties under the direction and control of the County. This license agreement is exempt from the County Procurement Policy and Procedures pursuant to Section 3(b) thereof.

The NYCEP has an April 2019 construction start date for work on the Catskill Aqueduct. The County will also be seeking the necessary legal approvals to grant a non-exclusive

permanent easement to the City for the 0.022 acres with a reciprocal easement coming back to the County to use the Access Road. The License Agreement will terminate when the parties enter into the easement agreement, which is subject to approval by the Board of Legislators and this Honorable Board.

Accordingly, approval of the attached resolution by your Honorable Board is most respectfully requested.

APPROVED BOARD OF ACQUISITION & CONTRACT - 03/21/2019 - LISA MRIJAJ, SECRETARY

## RESOLUTION

Upon a communication from the Commissioner of Parks, Recreation and Conservation, be it hereby

**RESOLVED**, that the County of Westchester (the "County") is hereby authorized to enter into a temporary license agreement with the City of New York (the "City"), acting by and through the Department of Environmental Protection (the "NYCDEP"), pursuant to which the NYCDEP, at its sole cost, will 1) construct an access road over approximately 0.022 acres of County-owned real property located in the Village of Pleasantville designated as Section, Block and Lot No. 99.14-1-1 on the Tax Maps for the Village of Pleasantville (the "County Parcel") in order to gain to access the Catskill Aqueduct and 2) use approximately 0.030 and 0.012 acres on the County Parcel for construction staging purposes, for a term of one (1) year (the "License Agreement"); and be it further

**RESOLVED**, that the License Agreement is necessary for the NYCDEP to construct an access road from Washington Avenue, over the City adjacent parcel, over the County Parcel, connecting to the City's existing easement on the County Parcel (the "Access Road"), and be it further

**RESOLVED**, that the City, at its sole cost and expense, shall be responsible for the maintenance and repair of the Access Road, with the exception of snow plowing; and be it further

**RESOLVED**, that the City will agree (a) that except for the amount, if any, of damage attributable to, caused by or resulting from the negligent acts of the County, the City shall indemnify, defend and hold harmless the County, its officers, elected officials, employees, and agents from and against any and all liability, claims, demands, costs, judgments, fees and attorneys' fees or loss arising directly or indirectly out of the License Agreement or out of the performance or failure to perform by the City or third Parties under the direction and control of the City; and (b) to provide defense for, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the License Agreement and to bear all other costs and expenses related thereto, and be it further

**RESOLVED**, that the City will agree to indemnify, hold harmless and defend the County from and against any and all suits, actions, proceedings, fines, claims, arising from or alleged to arise from a violation of any all federal, state, and local laws, rules and regulations, unless and except to the extent such violation shall have been caused by the fault of the County, and be it further

**RESOLVED**, that the City will agree to defend, indemnify and hold harmless the County, its officers, elected officials, employees, and agents, at City's sole expense, from and against any and all liability, claims, lawsuits, demands, costs, judgments, fees and attorneys' fees or loss arising directly or indirectly out of any claim or lawsuit by any person or entity seeking to enforce any right, covenant, condition, easement and other

restriction of record, including but not limited to the right of reverter in the Indenture, dated December 14, 1928, duly recorded in the Westchester County Clerk's Office at Liber 3072, page 168 (the "1928 Indenture"), and be it further

**RESOLVED**, that City will grant to the County, its officers, employees, agents and contractors a license to enter upon, use and occupy the portion of the Access Road located on the City Parcel upon completion of construction for the purpose of accessing the County Parcel and/or servicing, maintaining and repairing the County Trunk Sewer and Manholes. The County will agree that, except for the amount, if any, of damage attributable to, caused by or resulting from the negligent acts of the City, the County shall indemnify, defend and hold harmless the City, its officers, elected officials, employees, and agents 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 performance or failure to perform hereunder by the County or third parties under the direction and control of the County.

**RESOLVED**, that the County Executive or his authorized designee is hereby authorized to execute all instruments necessary to implement this Resolution.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
					N/A

Budget Funding Year(s) \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_  
 (must match resolution)

Funding Source Tax Dollars \_\_\_\_\_

State Aid \_\_\_\_\_

\$ N/A Federal Aid \_\_\_\_\_

(must match resolution) Other \_\_\_\_\_

APPROVED BOARD OF ACQUISITION & CONTRACTS 03/21/2019