

This **AGREEMENT** made this 9th day of March, 2011 by and between:

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

and

THE TOWN OF OSSINING, a municipal corporation of the State of New York, having an office and place of business located at 16 Croton Avenue, Ossining, New York 10562 (hereafter the "Town")

W I T N E S S E T H:

WHEREAS, the Town desires to obtain supplemental policing services in the aid of the existing Town police force from the County, acting through its Department of Public Safety (the "Department"); and

WHEREAS, the parties have successfully concluded negotiations and have agreed on the relevant terms and conditions pursuant to which such supplemental policing services will be provided; and

WHEREAS, Article 5-G of the General Municipal Law authorizes municipal corporations to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis; and

WHEREAS, Section 173.41 of the Laws of Westchester County requires that any contract between the County and another municipal corporation for joint police service pursuant to Article 5-G of the General Municipal Law be for a term of not more than four years and that such contract shall not replace an existing local police force but shall only be for special and specified police functions and services in the aid of such existing local police force; and

WHEREAS, the Town is not eliminating its existing local police force but will continue to staff a police force to provide for police services within areas of the Town outside of the

boundaries of the villages of Briarcliff Manor and Ossining (hereafter referred to as the “Town Outside of the Villages”) which police force shall consist of such duty personnel as the Town Board determines to be needed; and

WHEREAS, the Town has duly authorized the Town Supervisor to execute an agreement with the County whereby the Department will provide supplemental policing services for the compensation and upon the terms described below; and

WHEREAS, by Act No. 11-2011, approved by the Westchester County Board of Legislators on January 18, 2011 and by Resolution approved by the Westchester County Board of Acquisition and Contract on February 24, 2011, the County was authorized to enter into an agreement to provide such supplemental policing services to the Town for the compensation and upon the terms described below

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

FIRST: The Department shall provide, on a daily basis, supplemental policing services in the aid of the existing Town police force consisting of two (2) patrol cars, each patrol car staffed by one (1) police officer during both the day and evening tours respectively and one (1) patrol car staffed by one (1) police officer during the night tour to patrol areas of the Town Outside of the Villages. The Department shall also provide one (1) police officer to serve as the School Resource Officer of the Anne M. Dorner Middle School located in the Town and one (1) detective for matters requiring investigation that arise in the area of the Town Outside of the Villages. All services provided herein shall be in the aid of the existing Town police force which is the police agency responsible for patrolling the Town and responding to emergency calls. The above described responsibilities of the Department in the Town Outside of the Villages shall be the primary job duties of the Department Police Personnel when assigned to provide the services covered by this agreement.

SECOND: For the services rendered pursuant to Paragraph "FIRST", the Town shall pay the County a sum (the "Annual Fee") equal to the County's costs, including but not limited to salary, overtime, holiday pay, shift differential, and fringe benefits. The Town shall pay the Annual Fee in two equal installments due June 1st and November 1st. The Annual Fee for the first year of the Agreement is \$2,283,982. Attached hereto and made a part hereof as Schedule "A" is a budget upon which the Annual Fee for the first year of the Agreement is based. The parties acknowledge and agree that this Annual Fee may require adjustment based on actual staffing during the transition period.

By October 1st of years 1 through 3 of this Agreement, the County shall notify the Town of the Annual Fee for the upcoming year. The County shall also provide the Town with a budget in support of the Annual Fee for each of the remaining years of the Agreement.

Notwithstanding anything to the contrary herein, in the event that the County, in its sole discretion, determines that the Annual Fee for any year of the Agreement does not adequately reflect the cost to the County for providing the services, the County reserves the right to adjust the Annual Fee upon written notice to the Town. Any adjustment shall be supported by reasonable documentation. Such notice, if necessary, shall be provided within 90 days of the end of the year for which the Annual Fee is being adjusted. The Town shall make any additional payments based on this adjustment calculation for the previous year in two equal installments, payable on or before June 1st and November 1st of the upcoming year of this Agreement. If a credit is due, the Town may deduct the amount of such credit from the next payment due to the County. For the final year of this Agreement, any credit due to the Town, or additional charge owed by the Town, shall be made within thirty (30) days of the expiration of this Agreement by the appropriate party.

THIRD: The Town agrees that the Department shall have the nonexclusive option to use the Town police facility at 507 North State Road, Ossining, New York for police and related services at no charge to the County.

FOURTH: The term of this Agreement shall commence on January 1, 2011 and shall expire on December 31, 2014, unless sooner terminated in accordance with the provisions of this Agreement.

FIFTH: (a) Either party, upon one (1) years notice to the other party, may terminate this Agreement when the terminating party deems it to be in its best interest.

(b) In the event that there has been a material breach by either party of any of the terms of the Agreement and such breach remains uncured for thirty (30) days after service on the breaching party of written notice thereof, or in the event that such breach is not susceptible of being cured within such thirty (30) days, such cure has not been commenced within such period and diligently pursued and completed within a reasonable time thereafter, the non-breaching party, in addition to any other right or remedy it might have, may terminate this Agreement. Notice hereunder shall be effective on the date of receipt.

Upon termination or expiration of this Agreement, the County shall reimburse the Town for any advance payments made by the Town prior to such termination or expiration. The Town shall satisfy any and all arrears to the County. Any such adjustments shall be made by the responsible party within thirty days of termination or expiration of this Agreement. In the event of a dispute as to the value of the services rendered by the County prior to the date of termination, it is understood and agreed that the Commissioner of Public Safety (“Commissioner”) shall determine the value of such services rendered by the County. The Town shall accept such reasonable and good faith determination, which will be supported by documentation provided to the Town, as final.

SIXTH: In addition to, and not in limitation of the insurance requirements contained in Schedule “B” entitled “Standard Insurance Provisions”, attached hereto and made a part hereof, the Town agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Town shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands,

costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Town or third parties under the direction or control of the Town; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the acts or omissions hereunder by the Town or third parties under the direction or control of the Town and to bear all other costs and expenses related thereto.

SEVENTH: The County agrees to 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. Attached hereto as Schedule "C", is a written assurance from the County of its decision to self-insure. In addition to, and not in limitation of the above, the County agrees:

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

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the acts or omissions hereunder by the County or third parties under the direction or control of the County and to bear all other costs and expenses related thereto.

EIGHTH: All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, postage pre-paid, or sent by hand or overnight delivery, or sent by facsimile (with acknowledgement 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:

To the County:

Commissioner of Public Safety
Saw Mill River Parkway
Hawthorne, New York 10532

with a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Town:

Town Supervisor
Town of Ossining
16 Croton Avenue
Ossining, New York 10562

with a copy to:

Town Attorney
Town of Ossining
16 Croton Avenue
Ossining, New York 10562

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

In the event that 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.

TENTH: Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Under this IMA it is recognized and understood that the County encourages the Municipality to do similarly.

ELEVENTH: Any purported delegation of duties or assignment of rights under this Agreement by one party without the prior express written consent of the other is void.

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

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

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

THE COUNTY OF WESTCHESTER

By: _____
Robert P. Astorino
County Executive

TOWN OF OSSINING

By: _____
Catherine Borgia
Town Supervisor

Authorized and approved by the Westchester County Board of Legislators, at a meeting duly held on the 18th day of January, 2011 by Act No. 11-2011.

Authorized and approved by the Board of Acquisition and Contract of the County of Westchester, at a meeting duly held on the 24th day of February, 2011.

Authorized and approved by the Town Board of the Town of Ossining, at a meeting duly held on the 11th day of November, 2010.

Approved as to form and manner of execution:

Sr. Assistant County Attorney
The County of Westchester
K\ANDPS\Ossining police\Ossining IMA copy for signing ceremony.doc

MUNICIPALITY'S ACKNOWLEDGEMENT

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

On the ____ day of _____ in the year 2011,
_____, known to me, or proven on the basis of satisfactory evidence,
to be the individual who has subscribed to the within instrument, personally appeared before me
and acknowledged to me that she/he executed the same in his/her duly authorized capacity, and
that by his/her signature on the instrument, the individual, or the person on whose behalf the
individual acted, executed the instrument and acknowledged, if operating under a trade name,
that the certificate required by the New York State General Business Law, Section 130 has been
filed as required therein.

Notary Public

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 _____ 2011, before me personally came _____
_____, whose signature appears above, known to me 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

SCHEDULE "A"

PAYMENT SCHEDULE

YEAR	PAYMENT
2011	\$ 2,283,982
2012	\$ 2,428,820
2013	\$ 2,576,249
2014	\$ 2,731,095
	<hr/>
	\$10,020,146

SCHEDULE "B"

STANDARD INSURANCE PROVISIONS **(MUNICIPALITY)**

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance 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, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification. All property losses shall be made payable to and adjusted with the County.

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 any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 (9/07) 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: www.wcb.state.ny.us (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

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) Employer's Liability with minimum limit of \$100,000.00.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000.00 for bodily injury and \$100,000.00 for property damage or a combined single limit of \$1,000,000.00 (c.s.l.), naming the County of Westchester as an additional insured. This insurance shall indicate the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000.00 per occurrence 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:

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

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected 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 of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

SCHEDULE "C"

_____, 2011

Supervisor
Town of Ossining
16 Croton Avenue
Ossining, New York

Dear Sir or Madam:

This letter is being provided as evidence of the County of Westchester's financial security in support of any indemnity contained in the Agreement between the County of Westchester and the Town of Ossining.

The County of Westchester is self-funding its casualty and liability exposures in accordance with Local Law 6-1986 that amended the Laws of Westchester County to add a new Chapter 295 providing for the establishment and management of a liability and casualty reserve fund. Contribution to this dedicated reserve fund is actuarially determined and funded on an annual basis.

Current assets exceed Ten Million Dollars (\$10,000,000.00)

Sincerely,

Anthony DiBuono
Risk Management

Description:
Town of Ossining Supplemental Police Services