

## **CITY OF RYE**

### **NOTICE**

There will be a regular meeting of the City Council of the City of Rye on Wednesday, March 30, 2011, at 8:00 p.m. in the Council Room of City Hall. *The Council will convene at 7:00 p.m. and it is expected they will adjourn into Executive Session at 7:01 p.m. to discuss attorney/client matters.*

### **AMENDED AGENDA**

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Draft unapproved minutes of the regular meeting of the City Council held March 16, 2011.
5. Approval of the election of one new member to the Rye Fire Department.
6. Mayor's Management Report
  - Capital Projects Update
  - Legal Update
7. Finance Committee Review of the Rye Town Park Budget.
8. Presentation on Rye Town Park automated parking initiative.
9. Resolution endorsing the East Coast Greenway Route through the City of Rye.
10. Resolution to authorize the implementation and funding for the Central Avenue Bridge project under the Emergency Relief Program, PIN 8701.43.
11. Authorization for the City Manager to enter into a supplemental Architectural/Engineering consultant agreement for the Theodore Fremd project under the Emergency Relief Program, PIN 8701.43.
12. Public Hearing to amend Local Law Chapter 93, Section 93-6, "Filming – License Fee", to amend the fee for filming in the City.
13. Approval of an application for a partial refund of 2009 and 2010 real estate taxes for property located at 11 Hook Road and authorization to refund the overpaid tax amounts.  
Roll Call

14. Adoption of the 2011 County property tax rates.
15. Residents may be heard who have matters to discuss that do not appear on the agenda.
16. Miscellaneous communications and reports.
17. Old Business.
18. New Business.
19. Adjournment.

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The next regular meeting of the City Council will be held on Wednesday, April 13, 2011 at 8:00 p.m. A joint meeting of the City Council of the City of Rye and the Rye City School District Board of Education will be held on Saturday, April 9, 2011.

\*\* City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at [www.ryeny.gov](http://www.ryeny.gov) under "RyeTV Live".

\* No Mayor office hours this week.



# CITY COUNCIL AGENDA

NO. 4

DEPT.: City Clerk

DATE: March 30, 2011

CONTACT: Dawn F. Nodarse

**AGENDA ITEM:** Draft unapproved minutes of the Regular Meeting of the City Council held March 16, 2011, as attached.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council approve the draft minutes.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

Approve the Unapproved Minutes of the Regular Meeting of the City Council held March 16, 2011, as attached.

***DRAFT UNAPPROVED MINUTES*** of the  
Regular Meeting of the City Council of the City of  
Rye held in City Hall on March 16, 2011 at 8:00 P.M.

PRESENT:

DOUGLAS FRENCH Mayor  
RICHARD FILIPPI  
PAULA J. GAMACHE  
PETER JOVANOVIK  
SUZANNA KEITH  
CATHERINE F. PARKER  
JOSEPH A. SACK  
Councilmembers

ABSENT: None

The Council convened at 7:30 p.m. Mayor French made a motion, seconded by Councilman Jovanovich and unanimously carried, to immediately adjourn into Executive Session to discuss personnel matters. Councilwoman Gamache made a motion, seconded by Councilman Filippi and unanimously carried, to adjourn the Executive Session at 8:10 p.m. The regular meeting convened at 8:17 p.m.

1. Pledge of Allegiance

Mayor French called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor French asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3. General Announcements

Mayor French said that the thoughts of the community were with the people of Japan as a result of the recent earthquake.

4. Draft unapproved minutes of the regular meeting of the City Council held March 2, 2011

Councilwoman Gamache made a motion, seconded by Councilwoman Parker and unanimously carried, to approve the minutes of the regular meeting of the City Council held on March 2, 2011, as submitted.

5. Mayor's Management Report

- Flood Control Projects Update

City Manager Pickup provided an update on the following flood-related projects:

Sluice Gate: A meeting was held with Rye Brook to finalize the Inter-municipal Agreement (IMA), which deals with maintenance, operation and testing; communication between the municipalities, and internal communication with the system. The IMA will come before the Council for approval and once final design is approved the IMA will kick off the Rye Brook Share of the project cost, which is the final source of funding for the project. If bids can be awarded in June, work could start in July and possibly be completed over the summer.

Pending FEMA Grants: Two grants are pending from 2008 and 2009 Congressional earmarks. The State Emergency Management Office (SEMO) that manages the grant process has consolidated three years of grant funding and is supposed to be issuing grant awards. When the grant approval is received, the City has a scope of the necessary work, which can be put in the field fairly quickly. There is no local match of funds required for these grants.

Central Avenue Bridge: The City has all the preliminary design approvals and will be meeting with the utility companies to finalize agreements. The City must then get a Disadvantaged Business Enterprise Goal for participation in the funding stream and the final Notice to Proceed from the State before going out to bid on the project. The City may be able to award the bid as early as July and be mobilized on site prior to the beginning of the school year.

Theodore Fremd Avenue Wall: There are right-of-way issues and this project is six-months to a year behind the Central Avenue Bridge project before final design approval.

Nature Center Bridge: The bridge has been yellow-flagged for weight restriction. The City has identified \$15,000 in the capital budget for an epoxy injection project, but must wait for proper weather conditions to do the work.

- Legal Update

Corporation Counsel Wilson reported on the following matters:

*Delli Paoli v. City of Rye*: A Notice of Entry on the Decision and Order was received in connection with this Article 78 proceeding against the Zoning Board of Appeals. The Judge remanded the matter back to the Board for further findings consistent with its authority under the City Code.

*People v. Schwartz*: The defendant has appealed a trial decision in City Court. The matter has been fully briefed in the Appellate Term and the City has received a notice that Oral Argument is coming up.

*Beaver Swamp Brook*: A Negative Declaration has been received from Department of Environmental Conservation (DEC) staff, which means that the SEQRA process has ended. There is a concurrent Administrative Law process going on. The Administrative Law Judge (ALJ) had previously ruled that there were certain issues that need to proceed to an Adjudicatory hearing. The City is waiting for the ALJ to come down with a time frame within which certain decisions will have to be made.

6. Consideration of a request by the Milton Elementary School PTO to approve a parade to precede the Milton Elementary School Fair on Saturday, March 19, 2011 from 9:00 a.m. to 10:15 a.m.

Councilwoman Parker made a motion, seconded by Councilman Filippi and unanimously carried, to approve the following Resolution:

**RESOLVED**, that the request made by the Milton Elementary School PTO to approve a parade to precede the Milton Elementary School Fair on Saturday, March 19, 2011 from 9:00 a.m. to 10:15 a.m., is hereby approved.

7. Public Hearing to amend Local Law Chapter 53, Section 53-2, "Membership of Architectural Review Board", to reduce the number of Board members from seven to five and to permit non U.S. Citizens to serve on the Board

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried to open the public hearing.

There was no one from the public wishing to speak on the proposed local law.

It was the consensus of the Council to move forward with the proposal to allow non U.S. citizens to serve on the Board of Architectural Review and defer from reducing the number of members on the Board from seven to five at this time.

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried to close the public hearing.

Councilman Jovanovich made a motion, seconded by Councilwoman Gamache, to adopt the following local law:

**CITY OF RYE  
LOCAL LAW NO. 1 2011**

**A local law to amend Chapter, 53-2 "Membership of Architectural Review Board" of the Code of the City of Rye as follows:**

**Section 1**

**§ 53-2 Membership of Architectural Review Board.**

In accordance with Article 19 of the Rye City Charter, there is hereby created a Board of Architectural Review which shall consist of seven members who shall serve without compensation. All members of the Board shall be lawful residents of the City and shall be specially qualified by reason of training or experience in architecture, land development, community planning, real estate, landscape architecture, architectural history, engineering, law, building construction or other relevant business or profession, or by reason of civic interest and sound judgment to judge the effect of a proposed erection, reconstruction or

alteration of a structure upon the desirability, property values and development or preservation of surrounding areas and to understand and carry out the legislative findings and policy statements of the Council set forth in §53-1. There shall be no requirement that a member of the Board be a citizen of the United States. At least one member shall be a registered architect in the State of New York. The Chair and other members of the Board shall be appointed by the Mayor, with the approval of the Council, for terms of three years, with staggered terms, such terms to be subject to renewals at the discretion of the Mayor, subject to the approval of the Council, except that one new appointment made in 2006 shall be for a two-year term, and one new appointment made in 2006 shall be for a one-year term so that term, and thereafter their successors shall be appointed for terms of three years from and after the expiration of the term of their predecessors in office. In the same manner, vacancies shall be filled for the unexpired term of any member whose place has become vacant.

**Section 2**

This law will take effect immediately upon filing with the New York State.

**ROLL CALL:**

**AYES:** Mayor French, Councilmembers Filippi, Gamache, Jovanovich,  
Keith, Parker and Sack  
**NAYS:** None  
**ABSENT:** None

The local law was adopted by a 7-0 vote.

**8. Presentation on Parking Technology**

Former City Councilman Gerry Seitz, representing the company StreetSmart Technology (SST), made a presentation regarding new parking technology offered by the company and a proposal the company has made to the City. He noted that the first parking meters were developed 75 years ago for the purpose of increasing turn over in parking spaces. SST is a sensor-based technology that provides data about when a vehicle enters and leaves a parking space. It could also be utilized on streets that currently are not metered, but they would have to be striped. This data can be used to determine how spaces are being used as well as who is in violation. SST proposes to install 50 sensors (pucks) in the ground on a test basis for 30 days. At the end of that time they will make recommendations for the City's consideration based on the data collected. At the end of 90 days the City would decide if they want to go forward with the system. The cost of the system would be approximately \$1 per day, per puck. He added that the pucks do not interfere with cell service and the system can be programmed with a grace period.

The Council asked Mr. Seitz to provide them with information from other communities that have implemented the technology. They also indicated that they would like to have input from City staff, the Chamber of Commerce and the public prior to making any decision.

9. Presentation by Commissioner Connors on Coyote Season

Police Commissioner Connors began his presentation by reviewing what had happened in the Summer of 2010 when the City experienced a period of unusual coyote behavior and how the City had reacted. Currently, there have been few sightings of coyotes, but an increase in the deer population, which is a food source for coyotes, has been noted. He summarized the typical life patterns and feeding habits of coyotes and said that the animals can become dangerous when they lose their fear of humans. There is no unusual activity anticipated on the part of coyotes, but the City must be prepared with the warmer weather coming. The City has not been issued a trapping permit by the DEC this year, but has been issued a hazing permit, in order to reinforce the animal's natural fear. He advised residents to: be aggressive and make loud noises around coyotes; do not feed them; secure garbage cans; do not let small pets run free; supervise small children; and report coyote sightings and unusual behavior to the Police Department.

10. Residents may be heard who have matters to discuss that do not appear on the agenda

*Robert Schubert, 980 Forest Avenue*, again spoke about the issue of his pond. He said the Council does not know what is going on because nobody is speaking to him. Mayor French again advised Mr. Schubert that since the matter is being litigated, the proper forum for discussion is through the Courts. The City's Counsel is speaking with his Counsel.

*Donna and Thomas Wundeler, 552 Milton Road*, asked the Council to allow residents who have been receiving tickets for parking on Park Lane during the snow ordinance season, to park in the lot at the Milton Fire House. They believe that the option offered by the City to purchase parking permits for the lot near Dockside Deli is not acceptable. City Manager Pickup said that before committing to the suggested option, he wanted to receive feedback from the Fire Department and the Clerk's Office about how permits could be issued.

*Jim Amico, 350 Midland Avenue*, spoke about his request for a stop sign on Midland Avenue and asked if the stimulus projects had been signed off on yet so a stop sign could be put up. City Manager Pickup said that the City supplies information to the Federal Government on Stimulus-related project as asked and when clearance for final payment is received, there will be a discussion of implementing a pilot program for a stop sign, similar to the downtown.

11. Resolution for sole source approval for Phoenix Environmental Care products for fairway lawn maintenance fertilizers and Earthgreen Products for greens maintenance products  
Roll Call

City Manager Pickup summarized the Golf Club's program for greens maintenance and noted they are a leader in the community in trying to follow integrated pest management practices and sustainable practices for turf management. He said the program developed is fairly scientific and, therefore, they are asking for the ability to continue to use the provider of these products as a sole source vendor in order to continue the program. There was a discussion among the Council about the possibility that other companies could provide the same service and a sunset clause for the approval sought was suggested.

Councilman Jovanovich made a motion, seconded by Councilman Filippi, to adopt the following Resolution:

**RESOLVED**, that Phoenix Environmental

Care Products is hereby designated as sole source vendor for fairway lawn maintenance fertilizers and Earthgreen Products is hereby designated as sole source vendor for greens maintenance products, such designations to expire on December 31, 2011.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich,  
Keith and Sack  
NAYS: Councilwoman Parker  
ABSENT: None

The Resolution was adopted by a 6-1 vote.

12. Bid Award for Street Materials (Bid #1-11)  
Roll Call.

Councilwoman Keith made a motion, seconded by Councilman Filippi, to adopt the following Resolution:

**RESOLVED**, that Bid #1-11, Street Materials, is hereby awarded to Putnam Materials for crushed stone (3/4) and graded processed stone; to Peckham Materials for sub-base (recycled concrete); binder course Types 3 and 4, shim course Type 5, top course Types 6F and 7F, and asphaltic concrete curb mix, and to Dakota Supply for Class A Concrete and K-Krete, as the bidders offering the lowest price.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich,  
Keith, Parker and Sack  
NAYS: None  
ABSENT: None

The bid was awarded by a 7-0 vote.

The bid tab is on the next page.



13. Consideration to set a Public Hearing to amend Local Law Chapter 93, Section 93-6, "Filming – License Fee", to amend the fee for filming in the City

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried, to adopt the following Resolution:

**WHEREAS**, the Council wishes to amend Chapter 93, "Film Permits" of the Code of the City of Rye by amending Section 93-6 "License Fee"; and

**WHEREAS**, it is now desired to call a public hearing on such proposed amendments to the law, now, therefore, be it

**RESOLVED**, by the Council of the City of Rye as follows:

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on March 30, 2011 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such proposed local law.

Section 2. Such notice of public hearing shall be in substantially the following form:

**PUBLIC NOTICE  
CITY OF RYE**

**Notice of Public Hearing on a proposed local law to amend Chapter 93, "Film Permits" by amending §93-6 "License Fee" of the Code of the City of Rye**

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 30th day of March, 2011 at 8:00 P.M. at City Hall, Boston Post Road, in said City, at which interested persons will be afforded an opportunity to be heard concerning a proposal to amend Chapter 93, "Film Permits" by amending §93-6 "License Fee" of the Code of the City of Rye

Copies of said local law may be obtained from the office of the City Clerk.

Dawn F. Nodarse  
City Clerk  
Dated: March 17, 2011

14. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department

Councilman Jovanovich made a motion, seconded by Councilwoman Keith, to adopt the following Resolution:

**RESOLVED**, that the proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #117.8 “Mobile Video Recording Systems”, is hereby approved.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich, Keith, Parker and Sack

NAYS: None

ABSENT: None

The Resolution was adopted by a 7-0 vote.

15. Review and discussion of FOIL Procedures

Mayor French said he had asked the Corporation Counsel and City Manager to review the current FOIL process as a first step in revising the policy. Corporation Counsel Wilson said that a benefit to analyzing the process would be to streamline the process within the City and make it less cumbersome by possibly creating one centralized FOIL email address. This would make one person responsible for acknowledging receipt of the FOIL within the first five days; distributing the request to the appropriate department for a response, which would then be referred back to the original person for forwarding to the requestor. Ms. Wilson said that she, the City Manager and representatives of the five departments that currently receive FOIL requests, will sit down and come up with a proposal. The other aspects to be considered are provisions under the Public Officer’s Law that can be incorporated in the City’s procedures regarding fees and assessing costs for staff time. Ms. Wilson said that currently about 60-70% of FOIL requests are complex and require review and possible redaction of material. There was a suggestion made that having the City Council serve as the appellate body for FOIL should also be reconsidered when the policy is revised.

16. Miscellaneous Communications and Reports

Councilman Sack said that the Rye Town Park Commission would be holding a special meeting on March 22<sup>nd</sup> to approve the drafting of specs and bidding of the automated parking system. He said decisions would have to be made on how to pay for the system and suggested that a presentation should be made to the Council by the Citizens Parking Group that reviews the proposals. Mayor French added that the Citizens Finance Group should also make a presentation. He said a “Cost Containment Committee” has also been set up to discuss the 2011 budget for the park.

Councilwoman Parker said that several people have expressed their unhappiness to her about the outsourcing of parking tickets because they are unaware of how the system works and

miss the face-to-face contact. Ms. Parker also reported that 11 proposals were received by the County for the Playland RFP, three of which were Rye-based. Mayor French added that the first operational meeting of the County Committee formed to review the proposals would be held in April. Ms. Parker also reported that the City would soon be extending the numbers that would be accepted for recycling.

Councilwoman Keith said the Sustainability Committee will be holding a Stakeholders meeting on March 31<sup>st</sup> at the Library. She thanked City staff for helping the Committee get on the City website. Ms. Keith also said the Shared Roadways Committee is talking with the public to determine what their key issues are. They are partnering with the YMCA and Safe Routes to Schools Group and focusing on education and encouragement.

17. Old Business

Mayor French said the Council is looking to hear back from staff on the Tree Ordinance some time in April for a public hearing in May. The Mayor asked if the Council could begin receiving forecasts for this year's budget in order to determine what decisions must be made. City Manager Pickup advised waiting until after the State budget was adopted.

Councilwoman Parker suggested holding workshops with the Police and Fire Departments prior to budget season.

Councilwoman Keith asked if the City would consider asking Citizens Groups to run five-year scenarios for budget planning in order to look at issues of long-term financial sustainability, similar to what is done by the School District. Ms. Keith also asked when a crossing-guard analysis could be done. City Manager Pickup said that the trend for the Board of Education seems to be reducing funding for non-teaching positions. He said the discussion might not focus on an analysis of crossing guards, but on how these reductions will be handled at the schools. He said this may be a topic for discussion at the joint meeting of the City Council and School Board.

Councilman Filippi said he knows the City has been in contact with the County in connection with Hen Island and asked if the City and County staff could go out to the island at the same time to document each location and what the violations are. City Manager Pickup said that he and Corporation Counsel Wilson have met with the County Health Department and other County representatives regarding the complaint forwarded to the County. They agree that there are aspects of the complaint that can be worked on cooperatively. They are not looking at individual units but an issue that involves all 33 units for a comprehensive view of the issues. There is only one open item on Hen Island that the City is involved in. The complaints will be addressed through a normal administrative process with the City, County Health Department and Kuder Island Colony.

Councilwoman Parker asked if the Stop Sign presentation by City Planner Miller could be moved up to the next meeting. City Manager said he would have to look at the schedule because there may already be four presentations on that Agenda.

18. New Business

Mayor French offered congratulations to Mayor Pilla of Port Chester on his reelection.

19. Adjournment

There being no further business to discuss Councilman Jovanovich made a motion, seconded by Councilwoman Keith and unanimously carried, to adjourn the meeting at 11:28 p.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk



# CITY COUNCIL AGENDA

NO. 5

DEPT.: Fire Department

DATE: March 30, 2011

CONTACT: Chief George Hogben

**AGENDA ITEM:** Approval of the election of a new member to the Rye Fire Department.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council approve the election of Robert Martin to the Fire Police Patrol Company.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The Board of Fire Wardens has advised that Robert Martin was elected into membership by the Fire Police Patrol Company and was approved by the Fire Wardens at their March meeting.



# CITY COUNCIL AGENDA

NO. 6

DEPT.: City Council

DATE: March 30, 2011

CONTACT: Mayor Douglas French

**AGENDA ITEM:** Mayor's Management Report

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the City Manager provide a report on requested topics.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The Mayor has requested an update from the City Manager on the following:

- Capital Projects Update
- Legal Update



# CITY COUNCIL AGENDA

NO. 7

DEPT.: Finance Committee

DATE: March 30, 2011

CONTACT: Finance Committee

**AGENDA ITEM:** Finance Committee Review of the Rye Town Park Budget.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

Paula Schaefer of the Finance Committee will review the financials of the Rye Town Park Budget.



# CITY COUNCIL AGENDA

NO. 8

DEPT.: City Council

DATE: March 30, 2011

CONTACT: Mayor French

**AGENDA ITEM:** Presentation on Rye Town Park automated parking initiative.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

A presentation will be made by Dan Mathisson of the Rye Town Park Advisory Committee and Kristina Bicher of the Rye Town Park Parking Subcommittee on the automated parking initiative being explored by Rye Town Park.



# Rye Town Park

Automation Proposal  
Presentation to Rye City Council  
March 30, 2011

Dan Mathisson, RTP Advisory Committee  
Kristina Bicher, RTP Parking Task Force

# Advantages of Fully Automated Parking

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## ▶ **Decrease Staffing Costs**

- Automated system requires no cashiers at parking lot entrance. Currently booth has 2 people working every shift.

## ▶ **Add accountability and controls**

- Currently RTP has an all-cash system, with no car counts and no system in place to reconcile the cash at the end of each shift.

## ▶ **Increase Revenue**

- Fully automated system allows for incremental revenue opportunities (ie, off-season fees, creative fee schedules that boost revenue)

## ▶ **Accurately Collect Data**

- Maintain exact records of who, when, and how much.



happy taxpayer

# Parking RFP Responses

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Rye Town Park issued an RFP in January, seeking a variety of designs for automated parking solutions. The Town received 5 responses representing 3 different solutions:

## 1) Pay on entry

- Precision technology
- Amano McGann
- Control Systems

## 2) Pay and display

- Ventek

## 3) Card on entry / Pay on exit

- Core Cashless



# Potential Solution 1: Pay-on-entry

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## Advantages:

- ▶ Replicates methodology used today

## Disadvantages:

- ▶ Automated in-car transactions are slower than human transactions. Cars would queue up on Dearborn and Forest Ave.
- ▶ Can't charge lower rates for short stays



Forest Ave with pay on entry

# Potential Solution 2: Pay-and-Display

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## **Advantages:**

- ▶ Reduces traffic on entrance and exit

## **Disadvantages:**

- ▶ Requires large team of enforcement personnel
- ▶ Walking to machines and then walking back to car would be major inconvenience for beach-goers
- ▶ Large grass parking area would mean long walk to payment kiosks



never-ending enforcement

# Potential Solution 3: Card-on-Entry / Pay-on-Exit

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## Advantages:

- ▶ Allows park to charge less for shorter stays
- ▶ Minimizes entry transaction, reducing traffic on Dearborn and Forest Aves.
- ▶ Pay-at-kiosk eliminates in-car transaction, mitigating traffic on exit.

## Disadvantages:

- ▶ Entry / exit lanes need to be re-configured for smoothest operation



just like at the mall

# Recommended Parking System

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There was consensus among the professional staff and the Advisory Committee that Card-on-entry / Pay-on-Exit was the best solution.



## *How it works:*

- ▶ Push button to enter, take waterproof card, gate opens.
- ▶ On exit, insert card into walk-up outdoor kiosks, pay with cash or credit card. Customer then has 20 minutes to exit parking lot.
- ▶ Kiosks can determine residency / senior status by either reading NY State driver's license or resident cards issued by RTP.
- ▶ Alternately, customer can pay directly from car at exit, but then must use credit/debit card (no cash payment at gate).
- ▶ Courtesy cards given to staffers, law enforcement, Seaside Johnnie's delivery men, etc.
- ▶ Help button on gate programmed to ring to any phone number. Dialing a code then opens gate.
- ▶ Video camera records vehicle and license plate to verify courtesy cards / remote opens are not being abused.

# Estimated savings / revenue projections

<b>Savings</b>	<b>Estimated Savings</b>
Reduce parking cashiers from 2 per shift to 0	\$28,000
Reduce beach cashiers from 2 per booth to 1, by moving cash transactions to kiosks	\$42,000
Eliminate accounting software annual fee / start-up costs	\$12,000
<i>Total Annual Cost Savings</i>	<i>\$82,000</i>
<b>Revenue Gains</b>	<b>Estimated Revenue Gain</b>
Charge small parking fee in off-season	\$25,000
Improved parking collection due to better controls (+10%)	\$33,000
Improved beach collection due to better controls (+10%)	\$45,000
<i>Total Annual Revenue Gain</i>	<i>\$103,000</i>
<b>Estimated Cost Savings + Revenue Gain</b>	<b>\$185,000</b>

# What are costs of automation?

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In the initial RFPs, cost proposals were as follows:

Core Cashless (Pay on exit)	\$111,072
Control Systems (Pay on entry)	\$118,888
VenTek (Pay and Display)	\$153,430
Amano McGann (Pay on entry)	\$153,525
Precision Tech (Pay on entry)	\$188,000

Notes:

- Core Cashless has since added improvements to their proposal bringing the proposed cost to \$134,000.
- There are also anticipated installation fees, estimated to be approximately \$25,000 that will be included in the final proposal put out to formal bid.
- Total anticipated cost including installation: \$140,000 - \$160,000.
- Annual costs including software licensing fees, plastic cards: Approx \$30,000
- The system is therefore estimated to pay for itself in 12-24 months, and then generate a net benefit of an estimated \$150,000 per year.

# Committee's Recommended Implementation Timeline

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- ▶ Figure out logistics of traffic flow, with input from fire/police April 3
- ▶ Issue public bid document including installation April 15
- ▶ Receive bid responses April 29
- ▶ Select vendor, figure out detailed financing plans June 1
- ▶ Rye Town Park Commission vote June 14
- ▶ Contract awarded June 15
- ▶ Install completed / "Go live" date Sept 7



# CITY COUNCIL AGENDA

NO. 9      DEPT.: City Manager's Office      DATE: March 30, 2011  
CONTACT: Scott D. Pickup, City Manager

**AGENDA ITEM:** Resolution endorsing the East Coast Greenway Route through the City of Rye.

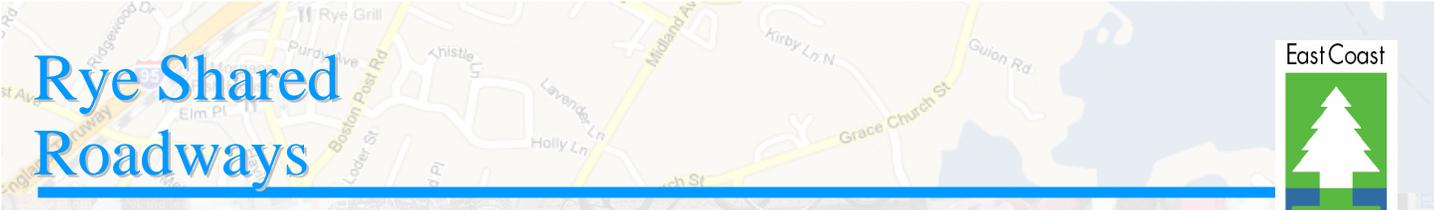
**FOR THE MEETING OF:**  
March 30, 2011  
**RYE CITY CODE,**  
CHAPTER  
SECTION

**RECOMMENDATION:** That the Council approve the resolution allowing the East Coast Greenway pathway to pass through the City of Rye.

**IMPACT:**     Environmental     Fiscal     Neighborhood     Other:

**BACKGROUND:** The East Coast Greenway is a proposed 2,600-mile, shared-use pathway that will pass through Westchester County to connect cities, towns, and villages along the eastern seaboard from Calais, Maine to Key West, Florida. The Council must consider the request to have the pathway include the City of Rye.

See attached.



# Rye Shared Roadways

East Coast



Greenway

## *East Coast Greenway* through Rye

Presented to the Rye City Council

March 30, 2011

## *Proposed resolution*

**CITY OF RYE, NEW YORK  
RESOLUTION  
ENDORISING THE EAST COAST GREENWAY ROUTE  
THROUGH THE CITY OF RYE, NEW YORK**

**WHEREAS**, the East Coast Greenway is a proposed 2600-mile, shared-use pathway that will pass through Westchester County to connect cities, towns and villages along the eastern seaboard from Calais, Maine, to Key West, Florida; and

**WHEREAS**, New York is one of 15 states and the District of Columbia through which the Greenway runs; and

**WHEREAS**, the Greenway, considered the "urban equivalent of the Appalachian Trail," will pass through sites showcasing the nation's industrial, historic, and cultural diversity; and

**WHEREAS**, the Greenway supports the City's commitment to environmental sustainability, increasing pedestrian and non-motorized transportation options while improving air quality, reducing roadway congestion and encouraging ecotourism; and

**WHEREAS**, the Greenway will spur the building of a network of pedestrian and bicycling greenways through New York, a goal encouraged by the New York Department of Transportation and other agencies; and

**WHEREAS**, the Greenway will serve non-motorized users, both local residents and long-distance travelers; and

**WHEREAS**, the Greenway will encourage people of all ages to be outdoors more, improving their health and physical fitness while enjoying their playing fields, parks and nature preserves; and

**WHEREAS**, the Greenway, by offering tourists and shoppers access to cultural and historical sites, will bring economic benefits to municipalities and businesses along the route; and

**WHEREAS**, the Greenway route is fluid and can easily be altered in the future based upon future improvements or other considerations.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Rye, New York, hereby endorses the concept of the East Coast Greenway and its passage through the City of Rye along the initially designated route of Grace Church Street to Forest Avenue to Playland Parkway to Old Post Road to Playland Access Drive to Theall Road to Osborn Road, and

**BE IT FURTHER RESOLVED**, the East Coast Greenway Alliance is hereby authorized to provide necessary signage and to assist the City to erect signage along the route, and

**BE IT FURTHER RESOLVED**, that the City of Rye, New York encourages our neighboring cities, towns and villages to endorse the East Coast Greenway and establish linking routes, and

**BE IT FURTHER RESOLVED**, that a certified copy of this Resolution be forwarded to the East Coast Greenway, the Governor of the State of New York, the New York State Department of Transportation, the Westchester County Planning Department, the Village of Port Chester, the Town of Harrison, the Town of Mamaroneck, the Village of Mamaroneck, the Village of Larchmont, the City of New Rochelle and the Village of Pelham Manor.



## What is the East Coast Greenway?

The East Coast Greenway is a long-distance, urban, shared-use trail system linking 25 major cities along the eastern seaboard between Calais, Maine and Key West, Florida.

It is a public works project that is creating a transportation infrastructure for cyclists and pedestrians along the Eastern Seaboard.

The East Coast Greenway Alliance (ECGA), a non-profit organization, is the driving force behind the Greenway.

The trails that constitute the Greenway are owned and managed by local public bodies: state, county, and municipal agencies.

The Alliance does not own any portion of the Greenway and will not directly maintain or manage it.



# Rye Shared Roadways



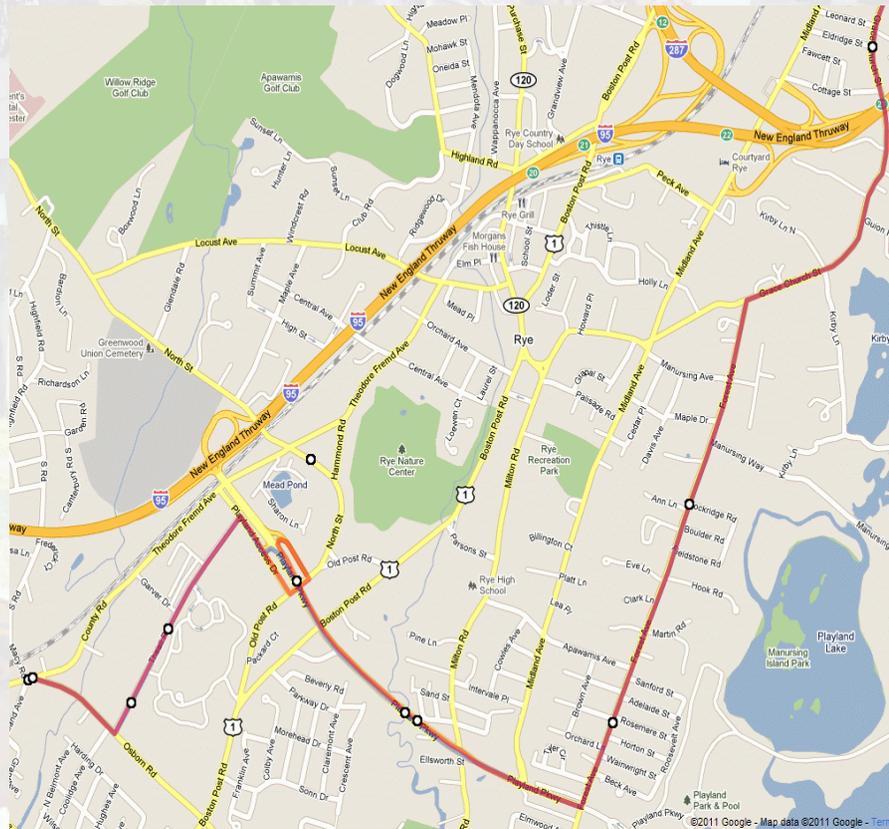
## The route through Rye

The initially designated route:

Grace Church Street > Forest Avenue > Playland Parkway > Old Post Road > Playland Access Drive > Theall Road > Osborn Road

This route was chosen above other alternatives by a group of Committee cyclists who evaluated alternatives by riding them all.

The ECG route is fluid and can easily be altered in the future based upon future improvements or other considerations. For example, if the County's Playland Parkway Pathway project moves forward then the route could be modified to include greater portions of that route.



A portion of the route is on County roadway (Playland Parkway), and thus gives rise to opportunities for partnership.

## Update: Status of Playland Access Road bridge on Old Post Road

The County had planned to repair and update the bridge; however funding for that is frozen.

From the Westchester County 2011 Capital Budget in re: capital budgets for Playland Parkway Access Road and the Old Post Road (North Street) over Playland Parkway (the "Bridge") *"Project approved in concept but subject to subsequent staff review"*.

In 2010, \$1,820,000 was appropriated for the design and construction for the bridge and \$400,000 for the Access Road, but bonding was not authorized.



As the Bridge project is not integral to the East Coast Greenway project, the Shared Roadways Committee, The Traffic and Pedestrian Safety Committee and City Staff therefore recommend that we proceed with the East Coast Greenway route as presented, while continuing to work with the County to address the "Bridge" safety concerns.

# Rye Shared Roadways



## What happens after approval



Signs will be erected along the route. They will be attached to existing posts and poles. Best are “U-channel” posts (used for no parking signs etc), but other possibilities include traffic light poles and regular light poles.

There typically would be a ECG sign and arrow at every turn, with possible confirmation sign not too far after each turn as well. On straight-aways they would be placed approximately every ½ mile. There would also be signs at major intersections even if there are no turns.

Signs are provided free of charge by the East Coast Greenway Alliance. Rye DPW will perform the installations.

No route improvements are required, although the Committee recommends that simple measures such as restriping, markings such as sharrows, bike lanes, and other diet tools be considered in the future.

Rye officials, the ECGA and the Bike Walk Alliance of Westchester & Putnam are tentatively planning an event in celebration of the route approvals in Westchester. It is scheduled for Sunday, June 5, 2011. It would be held in Rye at the Rye Town Park, and would feature elected officials from all the Sound Shore Communities through which the route passes.



## Benefits to Rye

The Greenway will contribute actually as well as symbolically to Rye's priorities which include:

- Encouraging healthy outdoor activity
- Increasing transportation options
- Enhancement of local economy by connecting people and communities
- Promoting our communities historic, cultural and recreation sites such as Playland, Jay Heritage, Rye Nature Center
- Improving community walking and cycling environments, vital for smart growth initiatives
- Opportunities to create kiosks, maps, etc. to promote our community



Joint ECG-NYC Parks Sign, Bronx River Trail in the Bronx

# Rye Shared Roadways



## Appendix

- Resolutions from other Westchester municipalities
- Maps: ECG route through New York

Playland Parkway Pathway project map



VILLAGE OF  
**PORT CHESTER**

222 Grace Church Street, Port Chester, NY 10573

Joan Mancuso  
Village Clerk

January 21, 2011

(516) 930-5202  
Fax: (516) 305-2560  
E-mail: [jmancuso@portchester.ny.gov](mailto:jmancuso@portchester.ny.gov)

The Honorable Andrew Cuomo  
Governor of New York  
Executive Chambers  
Albany, NY 12224

New York State Department of Transportation  
Region 8, Eleanor Roosevelt State Office Building  
4 Burnett Boulevard  
Poughkeepsie, NY 12603

Commissioner Edward Burroughs  
Westchester County Planning Dept.  
414 Michaelian Building  
148 Martine Avenue  
White Plains, NY 10601

Mayor Douglas H. French  
City of Rye  
1051 Boston Post Road  
Rye, NY 10580

Mayor Noam Branson  
City of New Rochelle  
515 North Avenue  
New Rochelle, NY 10801

Mayor/Supervisor Joan B. Walsh  
Town/Village of Harrison  
1 Heinson Place  
Harrison, NY 10528

Supervisor Valerie O'Keeffe  
Town of Mamaroneck  
740 West Boston Post Road  
Mamaroneck, NY 10543

Mayor Joseph C. Hays, Jr.  
Village of Pelham Manor  
Four Penfield Place  
Pelham Manor, NY 10803

Mayor Norman S. Rosenblum  
Village of Mamaroneck  
123 Mamaroneck Avenue  
Mamaroneck, NY 10543

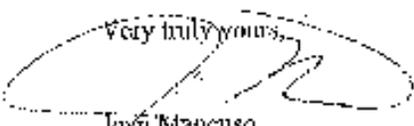
Mayor Joshua L. Mandell  
Village of Larchmont  
120 Larchmont Avenue  
Larchmont, NY 10538

Dear Governor Cuomo, New York State Department of Transportation,  
Commissioner Burroughs, Mayor French, Mayor Branson,  
Mayor/Supervisor Walsh, Supervisor O'Keeffe, Mayor Hays, Mayor Rosenblum and  
Mayor Mandell;

Enclosed please find a certified copy of a resolution adopted by the Board of  
Trustees of the Village of Port Chester at a meeting held on December 20, 2010 that the  
Board endorses the concept of the East Coast Greenway.

On behalf of the Board of Trustees please accept their gratitude for your attention  
to this important matter.

Very truly yours,

  
Joan Mancuso  
Village Clerk

cc: East Coast Greenway  
Mayor Pilla and the Board of Trustees

**VILLAGE OF PORT CHESTER  
RESOLUTION  
ENDORING THE EAST COAST GREENWAY ROUTE  
THROUGH THE VILLAGE OF PORT CHESTER**

On motion of TRUSTEE BRANCA, seconded by TRUSTEE MARINO, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

**WHEREAS**, the East Coast Greenway Alliance, a not for profit organization is spearheading the East Coast Greenway, a proposed 2600-mile, shared-use pathway that will pass through Westchester County to connect cities, towns and villages along the eastern seaboard from Calais, Maine, to Key West, Florida; and

**WHEREAS**, New York is one of 15 states and the District of Columbia through which the Greenway runs; and

**WHEREAS**, the Greenway, considered the "urban equivalent of the Appalachian Trail," will pass through sites showcasing the nation's industrial, historic, and cultural diversity; and

**WHEREAS**, the Greenway will spur the building of a network of pedestrian and bicycling greenways through New York, a goal encouraged by the New York Department of Transportation and other agencies; and

**WHEREAS**, the Greenway will serve bicyclists, walkers, equestrians, the physically challenged and other non-motorized users, both local residents and long-distance travelers; and

**WHEREAS**, the Greenway, by providing a largely off-road route separated from vehicular traffic, will encourage people of all ages to be outdoors more, improving their health and physical fitness while enjoying their playing fields, parks and nature preserves; and

**WHEREAS**, the Greenway, by offering tourists and shoppers access to cultural and historical sites, will bring economic benefits to municipalities and businesses along the route;

**NOW, THEREFORE, BE IT RESOLVED**, that the Village of Port Chester, New York, hereby endorses the concept of the East Coast Greenway and its passage through the Village of Port Chester along the designated route of Mill Street to Abendroth Avenue, to Waterfront Place/Dan Busco Place then to Grace Church Street; and

**BE IT FURTHER RESOLVED**, the East Coast Greenway Alliance is hereby authorized to assist the Village to erect necessary signage along the route; and

**BE IT FURTHER RESOLVED**, that a certified copy of this Resolution be forwarded to the East Coast Greenway, the Governor of the State of New York, the New York State Department of Transportation, the Westchester County Planning Department, the City of Rye, the Town of Harrison, the Town of Mamaroneck, Village of Mamaroneck, the Village of Larchmont, the City of New Rochelle and the Village of Pelham Manor.

**ROLL CALL**

**AYES:** Trustees Didden, Terenzi, Kenner, Franca, Marino, Brakewood and Mayor Pilla

**NOES:** None

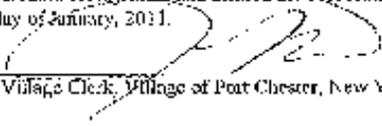
**ABSENT:** None

**DATE:** December 20, 2010

STATE OF NEW YORK) ss.  
COUNTY OF WESTCHESTER)

I, JOAN MANCUSO, Village Clerk of the Village of Port Chester, New York, do hereby certify that I have compared the foregoing copy with the original copy on file in the Village of Port Chester.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Port Chester, New York this 21<sup>st</sup> day of January, 2011.

  
Village Clerk, Village of Port Chester, New York

(Seal)

**VILLAGE OF MAMARONECK, NY  
RESOLUTION  
ENDORING THE EAST COAST GREENWAY ROUTE  
THROUGH THE VILLAGE OF MAMARONECK**

**WHEREAS**, the East Coast Greenway is a proposed 2600-mile, shared-use pathway that will pass through Westchester County to connect cities, towns and villages along the eastern seaboard from Calais, Maine, to Key West, Florida; and

**WHEREAS**, New York is one of 15 states and the District of Columbia through which the Greenway runs; and

**WHEREAS**, the Greenway, considered the "urban equivalent of the Appalachian Trail," will pass through sites showcasing the nation's industrial, historic, and cultural diversity; and

**WHEREAS**, the Greenway will spur the building of a network of pedestrian and bicycling greenways through New York, a goal encouraged by the New York Department of Transportation and other agencies; and

**WHEREAS**, the Greenway will serve bicyclists, walkers, equestrians, the physically challenged and other non-motorized users, both local residents and long-distance travelers; and

**WHEREAS**, the Greenway, by providing a largely off-road route separated from vehicular traffic, will encourage people of all ages to be outdoors more, improving their health and physical fitness while enjoying their playing fields, parks and nature preserves; and

**WHEREAS**, the Greenway, by offering tourists and shoppers access to cultural and historical sites, will bring economic benefits to municipalities and businesses along the route;

**NOW, THEREFORE, BE IT RESOLVED**, that the Village of Mamaroneck, New York, hereby endorses the concept of the East Coast Greenway and its passage through the Village of Mamaroneck, and encourages our neighboring cities, towns and villages to do the same; and

**BE IT FURTHER RESOLVED**, that a certified copy of this Resolution be forwarded to the East Coast Greenway, the Governor of the State of New York, the New York State Department of Transportation, the Westchester County Planning Department, the Village of Port Chester, the City of Rye, the Town of Harrison, the Town of Mamaroneck, the Village of Larchmont, the City of New Rochelle and the Village of Pelham Manor.

# Rye Shared Roadways

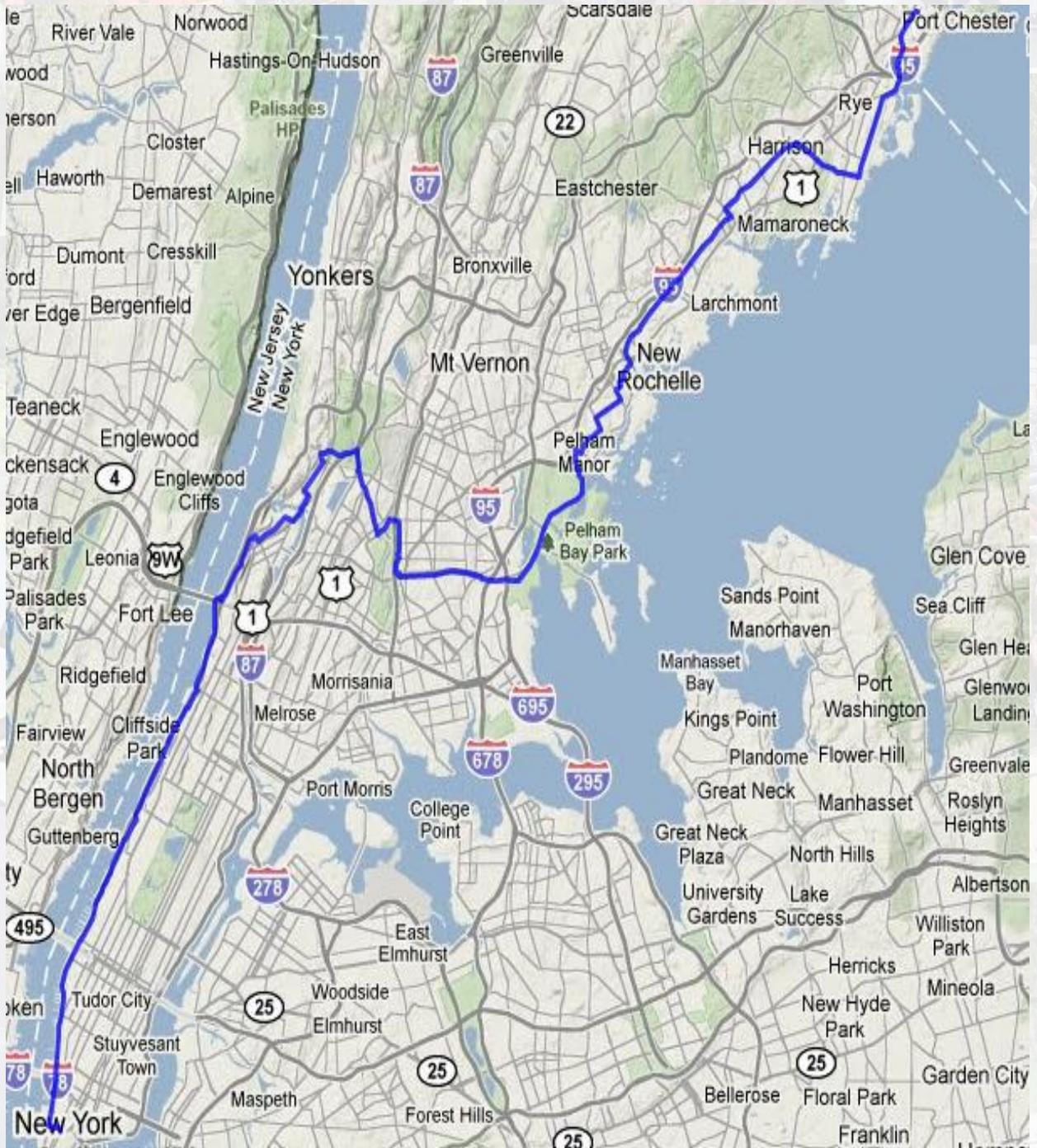
## ECG route through New York

East Coast



Greenway

Port Chester to WFC in Manhattan, 38.9 miles





1 inch equals 0.5 miles  
 WCDP, January 2009

Westchester  
[www.westchester.gov](http://www.westchester.gov)

October 2, 2009. Westchester County, New York  
 County Board of Legislators

## Playland Parkway Pathway Expansion Project Location Map

432 Michaelan Office Building  
 148 Marine Avenue  
 White Plains, New York 10601  
[www.westchestergov.com/planning](http://www.westchestergov.com/planning)



# CITY COUNCIL AGENDA

NO. 10

DEPT.: City Manager's Office

DATE: March 30, 2011

CONTACT: Scott Pickup, City Manager

**ACTION:** Resolution to authorize the implementation and funding for the Central Avenue Bridge project under the Emergency Relief Program, PIN 8701.43.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Mayor and Council authorize the City Manager to enter into the NYSDOT/Local Agreement for the Central Avenue Bridge project.

**IMPACT:**  Environmental  Fiscal  Neighborhood Other:

**BACKGROUND:**

In order to proceed with the Central Avenue Bridge project, the NYS Department of Transportation requires that the City Manager execute the attached Supplemental Agreement and supply a Resolution attesting to Rye City Council approval and appropriation of funding.

See attached Agreement and Resolution.

## CITY OF RYE

Resolution authorizing the implementation, and funding in the first instance 100% of the federal-aid of transportation federal-aid project, and appropriating funds therefore.

**WHEREAS**, a project for the **ER 2007 Floods – Central Ave Bridge Replacement in the City of Rye, Westchester County, PIN 8701.43** (the “Project”) is eligible for funding under Title 23 US Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

**WHEREAS**, a Resolution adopted by the City of Rye on May 28, 2008 approved and agreed to advance the Project by making a commitment of 100% of the non-federal share of the costs of preliminary engineering and construction work.

**WHEREAS**, it was subsequently found necessary to undertake additional preliminary engineering and construction work not contemplated in the original agreement authorized by the previous resolution; and

**WHEREAS**, it has been found necessary to increase the federal and non-federal share of costs for the additional preliminary engineering and construction work for the project; and

**WHEREAS**, the City of Rye desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of right-of-way incidental and right-of-way acquisition work for the Project portions thereof.

**NOW, THEREFORE, BE IT RESOLVED**, that the Rye City Council hereby approves the above-subject project; and it is hereby further

**RESOLVED**, that the Rye City Council hereby authorizes the City of Rye to pay the first instance 100% of the federal and non-federal share of the cost of the additional preliminary engineering and construction work and the right-of-way incidental and right-of-way acquisition work for the Project or portions thereof; and it is further

**RESOLVED**, that the sum of 561,458 (\$2,816,537 minus previous \$2,255,079) is hereby appropriated from bonded cash and previous transfers from General Fund and Capital Projects and made available to cover the cost of participation in the above phases of the Project; and it is further

**RESOLVED**, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Rye City Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the Mayor thereof, and it is further



**Supplemental Agreement Cover for Local Agreements (11/07)**

MUNICIPALITY/SPONSOR: City of Rye

PIN: 8701.43

BIN: 2225280

Comptroller's Contract No: D031759

Supplemental Agreement No. 1

Date Prepared & By: 03/07/2011 s. roth

**SUPPLEMENTAL AGREEMENT**

This Supplemental Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at  
50 Wolf Road, Albany, New York, 12232, on behalf of New York State ("State");

And

**The City of Rye** (the Municipality/Sponsor)

Acting by and through the **Mayor**

With its office at **1051 Boston Post Road, Rye, Westchester County, New York**

This amends the existing Agreement between the parties in the following respects only:

**X** Amends a previously adopted Schedule A by:

**X** amending a project description

**X** amending the contract end date

**X** amending the scheduled funding by:

adding additional funding:

adding 1,2,3 phase which covers eligible costs incurred on/after xxxxxx

adding 1,2,3 phase which covers eligible costs incurred on/after xxxxxx

**X** increasing funding for a project phases(s) - **Construction**

adding a pin extension

change from Non-Marchiselli to Marchiselli

deleting/reducing a project phase(s)

other (xxxxx)

Amends a previously adopted Schedule "B" (Phases, Sub-phase/Tasks, and Allocation of Responsibility)

**X** Amends the text of the Agreement as follows (*insert text below*):

Section 4. *Payment or Reimbursement of Costs.* ...Billing shall be no more frequent than monthly and must be submitted in no less than six month intervals.

Section 15. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement, the "Procedures for Locally Administered Federal Aid Projects" manual and in accordance with current Federal and State laws, rules, and regulations.

**Supplemental Agreement Cover for Local Agreements (11/07)**

MUNICIPALITY/SPONSOR: City of Rye

PIN: 8701.43

BIN: 2225280

Comptroller's Contract No: D031759

Supplemental Agreement No.1

Date Prepared & By: 03/07/2011 s. roth

Section 16. *Notice of Requirements.*

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - (a) Via certified or registered United States mail, return receipt requested;
  - (b) By facsimile transmission;
  - (c) By personal delivery;
  - (d) By expedited delivery service; or
  - (e) By e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

New York State Department of Transportation (NYSDOT)

Name: Carolyn M. Ryan

Title: Local Projects Manager

Address: Eleanor Roosevelt State Building

4 Burnett Boulevard, Poughkeepsie, NY 12603

Telephone Number: 845-431-5788

Facsimile Number: 845-431-5988

E-Mail Address: [cryan1@dot.state.ny.us](mailto:cryan1@dot.state.ny.us) or [dholsopple@dot.state.ny.us](mailto:dholsopple@dot.state.ny.us)

(Municipality/Sponsor): City of Rye

Name: Doug French

Title: Mayor

Address: 3<sup>rd</sup> Floor City Hall, 1051 Boston Post Road, Rye, NY 10580

Telephone Number: 914-967-7404

Facsimile Number:

E-Mail Address: [mayor@ryeny.gov](mailto:mayor@ryeny.gov)

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

17. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible Local expenditures as required by this contract, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting Local Sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. When applicable to State Marchiselli and other State reimbursement by the NYS Thruway, registration forms and instructions can be found at the NYSDOT Local Programs website at [www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/Electronic%20Payment%20Guidelines](http://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/Electronic%20Payment%20Guidelines). The Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller and/or NYS Thruway Authority's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

**Supplemental Agreement Cover for Local Agreements (11/07)**

**MUNICIPALITY/SPONSOR: City of Rye**

**PIN: 8701.43**

**BIN: 2225280**

**Comptroller's Contract No: D031759**

**Supplemental Agreement No.1**

**Date Prepared & By: 03/07/2011 s. roth**

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by its duly authorized officials as of the date first above written.

**Approved for the Municipality/Sponsor**

**Municipality/Sponsor Attorney:**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011 before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the Municipal/Sponsor Corporation described in and which executed the above instrument; that it was executed by order of the \_\_\_\_\_ of said Municipal/Sponsor Corporation pursuant to a resolution or other authorization which was duly adopted on \_\_\_\_\_ and which a certified copy is attached and made a part hereof, and that he/she signed his/her name thereto by like order.

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

By: \_\_\_\_\_  
For Commissioner of Transportation

APPROVED AS TO FORM:  
STATE OF NEW YORK ATTORNEY GENERAL

By: \_\_\_\_\_  
Assistant Attorney General

Agency Certification: In addition to the Acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract.

**COMPTROLLER'S APPROVAL:**

By: \_\_\_\_\_  
For the New York State Comptroller  
Pursuant to State Finance Law § 112

## NYSDOT/Local Agreement - Schedule A for PIN 8701.43

<b>OSC Municipal Contract #:</b> <b>D031759</b>	<b>Contract Start Date:</b> <u>4/14/2007</u> (mm/dd/yyyy)	<b>Contract End Date:</b> <u>9/30/2017</u> (mm/dd/yyyy) <input type="checkbox"/> Check, if date changed from the last Schedule A
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**Purpose:**  Original Standard Agreement  Supplemental Schedule A No. 1

**Agreement Type:**  Locally Administered Municipality/Sponsor (Contract Payee): City of Rye  
 State Administered Other Municipality/Sponsor (if applicable):

State Administered *List participating Municipality(ies) and the % of cost share for each and indicate by checkbox which Municipality this Schedule A applies.*

[ Municipality:	% of Cost share
[ Municipality:	% of Cost share
[ Municipality:	% of Cost share

**Authorized Project Phase(s) to which this Schedule applies:**  PE/Design  ROW Incidentals  
 ROW Acquisition  Construction/CI/CS

**Work Type:** BR REPLACE **County (If different from Municipality):** Westchester County

**Project Description**  (Check, if changed from last Schedule A): ER 2007 Floods - Central Ave Bridge Replacement  
**Additional Project Description (if required):** Replacement of the Central Avenue Bridge (BIN 2225280) in the City of Rye, Westchester County.  
**Marchiselli Eligible**  Yes  No

**Approved Marchiselli Allocations in Legislature's Comprehensive List FOR ALL PHASES** *To compute Total Costs in the last row and column, right click in each field and select "Update Field."*

<i>Check box to indicate change from last Schedule A</i>	State Fiscal Year(s)	Project Phase			TOTAL
		PE/Design	ROW (RI & RA)	Construction/CI/CS	
<input type="checkbox"/>	Cumulative total for all prior SFYs	\$0.00	\$	\$	\$ 0.00
<input type="checkbox"/>	Current SFY	\$	\$	\$	\$ 0.00
<b>Authorized Allocations to Date</b>		<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>

**A. Summary of allocated MARCHISELLI Program Costs FOR ALL PHASES** *For each PIN Fiscal Share below, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." To compute Total Current Costs in the last row, right click in each field and select "Update Field."*

PIN Fiscal Share	"Current" or "Old" entry indicator	Federal Funding Program	Total Costs	FEDERAL Participating Share and Percentage	STATE MARCHISELLI Match	LOCAL Matching Share	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
	Current		\$	\$	\$	\$	\$
	Old		\$	\$	\$	\$	\$
<b>TOTAL CURRENT COSTS:</b>			<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>

NYS DOT/Local Agreement – Schedule A

**B. Summary of Other (including Non-allocated MARCHISELLI) Participating Costs FOR ALL PHASES** For each PIN Fiscal Share, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." To compute Total Current Costs in last row, right click in each field and select "Update Field."

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
8701.43.321	Current	ER	\$2,816,537.00	\$2,253,230.00	\$0.00	\$563,307.00
	Old	ER	\$2,255,079.00	\$1,804,063.00	\$0.00	\$451,016.00
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
<b>TOTAL CURRENT COSTS:</b>			\$2,816,537.00	\$2,253,230.00	\$ 0.00	\$563,307.00

<b>C. Total Local Deposit(s) Required for State Administered Projects:</b>	\$
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**D. Total Project Costs** To compute Total Costs in the last column, right click in the field and select "Update Field."

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total Other STATE Cost	Total LOCAL Cost	Total Costs (all sources)
\$2,253,230.00	\$0.00	\$0.00	\$563,307.00	\$2,816,537.00

<b>E. Point of Contact for Questions Regarding this Schedule A (Must be completed)</b>	Name: <u>D. Holsopple</u> Phone No: <u>845-431-5977</u>
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See Agreement (or Supplemental Agreement Cover) for required contract signatures.



**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

November, 2010

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**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any

employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export

Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on

its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in

accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law

Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

## **APPENDIX B: REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS**

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, NYSDOT is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration undertakes to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT has, in cooperation with FHWA, assembled the body of Federal-aid requirements, together with information, NYSDOT procedures and practices in its "Procedures for Locally Administered Federal-Aid Projects" (available through NYSDOT's web site at: <https://www.nysdot.gov/portal/page/portal/divisions/operating/opdm/community-assistance-delivery-bureau/locally-administered-federal-aid-projects>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration that enters Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

### **NON DISCRIMINATION/EEO/DBE REQUIREMENTS**

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and Department of Transportation regulations (49CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsor's contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49CFR Part 26.

### **FEDERAL SINGLE AUDIT REQUIREMENTS**

Non-Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations". Non-Federal entities

that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. \_\_\_\_ 215 (a) of OMB Circular A-133 Subpart B-- Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency<sup>1</sup> the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of federal award payments.

### **THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE**

The Catalog of Federal Domestic Assistance (CFDA), is an on-line database of all Federally-aided programs available to State, and local governments (including the District of Columbia); federally -recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals. The database is accessible at <http://www.cfda.gov/>.

### **THE CFDA IDENTIFICATION NUMBER**

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The most commonly used CFDA number for the Federal-aid Highway Planning and Construction program is 20.205. Additional CFDA numbers for other transportation and non-transportation related programs are:**

**20.215, Highway Training and Education**  
**20.219, Recreational Trails Program**  
**20.XXX, Highway Planning and Construction - Highways for LIFE;**  
**20.XXX, Surface Transportation Research and Development;**  
**20.500, Federal Transit-Capital Investment Grants**  
**20.505, Federal Transit-Metropolitan Planning Grants**  
**20.507, Federal Transit-Formula Grants**  
**20.509, Formula Grants for Other Than Urbanized Areas**  
**20.600, State and Community Highway Safety**  
**23.003, Appalachian Development Highway System**  
**23.008, Appalachian Local Access Roads**

### **PROMPT PAYMENT MECHANISMS**

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime

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<sup>1</sup> The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.



# CITY COUNCIL AGENDA

NO. 11

DEPT.: City Manager's Office

DATE: March 30, 2011

CONTACT: Scott Pickup, City Manager

**ACTION:** Authorization for the City Manager to enter into a supplemental Architectural/ Engineering consultant agreement for the Theodore Fremd project under the Emergency Relief Program, PIN 8701.43.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Mayor and Council authorize the City Manager to enter into the Supplemental Architectural/Engineering Consultant Agreement for the Theodore Fremd project.

**IMPACT:**  Environmental  Fiscal  Neighborhood Other:

**BACKGROUND:**

In order to proceed with the Theodore Fremd project, the NYS Department of Transportation requires that the City Manager execute the attached Supplemental Agreement for NYSDOT applicable requirements.

See attached Agreement.

**Supplemental Architectural/ Engineering  
Consultant Agreement**

NYSDOT PIN 8701.43    Municipal Contract No. \_\_\_\_\_

Agreement made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between

**The City of Rye**

having its principal office at 1051 Boston Post Road, Rye NY (the "Municipality")

and

**WSP - Sells** with its office at 555 Pleasantville Road, Briarcliff Manor, NY (the "Consultant")

**WITNESSETH:**

WHEREAS, in connection with a federal-aid project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this agreement as **Theodore Fremd Retaining Wall Restoration Project (PIN 8701.43)** (as described in detail in Attachment A annexed hereto, the "Project") the Municipality has sought to engage the services of a Consultant Engineer to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration ("FHWA"), the Municipality has selected the Consultant to perform such services in accordance with the requirements of this Agreement; and

WHEREAS, **Mr. Scott Pickup, City Manager**, is authorized to enter this Agreement on behalf of the Municipality,

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT**

This agreement consists of the following:

Agreement Form - this document titled "Supplemental Architectural/Engineering Consultant Agreement";

Attachment "A" - Project Description and Funding;

Attachment "B" - Task List;

Attachment "C" - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

**ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS.**

2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide the Municipality with plans, estimates and other services and deliverables more specifically described in Attachment "B".

2.2 The CONSULTANT shall ascertain the applicable practices of the Municipality, NYSDOT and/or FHWA

prior to beginning any of the work of this PROJECT. All work required under this Agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".

2.3 The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the Municipality.

**ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT**

As full compensation for Consultant=s work, services and expenses hereunder the Municipality shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based the methods designated and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

<b>3.3 Lump Sum Cost Plus Reimbursables Method</b>			
<b>ITEM</b>	<b>DESCRIPTION OF ITEMS WITHIN METHOD</b>	<b>APPLICABLE RATE/ AMOUNT OR PERCENTAGE</b>	<b>INTERIM PAYMENTS</b>
<b>ITEM I</b>	A Lump Sum paid to Consultant for the scope of services hereunder, unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	A Lump Sum of \$12,300	The CONSULTANT shall be paid in Monthly progress payments based upon the percentage of work accomplished and Direct Non-Salary Costs incurred during the period. Progress payments are subject to approval by the municipality=s representative.
<b>ITEM II</b>	Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit.	Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative. All reimbursement for travel, meals and lodging shall be made at actual cost paid, but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor. For Reimbursable Direct Non-Salary Costs a multiple of One times shall be applied to the expenses incurred by the Consultant, the consultant's employees, or the subconsultant not to exceed \$7,800	
<b>ITEM III</b>	Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality.	Salvage value	

#### **ARTICLE 4. INSPECTION**

The duly authorized representatives of the Municipality, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

#### **ARTICLE 5. AUDITS**

5.1 Payment to the Consultant is subject to the following audit rights of the Municipality:

A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.

B. For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$250,000, an audit may be waived by the Municipality.

C. For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$250,000, an audit may be waived by the Municipality.

5.2 In order to enable the Municipality to process the final payment properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.

- I. Records of Direct Non-Salary Costs;
- II. Copies of any subcontracts relating to said contract;
- III. Location where records may be examined; and
- IV. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

#### **ARTICLE 6. FINAL PAYMENT**

6.1 The Municipality will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the Municipality from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided herein.

#### **ARTICLE 7. EXTRA WORK**

7.1 Consultant's performance of this Agreement within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the Municipality of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Municipality on a monthly basis or such alternative interval as the Municipality directs in writing.

7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Agreement and constitutes extra work, the CONSULTANT shall promptly notify the Municipality, in writing, of this fact prior to beginning any of the work. The Municipality shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the Municipality determines that such work does constitute extra work, the Municipality shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT Agreement, providing the compensation and describing the work authorized,

shall be prepared and issued by the Municipality. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Municipality to the CONSULTANT for execution after approvals have been obtained from necessary Municipality officials, and, if required from the Federal Highway Administration.

7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the Municipality all assistance required by the Municipality. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the Municipality's directions shall be exercised by the issuance of a separate Agreement, if necessary.

#### **ARTICLE 8. CONSULTING LIABILITY**

The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Agreement.

Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the Municipality from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Municipality beyond such as may legally exist irrespective of this Article or this Agreement.

The CONSULTANT shall procure and maintain for the duration of the work for such project(s). Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) per project, issued to and covering damage for liability imposed on the CONSULTANT by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Agreement. The CONSULTANT shall supply any certificates of insurance required by the Municipality and adhere to any additional requirements concerning insurance.

#### **ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE**

This agreement shall be void and of no effect unless the CONSULTANT shall secure Workman=s Compensation Insurance for the benefit of, and keep insured during the life of this agreement, such employees as are necessary to be insured in compliance with the provisions of the Workman=s Compensation Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this agreement. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this agreement in the sum of at least \$1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Municipality at the time of execution of this agreement.

#### **ARTICLE 10. INTERCHANGE OF DATA**

All technical data in regard to the PROJECT existing in the office of the Municipality or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

#### **ARTICLE 11. RECORDS RETENTION**

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the Records). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Municipality, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

#### **ARTICLE 12. DAMAGES AND DELAYS**

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Municipality may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Municipality of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this agreement.

#### **ARTICLE 13. TERMINATION**

The Municipality shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

- A. for convenience of the Municipality - if a termination is brought about for the convenience of the Municipality and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.
- B. for cause - if the termination is brought about as a result of the Municipality's determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the Municipality, of the total amount of work contemplated by the PROJECT Agreement.

#### **ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT**

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and the Municipality shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Municipality or his duly authorized representative. In case of the failure of the CONSULTANT's successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the Municipality for any damages it may sustain by reason thereof. Upon the delivery of all such data to the

Municipality, the Municipality will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

#### **ARTICLE 15. CODE OF ETHICS**

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

#### **ARTICLE 16. INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of the Municipality by reason hereof, and that he will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Municipality, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

#### **ARTICLE 17. COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Municipality shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **ARTICLE 18. TRANSFER OF AGREEMENT**

The CONSULTANT specifically agrees, that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of his right, title or interest therein, or his power to execute such Agreement, to any other person, company or corporation, without the previous consent in writing of the Municipality.

If this provision is violated, the Municipality may revoke and annul the Agreement and the Municipality shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement without such consent in writing of the Municipality.

#### **ARTICLE 19. PROPRIETARY RIGHTS**

The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York and the Municipality a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

#### **ARTICLE 20. SUBCONTRACTORS/ SUBCONSULTANTS**

All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by the Municipality.

**ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29**

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

**ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT**

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the Municipality may in certain circumstances, provide compensation for such work.
- B. Neither the Municipality's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the Municipality in accordance with applicable law for all damages to the Municipality caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.
- C. The rights and remedies of the Municipality provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS**

The CONSULTANT agrees to comply with all applicable Federal, State and Municipality Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, CONSULTANT agrees that neither it nor its SUBCONSULTANTS shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. CONSULTANT is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

**ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.58**

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- a. an existing contract for the PROJECTs ROW incidental work or construction engineering; or
- b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

**ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS** *(unless more restrictive municipal laws apply)*

For all contracts other than personal services in excess of \$5,000, the consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$20,000 except printing contracts in excess of \$10,000, the consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

**ARTICLE 27. WAGE AND HOURS PROVISIONS**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Consultant's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Consultant and its subconsultants must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION**

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Consultant agrees, as a material condition of the contract, that neither the Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Consultant, or any of the aforesaid affiliates of Consultant, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Municipality and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (See, 2 NYCRR 105.4).

**ARTICLE 29. SERVICE OF PROCESS**

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Consultant hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Consultant's actual receipt of process or upon the Municipality's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Consultant must promptly notify the Municipality, in writing, of each and every change of address to which service of process can be made. Service by the Municipality to the last known address shall be sufficient. Consultant will have thirty (30) calendar days after service hereunder is complete in which to respond.

**ARTICLE 30. MISCELLANEOUS**

**30.1 Executory Contract.** This Agreement shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the Municipality beyond the monies legally available for the purposes hereof.

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

Reference: Municipality Contract # \_\_\_\_\_

Municipality	Consultant
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

**ACKNOWLEDGMENT OF THE CITY OF RYE**

STATE OF NEW YORK

ss:

COUNTY OF WESTCHESTER

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ before me, the subscriber, personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say; that he/she resides in \_\_\_\_\_, New York; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Municipality.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, N.Y.

**ACKNOWLEDGMENT OF THE CONSULTANT**

STATE OF NEW YORK

ss:

COUNTY OF WESTCHESTER

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ before me personally came Mose D. Buonocore to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, N.Y.

**Attachment A**  
**Supplemental Architectural/ Engineering Consultant Agreement**  
**Project Description and Funding**

PIN: 8701.43	<i>Term of Agreement</i> Ends: _____		
BIN: N/A			
<input type="checkbox"/> Main Agreement	<input type="checkbox"/> Amendment to Agreement [add identifying #]	<input checked="" type="checkbox"/> Supplement to Agreement	
<b>Phase of Project Consultant to work on:</b>			
<input type="checkbox"/> P.E./Design	<input checked="" type="checkbox"/> ROW Incidentals	<input type="checkbox"/> ROW Acquisition	<input type="checkbox"/> Construction, C/I, & C/S
Dates or term of Consultant Performance: Start Date: March 2011 Finish Date: March 2012			
<b>PROJECT DESCRIPTION:</b>			
<b>PIN 8701.43 Theodore Fremd Avenue Retaining Wall</b>			
Project Location:  Theodore Fremd Avenue, City of Rye			
Consultant Work Type(s): See Attachment B for more detailed Task List.			

**MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:**

\$20,100

**Attachment B**

**Task List**

## Section 5 - Right-of-Way

### 5.01 Abstract Request Map and/or Title Search

The **Consultant** will complete title searches (abstracts of title) for properties to be acquired by the **Municipality**.

### 5.02 Right-of-Way Survey

The **Consultant** will perform survey needed to accurately determine existing right-of-way limits and establish side property lines.

### 5.03 Right-of-Way Mapping

The **Consultant** will meet with the **Municipality** to discuss the types of right-of-way acquisitions required and the limits of acquisition lines.

The **Consultant** will prepare acquisition maps in accordance with the format provided by the **Municipality**.

The **Consultant** will prepare all map revisions or additions which are determined necessary during the construction of the project.

### 5.04 Right-of-Way Plan

The **Consultant** will prepare the Right-of-Way Plan(s) in accordance with the "Locally Administered Federal Aid Procedures Manual."

### 5.05 Right-of-Way Cost Estimates

The **Consultant** will provide cost estimates for the right-of-way to be acquired by the **Municipality** on all alternatives being considered and will provide updated estimates, as necessary.

### 5.06 Public Hearings/Meetings

The **Consultant** will assist the **Municipality** in conducting any public hearings and/or informational meetings as may be required by the Eminent Domain Procedure Law. Public hearings will be included under Section 3.06.

### 5.07 Property Appraisals

The **Consultant** will prepare property appraisals, including estimating the damages caused by the acquisition(s). The **Consultant** will also prepare estimates for the rental of occupied property(ies).

#### **5.08 Appraisal Review**

The **Municipality** will review appraisals prior to offers being made to the property owners.

#### **5.09 Negotiations and Acquisition of Property**

Property offers must not be made until authorization is granted to the **Municipality** by the NYSDOT.

The **Municipality** will negotiate with property owners for the acquisition of their property, including completion of all documents required by the **Municipality** in order to obtain the property.

#### **5.10 Relocation Assistance**

~~The **Consultant** will administer relocation assistance to displaced persons and businesses and oversee their relocation and vacating the property.~~

#### **5.11 Property Management**

~~The **Consultant** County will:~~

- ~~\_\_\_\_\_ prepare an inventory of all improvements acquired.~~
- ~~\_\_\_\_\_ prepare and deliver all required rental notices, rental permits and rental information.~~
- ~~\_\_\_\_\_ collect rentals and payments for salvaged items.~~
- ~~\_\_\_\_\_ maintain improvements in safe and secure manner.~~
- ~~\_\_\_\_\_ oversee the removal of improvements by owners or third party purchasers.~~
- ~~\_\_\_\_\_ demolish improvements when available prior to project construction.~~
- ~~\_\_\_\_\_ dispose of excess right-of-way.~~

Attachment C

Staffing Rates, Hours, Reimbursables and Fee

Exhibit A, Page 1  
 Salary Schedule

**CHAS. H. SELLS, INC.**

JOB TITLE	ASCE (A) OR NICET (N)	AVERAGE HOURLY RATES PRESENT
	GRADE	2/2011
Department Manager	VIII (A)	\$75.68
Project Manager	VII (A)	\$70.30
Project Engineer	VI (A)	\$62.49
Design Engineer II	V (A)	\$49.61
Design Engineer I	IV (A)	\$43.06
Designer II	III (A)	\$36.58
Designer I	I/II (A)	\$30.82
CAD Detailer	IV (N)	\$45.29
CAD Operator/Drafter	III (N)	\$34.95
Project Surveyor	II (N)	\$41.24
Party Chief (Field)	III (N)	\$38.23
Instrument Person (Field)	II (N)	\$23.31

OVERTIME POLICY

- Category A - No overtime compensation.  
 Category B - Overtime compensated at straight time rate.  
 Category C - Overtime compensated at straight time rate x 1.50.

Overtime applies to hours worked in excess of the normal working hours of 8 hrs / day.

Exhibit A, Page 2  
 Staffing Worksheet

Section	Task	Department Manager	Project Manager	Project Engineer	Design Engineer II	Design Engineer I	Designer II	Designer I	CAD Detailer	CAD Operator	Project Surveyor	Crew Chief	Instrument Person
SECTION 1 General	1.05 Project Familiarization												
	1.06 Meetings												
	1.07 Cost and Progress Reporting												
	1.10 Subconsultant Coordination												
	1.11 Subcontractors												
	Subtotal, Section 1	0	0	0	0	0	0	0	0	0	0	0	0
SECTION 2 Data Collection and Analysis	2.01 Design Survey												
	2.02 Design Mapping												
	2.03 Determination of Exist. Conditions												
	2.04 Accident Data and Analysis												
	2.05 Traffic Counts												
	2.06 Capacity Analysis/Modeling												
	2.07 Future Plans												
	2.08 Soil Investigations												
	2.09 Hydraulic Analysis												
	2.10 Bridges to be Rehabilitated												
	2.11 Pavement Evaluation												
	Subtotal, Section 2	0	0	0	0	0	0	0	0	0	0	0	0
SECTION 3 Preliminary Design	3.01 Design Criteria												
	3.02 Development of Alternatives												
	3.03 Cost Estimates												
	3.04 Preparation of Draft DAD												
	3.05 Advisory Agency Review												
	3.06 Public Info. Meetings												
	3.07 Preparation of Final DAD												
	Subtotal, Section 3	0	0	0	0	0	0	0	0	0	0	0	0
SECTION 4 Environmental	4.01 NEPA Classification												
	4.02 EROA Classification												
	4.03 Screenings and PreCm. Invest.												
	4.04 Detailed Studies and Analyses												
	4.05 Permits and Approvals Eln Plaza Permitting Theodore Fremd Avenue Permitting												
	4.06 Environmental Hearing												
	Subtotal, Section 4	0	0	0	0	0	0	0	0	0	0	0	0
SECTION 5 Right-of-Way	5.01 Abstract Request Map/Title Search										8		
	5.02 Right-of-Way Survey											8	8
	5.03 Right-of-Way Mapping						28				2		
	5.04 Right-of-Way Plan						12						
	5.05 Right-of-Way Cost Estimates						4						
	5.06 Public Hearings/Meetings												
	5.07 Property Appraisals						2						
	5.08 Appraisal Review												
	5.09 Negotiations and Acquisition of Prop.												
	5.10 Relocation Assistance												
	5.11 Property Management												
	Subtotal, Section 5	0	0	0	0	46	0	0	0	32	10	8	8
SECTION 6 Detailed Design	6.01 Preliminary Bridge Plans												
	6.02 Advance Detail Plans												
	6.03 Contract Documents												
	6.04 Cost Estimate												
	6.05 Utilities												
	6.06 Railroads												
	6.07 Bridge Inventory & Load Rating												
	6.08 Information Transmittal												
	Subtotal, Section 6	0	0	0	0	0	0	0	0	0	0	0	0
SECTION 7 Advertisement, Bid Opening, and Award	7.01 Advertisement												
	7.02 Bid Opening (Letting)												
	7.03 Award												
	Subtotal, Section 7	0	0	0	0	0	0	0	0	0	0	0	0
SECTION 8 Construction Support	8.01 Construction Support												
	Subtotal, Section 8	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	46	0	0	0	32	10	8	8
Total Hours		104											
Hourly Rates		\$75.62	\$70.33	\$62.49	\$49.61	\$43.06	\$36.58	\$30.92	\$45.29	\$34.55	\$41.24	\$38.23	\$23.31
Technical Labor		\$0.00	\$0.00	\$0.00	\$0.00	\$1,660.59	\$0.00	\$0.00	\$0.00	\$1,118.50	\$412.30	\$305.60	\$168.51
Total Technical Labor		\$4,003.85											

Exhibit B, Page 1  
Direct Non-Salary Expense

**1. Property Appraisals**

Original Property Appraisal	3,500.00
Update property appraisal for Shane's property	\$2,500.00
Independent appraisal review for Shane's property	\$1,800.00

**TOTAL DIRECT NON-SALARY COST**

\$7,800.00

Exhibit C  
Summary

*Chas. H. Sells, Inc.*

---

Item 1A, Direct Technical Salaries	\$4,004
Item II Direct Non-Salary Cost (Sells)	\$7,800
Item III, Overhead (176%)	\$7,047
<u>Item IV, Fixed Fee (12%)</u>	<u>\$1,326</u>
Total Estimated Cost	\$20,177
Maximum Amount Payable	\$20,100



# CITY COUNCIL AGENDA

NO. 12

DEPT.: Corporation Counsel

DATE: March 30, 2011

CONTACT: Kristen Wilson, Corporation Counsel

**ACTION:** Public Hearing to amend Local Law Chapter 93, Section 93-6, "Filming – License Fee", to amend the fee for filming in the City.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

Local Law Chapter 93, Section 93-6, "Filming – License Fee" is being updated to not only amend the fee for filming, but to remove the specific fee amount from the Law so that future changes to fees may be set by resolution of the City Council.

See attached draft Local Law.

**CITY OF RYE  
LOCAL LAW NO. 2011**

**A local law to amend Chapter 93 “Film Permits” § 93-6 “License fee” of the Code of the City of Rye as follows:**

**Section 1**

§ 93-6 License Fee.

The fee to be paid shall be determined by the City Clerk for each license, including a license for a portion of a day, as follows:

A.

License fee for use of public property. The minimum fee shall be \$1,600 per day, and the maximum fee shall not exceed \$16,000 per day **be set by resolution of the City Council**. The City Clerk, in determining the specific fee to be required, shall take into consideration the following factors which would denote a greater use of public property and therefore require higher fees:

(1)

Use of public parking spaces.

(2)

Use of vehicle travelways requiring the rerouting or directing of traffic.

(3)

Use of pedestrian travelways requiring the rerouting or directing of pedestrian traffic.

(4)

Use of public buildings during normal operating hours.

(5)

Use of other public areas during normal operating hours.

(6)

The size of the filming location.

(7)

The number of filming locations.

(8)

The number of hours the filming location or locations will be used.

(9)

Use or involvement of City personnel.

(10)

Use or involvement of City equipment.

(11)

Use of explosives.

(12)

Involve dangerous activities.

B.

License fee for use of private property. The fee for filming on private property shall be ~~\$350 per day~~ **set by resolution of the City Council.**

## **Section 2**

This law will take effect immediately upon filing with the New York State.



# CITY COUNCIL AGENDA

NO. 13

DEPT.: City Assessor

DATE: March 30, 2011

CONTACT: Noreen Whitty

**AGENDA ITEM:** Approval of an application for a partial refund of 2009 and 2010 real estate taxes for property located at 11 Hook Road and authorization to refund the overpaid tax amounts.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the City Council approve the request, and urge Westchester County to also refund the taxes due to the error made by the City of Rye.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

City taxes paid in 2009 and 2010 will be refunded in the amount of \$1,384.50. The Rye City School Board is voting on the school tax refund in the amount of \$5,037.54 on 3/29/11.

**BACKGROUND:**

Typically requests for refund are approved by the City Manager. In this situation, however, we are faced with an unusual situation in that the Director of the County Commission has denied the request, stating that the erroneous assessment was a mathematical rather than a clerical error. His denial comes in the form of a recommendation to the tax levying body.

Staff disagrees with Mr. Jackson's ruling and believe the resident should be refunded the amount of overpaid taxes, and also want to position the resident to be successful in having Westchester County refund the County portion of their tax bill. In addition, RCSD counsel has issued an opinion that the refund should be granted.

See attached.

MEMO TO: Scott Pickup, City Manager  
Dr. Edward J. Shine, Rye City School Superintendent

FROM: Noreen Whitty, City Assessor

RE: Application for Refund of Real Property Tax  
Leonard D'Angelo, Jr. – 11 Hook Road

DATE: February 4, 2011

Pursuant to Section 556 of the Real Property Tax Law, I hereby request that the attached application for a partial refund of 2009 & 2010 real estate taxes be approved by the City Council and Rye City School Board (the "School Board"). The total refund amounts to \$1,384.50 in City tax and \$5,037.54 in School tax.

Mr. D'Angelo recently came into my office to inform me that the square footage for his home as shown on assessment records was incorrect. Upon review of the building plans, it was confirmed that his home's square footage was approximately 1,000 square feet less than reflected on assessment records.

The procedure for correction of assessment errors requires that the error be reviewed by the County Tax Director who then makes a recommendation for action to the tax levying body. Westchester County Tax Director, David Jackson has recommended that the application be denied. He states that "a correctable error has not occurred." A copy of his letter is attached. The City's Corporation Counsel, Kristen Wilson, and I disagree. RPTL 550 (2g) specifically defines a clerical error as follows:

"...an arithmetical mistake by the assessor appearing on the property card..."

According to the law, The County Tax Director can only make a recommendation. Approval or denial of an application rests with the tax levying body. Based upon these facts, we believe Mr. D'Angelo is entitled to the refund and request that you approve same.

Additionally, please be advised that in 2002 the City Council and School Board each approved a refund application for a homeowner whose home's square footage was incorrect. Thus, there is precedent for authorizing a refund under these circumstances. The homeowner in that instance was Colby Stilp of 11 Halls Lane.

If you have any questions concerning this matter, please contact me.

Cc: Kristen Wilson, Esq.  
Encl.

**DANIEL G. VINCELETTE, PC**  
ATTORNEYS AND COUNSELORS AT LAW  
21 EVERETT ROAD EXTENSION  
ALBANY, NEW YORK 12205

DANIEL G. VINCELETTE

MEGHAN A. MARINELLO

(518) 489-1098  
FAX (518) 489-3304  
www.vincelettelaw.com  
e-mail: dgv@vincelettelaw.com

To: Dr. Edward Shine, Superintendent  
Kathleen Ryan, Business Manager  
From: Daniel G. Vincelette, Esq.  
Re: Correction of Errors -- D'Angelo, 11 Hook Road (Parcel No. 146-16-1-23)  
Date: March 18, 2011

I have reviewed the material related to the Application for Refund and Credit and the Correction of Errors petition filed on the above-referenced property by the City of Rye Assessor. As the error appears to be an arithmetic mistake by the Assessor's office, and the assessment and tax liability for the property was directly based upon that miscalculation, the application is proper and should be granted.

#### **BACKGROUND**

I have reviewed the documents from the City of Rye Assessor, as well as the correspondence and legal opinion from the Westchester County Real Property Tax Director, who has recommended that the application be denied. In addition, I have reviewed the property sketch, and I have spoken to the assessor to ascertain the underlying facts.

According to Assessor Noreen Whitty, the subject property was new construction that was placed as a full assessment for the first time on the 2009 roll. The 2009 assessment was based upon square footage of the improvement, as calculated by the assessor's office from the original building plans. There was a significant error in square footage made in the calculation by the Assessor's office upon which the assessment was based. The actual square footage, 4,224 square feet, was approximately 20 percent less than the amount originally calculated by the assessor. Upon review of this matter with the property owner, the assessor has filed an application for partial refund pursuant to Real Property Tax Law § 550 (2)(g).

#### **DISCUSSION**

The miscalculation of square footage from the building plans is an arithmetic mistake; the 2009 assessment was based directly upon the square footage. The error thus falls within the ambit of RPTL §550(2)(g). The decision provided by the County Real Property Tax Director, a 1999 Livingston County Supreme Court Decision that was published in the New York State Office of Real Property Services reporter, is distinguishable. In *Cen Electronics, Inc. v. Livingston County Board of Assessors* (Index No. 893-1998, Livingston Cty. Sup Ct. 1999), the Court denied an Article 78 petition filed by a taxpayer and held that an error in square footage did not constitute a clerical error where no arithmetic mistake was made. In addition, the court held that the error was limited to a mistake in the description of the property, and was not the basis for the assessment. This is consistent with the holdings of the New York State Court of Appeals in its

decisions related to correction of errors. *See Donald E. Axinn Companies v. Board of Assessors*, 85 NY2d 838 (1995)(petition granted where acreage error directly affected the assessment and computation of tax liability).

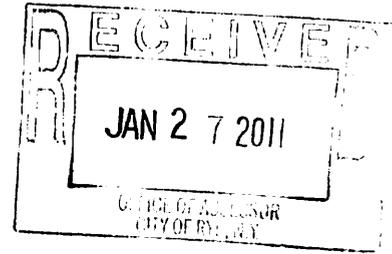
By law, the County Tax Director makes a recommendation to the taxing jurisdiction based upon a review of the petition. Based upon Real Property Tax Law §550(2)(g) and the applicable law, the petition for correction and refund should be granted.

If you have any questions, please do not hesitate to contact me.

Robert P. Astorino  
County Executive

Westchester County Tax Commission

David B. Jackson, AAS, CCD, IAO  
Executive Director



Monday, January 24, 2011

Noreen Whitty, City Assessor  
City of Rye  
1051 Boston Post Road  
Rye, NY 10580-2996

RE: Application for Refund and Credit (146-16-1-23-D'Angelo)

Noreen,

Enclosed is an application for refund and credit (RP-556) that this office received for the parcel referenced above. The years involved are 2009 & 2010. It is my **recommendation** that the application be denied. Based on the attached Opinion of Counsel and Supreme Court Case, a correctable error has not occurred.

Please make sure that the applicant is notified of the final decision of each applicable tax levying body. As you are aware, each individual City or Town makes decisions about real property assessment for Westchester County since they annex the Westchester County warrant to the final assessment roll.

Enclosures

Sincerely,

A handwritten signature in black ink that reads "David B. Jackson". The signature is written in a cursive style and is enclosed within a large, hand-drawn oval.

David B. Jackson, AAS, CCD, IAO  
Executive Director

cc: Board of Education, Rye City School District (Tax Levying Body)  
C/O Edward J. Shine, Ed.D, Superintendent of Schools  
411 Theodore Fremd Avenue  
Rye, NY 10580

City of Rye City Council (Tax Levying Body)  
C/O Mayor Douglas French  
1051 Boston Post Road  
Rye, NY 10580-2996

Westchester County Tax Commission, Office of the Executive Director

110 Dr. Martin Luther King Jr., Blvd.  
Room L-221  
White Plains, New York 10601

FAX: (914) 995-4333  
Telephone: (914) 995-4325  
E-mail: Dbj1@westchestergov.com

Website: <http://www.westchestergov.com/taxcommission>



Don't drink a drop  
Save water

NYS Department of  
Taxation and Finance

## Office of Real Property Tax Services

Valuing & Assessing Real Property    Taxpayer Rights & Information    Tax Policy & Exemptions    Forms, Publications & Procedures    Equalization & Tax Levy Distribution    Property Tax Reform

### Opinions of Counsel

#### Volume 9: Opinions of Counsel SBEA No. 23

Correction of errors (error in essential fact) (incorrect description of improvement)—Real Property Tax Law, §550:

The incorrect description of an improvement does not constitute an error in essential fact and may not be corrected pursuant to the correction of errors law. This type of valuation error is subject to review upon filing of an administrative complaint with the board of assessment review.

An assessor calculated the assessed value of an apartment building based upon the belief that it had eight units. While completing a subsequent inventory of commercial property within the city, however, the assessor discovered that the apartment building had only seven units. The assessor asks if this is a correctable error.

Article 5, title 3, of the Real Property Tax Law authorizes corrections on assessment rolls and tax rolls of certain "clerical errors," "errors in essential fact," and "unlawful entries," as those terms are defined in section 550 of the RPTL. The assessor suggests that the situation described is an "error in essential fact." We assume that the assessor is referring to "an incorrect entry on the taxable portion of the assessment roll, or the tax roll, or both, of the assessed valuation of an *improvement* to real property which was not in existence or which was present on a different parcel" (RPTL, §550(3)(b), emphasis added). We interpret the term "improvement" to refer to an entire structure, not an incorrect description of an improvement (i.e., structure) existing on a parcel.

The number of apartment units within a building is a part of the description of an improvement and is not administratively correctable by the procedures prescribed in Article 5, title 3, of the RPTL. This type of valuation error is subject to review upon the timely filing of an administrative complaint with the board of assessment review in accordance with title 1-A of Article 5 of the Real Property Tax Law.

October 27, 1987

Last Modified on: 01/04/2008 08:42:57

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Handwritten initials or mark in the top left corner.

of K...man v. Board of Assessors of the Village of Atlantic Beach, 141 A.D.2d 175, [Second Dept. 1988]). Petitioners further claim that the method by which the assessor added \$7,500.00 to each property assessment constitutes selective reassessment and is illegal. Conversely, respondent has indicated that he increased the assessments of the individual lots on the theory that the privileges granted to each lot owner are equal among lot owners as they all receive the same privileges. It is clear that the essence of petitioners' claims is the over evaluation of their properties and the proper procedural remedy would be to file a grievance pursuant to the RPTL as did the other individual property owners herein. Accordingly, the Court concurs with respondents that the instant proceeding cannot be a substitute for the grievance procedures contained within article 7 of the RPTL.

In light of the foregoing, the motion to dismiss is granted to the extent consistent with the Decision and Judgment herein.

This shall constitute the Decision and Judgment of this Court.

**Correction of Errors; Refund of Taxes, Clerical Error**

**STATE OF NEW YORK  
SUPREME COURT, LIVINGSTON COUNTY**

**CEN ELECTRONICS, INC.**

**Petitioner,**

**-vs-**

**LIVINGSTON COUNTY BOARD OF SUPERVISORS, et al.,**

**Respondent.**

**Index No. 893-1998**

**James S. Grossman, Esq., Rochester, NY, for petitioner.**

**David J. Morris and Peter K. Skivington, Esqs., Geneseo, NY, for respondents.**

**DATED: June 21, 1999**

**ALONZO, J.**

Petitioner, CEN Electronics, Inc., commenced this Article 78 proceeding seeking judgment compelling respondents to correct an alleged "clerical error" on the 1996, 1997, and 1998 property tax rolls and to refund excess taxes paid with interest. Respondents oppose the petition alleging that there was not a "clerical error", that the erroneous square footage information was not used in calculating the property's assessed value, and that petitioner did not seek administrative review pursuant to Real Property Tax Law, Article

5, Title I-A. I agree with respondents that petitioner has not made a sufficient showing that there was a "clerical error".

While analyzing the 1998 proposed property tax roll for the subject property, petitioner discovered that the property inventory card listed the square footage of buildings thereon as 181,000 square feet. An inspection of the buildings disclosed that the actual square footage was 126,309 square feet. That information was provided to the town assessor, and the 1998 assessed value was consequently reduced from the proposed amount of \$2,460,000.00 to \$1,552,800.00. Petitioner thereafter sought a refund of excess taxes paid within a three-year period.

Petitioner argues that the erroneous square footage figure constitutes a "clerical error" pursuant to Real Property Tax Law, §550(2)(g). If correct, petitioner is entitled to a reduction in tax and a refund of excess taxes paid within three years of the application (RPTL, §556[a]).

The pertinent section of the Real Property Tax Law provides that a "clerical error means an entry on an assessment or tax roll which is incorrect by reason of an arithmetical mistake by the assessor appearing on the property record card, field book or other final work product of the assessor" (RPTL, §550[2][g] [emphasis added]). In this case, no argument has been made that the assessor made

some error in arithmetic in determining the assessed value, and an arithmetical mistake has not been identified. Rather, the mistake in square footage is more like an error in acreage or an error in the description of improvements. An error in acreage is an "error in essential fact" (Matter of Donald E. Axinn Co. v. Bd. of Assessors of the Co. of Nassau, 85 N.Y.2d 838 [1995]; RPTL, §550[33][c]) and refunds are only made for taxes paid within one year of annexation of the tax warrant (RPTL, §556[1][a]). A mistake in the description of improvements must be challenged administratively via RPTL, Article 5, Title 1-A (9 Op. Counsel SBEA No. 23, October 27, 1987).

Respondents also argue that research of the assessment history revealed that the assessment was recently based upon an advisory appraisal by the Industrial and Utility Bureau of the State board of Equalization and Assessment in 1994; that appraisal was based upon 132,953 square feet. Respondents argue further that the present valuation is an update of the prior assessment that was based on the state appraisal, and thus, the erroneous square footage information did not form a basis of the present assessment. Although it appears that there may be some merit to respondents' argument, I do not need to resolve this factual issue because I have held that petitioner did not meet its initial burden of showing that there was a "clerical error".

The petition is denied.



*1/19/2011*

## CITY OF RYE

1051 Boston Post Road, Rye, NY 10580-2996

TEL: (914)967-7565 FAX: (914)967-4641

January 19, 2011

David Jackson  
Executive Director  
Westchester County Tax Commission  
110 Dr. Martin Luther King Jr. Blvd.  
White Plains, New York 10601

Re: Application for Refund of Real Property Taxes  
11 Hook Road, Rye (146-16-1-23)

Dear David:

Enclosed please find an application for a partial refund of taxes and documentation supporting this request pursuant to RPTL Section 550 (2g). The home's square footage was overstated due to the application of incorrect dimensions resulting in an overassessment.

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads 'Noreen Whitty'.

Noreen Whitty  
City Assessor

Encl.



NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES

APPLICATION FOR REFUND AND CREDIT OF REAL PROPERTY TAXES
FOR THE YEAR(S) 2009 + 2010

Part 1: To be completed in duplicate by Applicant. For refund or credit of real property tax, submit both copies to County Director of Real Property Tax Services...

Leonard D'Angelo, Jr. & Sabina D'Angelo
1a. Name of Owner
11 Hook Road Rye, NY 10580
1b. Mailing Address
1c. E-mail Address (optional) 146-16-1-23

4. Description of real property as shown on tax roll or tax bill
5. Account No. n/a 6a. Amount of taxes paid or payable 101,547.53 6b. Date of payment (if paid) 2009-11
7. I hereby request a refund or credit of real property taxes levied for the year(s) 2009 - 2010 by Rye City, West. Co. & RCSD

1/5/11 Date
\* Insert name of village, county, city, school district; town in Westchester County
Signature of Applicant

PART II: For use by COUNTY DIRECTOR, VILLAGE ASSESSOR: Attach written report including documentation and recommendation

Date application received: 1/21/2011 Date warrant annexed: 5/11 - 8/1/2009 + 2010

Last day for collection of taxes without interest:
Recommendation: 1/24/2011 Date
[ ] Approve application\* [x] Deny Application
Signature of Official

\* [ ] If box is checked, this copy is for assessor and board of assessment review of city/town/village of which are to consider attached report and recommendation as equivalent of petitions filed pursuant to section 553.

PART III: For use by TAX LEVYING BODY or OFFICIAL DESIGNATED BY RESOLUTION (Insert Number or Date)

APPLICATION APPROVED (Check reason) [ ] Clerical error [ ] Unlawful entry [ ] Error in essential fact
Amount of taxes paid: \$ Amount of taxes due: \$
Amount of refund or outstanding tax to be credited: \$

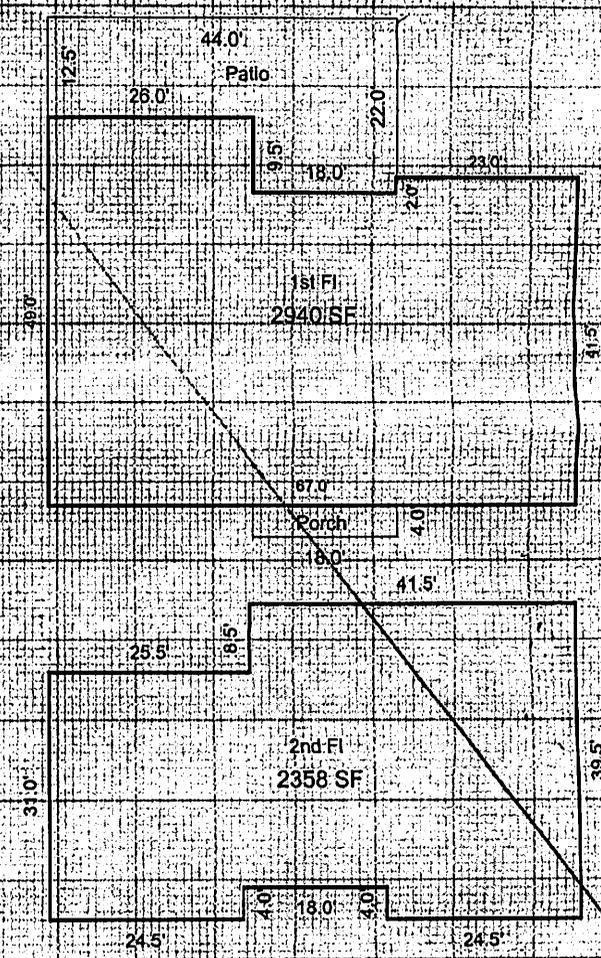
APPLICATION DENIED Reason:
Date Signature of Chief Executive Officer or Official Designated by Resolution

# SKETCH/AREA TABLE ADDENDUM

File No 146-16-1-23

Property Address 11 Hook Road  
 City Rye State NY Zip 10580  
 Borrower  
 Lender/Client  
 Appraiser Name *2008*

**146-16-1-23**  
 10rms/4bds/5.1bths  
 LR/DR/Kit/BkfstRm/FR  
 2 car garage underneath  
 2 trple  
 Finished basement (incl 1 bth)



AREA CALCULATIONS SUMMARY			
Code	Description	Net Size	Net Totals
GLA1	First Floor	2939.5	2939.5
GLA2	Second Floor	2357.8	2357.8
P/P	Patio	721.0	
	Covered Porch	72.0	793.0
Net LIVABLE Area (Rounded)			5297

LIVING AREA BREAKDOWN			
	Breakdown		Subtotals
First Floor			
	39.5 x 67.0		2646.5
	2.0 x 23.0		46.0
	9.5 x 26.0		247.0
Second Floor			
	24.5 x 39.5		967.8
	17.0 x 35.5		603.5
	24.5 x 31.0		759.5
	1.0 x 27.0		27.0
7 Items	(Rounded)		5297

*Correct SFLA = 4,224 (see revised sketch)*

# SKETCH/AREA TABLE ADDENDUM

File No 146-16-1-23

Property Address 11 Hook Road

City Rye

State NY

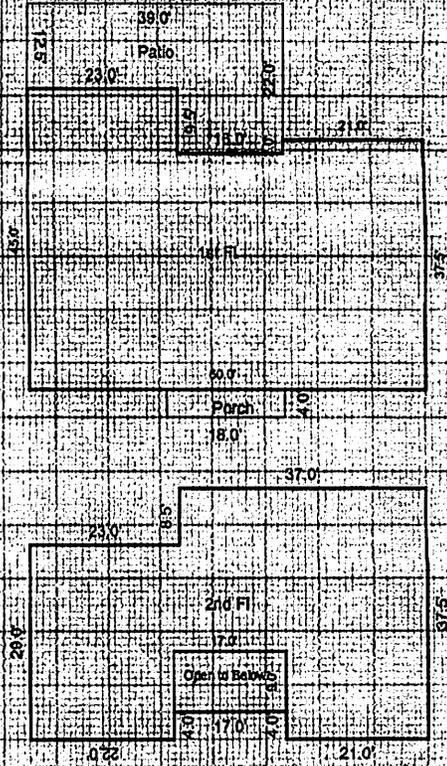
Zip 10580

Borrower

Lender/Client

Appraiser Name

146-16-1-23  
 10ms/4bss/5tblns  
 LR/DR/KI/BK/SHR/FR  
 2 car garage underneath  
 2 trpc  
 Finished basemnt incl 1bth



## AREA CALCULATIONS SUMMARY

Code	Description	Net Size	Net Totals
GLA1	First Floor	2390.5	2390.5
GLA2	Second Floor	1833.5	1833.5
P/P	Patio	639.5	
	Covered Porch	72.0	711.5
OTH	Open to below	153.0	153.0

## LIVING AREA BREAKDOWN

Breakdown			Subtotals
<b>First Floor</b>			
35.5 x	60.0		2130.0
2.0 x	21.0		42.0
9.5 x	23.0		218.5
<b>Second Floor</b>			
21.0 x	37.5		787.5
16.0 x	33.5		536.0
22.0 x	29.0		638.0
1.0 x	25.0		25.0
<b>Open to below</b>			-153.0

*Revised sketch*

Net LIVABLE Area (Rounded) 4224

7 Items (Rounded) 4224



# CITY COUNCIL AGENDA

NO. 14 DEPT.: FINANCE

DATE: March 30, 2011

CONTACT: JOSEPH S. FAZZINO, Deputy Comptroller

**Agenda Item:** Adoption of the 2011 County property tax rates.

**FOR THE MEETING OF:**

March 30, 2011

**RYE CITY CODE,  
CHAPTER  
SECTION**

**RECOMMENDATION:** That the City Council adopt the 2011 County tax rates.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other

**BACKGROUND:**

The City must by law collect the County taxes and remit the collected amount of the tax warrant to the County in two installments: 60% on May 25<sup>th</sup> and the balance of 40% on October 15<sup>th</sup>.

The County tax rates must be adopted by the City Council in order to provide sufficient lead time for the preparation and mailing of the County tax bills, and to allow sufficient time for property owners to remit their payment within the penalty-free period (the month of May).

Failure to adopt this resolution does not relieve the City of its legal responsibility to remit to the County the amount of the tax warrant due on the dates noted above, and, by State law, the City cannot waive penalties for late payment of property taxes, even if the property owner(s) did not receive a bill or received a bill after the penalty-free period.

**RESOLVED**, that the tax rates for the amounts of Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District charges for the fiscal year beginning January 1, 2011, shall be as follows:

<u>Westchester County</u>	
Levy	\$21,558,709
Taxable Assessed Value	137,436,174
Taxable Rate per \$1,000 Assessed Value	156.863
<u>Blind Brook Sewer District</u>	
Levy	\$3,059,068
Taxable Assessed Value	141,516,292
Taxable Rate per \$1,000 Assessed Value	21.616
<u>Mamaroneck Valley Sewer District</u>	
Levy	\$544,554
Taxable Assessed Value	18,905,276
Taxable Rate per \$1,000 Assessed Value	28.804
<u>Refuse Disposal District No. 1</u>	
Levy	\$2,156,192
Taxable Assessed Value	140,578,168
Taxable Rate per \$1,000 Assessed Value	15.338

And be it further

**RESOLVED**, that the Council does hereby certify to the City Comptroller the above stated levies and tax rates for Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District No. 1 charges, and the City Comptroller is hereby directed to apportion and extend against each taxable property listed upon the assessment roll of the City of Rye for 2011 at the rates specified, the amount of taxes required to produce the total sums certified and to render tax notices for, and receive and collect, the several sums computed and determined, and, it is further

**RESOLVED**, that the tax warrant of Westchester County be signed by the Mayor and directed to the City Comptroller to collect the amount of said taxes with interest as provided by law and any special assessment heretofore authorized and approved.