

**INTER-MUNICIPAL AGREEMENT
BETWEEN THE COUNTY OF NASSAU,
NEW YORK, AND THE TOWN OF OYSTER BAY, NEW YORK, IN
RELATION TO THE TRANSFER OF STILLWELL PRESERVE**

THIS AGREEMENT (the “**Agreement**”), made and entered as of the date on which this Agreement is last executed by the parties hereto, by and between the COUNTY OF NASSAU (hereinafter referred to as the “**County**”), a municipal corporation having its principal offices at 1550 Franklin Avenue, Mineola, New York 11501, and the TOWN OF OYSTER BAY (hereinafter referred to as the “**Town**”), a municipal corporation, having offices at 54 Audrey Avenue, Oyster Bay, New York 11771 (the County and the Town are hereinafter referred to, together, as the “**Parties**”, and individually, as a “**Party**”).

W I T N E S S E T H:

WHEREAS, the **County** periodically performs a review and assessment of **County** properties; and

WHEREAS, following that assessment, the **County** has identified Stillwell Woods Preserve (hereinafter referred as “**Stillwell**” or the “**Premises**”), located within the **Town** that is owned by the **County**; and

WHEREAS, the **County** and the **Town** are currently parties to a License Agreement, which grants the **Town** a license to use **Stillwell** for recreational purposes; and

WHEREAS, **Stillwell** is predominately used by **Town** residents and the **Town** is in the best position to identify and serve the needs of those residents; and

WHEREAS, in the interest of consolidating services, improving efficiency, and creating new recreational opportunities for **County** and **Town** residents, the **County** wishes to convey, and the **Town** wishes to acquire **Premises**, as more particularly described in this **Agreement**; and

WHEREAS, the **Town** recently expended the sum of \$639,124.41 to perform capital improvements on the **Premises** to alleviate deteriorated asphalt and flooding issues, as well as to provide a size expansion and form layout and striping of the parking lot to improve parking capacity, efficiency and safety (the “**Town Capital Improvements Project**”); and

WHEREAS, the **Town Capital Improvements Project** also included the removal of overgrown vegetation to reclaim parking area, regrading and adding significant stormwater storage capacity, and the resurfacing and reconstruction of the asphalt pavement; and

WHEREAS, the **Town** has indicated to the **County** the need for additional capital improvements at **Stillwell** to enhance the experiences of the residents of the **County** and the **Town**, said capital improvements are more particularly described in **Appendix “B”**,

provided by the **Town** and annexed hereto and made a part hereof (the descriptions contained in **Appendix “B”** are sometimes hereinafter referred to as “**Work**” or “**Project**”); and

WHEREAS, the **Town** and the **County** acknowledge the need for such capital improvements and also acknowledge the benefits said improvements will provide to **Town** and **County** residents; and

WHEREAS, the **Town** is accepting responsibility to undertake the design and installation of said capital improvements and oversee the **Project**; and

WHEREAS, the **Town** and the **County** estimate that the cost of said **Project** shall be at least Twelve Million and 00/000 – (\$12,000,000.00) – Dollars, and the **County** desires to assist the **Town** in providing funding for the **Town** to make capital improvements to **Stillwell**, said capital improvements (“**Project**”) to be designed and completed solely by the **Town**; and

WHEREAS, the funds expended by the **Town** and the **County** on the **Project** are separate and apart from the **Town** Capital Improvements **Project** and are unrelated to the funds that will be expended pursuant to this **Agreement**; and

WHEREAS, the **County** and the **Town** are authorized pursuant to both Article 9, No. 1 of the State Constitution and Article 5-G of the NYS General Municipal Law to enter into intergovernmental agreements; and

WHEREAS, the **County** and the **Town**, believing it to be in the best interest of the taxpayers of their respective municipalities, do hereby authorize inter-municipal cooperation with respect to the mutual covenants set forth in this **Agreement**; and

WHEREAS, the **Parties** do hereby authorize inter-municipal cooperation with respect to a project for the design and installation of those capital improvements all as is more particularly described in **Appendix “C** attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the **Parties** hereto do agree as follows:

I. Transfer of Premises

1.1 Transfer. The **County** agrees to convey to the **Town**, and the **Town** agrees to acquire from the **County**, upon the terms and conditions hereinafter contained and subject to all applicable Laws, as hereinafter defined, (i) the parcels of land (including the Stormwater Basin) which is designated as Section 14, Block E, Lot 1010, located at 72 S. Woods Road, Village of Woodbury, Town of Oyster Bay, County of Nassau, State of New York, on the Nassau County Land and Tax Map and more particularly shown by the map attached hereto and hereby made a part hereof as **Appendix “A”**, the actual metes and bounds description and/or Section, Block and Lot to be provided; (ii) all buildings and

improvements situated thereon, if any, (iii) all right, title and interest, if any, of the **County** in and to any land lying in the bed of any street, road, highway or avenue, opened or proposed, in front of or adjoining the subject premises, to the center line thereof, and all right, title and interest of the **County** in and to any award made or to be made in lieu thereof and in and to any unpaid award for damages to the subject premises by reason of change of grade of any street or highway or any taking by condemnation; (iv) the appurtenances and all the estate and rights of the **County** in and to the subject premises; and (v) all right, title and interest of the **County**, if any, in and to the fixtures, equipment and other personal property attached or appurtenant to the subject premises, except as otherwise provided herein (the foregoing items (i) through (v) are, collectively, referred to herein as “**Stillwell**” or the “**Premises**”).

1.2 Permitted Encumbrances. (a) The **Premises** is to be transferred subject to (i) any state of facts an accurate survey may show and any variations between the location of records lines, (ii) covenants, restrictions, reservations, easements and agreements of record, (iii) laws and governmental regulations that affect the use and maintenance of the **Premises**, (iv) consents for the erection of any structures on, under or above any streets on which the **Premises** abuts, (v) minor encroachments (less than 12 inches) of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway, (vi) all licenses and easements, if any, for public utilities and the rights of any utility company to maintain and operate lines, poles, cables and distribution boxes in, over and upon the **Premises** (vii) any laws, codes, regulations or ordinances, requirements and construction preconditions (including, but not limited to zoning, building and environmental matters) as to the use, occupancy, subdivision or improvement of the **Premises** adopted or imposed by any governmental agency having jurisdiction, and all amendments and additions thereto now or which at closing will be in force and effect and (viii) the standard preprinted exceptions, stipulations and exclusions from coverage contained in any certificate of title or title policy issued to the **Town** by any title company authorized to issue title insurance in the State of New York, provided that none of the above shall prevent the continued existence of any buildings on the premises, the **Town**'s use of the premises for recreational park purposes, nor prevent the **Work** as set forth herein.

(b) Title Defects. If the **County** shall be unable to convey title to the **Premises** at the closing in accordance with the provisions of this **Agreement** or if the **Town** shall have any other grounds under this **Agreement** for refusing to consummate the transfer provided for herein, the **Town**, nevertheless, may elect to accept such title as the **County** may be able to convey without any liability on the part of the **County**. If the **Town** shall not so elect, the **Town**, as its sole and exclusive remedy, may terminate this **Agreement**. The **County** shall not be required to bring any action or proceeding or to incur any expense to cure any title defects or violations or to enable the **County** otherwise to comply with the provisions of this **Agreement**.

(c) Stormwater Basin. The **Town** covenants that any future redevelopment or changes to the Stormwater Basin performed by the **Town** shall be performed in a way that

accommodates the tributary area that the Stormwater Basin currently serves to enable the Stormwater Basin to continue to rectify area drainage problems.

1.3 Payment. The purchase price is ONE and 00/100 -- (\$1.00) – Dollar, payable at Closing.

1.4 Closing Date. Subject to the conditions set forth herein, the **Closing** shall occur on or about the thirtieth (30th) day after the securing of all required governmental approvals for the transfer (the “**Transfer Approvals**”), including, without limitation, the passage of appropriate legislation by the State approving the transfer, if required. In the event State approval is required for the transfer, the **Town** shall be responsible for obtaining the State approval. The **County** will assist the **Town** in obtaining the State approval, including providing a “Home Rule Message” in support of the **Town** taking title to the subject Premises.

1.5 Covenants in Deeds. The Deed conveying the subject premises from the **County** to the **Town** shall contain clauses that state:

(a) The Grantee, by the acceptance of this Deed, further covenants and agrees for itself and its successors and assigns as follows: (i) the above described premises shall be forever used and maintained as and for public recreational purposes and for those purposes only, except that the Grantee, its successors and assigns, may provide parking or erect ancillary structures on the said premises as are necessary for operations consistent with the public recreational purposes of the said premises; (ii) all Nassau County residents shall be allowed to use and enjoy the said Park on the same terms and conditions as shall residents of the Grantee or its successors and assigns; (iii) Grantee shall honor all current permits and is permittees, and will endeavor to provide similar usage for current permittees at the Park; (iv) the Grantee and its successors and assigns shall display and maintain, at the main entrance to the Park, a sign, acceptable to the **County** in all respects, including, without limitation, design, size and location, that states: “*Stillwell is open to all Nassau County residents, subject to compliance with all rules and regulations*” and the **County** will not unreasonably withhold its consent to the design, size and location of such signage; (v) in the event that there is a breach of any of the conditions or covenants herein by Grantee or its successors and assigns, at the option of the **County**, all right, title and interest in and to all of the said premises shall revert to the County of Nassau and the **County** shall have the right to enter upon said premises ninety (90) days (“**Cure Period**”) following written notice from the **County** to the Grantee, its successors and assigns, of said breach, provided, however, that Grantee, its successors and assigns, do not cure said breach within the **Cure Period** or take such steps as are reasonable to cure such breach during the cure period, and (vi) in the event that any of the conditions or covenants herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining conditions or covenants shall not in any way be affect or impaired thereby.

(b) SUBJECT, however, to the understanding of the parties that, insofar as the Park was acquired by Grantor as perpetual preservation lands pursuant to County of Nassau Local

Law 5-1988, and further, insofar as the purpose of the transfer of the Premises pursuant to this deed is for the environmentally beneficial use of the Property by the Grantee and the County of Nassau (such use, the “**Permitted Use**”), nothing contained herein shall change or extinguish, or is intended to change or extinguish, the restricted and limited use of the **Premises** as perpetual preservation lands, and the use restrictions and the limitations contained in Local Law 5-1988 shall continue to run with the land and be binding upon Grantee, its successors and assigns.

(c) FURTHER SUBJECT, to the restriction that Grantee shall only use the **Premises** for public recreational purposes, and for no other use. These covenants and restrictions shall run with the land and shall be binding upon Grantee, its successors and assigns.

1.6 Due Diligence Review.

(a) Commencing on the date hereof and expiring one hundred twenty (120) days thereafter (the “**Inspection Expiration Date**”) or such other date as mutually agreed to by the **Parties** in writing, the **Town** and its authorized representatives and agents shall be entitled to enter upon the **Premises** at reasonable hours upon notice to the **County** in order to conduct such reasonable and customary inspections, studies, tests and reviews with respect to the **Premises** which the **Town** deems necessary or desirable in connection with an assessment of (i) the structural integrity and physical condition of the **Premises** (the “**Engineering Review**”), and (ii) the environmental condition of the **Premises**, including, without limitation, a Phase I environmental assessment of the **Premises** (the “**Environmental Review**”; which, together with the Engineering Review is hereinafter collectively referred to as the “**Due Diligence Review**”), at the **Town’s** sole cost and expense. Prior to performing any sampling or testing that disturbs the **Premises**, including any so-called “Phase II” environmental assessment, the **Town** must obtain the **County’s** prior written consent based on the **County’s** review of **Town’s** proposed plans. The **County** shall cooperate with **Town** and its authorized representatives and agents in every reasonable way, at **Town’s** sole cost and expenses, in connection with the **Due Diligence Review**.

(b) In the event that the **Town** and/or its agents, employees or representatives shall cause any damage to the **Premises** by reason of work conducted during the **Due Diligence Review**, it shall be the obligation of the **Town** to repair any such damage to the **Premises** and restore the **Premises** to the condition the same were in prior to such work being done.

(c) The **Town** hereby agrees to conduct its activities upon the **Premises** and adjacent property so as not to endanger any person thereon and to indemnify, defend and hold the **County** free and harmless from and against (i) all physical damage to the **Premises** caused by work done in connection with the **Due Diligence Review**, (ii) all loss, liability or damage suffered or incurred by the **County** arising out of **Town’s** breach of the terms and conditions of this section, or resulting from injury or death to individuals or damage to property sustained on the **Premises** and caused by the work in connection with the **Due Diligence Review** conducted by, or at the direction of, the **Town** and/or its agents, employees

and representatives, and (iii) all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the **County** in connection with any action, suit, proceeding, demand, assessment or judgment incident to the foregoing. The **Town's** indemnification obligations contained in this Section shall survive the termination or expiration of this **Agreement**.

(d) The **Town** agrees to treat all information received with respect to the **Premises** and not otherwise in the public domain, whether such information is obtained from the **County** or from the **Due Diligence Review**, in a confidential manner, unless otherwise required by law. The **Town** shall not disclose any such information to any third parties other than such disclosure to the **Town's** counsel, consultants, accountants and advisors as may be required in connection with the **Town's** potential acquisition of the **Premises** (any such disclosure to be made expressly subject to this confidentiality requirement). The **Town's** confidentiality obligations contained in this Section shall survive the termination or expiration of this **Agreement**.

(e) The **Town** shall have the right to terminate this **Agreement** for any reason whatsoever in connection with the **Due Diligence Review** at any time prior to the **Inspection Expiration Date** upon written notice to the **County**, which notice must be delivered to the **County** in accordance with the notice provisions of this Agreement on or before the **Inspection Expiration Date**, unless the Parties agree to extend such date with **TIME BEING OF THE ESSENCE**. The **Town's** failure to timely deliver such notice on or before the **Inspection Expiration Date, as extended if extended**, shall be deemed a waiver by the **Town** of its right to terminate this **Agreement** pursuant to the provisions of this section, in which event this **Agreement** shall continue in full force and effect.

1.7 Delivery and Acceptance of Quitclaim Deeds. At the Closing, the **County** shall deliver executed and acknowledged quitclaim deed for the **Premises** (the "**Deed**"), in statutory form for recording, sufficient to convey the fee simple title to the **Premises**. The delivery and acceptance of the **Deed** at the Closing, without the simultaneous execution and delivery of a specific agreement which by its terms shall survive the Closing, shall be deemed to constitute full compliance by the **County** with all of the terms, conditions and covenants of this **Agreement** on the **County's** part to be performed, except as to those obligations specifically stated herein that shall survive the Closing.

1.8 Closing Costs. The **Town** shall pay all recording fees, title premiums, transfer taxes and reasonable and customary closing expenses relating to the Closing.

1.9 No Representations or Warranties Made by County. (a) The **County** makes no representations or warranties express or implied, regarding the **Premises**. The **Town** has conducted or may conduct its own independent investigations of the **Premises**, at its sole cost and expense. The determination of the **Town** to acquire the **Premises** has been or will be made in the sole discretion of the **Town**. The **Town** has not and shall not rely on any representations or warranties by the **County** in making its decision to acquire the **Premises**.

(b) Condition of the Premises at Time of Conveyance. The **Town** acknowledges and represents to the **County** that neither the **County** nor any agent or representative of the **County** has made any statements or representations regarding the physical condition of the **Premises**, its zoning, its compliance with any environmental or occupational protection, pollution, subdivision or land use laws, rules, regulations or requirements, the state of title, the uses which can be made of the same, or the rents, income, expenses, operation or any other matter or thing affecting or relating to the **Premises**, or to any buildings or improvements thereon erected, except as expressly set forth in this **Agreement**. The **Town** is acquiring the **Premises** in their "AS IS, WHERE IS, WITH ALL FAULTS" condition as of the **Closing Date**, subject to ordinary wear and tear and natural deterioration and obsolescence between the date of this **Agreement** and the **Closing Date**. All understandings and agreements heretofore had between the **Parties** or their respective agents or representatives are merged in this **Agreement** which alone fully and completely expresses their agreement. Without limiting the provisions of this Section, and notwithstanding anything to the contrary contained in this **Agreement**, the **Town** hereby releases the **County** and (as the case may be) the **County's** officers, employees, and agents from any and all claims, demands, causes of actions, losses, damages, liabilities, costs and expenses (including reasonable attorney's fees), whether known or unknown, liquidated or contingent, arising from or relating to the existence of any conditions, including environmental and other physical conditions, affecting the **Premises**, except for those arising out of the **County's** gross negligence or willful misconduct, and claims accruing prior to the **Closing Date**.

1.10 No Broker Involved. The **County** and the **Town** each represent that they have not negotiated with any brokers in connection with this transaction.

1.11 Cooperation by Parties. The **Parties** agree to work cooperatively and use their best efforts to complete the Transfer, including but not limited to: (i) the preparation, undertaking and filing of any and all required environmental analyses, reviews or reports, all at the **Town's** sole cost and expense; (ii) the passage of any required local law or home rule message; and (iii) taking additional efforts, if necessary, to secure the passage of appropriate legislation by the State Legislature, its signing by the State Governor and any other necessary approvals. The **Town** shall conduct all negotiations to secure the necessary approvals, with the cooperation of the **County**, when necessary.

1.12 Park Operation by Town. As of the **Closing Date**, the **Town** shall operate the Park on the **Premises** as part of its **Town** system, and accept all responsibility for staffing, management, maintenance, improvements, operation and related activities. The **Town** shall honor any permits issued by the **County** with respect to the Park on the **Premises** prior to the **Closing Date**. The provisions of this Section shall survive the termination of this **Agreement**.

1.13 Stillwell Open to County Residents. As of the **Closing Date**, the **Town** shall (i) continue to operate the Park on the **Premises** for public recreation and Countywide

recreational purposes; (ii) ensure that all **County** residents shall be allowed to use and enjoy **Stillwell** on such terms and conditions as shall residents of the **Town** and (iii) display and maintain, at the main entrance to **Stillwell**, a sign, acceptable to the **County** in all respects, including, without limitation, design, size and location, that states, “*Stillwell is open to all Nassau County residents, subject to compliance with Town Code.*” The provisions of this Section shall survive **Closing**.

1.14 Required Governmental Approvals. (a) If the transfer is not approved by the New York State Legislature, if required, within four (4) years after the **Inspection Expiration Date**, (hereinafter referred to as the “**Approval Expiration Date**”) the County shall have the right in its sole discretion, to be exercised in writing no less than thirty days prior to the **Approval Expiration Date**, to terminate this Agreement. .

(b) In the event that the transfer is not approved by the New York State Legislature, if required, within four (4) years after the **Inspection Expiration Date**, or the **Approval Expiration Date**, then:

- Any work being conducted as part of the Project, as herein defined, other than as necessary to complete a phase already in construction, shall not go forward;
- All right, title, and interest in and to the Premises shall remain with the County, and;
- The validity, legality, and enforceability of the remaining conditions or covenants contained in this Agreement shall not in any way be affected or or impaired thereby,

II. Investment in Stillwell

2.1 Town Commitment to Invest in Stillwell. The Town is committed to upgrading, improving and investing in Stillwell. A general description of the capital improvements to be performed by the Town is annexed hereto as Appendix B.

2.2 Timing of County Contribution. The County shall make no contribution until such time as the Town has commenced making the capital improvements as detailed in Appendix B.

2.3 Term. The County and the Town’s investment obligations as set forth herein shall commence on the date on which this Agreement is last executed by the Parties and the conditions set forth in paragraph 3.11(a) have been met (the “**Commencement Date**”) and shall terminate when both parties have fulfilled their respective investment obligations hereunder and as set forth in his Section II “Investment in Stillwell,” unless this Agreement is sooner terminated in accordance with its terms.

2.4 County Contribution. The Town shall be solely responsible for the completion of the Project and all costs associated therewith, except that the County shall contribute a sum equal to the amount expended by the Town for the Project, not to exceed

Six Million Dollars (\$6,000,000.00) (the “**County Contribution**”) for the aforesaid Project, including but not limited to, engineering, construction management of the installation and the installation of the Capital Improvements. This amount will be paid in accordance with subsections (a), (b) and (c) below. It is specifically agreed by and between the Parties that the Town has completed the Town Capital Improvements Project, which consisted of the following items:

- Placement of drainage structures throughout the road and installation of new parking lot on the property
- Connecting all drainage to positive drainage on South Woods Road;
- Removal of existing asphalt pavement on the road, and fine grading;
- Placing RCA and fine grade new parking lot on the property;
- Paving entire road and new parking lot with asphalt in two lifts;
- Striping for parking and traffic control along the road and new parking lot;
- Restoration of fields where disturbed.

The County Contribution is separate and apart from the funds expended by the Town in the Town Capital Improvements Project and the County is not obligated to reimburse the Town for the funds expended in the Town Capital Improvements Project

(a) Vouchers. The County Contribution shall be made to the Town in arrears and shall be contingent upon (i) the Town submitting a claim voucher (the “**Voucher**”) to the County, that (a) states with reasonable specificity the Work completed and the payment requested as consideration for same. (b) certifies that the Work completed and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation supporting the amount claimed, including but not limited to providing an itemized budget of expenses incurred and (ii) review, approval and audit of the Voucher by the appropriate County Departments and/or the County Comptroller or his or her duly designated representative (the “**Comptroller**”). Notwithstanding the above, payments shall be made by check payable to THE TOWN OF OYSTER BAY, or by wire to the Town’s account, at the direction of the Town.

(b) Timing of Payment Claims. The Town shall submit claims no later than three (3) months following the completion of the Work that is the subject of the claim and no more frequently than once a month. Town may submit claims for reimbursement on a monthly basis.

(c) No Duplication of Payments. Payments under this Agreement shall not duplicate payments for any work performed or to be performed under other agreements between the Town and another funding source.

(d) Reporting Requirements. The Town shall provide to the County a full report and accounting of the use of the County Contribution funds within sixty (60) days of receipt and every thirty (30) days thereafter through the expenditure of the County Contribution funds. Such report shall contain a certification by a person duly authorized to

represent the Town that the Project has been satisfactorily implemented and sufficiently outlines the accounting of all monies received and expenditures made as well as the progress and results of the Project. Any County Contribution funds remaining unexpended shall be returned to the County upon termination of this Agreement.

2.5 The Project. (a) Procurement. The Town shall perform itself with in-house resources or undertake a procurement process in compliance with all applicable laws to provide or the letting of contracts for all labor and materials necessary to carry out the Project, including, but not limited to, (i) the development of biddable final plans and specifications for the Work; (ii) performance of the Work; and (iii) oversight relating to the Work. The County shall be given a reasonable time to comment upon such plans, specifications, contracts for the Work, and other bid documents prior to their issuance and dissemination. Based on the bids and/or proposals received by the Town, the Town shall select and retain contractor(s) to complete the Project. The Town shall provide the County with final copies of the final plans and specifications and other bid documents, and fully executed copies of all contracts entered into by the Town in furtherance of this Agreement, and copies of all approved change orders.

(b) Use of County Contributions. The Town shall apply the County Contribution solely toward expenses associated with the Project and for no other purpose.

(c) Books, Files and Records. The Town shall keep complete and accurate books, files and records of all matters pertained in to the County Contribution, the Project and this Agreement and, upon reasonable notice, the Town shall make the same available for inspection by the County at reasonable times during normal County business hours.

(d) Project Administration; Duty of Care. The Town shall exercise the same care in administering and monitoring the Project as the Town exercises with respect to similar activities in which there is no participation by other municipalities, but the Town shall have no further responsibility to the County except as expressly stated in this Agreement. The Town shall not be liable for any acts or omissions of the Town or any contractor(s) employed in connection with the Project except for acts or omissions amounting to negligence or willful misconduct by the Town. The County and their representatives shall have the right, from time to time at reasonable times, to inspect the Project and the Work being undertaken hereunder. The Town shall not make any material changes to the scope of the Project without prior written consent of the County.

(e) Excessive Costs. Any change orders or additional funding necessary to complete the Project, or to do any additional work beyond the scope of the Project, shall be the sole responsibility of the Town and nothing contained in this Agreement shall obligate the County to expend any money in excess of the County Contribution.

2.6 Costs and Responsibilities Associated with Capital Improvements. Except for the County Contribution, all costs and responsibilities associated with the construction, operation and upkeep of the Capital Improvements, including, but not limited to, structural and non-structural repairs, maintenance, and utilities shall be the sole responsibility of the

Town, and nothing contained in this Agreement shall be deemed to obligate the County to expend any money towards the Capital Improvements.

2.7 Indemnification; Defense; Cooperation. (a) Each Party shall be solely responsible for and shall indemnify and hold harmless the other Party, and their respective officers, employees, and agents (the “**Indemnified Party**”), from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys’ fees and disbursements) and damages (“Losses”), directly arising out of the negligence or willful misconduct of the indemnifying Party or its respective Agents.

(b) The indemnifying Party shall, upon the appropriate Indemnified Party’s demand and at the Indemnified Party’s direction, promptly and diligently defend, at the indemnifying Party’s own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against the Indemnified Party for which the indemnifying Party is responsible under this Section, and, further, to the indemnifying Party’s indemnification obligations, the indemnifying Part shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) The provisions of this Section shall survive the termination of this Agreement.

2.8 Independent Contractor. The Town is an independent contractor of the County. The Town shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Town (a “**Town Agent**”), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person (as hereinafter defined) with the authority to commit the County to any obligation. As used in this Agreement the word “Person” means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

2.9 Termination. (a) Generally. This section of the Agreement may be terminated (i) for “Cause (as hereinafter defined)” by any Party upon ten (10) days’ written notice to the other Party, stating the reason for termination, (ii) upon mutual written Agreement of the Parties, and (iii) in accordance with any other provisions of this Agreement expressly addressing termination.

(b) As used in this Agreement the word “Cause” includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the Work; and (ii) the termination or impending termination of federal or state funding for the Work.

2.10 Accounting. The Parties shall maintain and retain, for a period of six (6) years following the expiration or earlier termination of the Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually (“**Records**”), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles. Such Records

shall at all times be available for audit and inspection by the County Comptroller, the Town Comptroller, the Town Clerk, and any other governmental authority with jurisdiction over this Agreement, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

2.11 Successors and Assigns. The covenants and agreements herein contained shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

III. General

3.1 Notices. (a) Any demand, request, consent or other notice given or required to be given under this Agreement shall be deemed to have been duly and sufficiently given only if in writing and sent as follows:

- (i) by personal delivery with proof of delivery (any notice so delivered shall be deemed to have been received at the time so delivered);
 - (ii) by Federal Express (or other similar overnight courier) designating priority delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the carrier);
 - (iii) by United States registered or certified mail, return receipt requested, postage prepaid (any notice so delivered shall be deemed to have been received on the third (3rd) business day after delivery of any such notice to the United States Postal Registry Clerk); or
- (b) All notices shall be addressed to the Parties at the following addresses:

To the County:

County of Nassau
Attn: DCE for Parks and DPW
1550 Franklin Avenue
Mineola, New York 11501

with a copy to:

Nassau County Attorney's Office
Attn: Municipal Transaction Chief
One West Street
Mineola, New York 11501

To the Town:

Town of Oyster Bay
Attention: Town Attorney
54 Audrey Avenue
Oyster Bay, NY 11771

(c) Either Party may, by notice given pursuant to the provisions of this Paragraph, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt,

3.2 All Legal Provisions Deemed Included; Severability; Supremacy; Construction. (a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either Party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either Party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

(d) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either Party as drafter.

3.3 No Arrears or Default. The Town is not in arrears to the County upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

3.4 Bond Status. The Town shall not take any action, or omit to take any action, the result of which act or omission shall have an adverse impact on the tax-exempt status of any bond issued by, or on behalf of, the County, specifically including but not limited to, Federal laws, rules and regulations regarding private activity and arbitrage. The Town shall consult with the County and the County's bond counsel when appropriate to ensure compliance with such laws, rules and regulations.

3.5 Assignment. Neither Party hereto may assign its rights and/or obligations hereunder without the prior written consent of the other Party and any purported assignment without such consent shall be of no force and effect.

3.6 Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

3.7 Entire Agreement. This Agreement represents the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the Parties relating to the subject matter of this Agreement.

3.8 Consent to Jurisdiction, Governing Law, Jury Trial Waiver. (a) Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens.

(b) This Agreement shall be (i) governed by and construed in accordance with the laws of the State, and (ii) given a fair and reasonable construction in accordance with the intentions of the Parties.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

3.9 Compliance With Law. (a) Generally. The Parties shall comply with any and all applicable Federal, State and local Laws (as hereinafter defined), including, but not limited to, the State Environmental Quality Review Act and those laws relating to conflicts in interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. As used in this Agreement the word “Law” includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted. Without limited the generality of the foregoing or without limiting any other provision of this Agreement, the Parties acknowledge and agree that any County Contribution made hereunder is made on the express condition that the County shall have reasonable use and enjoyment of the funded projects, including public access for all County residents to any park facilities acquired or improved through the use of the County Contribution.

(b) Records Access. The Parties acknowledge and agree that all records, information, and data (“**Information**”) acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the Agreement or as required by law. The Town acknowledges that Town Information in the County’s possession may be subject to disclosure under Section 87 of the State Public Officer’s Law. In the event that such a request

for disclosure is made, the County shall make reasonable efforts to notify he Town of such request prior to disclosure of the Information so that the Town may take such action as it deems appropriate.

3.10 Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. Neither Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all County and Town approvals have been obtained, including approval by the County Legislature, (ii) approval by the Town Board (iii) approval of a referendum by the voters of the Town authorizing the conveyance and the capital improvement work set forth in Section II “Investment in Stillwell” above, and (ii) this Agreement has been executed by the County Executive or a duly authorized Deputy County Executive and the Town Supervisor.

(b) Availability of Funds. Neither Party shall have any liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from State and/or federal governments, then beyond funds available to either Party from the State and/or federal governments.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date this Agreement is last executed by the Parties.

COUNTY OF NASSAU

By: _____

Name: _____

Title: _____

Notary Public

STATE OF NEW YORK)

)ss.:

COUNTY OF NASSAU)

On the ____ day of _____ in the year 2023 before me personally came _____ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of Nassau, that he or she is _____ of the Town of Oyster Bay, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto.

Notary Public

APPENDIX A

Map

APPENDIX B

DESIGN AND INSTALLATION OF CAPITAL IMPROVEMENTS

It is the intention of the Town of Oyster Bay to make capital improvements to the Stillwater property, which improvements shall include athletic field improvements, pathways, lighting and improvements to rest room facilities and resident amenities. These improvements will be in the minimum amount of \$12,000,000, as set forth in the Agreement, and to qualify for the County to make its contribution of 50%, not to exceed \$6,000,000, all proposed improvements will first be discussed and revealed to the County of Nassau for prior approval, with the understanding, as set forth in the Agreement, that the

responsibility for the design and completion of said improvements will be the Town's. It is agreed that said improvements, to qualify for the County's contribution, will not be commenced, nor can the Town be required to commence any said improvements, until the State Legislature has approved the conveyance of the Premises from the County to the Town, EXCEPT that the parties acknowledge that the Town has expended the sum of \$639,124.41 to alleviate deteriorated asphalt and flooding issues, as well as to provide a size expansion and form layout and striping of the parking lot to improve parking capacity, efficiency and safety. The project included the removal of overgrown vegetation to reclaim parking area, regrading and adding significant stormwater storage capacity, and the resurfacing and reconstruction of the asphalt pavement. The lot was restriped to ensure maximum capacity, which included designated handicap accessible parking.

