# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION 1996 CLEAN WATER/CLEAN AIR BOND ACT ENVIRONMENTAL RESTORATION PROGRAM STATE ASSISTANCE CONTRACT

IN RE:

Municipality Name: City of New Rochelle / County of Westchester

Site Name: Davids Island

Site Address: Davids Island, New Rochelle, NY
Site Number: E360077

Contract Number: C303006

Amendment Number: 2

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This CONTRACT, (Amendment No. 2) is made between the New York State Department of Environmental Conservation (Department), acting for and on behalf of the State, and City of New Rochelle with offices located at 515 North Avenue, New Rochelle, NY 10801, jointly with the County of Westchester, Michaelian Office Building, 148 Martine Avenue, White Plains, NY 10601 (hereinafter "Municipality")

#### WITNESSETH

WHEREAS, the Department and the Municipality entered into a contract on July 13, 2006, (Original Contract), which was duly assigned Contract No: C303006, by the Office of the State Comptroller (State Comptroller); and

WHEREAS, the Original Contract was modified by the parties by Amendment No. 1, dated March 30, 2009; and

WHEREAS, State Assistance to the Municipality is being increased by this Amendment No: 2 in the amount of Eighty Thousand Nine Hundred Forty dollars (\$80,940); for a total of One Million Two Hundred Twenty-Two Thousand Nine Hundred Forty dollars (\$1,222,940).

WHEREAS, there are circumstances necessitating a modification of the Original Contract and the parties desire to amend said Original Contract.

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, and conditions made herein, the parties agree as follows:

(I). Section VI of the Original Contract, entitled "State Assistance Amount", is hereby revised and updated as follows:

The Commissioner shall pay the Municipality for its Eligible Costs in conducting the Project in an amount not to exceed One Million Two Hundred Twenty-Two Thousand Nine Hundred Forty dollars (\$1,222,940), which amount has been determined by the Commissioner to

be up to 90 percent of the estimated Eligible Costs for on-site work and up to 100 percent of the Eligible Costs of any off-site work directed by the Department to be undertaken outside the boundaries of the Site that is approved by the Department. The Department shall not pay for work that is not an Approved Activity, as defined in the "Glossary" which is attached and made a part of this Contract. The Department shall not pay for Department-approved proposed work that was not completed to the Department's satisfaction. Municipality may contribute its share of the Eligible Costs of the project from sources deemed eligible pursuant to Article 56 and its regulations thereto. If the final Eligible Costs are lower than those used to calculate the estimated Eligible Costs amount, the parties agree to either amend this State Assistance Contract to apply the same percentage shown above to the final Eligible Costs in order to determine the revised contract amount if the project is ongoing, or to reimburse the Municipality based on the final Eligible Costs and disencumber the unexpended contract amount and close out the contract, if the project is completed. Upon request by the Department, the Municipality agrees to execute and return the Contract Amendment to the Department within 90 days of receipt of a Contract Amendment that will identify the revised Contract amount.

- (II). Section XVII, entitled "Miscellaneous U." of the Original Contract is hereby revised and updated as follows:
- U. The term of this Contract shall start September 30, 2005. This Contract shall end on December 30, 2010. The Municipality agrees to proceed expeditiously with and to complete the Project in accordance with Work Plans approved by the Department, and any revisions thereto, and to carry out its other obligations under this Contract.
- (III). The Scope of Work, Schedule A is hereby deleted and replaced with a new Scope of Work, dated October 2, 2009.
- (IV). This Contract and Amendment No: 2 will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law.
- (V). Except as specifically modified herein, all terms and conditions of the Original Contract remain in full force and effect.

## CONTRACT NUMBER C303006

In witness whereof, the parties have signed this Contract on the date indicated opposite each signature. The signatory for the Department provides the following 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."

FOR MUNICIPALITY: City of New Rochelle	
State of <u>NEW YORK</u> ) ) ss: County of <u>WESTCHES</u> TER )	By: Charles B. Strome II  Title: City Manager  Date: 12 1 6 3
On this <u>2nd</u> day of <u>December</u> personally appeared <u>Charles B. Strome</u> , to me or proved to me on the basis of satisfactory (are) subscribed to the within instrument and acknown same in his/her/their capacity(ties), and that by his individual(s), or the person on behalf of which the	2009, before me, the undersigned, (name) or (names) personally known evidence to be the individual whose name is owledged to me that he/she/they executed the her/their signature(s) on the instrument, the
EOD DEDADUMENU	Date:12/2/2009
By: Jauly July Director of Management  Title: and Budyet Services	By: Rita A. Colangelo Title: Acting City Clerk
Date: AU(USt 25, 2010	Date: 12/2/2009
Approved as to form:  APPROVED AS TO FORM  APPROVED	Approved: Thomas P. DiNapoli State Comptroller
for the Attorney Adversary	By: APPROVED  DEPT OF AUDIT & CONTROL
PETER FAVRETION ASSOCIATE ATTORNEY ASSOCIATE ATTORNEY	Date:  SEP 7 2010  FOR THE STATE COMPTROLLER

# CONTRACT NUMBER <u>C303006</u>

In witness whereof, the parties have signed this Contract on the date indicated opposite each signature. The signatory for the Department provides the following 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."

FOR MUNICIPALITY: Westchester County

State of New York )  County of Westchotr)  (State of New York )	By: Robert P. Atain  Title: County Executive  Date: 6/22/10
On this 22 day of personally appeared Korl F. Retwood to me or proved to me on the basis of satisfactory e (are) subscribed to the within instrument and acknown same in his/her/their capacity(ties), and that by his/individual(s), or the person on behalf of which the	widence to be the individual whose name is owledged to me that he/she/they executed the her/their signature(s) on the instrument, the
DAWN M. FALCO NOTARY PUBLIC, STATE OF NEW YORK NO. 01FA6125845 QUALIFIED IN WESTCHESTER COUNTY COMMISSION EXPIRES APRIL 25, 20	By:
PPROVED AS TO FORM.	FOR DEPARTMENT
and M'la	By: Dawom Falco
COUNTY ATTORNEY	Title: Dic/Administratur Semes
Approved as to form:	Date: 6-72+0 Approved: Thomas P. DiNapoli State Comptroller
Ву:	By:
for the Attorney General	
Date:	Date:
The contract is not effective until it is approved by	the State Comptroller and filed in his office.

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION 1996 CLEAN WATER/CLEAN AIR BOND ACT ENVIRONMENTAL RESTORATION PROGRAM STATE ASSISTANCE CONTRACT

# SCHEDULE A Scope of Work October 2, 2009

Municipality Name: City of New Rochelle / County of Westchester

Site Name: Davids Island

Site Address: Davids Island, New Rochelle, NY 10801 Contract Number: C303006

Site Number: E360077 Amendment Number: 2

#### GENERAL PURPOSE

The general purpose of this project is to undertake all approved activities necessary to complete the Project required by this Contract. Project-specific Work Plans will become part of and enforceable under this Contract upon approval by the Department.

#### **GENERAL SCOPE**

#### **INVESTIGATION:**

The Remedial Investigation/Alternatives Analysis Report (RI/AAR) will involve all tasks necessary to investigate the site conditions, determine the public health and environmental impacts of the site, and to utilize this information to develop and evaluate appropriate remedial actions. During the RI/AAR, the Municipality will also remove and properly dispose of contaminants within all containment vessels, such as drums, tanks and transformers, located on the Site.

Specific tasks include: work plan development, site characterization, investigation of off-site impacts, a survey of the site and a metes and bounds description of the site, an exposure assessment, development of alternatives, screening of alternatives, post-screening field work, detailed analysis of alternatives, data validation, and public participation. Data collection and analysis will provide a sufficient basis for the Department to prepare a Proposed Remedial Action Plan (PRAP) and present it to the public.

#### INVESTIGATION CALCULATION:

Total Eligible Cost:	On-site \$ 1,084,456	Off-site \$ 224,430	Demolition/Asbestos \$ 45,000	Total \$1,353,886
Percentage:	90%	100%	50%	N/A
Total SAC Amount:	\$ 976,010	\$ 224,430	\$ 22,500	\$1,222,940

 Less: Executed SAC Amount:
 \$ 1,142,000

 SAC Amendment Amount:
 \$ 80,940

# HONORABLE BOARD OF LEGISLATORS THE COUNTY OF WESTCHESTER

Your Committee is in receipt of a communication from the County Executive requesting approval of an Act and a Resolution which would, if adopted by your Honorable Board, authorize the County of Westchester to submit a joint application with the City of New Rochelle ("City") to the New York State Department of Environmental Conservation ("NYSDEC") for grant funding pursuant to the State Environmental Restoration Program ("ERP"), for additional investigation and remediation of environmental conditions at Davids Island in furtherance of the County's intent to acquire fee title in Davids Island from the City for parkland purposes.

Your Committee is informed that, beginning in 2001, after Legislator Pinto, Mayor Idoni, and the County Executive announced that the County would purchase Davids Island from the City for Six Million Five Hundred Thousand (\$6,500,000) Dollars, the County's administration has worked in cooperation with members of this Honorable Board and City officials to undertake preliminary planning efforts in connection with this initiative.

In 2002, upon the advice of the County Attorney that provisions of the NYS General City Law specify that waterfront property owned by a city is subject to a "public trust" and that the property cannot be sold or otherwise alienated by that city without an act of the State Legislature, the County and the City joined together in preparing the necessary State legislation to allow the conveyance of Davids Island to the County for parkland purposes. A Home Rule Resolution was issued by the County, with this

Honorable Board and the County Executive acting as co-sponsors, in support of this State legislation which was ultimately enacted by the New York State Legislature on August 20, 2002. A copy of the approved State legislation is annexed hereto as Schedule "A."

As this Honorable Board is aware, in 2002, the County also hired a consultant to undertake an environmental assessment of the island, and to develop cost estimates for remediation of the environmental conditions which it identified thereon. Since receiving the consultant's report, which concluded that the costs of remediating environmental contamination in the soils and in the deteriorated structures on the island could be in excess of \$12 million, the County's administration has focused its efforts on identifying funding sources for the remediation of these environmental conditions as a necessary precursor to the County's acquisition of the island for parkland purposes.

Your Committee is advised that, to date, federal funding in the amount of \$4.1 million has been secured by Congresswoman Nita Lowey, and that the Corps has proposed a project to remove the deteriorated buildings and infrastructure from the abandoned military base facilities on Davids Island utilizing such federal funding.

Because these structures are both a source of environmental contamination and notable safety hazards due to the extent of their deterioration, your Committee concludes that the Corps' proposed project is both a very welcome and critical component of the remediation process.

Your Committee is further informed that the County has advised the City of the additional grant funding available through the State's ERP Program, which is administered by the NYSDEC and provides funding, in accordance with the Clean

Water/Clean Air Bond Act of 1996 and related legislation, for municipal programs designed to investigate and/or remediate the sources of environmental contamination where the municipal-owner is not the proximate cause of such contamination.

Your Committee is informed that the City has since requested that the County join in its ERP grant application for funding of additional investigation and remediation of the environmental conditions on Davids Island, which additional investigative work the NYSDEC has advised is a mandatory prerequisite to the future award of ERP remediation funding, as a co-applicant.

Your Committee is further informed that the Act and Resolution which are annexed hereto would authorize the County to submit a joint application with the City for grant funding under the State's ERP program. A copy of the draft grant application is annexed hereto and made a part hereof as Schedule "B." Your Committee is advised that, by submitting this application, the County will be committing to participate in both the investigation and remediation phases of the ERP program, as follows:

- (1) State grant funds will cover 90% of the costs of the <u>investigative</u> work which is the subject of the current grant application, with the local match funding the remaining 10% of project costs; and
- (2) State grant funds will cover from 50-90% of the costs of the remediation work, with the required local match covering the balance of remediation costs, subject to the scope of work and cost estimates to be developed during the investigative phase.

Of note, neither the annexed application, nor the relevant Resolution or Act, specify a sum certain for either the total grant request or the required local match associated with the investigation phase of this work. Your Committee is informed that this is because the State's ERP Program is an anomaly in that, upon approval of the grant application, the State will fund a fixed percentage of the actual cost of either the investigation or remediation phases (i.e. 90% of investigation work) even where the actual cost of the work undertaken exceeds the State-approved project cost estimate. For example, it is estimated that the additional investigative work to be performed at Davids Island under the ERP program will cost \$1 million, requiring a State/ERP contribution of 90% or \$900,000. However, in the event that the actual cost of investigation rises to \$1.5 million, the State will honor its commitment to pay 90% of the total cost or \$1,350,000. In such event, the local match will also increase proportionately.

Your Committee is also informed, however, that the annexed Act does place a financial limit on the County's share of the local match for this grant request in the total not-to-exceed amount of Sixty Thousand (\$60,000) Dollars. This figure is based on the estimated \$1 million cost of the investigative work proposed under the current grant application. Given that the required local match of 10% or \$100,000 would apply, the \$60,000 represents a 50/50 split of the local match between the City and the County, with an additional \$10,000 allowance built into the authorization in the event that the actual costs of the investigative work exceed the estimate by up to twenty (20%) percent. Pursuant to said Act, the County's share of the local match shall be calculated as follows:

- (i) in the event that the local match shall equal One Hundred Thousand (\$100,000) Dollars or less, the County and the City will pay equal shares of the total local match; and
- (ii) in the event that the local match shall exceed One Hundred Thousand (\$100,000) Dollars, the County and the City shall negotiate their respective shares of that portion of the local match which exceeds One Hundred Thousand (\$100,000) Dollars, provided that any County share in excess of Sixty Thousand (\$60,000.00) Dollars shall be subject to additional legal approval.

Your Committee is further informed that the Act authorizing the County to make and submit a joint application with the City for participation in the State ERP grant program, as described herein, will also ratify the annexed Resolution, which is presented in the standard form required by the NYSDEC for ERP program participation. Please be advised that your Honorable Board's approval of both instruments is required to effectuate the necessary approvals regarding the County's participation in this grant program.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). The Commissioner of Planning has reviewed the applicable SEQRA regulations, and has advised that the making of applications under the ERP/Clean Water/Clean Air Bond Act of 1996, as described herein, is a Type II action under SEQRA pursuant to 6 NYCRR 617.5(c)(21) ("conducting concurrent environmental . . . feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action"), as specified in the annexed SEQRA Status Sheet. As such, this Honorable Board has no

further responsibilities under SEQRA as set forth in 6 NYCRR 617.6(a)(1)(i). Your Committee concurs in this determination.

Further, your Committee concurs with the County Executive's determination that the County's proposed purchase, remediation, and dedication of Davids Island as parkland presents a unique and unprecedented opportunity for the County to convert blighted and unproductive waterfront land into much-needed, multi-dimensional parkland on the Long Island Sound. The potential remediation of the precarious environmental conditions on the island, which may exist as a result of the previous use of the island as a military base, and the permanent preservation of its natural resources as parkland will be one of the most important preservation efforts undertaken by the County in recent history.

Therefore, your Committee recommends the adoption of the Act and the Resolution, annexed hereto and as described herein, in furtherance of the

County's intent to acquire fee title in Davids Island from the City of New Rochelle for
parkland purposes.

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parkland purposes.

Bernier Spreak Plains, New York

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Parkland Plains, New York

Parks Lecrosion

The Late of the City of New Rochelle for
parkland purposes.

#### SEQR STATUS SHEET

PROJECT:

Davids Island Grant Application

DEPARTMENT:

Planning

#### Description

Davids Island is a 78-acre island located in Long Island Sound, off the coast of New Rochelle. Formerly a U.S. Army base, known as Fort Slocum, it was conveyed to the City of New Rochelle in 1967 and has remained uninhabited since then. Beginning in 2001, the County has been working towards acquisition of Davids Island as a County park. In 2002, the County conducted an environmental assessment of the island, which identified remediation needs costing in excess of \$12 million.

In furtherance of these efforts, the County proposes to submit a joint application with the City of New Rochelle to the NYS Department of Environmental Conservation for a grant under the State Environmental Restoration Program to fund additional investigation of environmental conditions at Davids Island.

#### SEQR Status

Type II. The proposed grant for additional investigation work is classified as Type II action, pursuant to section 617.5(c)(21), "conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes, necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action."

## ACT NO. 126 - 2005

AN ACT authorizing the County Executive of the County of Westchester, or his authorized designee, to make and execute a joint application with the City of New Rochelle to the New York State Department of Environmental Conservation for grant funding pursuant to the State Environmental Restoration Program for certain work, namely the investigation and remediation of environmental conditions at Davids Island, in furtherance of the County's intent to acquire fee title in Davids Island from the City of New Rochelle for parkland purposes.

WHEREAS, the County of Westchester (hereinafter the "County") has been advised by the rent form of the partition of Environmental Conservation ("NYSDEC") that grant funding is available to fund the remediation of environmental conditions at Davids Island pursuant to the State's Environmental Restoration Program ("ERP"); and

WHEREAS, the NYSDEC has also advised that, as a condition of awarding ERP funding for such remediation, it will require that additional investigative work to be undertaken on Davids Island; and

WHEREAS, ERP funding is also available for this investigative work, pursuant to which State grant funds will cover ninety (90%) percent of the costs of such additional investigation; and



WHEREAS, the County and the City of New Rochelle ("City") desire to apply for such ERP funding as co-applicants in furtherance of the County's intent to acquire fee title to Davids Island from the City for parkland purposes; and

WHEREAS, the NYSDEC requires the adoption of a standardized Resolution by any municipality which requests ERP funding.

**NOW THEREFORE, BE IT ENACTED** by the Board of Legislators of the County of Westchester as follows:

- Section 1. The County Executive, or his authorized designee, is hereby authorized and directed to make this joint application with the City of New Rochelle to the NYSDEC for grant funding pursuant to the State Environmental Restoration Program in order to fund both the additional investigation of environmental conditions on Davids Island as required by the NYSDEC, and the remediation thereof ("Project").
- **§2.** The attached Resolution authorizing the County of Westchester to participate in the State Environmental Restoration Program, for the purposes specified herein, is hereby adopted.
- ten (10%) percent local match for cost of the investigative phase of the Project in the total not to exceed amount of Sixty Thousand (\$60,000) Dollars, as follows:



- (i) in the event that the local match shall equal One Hundred Thousand (\$100,000) Dollars or less, the County and the City will pay equal shares of the total local match; and
- (ii) in the event that the local match shall exceed One Hundred Thousand (\$100,000) Dollars, the County and the City shall negotiate their respective shares of that portion of the local match which exceeds One Hundred Thousand (\$100,000) Dollars, provided that any County share in excess of Sixty Thousand (\$60,000.00) Dollars shall be subject to additional legal approval.
- §4. The County Executive or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Executive deems necessary or desirable to accomplish the purposes hereof.
  - §5. This Act shall take effect immediately.



## RESOLUTION NO. 84 - 2005

A RESOLUTION authorizing the items listed below pursuant to the Clean Water/Clean Air Bond Act of 1996 in connection with the remediation of Davids Island.

WHEREAS, the County of Westchester (hereinafter the "County") has been advised by the New York State Department of Environmental Conservation ("NYSDEC") that certain work, as described in its co-application with the City of New Rochelle (hereinafter the "City") and its attachments, will be required ("Project"), and after thorough consideration of the various aspects of the problem has hereby determined that the work specified in such application is desirable; is in the public interest and is required in order to implement the Project; and

WHEREAS, Article 56 of the NYS Environmental Conservation Law authorizes

State assistance to municipalities for environmental restoration projects by means of a

contract and the County deems it to be in the public interest and benefit under this law to

enter into a joint contract with the City of New Rochelle therefor; and

**NOW THEREFORE, BE IT ENACTED** by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Executive, or his authorized designee, is hereby authorized to act on behalf of the County in all matters related to the State assistance under ECL Article 56, Title 5 in connection with this joint application with the City for the funding of the Project, as described herein. The County Executive, or his

authorized designee, is authorized to make application therefor, execute the State Assistance Contract, as co-recipient with the City, submit Project documentation, and otherwise act for the County's governing body in all matters related to State assistance for the Project.

\$2. The County agrees that it will fund its portion of the cost of the Project and that funds will be made available to initiate the Project's field work within twelve (12) months of written approval of its joint application with the City by the New York State Department of Environmental Conservation.

53. A certified copy of this authorizing Resolution shall be prepared and transmitted to the New York State Department of Environmental Conservation together with the joint Application for State Assistance and to the City of New Rochelle.

54. This Resolution shall take effect immediately upon passage and shall specifically apply to the application annexed hereto as Schedule "B."

# FISCAL IMPACT STATEMENT

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	Department: <u>Planning</u>
Budget Department	Litle: Associate Planner
Reviewed By:	repared by: Ed Hoffmeister
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rent Appropriations	Source of County Funds (check one):
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SPECIAL REVENUE FUND (Districts)	TRO9RIA ☐ AIRPORT
postment and Budget Department)	

STATE OF NEW YORK	)	
	)	SS
COUNTY OF WESTCHESTER	)	

I HEREBY CERTIFY that I have compared the foregoing Act No. 126 - 2005, and Resolution No. 84 - 2005, with the originals on file in my office, and that the same are correct transcripts therefrom, and of the whole, of said original Act, and Resolution, which were duly adopted by the Westchester County Board of Legislators, of the County of Westchester on May 23, 2005, and approved by the County Executive on May 25, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 12<sup>th</sup> day of July, 2010.

Tina Seckerson

Clerk of the Westchester County Board of Legislators

County of Westchester, New York

(seal)

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COUNTY OF WEST	•		
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CITY OF NEW ROCH	(E) Lakaria }		
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			e, do hereby certify that
I have compared the prec	eding resol	ution	
with the original	Resolution No.	67adopted at	a meeting of the City
Council of the City of I	lew Rochelle, held	on the 12th day of	April ,2005,
and do hereby certify th			
of such original.		<u> </u>	
or such or ignian.			
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IN TESTIMON	Y WHEREOF, I	have hereunto subs	cribed my name and
affixed the Official Sea	of the City of New	<b>Rochelle this</b> 6th	_day ofJune,
<b>20</b> 05 .	-		
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		<u></u>	City Clouds
			City Clerk

#### City of New Rochelle, N.Y. Dist Member Yeas Nays Abstain Absent Introduced On: 1st Boyle Introduced By: 2nd Quinlan 'Held: 314 Stowe Adopted: 4th Lopez 5th No. Bramson Council Members Michael E. Boyle, 6<sup>th</sup> Sussman Moved: James C. Stowe, Roberto Lopez, Noam Bramson, Marjanne L. Sussman Mayor Idoni {and} SecondedMayor Timothy C. <u>Idoni</u> 16.1. Approved As To Form: Corporation Counsel

SUBJECT OR TITLE

RESOLUTION AUTHORIZING THE ITEMS LISTED PURSUANT TO THE CLEAN WATER/CLEAN AIR BOND ACT OF 1996 (DAVIDS ISLAND REMEDIATION).

WHEREAS, the City of New Rochelle ("Municipality"), after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that certain work, as described in its application and attachments ("Project"), is desirable, is in the public interest, and is required in order to implement the Project; and

WHEREAS, Article 56 of the Environmental Conservation Law ("ECL") authorizes State assistance to municipalities for environmental projects by means of a contract and the Municipality deems it to be in the pubic interest and benefit under this law to enter into a contract therewith; now, therefore,

BE IT RESOLVED by the Council of the City of New Rochelle as follows:

- 1. The City Manager is hereby authorized to act on behalf of the Municipality in all matters related to State assistance under ECL Article 56, Title 5. The City Manager is also authorized to make application, execute the State Assistance Contract, submit Project documentation, and otherwise act for the Municipality's governing body in all matter related to the Project and State assistance.
- 2. The Municipality agrees that it will fund its portion of the cost of the Project and that funds will be available to initiate the Project's field work within twelve (12) months of written approval of its application by the Department of Environmental Conservation.
- 3. A certified copy of this authorizing Resolution shall be prepared and sent to the Albany office of the New York State Department of Environmental Conservation together with the Application for State Assistance.
  - 4. This authorizing Resolution shall take effect immediately upon passage.

Authenticated and certified) this 12th day of April, 2005)

TIMOTHY C. IDONI, Mayor DOROTHY ALLEN, City Clerk

#### ACT NO. 126 - 2005

AN ACT authorizing the County Executive of the County of Westchester, or his authorized designee, to make and execute a joint application with the City of New Rochelle to the New York State Department of Environmental Conservation for grant funding pursuant to the State Environmental Restoration Program for certain work, namely the investigation and remediation of environmental conditions at Davids Island, in furtherance of the County's intent to acquire fee title in Davids Island from the City of New Rochelle for parkland purposes.

WHEREAS, the County of Westchester (hereinafter the "County") has been advised by the rock state Department of Environmental Conservation ("NYSDEC") that grant funding is available to fund the remediation of environmental conditions at Davids Island pursuant to the State's Environmental Restoration Program ("ERP"); and

WHEREAS, the NYSDEC has also advised that, as a condition of awarding ERP funding for such remediation, it will require that additional investigative work to be undertaken on Davids Island; and

WHEREAS, ERP funding is also available for this investigative work, pursuant to which State grant funds will cover ninety (90%) percent of the costs of such additional investigation; and

#### SEQR STATUS SHEET

PROJECT:

**Davids Island Grant Application** 

DEPARTMENT:

Planning

#### Description

Davids Island is a 78-acre island located in Long Island Sound, off the coast of New Rochelle. Formerly a U.S. Army base, known as Fort Slocum, it was conveyed to the City of New Rochelle in 1967 and has remained uninhabited since then. Beginning in 2001, the County has been working towards acquisition of Davids Island as a County park. In 2002, the County conducted an environmental assessment of the island, which identified remediation needs costing in excess of \$12 million.

In furtherance of these efforts, the County proposes to submit a joint application with the City of New Rochelle to the NYS Department of Environmental Conservation for a grant under the State Environmental Restoration Program to fund additional investigation of environmental conditions at Davids Island.

#### **SEQR Status**

Type II. The proposed grant for additional investigation work is classified as Type II action, pursuant to section 617.5(c)(21), "conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes, necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action."

# HONORABLE BOARD OF LEGISLATORS THE COUNTY OF WESTCHESTER

Your Committee is in receipt of a communication from the County Executive requesting approval of an Act and a Resolution which would, if adopted by your Honorable Board, authorize the County of Westchester to submit a joint application with the City of New Rochelle ("City") to the New York State Department of Environmental Conservation ("NYSDEC") for grant funding pursuant to the State Environmental Restoration Program ("ERP"), for additional investigation and remediation of environmental conditions at Davids Island in furtherance of the County's intent to acquire fee title in Davids Island from the City for parkland purposes.

Your Committee is informed that, beginning in 2001, after Legislator Pinto, Mayor Idoni, and the County Executive announced that the County would purchase Davids Island from the City for Six Million Five Hundred Thousand (\$6,500,000) Dollars, the County's administration has worked in cooperation with members of this Honorable Board and City officials to undertake preliminary planning efforts in connection with this initiative.

In 2002, upon the advice of the County Attorney that provisions of the NYS General City Law specify that waterfront property owned by a city is subject to a "public trust" and that the property cannot be sold or otherwise alienated by that city without an act of the State Legislature, the County and the City joined together in preparing the necessary State legislation to allow the conveyance of Davids Island to the County for parkland purposes. A Home Rule Resolution was issued by the County, with this

Honorable Board and the County Executive acting as co-sponsors, in support of this State legislation which was ultimately enacted by the New York State Legislature on August 20, 2002. A copy of the approved State legislation is annexed hereto as Schedule "A."

As this Honorable Board is aware, in 2002, the County also hired a consultant to undertake an environmental assessment of the island, and to develop cost estimates for remediation of the environmental conditions which it identified thereon. Since receiving the consultant's report, which concluded that the costs of remediating environmental contamination in the soils and in the deteriorated structures on the island could be in excess of \$12 million, the County's administration has focused its efforts on identifying funding sources for the remediation of these environmental conditions as a necessary precursor to the County's acquisition of the island for parkland purposes.

Your Committee is advised that, to date, federal funding in the amount of \$4.1 million has been secured by Congresswoman Nita Lowey, and that the Corps has proposed a project to remove the deteriorated buildings and infrastructure from the abandoned military base facilities on Davids Island utilizing such federal funding.

Because these structures are both a source of environmental contamination and notable safety hazards due to the extent of their deterioration, your Committee concludes that the Corps' proposed project is both a very welcome and critical component of the remediation process.

Your Committee is further informed that the County has advised the City of the additional grant funding available through the State's ERP Program, which is administered by the NYSDEC and provides funding, in accordance with the Clean

Water/Clean Air Bond Act of 1996 and related legislation, for municipal programs designed to investigate and/or remediate the sources of environmental contamination where the municipal-owner is not the proximate cause of such contamination.

Your Committee is informed that the City has since requested that the County join in its ERP grant application for funding of additional investigation and remediation of the environmental conditions on Davids Island, which additional investigative work the NYSDEC has advised is a mandatory prerequisite to the future award of ERP remediation funding, as a co-applicant.

Your Committee is further informed that the Act and Resolution which are annexed hereto would authorize the County to submit a joint application with the City for grant funding under the State's ERP program. A copy of the draft grant application is annexed hereto and made a part hereof as Schedule "B." Your Committee is advised that, by submitting this application, the County will be committing to participate in both the investigation and remediation phases of the ERP program, as follows:

- (1) State grant funds will cover 90% of the costs of the <u>investigative</u> work which is the subject of the current grant application, with the local match funding the remaining 10% of project costs; and
- (2) State grant funds will cover from 50-90% of the costs of the remediation work, with the required local match covering the balance of remediation costs, subject to the scope of work and cost estimates to be developed during the investigative phase.

Of note, neither the annexed application, nor the relevant Resolution or Act, specify a sum certain for either the total grant request or the required local match associated with the investigation phase of this work. Your Committee is informed that this is because the State's ERP Program is an anomaly in that, upon approval of the grant application, the State will fund a fixed percentage of the actual cost of either the investigation or remediation phases (i.e. 90% of investigation work) even where the actual cost of the work undertaken exceeds the State-approved project cost estimate. For example, it is estimated that the additional investigative work to be performed at Davids Island under the ERP program will cost \$1 million, requiring a State/ERP contribution of 90% or \$900,000. However, in the event that the actual cost of investigation rises to \$1.5 million, the State will honor its commitment to pay 90% of the total cost or \$1,350,000. In such event, the local match will also increase proportionately.

Your Committee is also informed, however, that the annexed Act does place a financial limit on the County's share of the local match for this grant request in the total not-to-exceed amount of Sixty Thousand (\$60,000) Dollars. This figure is based on the estimated \$1 million cost of the investigative work proposed under the current grant application. Given that the required local match of 10% or \$100,000 would apply, the \$60,000 represents a 50/50 split of the local match between the City and the County, with an additional \$10,000 allowance built into the authorization in the event that the actual costs of the investigative work exceed the estimate by up to twenty (20%) percent.

Pursuant to said Act, the County's share of the local match shall be calculated as follows:

- (i) in the event that the local match shall equal One Hundred Thousand (\$100,000) Dollars or less, the County and the City will pay equal shares of the total local match; and
- (ii) in the event that the local match shall exceed One Hundred Thousand (\$100,000) Dollars, the County and the City shall negotiate their respective shares of that portion of the local match which exceeds One Hundred Thousand (\$100,000) Dollars, provided that any County share in excess of Sixty Thousand (\$60,000.00) Dollars shall be subject to additional legal approval.

Your Committee is further informed that the Act authorizing the County to make and submit a joint application with the City for participation in the State ERP grant program, as described herein, will also ratify the annexed Resolution, which is presented in the standard form required by the NYSDEC for ERP program participation. Please be advised that your Honorable Board's approval of both instruments is required to effectuate the necessary approvals regarding the County's participation in this grant program.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). The Commissioner of Planning has reviewed the applicable SEQRA regulations, and has advised that the making of applications under the ERP/Clean Water/Clean Air Bond Act of 1996, as described herein, is a Type II action under SEQRA pursuant to 6 NYCRR 617.5(c)(21) ("conducting concurrent environmental . . . feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action"), as specified in the annexed SEQRA Status Sheet. As such, this Honorable Board has no

further responsibilities under SEQRA as set forth in 6 NYCRR 617.6(a)(1)(i). Your Committee concurs in this determination.

Further, your Committee concurs with the County Executive's determination that the County's proposed purchase, remediation, and dedication of Davids Island as parkland presents a unique and unprecedented opportunity for the County to convert blighted and unproductive waterfront land into much-needed, multi-dimensional parkland on the Long Island Sound. The potential remediation of the precarious environmental conditions on the island, which may exist as a result of the previous use of the island as a military base, and the permanent preservation of its natural resources as parkland will be one of the most important preservation efforts undertaken by the County in recent history.

Therefore, your Committee recommends the adoption of the Act and the Resolution, annexed hereto and as described herein, in furtherance of the

County's intent to acquire fee title in Davids Island from the City of New Rochelle for

parkland purposes.

Dated: May 16, 2005

White Plains, New York

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WHEREAS, the County and the City of New Rochelle ("City") desire to apply for such ERP funding as co-applicants in furtherance of the County's intent to acquire fee title to Davids Island from the City for parkland purposes; and

WHEREAS, the NYSDEC requires the adoption of a standardized Resolution by any municipality which requests ERP funding.

**NOW THEREFORE, BE IT ENACTED** by the Board of Legislators of the County of Westchester as follows:

- Section 1. The County Executive, or his authorized designee, is hereby authorized and directed to make this joint application with the City of New Rochelle to the NYSDEC for grant funding pursuant to the State Environmental Restoration Program in order to fund both the additional investigation of environmental conditions on Davids Island as required by the NYSDEC, and the remediation thereof ("Project").
- §2. The attached Resolution authorizing the County of Westchester to participate in the State Environmental Restoration Program, for the purposes specified herein, is hereby adopted.
- ten (10%) percent local match for cost of the investigative phase of the Project in the total not to exceed amount of Sixty Thousand (\$60,000) Dollars, as follows:

- (i) in the event that the local match shall equal One Hundred Thousand (\$100,000) Dollars or less, the County and the City will pay equal shares of the total local match; and
- (ii) in the event that the local match shall exceed One Hundred Thousand (\$100,000) Dollars, the County and the City shall negotiate their respective shares of that portion of the local match which exceeds One Hundred Thousand (\$100,000) Dollars, provided that any County share in excess of Sixty Thousand (\$60,000.00) Dollars shall be subject to additional legal approval.
- **§4.** The County Executive or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Executive deems necessary or desirable to accomplish the purposes hereof.
  - §5. This Act shall take effect immediately.

#### RESOLUTION NO. 84 - 2005

A RESOLUTION authorizing the items listed below pursuant to the Clean Water/Clean Air Bond Act of 1996 in connection with the remediation of Davids Island.

WHEREAS, the County of Westchester (hereinafter the "County") has been advised by the New York State Department of Environmental Conservation ("NYSDEC") that certain work, as described in its co-application with the City of New Rochelle (hereinafter the "City") and its attachments, will be required ("Project"), and after thorough consideration of the various aspects of the problem has hereby determined that the work specified in such application is desirable; is in the public interest and is required in order to implement the Project; and

WHEREAS, Article 56 of the NYS Environmental Conservation Law authorizes

State assistance to municipalities for environmental restoration projects by means of a

contract and the County deems it to be in the public interest and benefit under this law to

enter into a joint contract with the City of New Rochelle therefor; and

NOW THEREFORE, BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Executive, or his authorized designee, is hereby authorized to act on behalf of the County in all matters related to the State assistance under ECL Article 56, Title 5 in connection with this joint application with the City for the funding of the Project, as described herein. The County Executive, or his

authorized designee, is authorized to make application therefor, execute the State

Assistance Contract, as co-recipient with the City, submit Project documentation, and
otherwise act for the County's governing body in all matters related to State assistance
for the Project.

- S2. The County agrees that it will fund its portion of the cost of the Project and that funds will be made available to initiate the Project's field work within twelve (12) months of written approval of its joint application with the City by the New York State Department of Environmental Conservation.
- §3. A certified copy of this authorizing Resolution shall be prepared and transmitted to the New York State Department of Environmental Conservation together with the joint Application for State Assistance and to the City of New Rochelle.
- **\$4.** This Resolution shall take effect immediately upon passage and shall specifically apply to the application annexed hereto as Schedule "B."

## FISCAL IMPACT STATEMENT

CAPITAL PROJECT: BPL2A Feasibility Studies - David's Island ☐ NO FISCAL IMPACT PROJECTED CAPITAL BUDGET IMPACT (To be completed by Finance Department and Budget Department) A) 

GENERAL FUND AIRPORT **EXPENSES AND REVENUES** Source of County Funds (check one): □ Current Appropriations ☐ Capital Budget Amendment B) BONDING AUTHORIZATIONS PPU: Total Principal \$ 0 Anticipated Interest Rate \_\_\_\_% Anticipated Annual Cost (Principal and Interest) \$ \_\_\_\_ Total Debt Service (Annual Cost X Term) \$ \_\_\_\_\_ Finance Department: C) IMPACT ON OPERATING BUDGET (To be completed by Operating Department and reviewed by Budget Department) Potential Related Expenses: Annual \$ 0 (Previously appropriated Cash to Capital) Potential Related Revenues: Annual \$ 0 Anticipated Savings to County and/or Impact on Department Operations (Describe in detail for current and next four years.): Previously appropriated Cash to Capital Reviewed By: \_\_ Prepared by: Ed Hoffmeister Title: Associate Planner **Budget Department** Department: Planning

If you need more space, please attach additional sheets.

STATE OF NEW YORK	)	
	)	SS.
WESTCHESTER COUNTY	)	

I HEREBY CERTIFY that I have compared the foregoing Act, Act No. 126 - 2005 with the original on file in my office, and that the same is a correct transcript therefrom and of the whole of the said original Act which was duly adopted by the County Board of Legislators of the County of Westchester on May 23, 2005 and approved by the County Executive on May 25, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 26<sup>th</sup> day of May, 2005.

Perry M. Ochacher

The Clerk of the Westchester County
Board of Legislators
and Chief of Staff

County of Westchester, New York

(seal)

STATE OF NEW YORK	)	
	)	SS
COUNTY OF WESTCHESTER	)	

I HEREBY CERTIFY that I have compared the foregoing Resolution, Resolution No. 84 - 2005 with the original on file in my office and that the same is a correct transcript therefrom and of the whole of said original Resolutions which was duly adopted by the Westchester County Board of Legislators of said County on May 23, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said County Board of Legislators on this 24<sup>th</sup> day of May, 2005.

Perry M. Ochacher

The Clerk of the Westchester County
Board of Legislators
and Chief of Staff

County of Westchester, New York

(seal)