

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, December 2, 2009, at 8:00 p.m. in the Council Room of City Hall.

AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. Residents may be heard who have matters to discuss that do not appear on the agenda.
4. Public hearing on the proposed 2010 Budget.
5. Resolution authorizing the acceptance of the Federal Economic Recovery Stimulus funds and providing authorization for the Mayor and City Counsel to enter into an agreement with the New York State Department of Transportation (NYSDOT) for the Pedestrian Safety improvement projects.
6. Resolution authorizing the financing for the Rye Town Park Capital Improvement Project.
7. Authorization for the City Manager to enter into a contract with Aero Hardware & Parts Co, Inc. to extend the terms on the final payment of \$5 million due on 1037 Boston Post Road.
8. Discussion of amending the Chapter 90 Fences and Walls to allow for deer fencing.
9. Discussion of notice provisions for land use applications.
10. Miscellaneous communications and reports.
11. Old Business.
12. New Business.
13. Draft unapproved minutes of the Budget Workshop held November 12, 2009, the Budget Workshop held on November 16, 2009 and the Regular Meeting/Budget Workshop of the City Council held on November 18, 2009.
14. Adjournment.

The next regular meeting of the City Council will be held on Wednesday, December 16, 2009.



CITY COUNCIL AGENDA

NO. 4

DEPT.: City Manager's Office

DATE: November 23, 2008

CONTACT: Frank J. Culross, City Manager

ACTION: Public hearing on proposed 2010 City Budget

FOR THE MEETING OF:

December 2, 2009

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the Mayor and the Council conduct the public hearing on the proposed 2010 Rye City Budget.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The City Manager presented the budget November 9th. The Council held Workshops on November 12th, 16th, 18th, 30th, and December 2rd.

Budget adoption is scheduled for December 16, 2009.



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Manager's Office

DATE: November 23, 2009

CONTACT: Frank J. Culross, City Manager

AGENDA ITEM: Resolution authorizing the acceptance of the Federal Economic Recovery Stimulus funds and providing authorization for the Mayor and City Counsel to enter into an agreement with the New York State Department of Transportation (NYSDOT) for the Pedestrian Safety improvement projects.

FOR THE MEETING OF:

December 2, 2009

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Rye City Council adopt the Resolution to accept the Stimulus funds for the Sidewalk/Pedestrian improvement projects.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Provisions for obtainment of the Stimulus funds include:

- 1) Adoption of the attached Resolution
- 2) Authorization for the Mayor and City Counsel to enter into the attached agreement

The Safe Routes to School Sidewalk/Pedestrian Improvements were approved under the TIP Amendment PIN 8760.84. The six projects totaling \$695,000 include the following:

- | | |
|--|------------------|
| 1. Library Lane signal and pedestrian phase signals, ADA compliant curb cuts | \$195,000 |
| 2. Playland Parkway @ Forest Avenue pedestrian improvements
(westerly & southerly legs) | \$ 85,000 |
| 3. Midland @ Palisades (speed table) intersection improvements | \$ 85,000 |
| 4. New sidewalk (Johnson Place to Mamaroneck Line) 1800 LF of sidewalk | \$160,000 |
| 5. Oakland Beach Avenue sidewalk improvements (2000 LF sidewalk) | <u>\$170,000</u> |
| | \$695,000 |

RESOLVED, that the **Mayor** is hereby authorized to execute all necessary Agreements or certifications on behalf of the Municipality/Sponsor, (subject to the Municipal/Sponsor Attorney's approval as to form and content), with NYSDOT in connection with the advancement or approval of the Project identified in the State/Local Agreement; and providing for the administration of the Project and the Municipality/Sponsor's first instance funding of the non-federal share of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible; and it is further

RESOLVED, that in addition to the Mayor, the following municipal titles: Commissioner of Public Works, City Engineer, City Comptroller, _____ are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

RESOLVED, that a certified copy of this Resolution be filed with the New York State Commissioner of the Department of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further

RESOLVED, that this Resolution shall take effect immediately.

_____ moved the adoption of the resolution.
(Name and Title)

Seconded by _____ . Upon roll call, adopted.
(Name and Title)

Clerk of the **City of Rye**
County of **Westchester**

I, hereby certify that I have compared the foregoing copy of a resolution with the original duly adopted by the above mentioned Municipality/Sponsor at a session held on the ____ day of _____, 2009 and that the same is a true copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the said **City of Rye**, this ____ day of _____, 2009.

Clerk of the City of Rye

**ECONOMIC RECOVERY PROJECTS
MUNICIPAL/SPONSOR RESOLUTION
Resolution No. _____**

WHEREAS, the **Pedestrian Safety Improvements and ADA Ramps** Identified as **PIN 8760.84**, an Economic Recovery Project in the **City of Rye**, (hereinafter "the Project"), in **Westchester County** (hereinafter "the Municipality/Sponsor"), is eligible for funding under Title 23 US Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 100% Federal funds and 0% non-federal funds.

NOW, THEREFORE, the Municipality/Sponsor's Council duly convened does hereby:

RESOLVE, that the Municipality/Sponsor's Council hereby approves the Project; and it is hereby further

RESOLVED, that the Municipality/Sponsor agrees to advance the Project through the Municipality/Sponsor's resources and agrees that the Municipal/Sponsor's Council hereby authorizes the Municipal/Sponsor to pay in the first instance the full federal and full non-federal costs of any and all phases(s) or portions thereof.

RESOLVED, that the Municipality/Sponsor's Board makes a 100% commitment of the non-federal share (if any) of the costs of **Construction/ Construction Inspection** phases(s) of work for the Project or portions thereof, with the federal share of such costs to be applied directly by the New York State Department of Transportation ("NYSDOT") pursuant to the State/Local Agreement; and it is hereby further,

RESOLVED, that the sum of **\$695,000** is hereby appropriated from _____ [or pursuant to _____] and made available to cover the cost of participation to complete the Project including all phase(s) or portions thereof

RESOLVED, that upon the completion of the construction of the Project, or a fully usable portion thereof, the Municipality/Sponsor agrees to maintain the Project, or fully usable portion thereof, at their sole cost and expense; and it is hereby further

RESOLVED, that in the event the full federal and non-federal share of the Projects exceeds the amount appropriated above, the Municipality/Sponsor's Council shall convene as soon as possible to appropriate said excess amount immediately; and it is hereby further

STANDARD
Federal-Aid Highway and Marchiselli-Aid Local Project Agreement
COMPTROLLER'S CONTRACT NO _____

This Agreement is by and between:

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

and,

City of Rye (the "Municipality/Sponsor")
acting by and through the **Mayor**
with its office at 1051 Boston Post road, Rye, Westchester County, New York.

This Agreement covers eligible costs incurred on or after _____

This Agreement identifies the party responsible for administration, and establishes the method or provision for funding, of applicable phases of a Federal-aid project for the improvement of a street or highway not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement or one or more Supplemental Schedule(s) A to this Agreement duly executed and approved by the parties hereto. The phases that are potentially the subject of this Agreement, as further enumerated below, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; Construction; and/or Construction Supervision and Inspection. The Federal-aid project shall be identified for the purposes of this Agreement as **PIN 8760.84, Pedestrian Safety Improvements and ADA Ramps, City of Rye, Westchester County** (as more specifically described in such Schedule A or Supplemental Schedules A, the "Project").

WITNESSETH:

WHEREAS, the United States has provided for the apportionment of Federal-aid funds to the State for the purpose of carrying out Federal-aid highway projects pursuant to the appropriate sections of Title 23 U.S. Code as administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the New York State Highway Law authorizes the Commissioner of Transportation (hereinafter referred to as "Commissioner") to use Federal aid available under the Federal-aid highway acts and provides for the consent to and approval by the Municipality/Sponsor of any project under the Federal-aid highway program which is not on the State highway system before such Project is commenced; and

WHEREAS, pursuant to Highway Law §10(34-a) and section 15 of Chapter 329 of the Laws of 1991 as amended by section 9 of Chapter 330 of the Laws of 1991 the State established the "Marchiselli" Program, that provides State aid for Federal aid highway projects not on the State highway system; and

WHEREAS, pursuant to Chapters 329, 330 and 331 of the Laws of New York of 1991, Highway Law §80-b and Public Authorities Law §380 funding of the "State share" of projects under the Marchiselli Program is provided from the proceeds of Local Highway and Bridge Service Contract Bonds issued by the New York State Thruway Authority ("Thruway Authority Bonds"); and

WHEREAS, the continuing legislative authorization for the funding of eligible costs of Federal aid Municipal/Sponsor streets and highway projects from the proceeds of Thruway Authority Bonds is pursuant to a chapter or chapters of the laws of New York State providing appropriations pursuant to Public Authorities Law §380(1); and

WHEREAS, projects eligible for Marchiselli aid are identified by the State Legislature in the "Comprehensive List" published in the annual Report of the Fiscal Committees on the Executive Budget (the "Green Book"), and the Project is duly included in the current Green Book; and

WHEREAS, pursuant to authorizations therefore, NYSDOT and the Municipality/Sponsor are desirous of progressing the Project under the Federal-aid and, if applicable, Marchiselli-aid Programs; and

WHEREAS, the Legislative Body of the Municipality/Sponsor by Resolution No. _____ adopted at meeting held on _____ approved the Project, the Municipality/Sponsor's entry into this Agreement, has appropriated necessary funds in connection with any applicable Municipal/Sponsor Deposit identified in applicable Schedules A and has further authorized the Mayor of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution is attached to and made a part of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The Agreement consists of the following:

- Agreement Form - this document titled "Standard Federal Aid & Marchiselli Aid Local Project Agreement";
- Schedule "A" - Description of Project phase, Funding and Deposit Requirements;
- Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility
- Appendix "A" - New York State Required Contract Provisions
- Appendix "B" - U.S. Government Required Clauses
- Municipal/Sponsor Resolution(s) - duly adopted Municipal/Sponsor resolution(s) authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating the funding required therefore.

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A or one or more supplemental Schedule(s) A as may hereafter be executed and approved by the parties hereto as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the development of such Schedule(s) A for the purposes of conforming to New York State or to Federal Highway Administration requirements.

The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the "Procedures for Locally Administered Federal Aid Projects" manual (available through NYSDOT's web site at: <http://www.nysdot.gov> publications - in particular the Appendices to Chapter 4 entitled Work Requirements, Record Keeping Guidelines and Consultant Selection Procedures, as such may be amended from time to time.

3. *Municipal/Sponsor Deposit.* Where the work is performed by consultant or construction contract entered by NYSDOT, or by NYSDOT forces, and unless the total non-Federal share of the Project phase is under \$5,000, the Municipality/Sponsor shall deposit with the State Comptroller, prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the non-Federal share of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply Federal aid and the required Municipal/Sponsor Deposit for the non-Federally aided portion, and, if applicable, shall request Thruway Authority funding of Marchiselli aid to the Municipality/Sponsor as described below. For work performed by or through the Municipality/Sponsor NYSDOT will reimburse the Municipality/Sponsor with Federal aid and, if applicable, Marchiselli aid as described below. Billing shall be no more frequent than monthly and must be submitted in no less than six months intervals.

4.1. *Federal Aid.* NYSDOT will administer Federal funds for the benefit of the Municipality /Sponsor for the Federal share and will fund the applicable percentage designated in Schedule A of Federal-aid participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. For work performed by or through the Municipality/Sponsor NYSDOT will reimburse Federal-aid-eligible expenditures in accordance with NYSDOT policy and procedures.

4.1.1 *Participating Items.* NYSDOT shall apply Federal funds only for that work and those items that are eligible for Federal participation under Title 23 of U.S. code, as amended, that requires Federal-aid-eligible projects to be on the Federal Aid Highway System ("FAHS"), except for bridge and safety projects that can be off the FAHS. Included among the Federal participating items are the actual cost of employee personal services, leave and fringe benefit additives are eligible. Other participating costs include materials and supplies, equipment use charges or other Federal Participating costs directly identifiable with the eligible project.

4.1.2 *Periodic Reimbursement.* Except where the Municipality/Sponsor proceeds or has proceeded without an agreement with NYSDOT, if the Municipality/Sponsor finds it desirable to have reimbursement made periodically, upon the request and certification therefore by the Municipality/Sponsor NYSDOT may make Federal-aid progress payments based on either:

- a. billings submitted by the consultant;
- b. payment estimates prepared by NYSDOT's Engineer in Charge; or
- c. billings prepared by the Municipality/Sponsor in accordance with NYSDOT requirements, based on costs incurred as disclosed by the records thereof, as required by the Project, with adjustments to be made after audit by NYSDOT or FHWA.

4.2. *Marchiselli Aid (if applicable).* NYSDOT will request Thruway Authority reimbursement to the Municipality of the upset amount and designated percentage in Schedule A of the non-overmatched non-federal share of Federal participating cost, (the "State share"), incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. Not all Federal-aid-eligible participating costs are eligible for Marchiselli aid. Only "Eligible Project Costs" (as defined in Marchiselli Program instructions issued by NYSDOT) incurred after April 1, 1991 are reimbursable.

4.2.1 *Marchiselli Eligible Project Costs.* To be eligible for Marchiselli Aid Project costs must: (a) be eligible for Federal participation as described under §4.1; (b) be for work which, when completed, has a certifiable service life of at least 10 years; and (c) be for a work type that relates directly and exclusively to a municipally-owned highway, bridge or highway-railroad crossing off the State Highway System.

4.2.2 *Periodic Reimbursement.* Except where the Municipality proceeds or has proceeded without a Marchiselli Agreement with NYSDOT, if the Municipality finds it desirable to have reimbursement made periodically, upon the request and certification therefore by the Municipality NYSDOT may submit a request to the Thruway Authority to make progress payments based on the amount of Federal-aid participating expenditures made to date by the New York State Comptroller. For work performed by or through the Municipality, NYSDOT will reimburse eligible Marchiselli expenditures in accordance with Marchiselli program policy and claims procedures, with adjustments to be made after audit by NYSDOT or FHWA.

4.3. In no event shall this Agreement create any obligation to the Municipality/Sponsor for funding or reimbursement of any amount in excess of:

- (a) the amount stated in Schedule A for the Federal Share or;
- (b) the amount stated in Schedule A as the State (Marchiselli) share or the amount stated in the Comprehensive List, whichever is lower.

4.4. All items included by the Municipality/Sponsor in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT and the FHWA. Such items shall be subject to audit by the State and the FHWA.

4.5. If Project-related work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To effect such payment the reimbursement to the Municipality/Sponsor provided for in sections 4.1 and 4.2 may be reduced by NYSDOT by the amounts thereof in excess of the Municipal/Sponsor Deposit available for such payment to NYSDOT.

5. *Supplemental Agreement or Supplemental Schedule A.* Supplemental Agreements or Supplemental Schedule(s) A may be entered by the parties, and must be executed and approved in the manner required for a State contract. A Supplemental Schedule A is defined as a Supplemental Agreement which revises only the Schedule A of a prior Agreement or Supplemental Agreement. In the event Project cost estimates increase over the amounts provided for in Schedule A or Eligible Project Costs in the Comprehensive List are increased by the legislature, no additional reimbursement shall be due to the Municipality/Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality/Sponsor any monies paid to the Municipality/Sponsor pursuant to this Agreement which are subsequently determined to be ineligible for Federal Aid or Marchiselli Aid hereunder.

7. *Loss of Federal Participation.* In the event the Municipality/Sponsor withdraws its approval of the project, or suspends or delays work on the Project, or takes other action that results in the loss of Federal participation for the costs incurred pursuant to this Agreement, the Municipality/Sponsor shall refund to the State all reimbursements received from the State, and shall reimburse the State for 100% of all preliminary engineering and right-of-way incidental costs incurred by NYSDOT. The State may offset any other State or Federal aid due to the Municipality/Sponsor by such amount and apply such offset to affect such refund.

8. *Municipal/Sponsor Liability.*

8.1 If the Municipality/Sponsor performs work under this Agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality/Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality/Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

8.2 The Municipality/Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement. Negligent performance of service, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon the Municipality/Sponsor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

9. *Maintenance.* Except as otherwise provided for a NYSDOT administered project during its construction phase only, the Municipality/Sponsor shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality/Sponsor. If the Municipality/Sponsor intends to have the project maintained by another, any necessary maintenance Agreement will be executed and submitted to NYSDOT before construction of the Project is begun. Upon its completion, the Municipality/Sponsor will operate and maintain the Project at no expense to NYSDOT and, during the useful life of the Project the Municipality/Sponsor shall not discontinue operation of the Project without the prior written approval of NYSDOT. The Municipality/Sponsor will not dispose of the Project during its useful life without the prior approval of NYSDOT. In the event of such approved disposition the Municipality/Sponsor shall either cause the purchaser or transferee to assume the Municipality/Sponsor's continuing obligations under this Agreement, or shall reimburse NYSDOT for the pro-rata share of the grant over the remaining useful life of the Project.

10. *Independent Contractor.* The officers and employees of the Municipality/Sponsor, in accordance with the status of the Municipality/Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

11. *Contract Executory; Required Federal Authorization.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies available to the State and no liability on account thereof shall be incurred by the State beyond monies available for the purposes hereof. No phase of work for the project shall be commenced unless and until NYSDOT receives authorization from the Federal government.

12. *Assignment or Other Disposition of Agreement.* The Municipality/Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

13. *Term of Agreement.* As to the Project and phase(s) described in Schedule A executed herewith, the term of this Agreement shall begin on the date of this Agreement as first above written. This Agreement shall remain in effect so long as Federal aid and Marchiselli aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this Agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a Federal or State budgetary hiatus will not by itself be construed to cause a lapse in this Agreement, provided any necessary Federal or State appropriations or other funding authorizations therefore are eventually enacted.

14. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality/Sponsor assert, make, or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this Agreement.

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

16. *Required Clauses.* Attached hereto and made a part of this Agreement as if set forth fully herein is Appendix A, Standard Clauses for all New York State contracts.

NYS DOT # _____

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

Municipality/Sponsor

Municipality/Sponsor Attorney

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

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

On this _____ day of _____, 2009 before me personally came _____ to me known, who, being by me duly sworn did depose and say that s/he resides at _____; that s/he is the _____ of the Municipal/Sponsor Corporation described in and which executed the above instrument; that it was executed by order of the _____ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on _____ and which a certified copy is attached and made a part hereof; and that s/he signed his/her name thereto by like order.

Notary Public

Approved for NYSDOT:

Approved as to Form:

By: _____
For Commissioner of Transportation

STATE OF NEW YORK ATTORNEY GENERAL
By: _____
Assistant Attorney General

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

COMPTROLLER'S APPROVAL:

DATE: _____

By: _____
For the New York State Comptroller
Pursuant to State Finance Law §112.

NYS DOT/Local Agreement - Schedule A for PIN 8760.84

OSC Municipal Contract #: _____ Contract End Date: 3/30/2012^(mm/dd/yyyy)
 Check, if date changed from the last Schedule A

Purpose: Original Standard Agreement Supplemental Schedule A No.

Agreement Type: Locally Administered Municipality/Sponsor (Contract Payee): City of Rye
 Other Municipality/Sponsor (if applicable): _____
 State Administered *List participating Municipality(ies) and the % of cost share for each and indicate by checkbox which Municipality this Schedule A applies.*
 Municipality: _____ % of Cost share
 Municipality: _____ % of Cost share
 Municipality: _____ % of Cost share

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

Work Type: BIKE/PED./FACILITIES County (If different from Municipality): Westchester

Project Description (Check, if changed from last Schedule A): Pedestrian Safety Improvements & ADA Ramps
 Additional Project Description (if required): Construction of ADA ramps, pedestrian crosswalks, speed control devices, as well as sidewalks and replacement of outdated/antiquated existing traffic signals, as needed at: Boston Post Rd @ Library Lane; Midland Ave @ Palisades Rd; Playland Parkway @ Forest Ave; Oakland Beach Avenue; and Boston Post Road.
 Marchiselli Eligible Yes No

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

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

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

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

NYS DOT/Local Agreement – Schedule A

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

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
8760.84.321	Current	Other (see footnote)	\$695,000.00	\$695,000.00	\$0.00	\$0.00
	Old		\$0.00	\$0.00	\$0.00	\$0.00
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
..	Current		\$	\$	\$	\$
	Old		\$	\$	\$	\$
TOTAL CURRENT COSTS:			\$695,000.00	\$695,000.00	\$ 0.00	\$ 0.00

C. Total Local Deposit(s) Required for State Administered Projects:	\$0.00
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D. Total Project Costs To compute Total Costs in the last column, right click in the field and select "Update Field."

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total Other STATE Cost	Total LOCAL Cost	Total Costs (all sources)
\$695,000.00	\$0.00	\$0.00	\$0.00	\$695,000.00

E. Point of Contact for Questions Regarding this Schedule A (Must be completed)

Name: Doreen Holsopple
 Phone No: 845-431-5977

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

SCHEDULE B: Construction Project Type Phases, Subphases/Tasks, and Allocation of Responsibility Page 1 of 5 PIN 8760.84

Instructions: Enter an "X" to indicate the appropriate Phase, then assign the responsibility for *each applicable Subphase task* by entering an "X" in either the NYSDOT column to allocate the task to State Labor Forces or a State Contract, or enter an "X" in the other appropriate column to indicate a task allocated to Non-State Labor Forces or a Locally Administered Contract.

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
A1. Preliminary Engineering ("PE") Phase		
1. <u>Scoping</u> : Prepare & distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.		
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, land use and development analysis and forecasts.		
3. <u>Preliminary Design</u> : Prepare & distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design subphases or tasks and/or to secure the approval/authorization to proceed.		
4. Review & Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.		
5. Obtain aerial photography and photogrammetric mapping.		
6. Perform all surveys for mapping and design.		
7. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the <i>Highway Design Manual</i> , including all Highway Design including pavement evaluations, taking and analyzing cores; design of pavement mixes and applications procedures, preparation of any necessary bridge site data package, if necessary, and all Structural Design including necessary hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems (e.g., Signals, IVHS facilities), and maintenance and protection of traffic plans. FRA criteria will apply to rail work.		
8. Perform landscape design (including erosion control).		
9. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need for cultural resources survey.		
10. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance separately, any portions of the project which may be more appropriately progressed separately and independently.		
11. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.		
12. Conduct any required soils and other geological investigations.		

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
13. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocation plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.		
14. Determine the need and apply for any required permits, including U. S. Coast Guard, U. S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.		
15. Prepare and execute any required agreements, including: -- Railroad force account -- Maintenance agreements for sidewalks, lighting, signals, betterments. -- Betterment Agreements - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities.		
16. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E by NYSDOT		
17. The American recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/ Sponsor must include in its construction contract the additional ARA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		
18. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		
_____ A2. Right-of-Way (ROW) Incidentals		
1. Prepare ARM or other mapping, showing preliminary taking lines.		
2. Right-of-Way (ROW) mapping and any necessary right-of-way relocation plans.		
3. Obtain abstracts of title and certify those having an interest in right-of-way to be acquired.		
4. Secure Appraisals.		
5. Perform Appraisal Review and establish an amount representing just compensation.		
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including "de minimus" determination, as may be applicable. If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.		

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.		
8. The American recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/Sponsor must include in its construction contract the additional ARA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		
9. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		
B. Right of Way (ROW) Acquisition		
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. If NYSDOT is to acquire property on behalf of the Municipality, the Municipality agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.		
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.		
3. Conduct condemnation proceedings, court, and any other legal actions required to acquire properties.		
4. Monitor all ROW Acquisition work and activities, including review and processing of payments to property owners.		
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.		
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.		
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.		
8. The American Recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/Sponsor must include in its construction contract the additional ARRA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
9. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		
XX C. Construction (C), Supervision (C/S) and Inspection (C/I) Phase		
1. Advertise contract lettings and distribute contract documents to prospective bidders.		X
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).		XX
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.		X
4. Compile and submit Contract Award Documentation Package.		X
5. Review and approve any proposed subcontractors, vendors, or suppliers.		X
6. Conduct & control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records & files, including all diaries & logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies & labor for the performance of the work on the project, & insure that the proper materials, equipment, human resources, methods and procedures are used.		X
7(A). For non-NHS or State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.		X
7(B) For NHS or State highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of, NYSDOT. The Municipality shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	Inspection by NYSDOT	Contractual reqs. of contractor and subs.
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.		X
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.		X
10. The American Recovery and Reinvestment Act (ARRA) projects require additional extensive reporting. The Municipality/Sponsor must include in its construction contract the additional ARRA reporting requirements related to the weekly employment during Construction or as modified by the Federal Highway Administration (FHWA).		X

PHASE/SUBPHASE	Allocation of Responsibility	
	NYSDOT	MUNICIPALITY
11. Pursuant to Title IX, Section 902 of the ARRA, the U.S. DOT Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any records of its subcontractors, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.		X
12. Review and approve all shop drawings, fabrications details, and other details of structural work.		X
13. Administer all construction contract claims, disputes or litigation.		X
14. Perform final inspection of the completed work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.	X	XX

xx= Lead in task.
Schedule B 2009 dh
PIN 8760.84

APPENDIX A: STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing

wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in

Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

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

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992 (NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

23. CONTRACT TERMINATION PROVISION. The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Laws §139j and §139k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

24. PERSONAL INFORMATION SECURITY. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

APPENDIX B: REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

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

FEDERAL SINGLE AUDIT REQUIREMENTS

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

that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. ____ 215 (a) of OMB Circular A-133 Subpart B-- Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

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

THE CFDA IDENTIFICATION NUMBER

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

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

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

PROMPT PAYMENT MECHANISMS

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

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

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

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

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

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

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

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

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

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

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

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

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

ARRA REPORTING & RECORD KEEPING REQUIREMENTS

Applicable To Transportation Projects Funded by the American Recovery & Reinvestment Act (ARRA)

The following information is applicable to public and private entities including state agencies, municipal governments, project sponsors, prime contractors, subcontractors and consultant firms contractually associated with State Let or Local Let transportation projects funded in total, or in part, by the ARRA.

For federally funded capital projects where this note is included, the presence of this note in the contract does not necessarily mean that the project is funded by ARRA funds. The prospective bidder may determine if this Special Note is applicable by accessing the list of certified projects at <https://www.nysdot.gov/recovery> and selecting the “certified highway projects” option. If the project appears on this list then the reporting and record keeping requirements delineated in this special note and its attachments are expected to apply to the project. Prior to the Notice to Proceed, Regional Construction Staff will verify the project funding and inform the contractor if the note applies to the contract at that time.

The ARRA, signed into law on February 17, 2009, contains various reporting requirements including employment and jobs data related directly and indirectly to projects receiving funds from the legislation. The ARRA legislation requires all entities, both public and private, to make available to various State and Federal Agencies all records, documentation and related materials of ARRA funded contracts for inspection and audit purposes. Refer to Attachment 1. The ARRA legislation also requires all entities, both public and private, to accept the authority of both the Comptroller General and the Inspector General. Refer to Attachment 2.

For all reporting entities the Federal Highway Agency form “FHWA-1589”, Revision 3-25, is to be completed on a monthly basis. Refer to Attachment 3 for the subject form and its instruction sheet. The electronic format (MS Excel) of this form is available for download at <https://www.nysdot.gov/recovery> by selecting the “Reporting Requirements” option.

All reporting entities, including subcontractors and subconsultants, are required to include their DUNS number (Dunn & Bradstreet Unique Identification Number) on the subject form, however, subcontractors and subconsultants who do not currently have a DUNS number are NOT required to obtain such. All other reporting entities must have a DUNS number.

The specific process for each reporting entity is described below. If the FHWA-1589 form is not properly completed and submitted by the scheduled submittal date, the NYSDOT may withhold the related monthly billing request.

- 1) For Consultants under contract with the NYSDOT whose contract is funded by provisions of the ARRA;

The firm will submit the FHWA -1589 form on a monthly basis attached to their monthly or

ARRA REPORTING & RECORD KEEPING REQUIREMENTS

appropriate bi-monthly billing request. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the NYSDOT office receiving the billing request.

- 2) For Contractors under contract with the NYSDOT whose contract is funded by provisions of the ARRA;

The firm will enter the employee work hour and wage information (as required by Form FHWA-1589) for ARRA funded capital construction contracts into the EBO (Equitable Business Opportunities) computer application as is currently required on NYSDOT construction contracts. Note that the EBO computer application is being modified to accept the additional information required for ARRA funded contracts. Until such time the EBO application modifications are available for use contractors shall retain the required data for eventual input into EBO.

The contractor must also complete the FHWA-1589 form and submit the signed original form attached to their monthly billing request. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the NYSDOT office receiving the billing request. The contractor is to complete the form for both their own employees and their subcontractor's employees. Subcontractors are also required to enter the information into the EBO computer application as is currently required on NYSDOT construction contracts.

For those contracts which do not require the EBO computer application the contractor is not required to use EBO, but shall complete the FHWA-1589 form as instructed herein.

- 3) For Local Municipal Governments, Project Sponsors, and all other entities not covered by #s 1 and 2 above (e.g. utilities, railroads, airports, transit agencies, etc.) under contract with the NYSDOT whose employees are funded by provisions of the ARRA;

The local government, project sponsor, or other entity, will submit the FHWA-1589 form on a monthly basis attached to their monthly billing request. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the NYSDOT office receiving the billing request.

- 4) For contractors and consultants under contract to Local Municipal Governments, Project Sponsors, or other entities (e.g. utilities, railroads, airports, transit agencies, etc.) whose projects are funded by provisions of the ARRA;

The firms will submit the FHWA-1589 form on a monthly basis attached to their monthly billing request to the local government, project sponsor or other entity. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the local municipal government, project sponsor or other entity.

ARRA REPORTING & RECORD KEEPING REQUIREMENTS

The Local Municipal Government, Project Sponsor or other entity receiving the monthly billing request for review, approval and signature will verify the FHWA-1589 form information, co-sign the form(s) and attach a copy of the form(s) to their monthly billing request to the NYSDOT. The Local Municipal Government, Project Sponsor or other entity will retain the original form(s) as project records.

- 5) For all other entities not covered by #4 above (e.g. utilities, railroads, airports, transit agencies, etc.) under contract to Local Municipal Governments, Project Sponsors or other entities whose contractors, consultants or employees are funded by provisions of the ARRA;

The firms will submit the FHWA-1589 form on a monthly basis attached to their monthly billing request to the local government, project sponsor or other entity.. If a billing request is not available for submittal by the 10th of the month the FHWA-1589 form shall be submitted separately with supporting documentation to the local municipal government, project sponsor, or other entity.

The Local Municipal Government, Project Sponsor or other entity receiving the monthly billing request for review, approval and signature will verify the FHWA-1589 form information, co-sign the form(s) and attach a copy of the form(s) to their monthly billing request to the NYSDOT. The Local Municipal Government, project sponsor or other entity will retain the original form(s) as project records.

ATTACHMENT 1
American Recovery and Reinvestment Act of 2009 (ARRA)
ADDITIONAL CONTRACT RECORD KEEPING REQUIREMENTS

If this Contract is funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009 (ARRA), the State must provide certain information on jobs and employment to the Federal Highway Administration (FHWA). This will require all reporting entities including the State, local governments, project sponsors, contractors and consultants who work on ARRA funded Projects to provide information to the State in accordance with Reporting Requirements published by the FHWA on March 23, 2009. The FHWA Reporting Requirements and any additional requirements issued or to be issued by FHWA, are made a part of this Contract, as though fully set forth at length herein.

All Entities shall submit Monthly Employment Reports providing required information on its workforce and the workforce of all subcontractors and sub-consultants who were active on the Contract during the reporting month. Contractors and Consultants shall report the direct project related job information for their workforce and the workforce of all Subcontractors or Sub-consultants active during the reporting month. These jobs include all employees actively engaged in projects who work on the jobsite, in the project office, in the home office, or who telework from a home or other alternative work location. These jobs also include any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project, but do not include material suppliers. Information will also be required concerning total hours worked for all employees reported and the total dollar amount of wages paid.

There will be no additional compensation for this reporting activity and the Monthly Report Form (FHWA-1589) will be required in both paper and electronic formats (MS Excel Spreadsheet Format) available at: <https://www.nysdot.gov/recovery> by selecting the "Reporting Requirements" option.

Entities shall complete a Report for each month from the date of the Notice to Proceed (or other document directing the start of Contract Work) until Completion and Acceptance of the Contract. To ensure the proper reporting of data on contracts managed by funding recipients, Local Municipal Governments, contractors and consultants shall insert the entire Special Note into subsequent agreements (for any contract receiving ARRA funding) related to this Contract. By completing the Report, an entity certifies that they are knowledgeable of the hours worked and the employment status for all employees listed. All entities are responsible to maintain data to support the Monthly Report Form until September 30, 2012, and to make it available to the State or Federal Government should the State or Federal Government request such supporting documents and materials.

ATTACHMENT 2
American Recovery and Reinvestment Act of 2009 (ARRA)
AUTHORITY OF THE COMPTROLLER GENERAL AND THE INSPECTOR GENERAL

AUTHORITY OF THE COMPTROLLER GENERAL:

Pursuant to Title IX, Section 902 of the American Reinvestment And Recovery Act (ARRA), the Comptroller General and his representatives are authorized to: 1) examine any records of the contractor, or any of its subcontractors, or any local agency administering such contract, that directly pertain to and involve transactions relating to the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors, or any local government agency administering the contract, regarding such transactions.

AUTHORITY OF THE INSPECTOR GENERAL:

Section 1515(a) of the American Recovery and Reinvestment Act (ARRA) provides authority for any representative of the Inspector General to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section of the law shall be interpreted to limit or restrict in any way any existing authority of the Inspector General.

ATTACHMENT 3
American Recovery and Reinvestment Act of 2009 (ARRA)
FHWA FORM-1589 & INSTRUCTIONS

Monthly Employment Report (Form: FHWA-1589)

Monthly employment information on each ARRA project is used by States for meeting the reporting requirements of Sections 1201 and 1512. In order for States to fulfill their reporting obligations, the States must collect and analyze certain employment data for each ARRA funded contract. This data to be reported is identified below and will be used by the States in developing Form 1587, which is to be submitted to FHWA. Reporting Entities shall complete a report for each month from the date of the contract award or Notice to Proceed until acceptance and completion of the contract. This report is only required for contracts that use ARRA funds. Prime contractors and consultants are required to provide the required information for their own workforce as well as the workforce of all subcontractors that were active on their ARRA funded project(s) for the reporting month. The 1589 form is due to the State no later than the 10th day of each month for the preceding month's data.

The states shall require the following data be provided by each contractor, consultant and funding recipient working on an ARRA project. The prime contractor or consultant for each project shall be responsible for reporting their firm as well as all subcontractors data.

Due date: Monthly, by the 10th of each month for the preceeding months data from contract award date or Notice to Proceed until contract completion and acceptance.

Due to: To be sent by each ARRA funded project entity to the designated office in NYSDOT.

Coding Instructions

- BOX 1. **Report Month:** The month and year covered by the report, as mm/yyyy (e.g. "May 2009" would be coded as "05/2009").
- BOX 2. **Contracting agency:** The name of the contracting agency. Enter "State" for State DOT projects. For non-State projects, enter the name of the contracting agency (contractor, consultant, city, county, or other funding recipient).
- BOX 3 **Federal-aid project number:** The State assigned federal-aid project number, consistent with the format reported in FMIS.
- BOX 4. **State project number or identification number:** The project number or ID, as assigned by the State of its funding recipient, consistent with the format reported in FMIS.
- BOX 5. **Project location:** State where project occurs. If the project performed for Federal Lands, provide the FLH Division or Federal Land Managing Agency (FLMA) region.
- BOX 6. **Contractor name and address:** The name and address of the contracting or consulting firm shall include the name, street address, city, state, and zip code.
- BOX 7. **Contractor DUNS number:** The unique nine-digit number issued by Dun & Bradstreet. Followed by the optional 4 digit DUNS Plus number. Reported as "999999999.9999"
- BOX 8. **Employment data:** The prime contractor or consultant will report the direct, on-the-project jobs for their workforce and the workforce of their sub-contractors active during the reporting month. These jobs data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel,

ATTACHMENT 3
American Recovery and Reinvestment Act of 2009 (ARRA)
FHWA FORM-1589 & INSTRUCTIONS

inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the ARRA funded project. This does not include material suppliers such as steel, culverts, guardrail, and tool suppliers. States should include in their reports all direct labor associated with the ARRA project such as design, construction, and inspection. The States reports should include their own project labor, including permanent, temporary, and contract project staff. States are asked not to include estimated indirect labor, such as material testing, material projection or estimated macro-economic impacts. FHWA will be estimating all indirect labor based on the information provided in this form along with other FHWA data. The form requests specifically:

- a. **Subcontractor name:** The name of each subcontractor or sub-consultant that was active on the project for the reporting month.
- b. **Employees:** The number of project employees on the contractor's or consultant's workforce that month, and the number of project employees for each of the active subcontractors for the reporting month. Do not include material suppliers.
- c. **Hours:** The total hours on the specified project for all employees reported on the contractor's or consultant's project workforce that month, and the total hours for all project employees reported for each of the active subcontractors that month.
- d. **Payroll:** The total dollar amount of wages paid by the contractor or consultant that month for employees on the specified project, and the total dollar amount of wages paid by each of the active subcontractors that month. Payroll only includes wages and does not include overhead or indirect costs.

BOX 9. Prepared by:

- a. **Name:** Indicate the person responsible for preparation of the form. By completing the form the person certifies that they are knowledgeable of the hours worked and employment status for all the employees. Contractors, consultants, and their subs are responsible to maintain data to support the employment form and make it available to the State or Federal government should they request supporting materials.
- b. **Date:** The date the employment form was completed. Reported as "mm/dd/yyyy." (e.g. "May 1, 2009" would be coded as "05/01/2009").

RIDER A

American Recovery & Reinvestment Act of 2009, Vendor Obligations

1. Since this agreement contains ARRA stimulus funds, the vendor will post any jobs that it creates or seeks to fill as a result of the stimulus funding. Vendors will post through the New York State Department of Labor (<http://labor.state.ny.us>), notwithstanding any other posting they might make. Any advertisements posted by the vendor for positions pursuant to this contract must indicate that the position is funded with stimulus funds. The Department may waive the requirements of this section at its discretion.

2. The vendor will maintain detailed records of its expenditure of ARRA Stimulus Funds in connection with this agreement and submit reports as requested by the State of New York. The State of New York as the recipient of funds under the ARRA is subject to (various monthly and) quarterly reporting requirements and oversight by federal agency inspectors. Additional reports are required under this agreement (See Required Contract Provision - "ARRA Reporting & Recordkeeping Requirements" and attachments).

3. The vendor is also responsible for holding all sub grantees to the above reporting requirements.

4. Agreement Funding	
a. State General Fund Dollars	\$0.00
b. Federal Fund Dollars	\$0.00
c. ARRA Stimulus Dollars	\$695,000.00
d. Other Fund Dollars	<u>\$0.00</u>
 Agreement Total	 \$695,000.00

PIN: 8760.84
DATE: 11/13/2009dh



CITY COUNCIL AGENDA

NO. 6

DEPT.: Finance

DATE: November 23, 2009

CONTACT: Jean Gribbins, City Comptroller

AGENDA ITEM: Resolution authorizing the financing for the Rye Town Park Capital Improvement Project.

FOR THE MEETING OF:

December 2, 2009

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council adopt the attached Resolution.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: At the City Council meeting of November 18, 2009 the Rye Town Park Capital Improvement project was approved. Authorization must be given to use unspent proceeds from the 2002 Recreation Bond Fund to finance the project.

See attached Resolution.

CITY OF RYE, NEW YORK

Extracts from Minutes of Meeting of the City Council

ROLL CALL:

AYES:

NAYS:

ABSENT:

Councilperson _____ made a motion, seconded by Councilperson _____ to adopt the following resolution to appropriate unspent proceeds of general obligations of the City of Rye, New York (the "City") for the cost of an object or purpose similar to and of the same period of probably usefulness as the object or purpose for which such obligations were originally issued.

RESOLUTION

WHEREAS, the City issued \$2,900,000 principal amount general obligations to finance the cost of additions to and the reconstruction of various City-owned buildings for park and recreational purposes pursuant to a \$4,400,000 aggregate principal amount serial bond resolution adopted by the City Council on April 10, 2002; and

WHEREAS, after completion of such park and recreational building addition and reconstruction project, \$890,000 of the \$2,900,000 proceeds of obligations issued by the City for such object or purpose remain unspent; and

WHEREAS, the City Council has been advised by the Commissioners of Parks that the City's obligation to fund its portion of a capital project established in Chapter 848 of the Laws of 1953, together with the Town of Rye, is \$414,000 and said Commissioners have delivered to the City Council a certificate as to the City's funding obligation pursuant to section 2 of said Chapter 848; and

WHEREAS, the City Council expects that the Town of Rye will contribute, appropriate and fund its portion of said capital project as certified by said Commissioners; and

WHEREAS, the City Council has determined that efficient financial administration of the City's obligation pursuant to said Chapter 848 will be achieved by applying said unspent proceeds to fund the cost of said obligation rather than incur new indebtedness

NOW, THEREFORE, be it resolved by the City Council of the City of Rye, New York, anything in the Charter of the City to the contrary notwithstanding, as follows:

1. **RESOLVED**, that pursuant to section 165.00(a) of the Local Finance Law and section 11 of the General Municipal Law, a portion of the proceeds originally in the amount of \$2,900,000 constituting a part of obligations of the City issued pursuant to a \$4,400,000

aggregate principal amount serial bond resolution adopted by the City Council on April 10, 2002, now unspent and not needed for the object or purpose (the construction and reconstruction of City-owned buildings for park and recreational purposes), hereby shall be (i) deposited in a single special account of the City in a bank or trust company located and authorized to do business in New York, (ii) not at any time commingled with other funds of the City, and (iii) expended and applied only to the cost of an object or purpose similar to and of the same period of probable usefulness as the object or purpose for which the such part of said obligations were issued, all in lieu of applying said unspent proceeds to annual debt service on said obligations. In connection with the issuance of said obligations, the City Council hereby ratifies, approves and confirms the powers delegated to the City Comptroller, as chief fiscal officer of the Village, contained in said bond resolution.

2. **FURTHER RESOLVED**, that prior to the expenditure of said unspent proceeds, the City Council shall conduct applicable environmental compliance proceedings under the NYS Environmental Quality Review Act with respect to the environmental and climate change impact of said similar object or purpose.

3. This resolution shall take effect immediately.

DATED: December 2, 2009

BY ORDER OF THE CITY COUNCIL

By _____
Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 7

DEPT.: City Manager

DATE: November 23, 2009

CONTACT: Frank J. Culross, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into a contract with Aero Hardware & Parts Co, Inc. to extend the terms on the final payment of \$5 million due on 1037 Boston Post Road.

FOR THE MEETING OF:

December 2, 2009

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Mayor and Council authorize the City Manager to enter into the agreement.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Agreement is an amendment to the Contract of Sale between the City of Rye and Aero Hardware & Parts Co., Inc. for 1037 Boston Post Road. This amendment defers payment of the \$5 million due on May 1, 2010 for up to two (2) additional years.

See attached documentation.

FIRST AMENDMENT TO CONTRACT OF SALE

This FIRST AMENDMENT TO CONTRACT OF SALE (this "Amendment") is made as of November 18, 2009 by and between **AERO HARDWARE & PARTS CO., INC.**, having an address at 130 Business Park Drive, Armonk, NY 10504 ("Seller"), and **CITY OF RYE**, a municipal corporation formed under the laws of the State of New York having an address at 1051 Boston Post Road, Rye, New York 10580 ("Purchaser").

RECITALS

WHEREAS, Seller and Purchaser entered into that certain Contract of Sale for Commercial Premises, dated as of March 31, 2006 ("Original Contract"); and

WHEREAS, the parties desire to add a new Section 2.12(d) to the Original Contract as hereinafter provided.

NOW THEREFORE, in consideration of the covenants and provisions contained herein and subject to the terms and conditions hereinafter set forth, the parties hereto intending to be legally bound, do hereby amend and supplement the Original Contract as follows:

1. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Original Contract.

2. The term "Contract" means the Original Contract, as amended/modified by this Amendment.

3. A new Section 2.02(d) is hereby added to the Contract to provide as follows:


"(d) At Purchaser's option, the payment referred to in subsection (c) above may be deferred from May 1, 2010 for up to two (2) additional years ("Deferral Period"). If, however, any part of the payment referred to in subsection (c) is paid after May 1, 2010, the Seller and Purchaser agreed to adjust the amount of such payment due to reflect any change in the applicable New York State or Federal Capital Gains Tax Rates so that the net payment to the Seller after payment of such capital gains taxes would be not less than the net payment had it been made on May 1, 2010.

During the Deferral Period, the Purchaser shall make consecutive monthly payments of interest to the Seller at the fixed per annum rate of 5.75% on the unpaid balance due the Seller, commencing on May 1, 2010 and continuing to May 1, 2012, at which time all accrued and unpaid interest on the remaining outstanding principal balance shall be due and payable in full."


4. Except as specifically provided herein, all terms and provisions of the Contract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date set forth above.

SELLER: AERO HARDWARE & PARTS CO., INC.

By: 
Name: Al Maiold
Title: President

PURCHASER: CITY OF RYE

By: 
Name: Frank J. Culross
Title: City Manager



CITY COUNCIL AGENDA

NO. 8

DEPT.: City Mayor

DATE: November 25, 2009

CONTACT: Mayor Otis

ACTION: Discussion of amending the Chapter 90 Fences and Walls to allow for deer fencing.

FOR THE MEETING OF:

December 2, 2009

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Rye law does not allow for deer fencing. A number of residents have requested that Rye's code be adjusted to allow this option. The purpose of this agenda item is to discuss this issue and consider amendment to our code.

The Town of North Castle amended their code earlier this year and it reads as follows:

Mesh deer fencing exceeding six feet in height shall be permitted to reach a height of eight feet, except that deer fencing over six feet in height shall not be permitted within 25 feet of the front property line.

Clinton, NY uses the following code language:

A deer protection fence, consisting of a fence material which shall be an open-type wire grid so as to minimize the fence's visual impact on surrounding properties, shall be permitted in side and rear yards only, provided that in side yards it is located no closer to the street right-of-way than the front yard setback line, and may be no more than eight feet in height.

Attached is a copy of the City of Rye's rules on fences and walls. An exception for deer fencing should consider how front yards are treated.



Search	City of Rye, NY	Index
Standard View		New Laws
CHAPTER 87. ENVIRONMENTAL QUALITY REVIEW	[Contents]	CHAPTER 92. (RESERVED)

This electronic version of the Code is provided for informational purposes only. For the official version of the Code, please contact the municipality.

[Jump to Content](#)

CHAPTER 90. FENCES AND WALLS

- § 90-1. Purpose.
- § 90-2. Definitions.
- § 90-3. Permit required.
- § 90-4. Front line fences.
- § 90-5. Rear line fences in residence districts.
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- § 90-14. Fence posts or supporting members.
- § 90-15. Responsibility for maintenance.
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- § 90-19. Standard for review of appeals.
- § 90-20. Rules or regulations for administration of provisions.

CHAPTER 90. FENCES AND WALLS

[HISTORY: Adopted by the Council of the City of Rye 12-1-1999 by L.L. No. 7-1999; amended in its entirety 1-16-2002. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land — See Ch. [170](#).

Zoning — See Ch. [197](#).

§ 90-1. Purpose.

The purpose of this chapter is to protect the public health, safety and welfare by establishing regulations for the design, construction and maintenance of fences and walls which, to the maximum extent practicable, would continue the open appearance of the community while allowing residents to have reasonable privacy in the use and enjoyment of their homes.

§ 90-2. Definitions.

When used in this chapter, the following words shall have the meaning stated here. Words used in this chapter which are not defined here shall have the meaning defined by Chapter 197. Words not defined by this chapter or by Chapter 197 shall have the meaning established by common usage.

DIVISION LINE, FRONT

In the case of a lot abutting upon only one street, the property boundary line separating the lot from the street; in the case of a lot abutting more than one street, other than a corner lot, any such property boundary for the area which has been previously designated by the lot owner, pursuant to Chapter [197](#), as being the front yard

or which has been irrevocably designated by the lot owner, pursuant to this chapter, as being the front division line. Each lot may have only one front division line unless it is a corner lot, as defined by Chapter 197 (§ 197-1), which would have two front division lines.

DIVISION LINE, REAR

The line forming a property boundary of the lot which is generally opposite the front division line.

DIVISION LINE, SIDE

The property boundary line or lines forming any part of the connection of the front division line with the rear division line.

FENCE

A structure made of any materials, or combination of materials, with clearly visible spaces between component parts, which encloses, separates, divides or defines a lot or portion thereof "Fence" includes a barrier of the stockade type made of parallel wooden posts or split poles.

HEIGHT (FENCE or WALL)

The vertical distance between the natural grade of the property at the base of the fence or wall and the highest horizontal member at the top. In the case of picket fences, wrought-iron fences with decorative elements, fences made of vertical boards with rounded ends or other structures of similar design, the top of the fence shall be a line parallel to the tops of the several points.

- A. The measurement of the height of a fence or wall shall not include the height of an appropriate accessory structure, such as an entrance gate, an archway or a decorative column at the corner of the lot.

- B. The measurement of the height of a fence or wall which has a top that is curved, with the height of the central portion being higher or lower than the height at the ends, is the vertical distance between the natural grade of the property at the base and an average of the height of the central portion and the height at the ends.

- C. The height of a fence or wall erected on a grade approximately equal to the top of a retaining wall, situated within three feet horizontally from the face of the retaining wall, shall be measured from the bottom at the grade immediately adjacent to the base of the fence or wall.

PROPERTY BOUNDARY LINE

A line forming the perimeter of a lot, delineating the separation between the lot and an adjoining lot or the right-of-way of an abutting street as described by a recorded deed.

STRUCTURE

An assembly of materials forming a construction framed of component parts for occupancy or use, including buildings, but not including a small object which is an accessory to a building or another structure (such as decorative statuary or railing for a walkway).

WALL

A structure made of any materials or combination of materials, without clearly visible spaces between components parts, which encloses, separates, divides or defines a lot or portion thereof "Wall" does not include a stockade type of fence.

WALL, FREESTANDING

A wall which is not a retaining wall.

WALL, RETAINING

A wall designed to retain or resist the lateral displacement of earth or other materials, whether or not it serves to enclose or subdivide any part of the lot in which it is located. This chapter does not establish standards for design, location, construction or maintenance of retaining walls and does not affect any such standard as may be required by other applicable law.

§ 90-3. Permit required.

A. For the purposes of this section, the term "fence" also includes every type of wall, and a repair made to more than 25% of an existing fence shall be considered a replacement. No person shall erect or install a new fence or shall extend, enlarge, replace or substantially modify an existing fence without having obtained a permit from the Building Inspector.

B. An application for a permit shall be made to the Building Inspector, on forms provided by the Building Department, and shall contain the following information:

- (1) An accurate plan showing property lines and the location of the proposed new or modified fence on or

within the applicant's property lines and the height of the proposed new or modified fence.

(2) The full name and address of the owner and of the applicant.

(3) A brief description of the materials to be used.

(4) Such other information as may reasonably be required by the Building Inspector to establish compliance with all applicable requirements.

C. The application for a permit shall be submitted for review by the Building Inspector upon receipt of payment of such fees as may be required by resolution of the City Council.

D. A determination by the Building Inspector which denies an application must be made in writing and must state the reason for denial.

E. Failure of the Building Inspector, within seven business days after receipt of a completed application and fee, to deny the application or to make any other determination shall be deemed to be approval.

F. Any person violating any of the provisions of this section shall, upon conviction thereof, be punished by a fine not exceeding \$250 or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment.

§ 90-4. Front line fences.

Except as otherwise provided by this chapter, no fence or freestanding wall which exceeds four feet in height shall be erected along a front division line or anywhere on the lot within 35 feet of a front division line (measured by the shortest distance to such line).

§ 90-5. Rear line fences in residence districts.

In all residence districts, no fence or freestanding wall which exceeds six feet in height may be erected along a rear division line or anywhere on the lot within 35 feet of a rear line (measured by the shortest distance to such line).

§ 90-6. Side line fences in residence districts.

In all residence districts, no fence or freestanding wall which exceeds four feet in height may be erected along a side division line if such fence or wall would be situated within any part of an area of the lot that is within 35 feet of the front division line (measured by the shortest distance to such line) or if such fence or wall would be situated within 35 feet of the right-of-way of an abutting street. However, if the shortest distance from the front division line to an existing residential structure is less than 35 feet, the limitation requiring that the height of a fence or wall may not exceed four feet extends from the front division line along the side line to the point that is the shortest distance to the residential structure. No such fence or wall which exceeds six feet in height may be erected along any other segment of the side line or within 35 feet of the side line (measured by the shortest distance to such segment).

§ 90-7. Side line fences where residential use adjoins business use.

If such fence or freestanding wall is erected near the side line of a lot being used as a residence which abuts property in a business district being used as a business, and if a point on the side line nearest to the building on either the residential property or the business property is within 35 feet of the front division line, the height of such fence or wall may not exceed four feet for a distance from the front division line until such point and may not exceed six feet in height beyond such point.

§ 90-8. Side line fences where residential use adjoins I-95 or I-287.

A fence or freestanding wall erected on a residence lot which abuts I-95 or I-287 and is situated within one foot of the property line may exceed four feet in height but may not exceed six feet in height.

§ 90-9. Fences on property with steep grade.

The height of a fence or freestanding wall may exceed four feet but may not exceed six feet above the natural grade if it is:

A. On a corner lot; and

B. Within 10 feet from the property line of an abutting roadway; and

C. Situated where the average natural grade at the location of the fence or wall is at least four feet higher than the average natural grade on the property within six feet from the fence or wall.

§ 90-10. Rear or side line fences in business districts.

In all business districts, no fence or freestanding wall which exceeds six feet in height may be erected along a rear or side division line or anywhere on the lot within 35 feet of such line (measured by the shortest distance to such line); except that, if the lot abuts a street, the height of a fence or wall located within 35 feet of the line abutting a street may not exceed four feet; and, if the lot adjoins a lot within a residence district, the height may not exceed the height that would be allowed on the adjoining lot.

§ 90-11. Fences or walls prohibited in all districts.

In all districts, the following are specifically prohibited:

A. Barbwire fences or fences using razor wire or any other material likely to cause physical injury to persons or animals.

B. Fences or walls erected in such a manner as to inhibit or divert the natural drainage flow or cause the blockage or damming of surface water creating ponding.

C. Fences or walls which may create a fire hazard or other dangerous condition or which may result in obstruction to effective fire fighting.

D. Fences or walls more than eight feet in height located anywhere on a lot, unless permitted by a section of Chapter 197 referring to outdoor tennis courts or other structures required for recreational activities.

§ 90-12. Fences and walls prohibited in all residence districts.

In all residence districts, the following are specifically prohibited:

A. Chain-link fences having an unfinished or jagged top edge; and chain-link fences having the opening spaces between wires covered by fabric sheeting or by strips of plastic or other material woven through the open spaces. In the case of a fence constructed before the effective date of this chapter, the requirements of this section shall apply upon the repair or replacement of that fence or wall.

B. Temporary fences, such as snow fences or expandable and collapsible fences, unless necessary for use on sites under construction or for snow control; canvas and/or cloth fences, except when necessary for protection of shrubs and vegetation.

§ 90-13. Traffic visibility across corners.

In all districts, except the Central Business District, no structure or planting of bushes or trees shall be maintained, or shall be allowed to remain, on any lot within 25 feet of any street corner intersection, measured in any direction by the shortest distance to the nearest corner, at a height in excess of three feet above curb level or so as to interfere with the visibility of vehicle traffic across the corner.

§ 90-14. Fence posts or supporting members.

In all districts, a fence or wall shall be erected with the smooth, finished or better side facing out toward the adjoining lot or abutting street; and all fence posts or supporting members shall be placed on the inside of the fence or wall. In the case of a fence or wall constructed before the effective date of this chapter, the requirements of this section shall apply upon the repair or replacement of that fence or wall.

§ 90-15. Responsibility for maintenance.

Fences, walls and the area between their exterior side and the nearest property line (or the nearest curblin if there is an abutting street) shall be properly maintained at all times; broken, cracked, rotted or rusted structural components shall be removed or repaired promptly; grounds shall be kept clear or planted with vegetation appropriate to the site. A property owner who fails to provide proper maintenance may, after notice by the Building Inspector and an opportunity to correct the situation, be required to remove the fence or wall.

§ 90-16. Duty of Building Inspector to issue notice of violation.

The Building Inspector shall have the duty and all power necessary to issue appropriate notices or orders directing a property owner to correct any conditions which are in violation of this chapter.

§ 90-17. Jurisdiction of Board of Appeals.

The Board of Appeals, acting pursuant to Chapter 197, is specifically vested with the additional jurisdiction necessary to hear and decide appeals by persons who may be aggrieved by a determination made by the Building Inspector in the enforcement of the provisions of this chapter.

§ 90-18. Persons eligible to appeal; time limit for filing.

For the purposes of this chapter, a person who may claim to be aggrieved must be an owner of a lot where a fence or wall has been erected or is sought to be erected or must be an owner or occupant of a lot which adjoins such lot or is situated on the opposite side of a street across from such lot. An appeal must be filed with the

Clerk of the Board within 30 days after the determination being appealed was made.

§ 90-19. Standard for review of appeals.

The standard that shall be used by the Board of Appeals in determining appeals made pursuant to this chapter shall be the most restrictive standard generally applicable in the State of New York for the granting of a variance from enforcement of provisions of a zoning ordinance limiting the height of structures located in a residential district. In making a determination on an appeal, the Board may consider the unusual amount of automobile traffic on a street adjoining a residence lot as being a relevant factor. Any roadway designed with four lanes for use by vehicles is presumed to have an unusual amount of traffic.

§ 90-20. Rules or regulations for administration of provisions.

The Board of Appeals is authorized to adopt and issue such rules or regulations as may be necessary for orderly administration of this chapter. A copy shall be on file in the Building Inspector's office.

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CITY COUNCIL AGENDA

NO. 9

DEPT.: City Mayor

DATE: November 25, 2009

CONTACT: Mayor Otis

ACTION: Discussion of notice provisions for land use applications.

FOR THE MEETING OF:

December 2, 2009

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: At our last meeting we heard from a resident who indicated he and his neighbors did not receive notice of a BAR application which they had concerns.


Please see attached Kristen Wilson's memo that provides background for discussion of these issues. They include:

1. Issues relating to notice for BAR and other boards, especially relating to abutters.
2. Right to appeal to the Zoning Board of Appeals.
3. Code provisions relating to notice for BAR applications.

Kristen's memo will provide a basis for Council discussion.

MEMORANDUM

TO: Rye City Council

FROM: Kristen Kelley Wilson, Esq. 

Re: Issues regarding public notification and appeal processes for BAR and other land use applications

Date: November 25, 2009

At the last meeting, several issues were raised regarding the public noticing requirements and the appeals process for applications pending before the Board of Architectural Review. In addition, issues regarding public noticing requirements for applications pending before other City boards and commissions were discussed. Below is a list of possible legislative actions that the City Council can take to address the concerns raised.

Notice requirements for all City boards and commissions

The Planning Commission and Board of Appeals require applicants to mail notices to nearby property owners, however the mailings are not required by the law to be sent via certified mail. Although certified mailings are more expensive, an amendment that would require certified mailings of the public notice to abutting property owners only (with regular mailings to the other property owners within the required noticing distance) would provide more reliable notice to those property owners most likely to be impacted. A short amendment to both the Planning Commission's procedures and the Board of Appeals' procedures could address this concern.

Notice requirements for the Board of Architectural Review

Currently, there are no required noticing procedures for applicants pending before the Board of Architectural Review (BAR) (either mailings or posting signs).¹

An amendment to Chapter 53-3 "Meetings and procedures of Board", to require notices to be mailed to property owners within 500 feet of the boundary of the property line (with the abutting property owners to receive certified mailings as discussed above) would provide the public with more notice of the application (similar to what is required of other City boards and commissions). In addition, the amendment should include the requirement for the applicant to post a sign on the subject property indicating that a building permit application is pending and is being considered by the BAR. The sign should reflect the date and time of the BAR meeting during which the particular application will be considered.

¹ It has been the practice of the BAR to require applicants to send out notices to nearby property owners. However, an amendment to the City Code requiring same as well as other noticing requirements is recommended so that those property owners most likely to be impacted will be more likely to receive notice.

In addition, the noticing requirements could be different if one of the properties within the noticing area is a multi-family dwelling/apartment/co-op. The noticing requirement could be for the applicant to send five notices to the property owner to be posted in common areas of the building(s) so that all residents could see the notice. This process would be less burdensome on the applicant while at the same time providing notice to the nearby residents.

Standing for Administrative appeals of ARB decisions

Under Chapter 53-10 "Appeals", only applicants who are aggrieved by the ARB's decision can take an administrative appeal to the Board of Appeals. An aggrieved neighbor or other interested party does not have this option and must pursue relief through the New York State Court system.

An amendment to Chapter 53-10 to allow any aggrieved party to appeal a decision to the Board of Appeals would provide a more accessible forum for aggrieved parties to bring an appeal and voice his/her concerns. The process would be similar to what is already in place regarding having the ARB render "findings" but once the findings are made, the aggrieved party can appeal the decision directly to the Board of Appeals.

Please let me know if you have any questions or other concerns that could be addressed in these amendments.



CITY COUNCIL AGENDA

NO. 13

DEPT.: City Clerk

DATE: November 23, 2009

CONTACT: Dawn F. Nodarse

AGENDA ITEM: Draft of the unapproved minutes of the Budget Workshop held November 12, 2009, the Budget Workshop held on November 16, 2009 and the Regular Meeting/Budget Workshop of the City Council held on November 18, 2009, as attached.

FOR THE MEETING OF:

December 2, 2009

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION: That the Council approve the draft minutes.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

Approve the Unapproved Minutes of the Budget Workshop held November 12, 2009, the Budget Workshop held on November 16, 2009 and the Regular Meeting/Budget Workshop of the City Council held on November 18, 2009.

DRAFT UNAPPROVED MINUTES of the
Budget Workshop of the City Council of the City of
Rye held in City Hall on November 12, 2009 at 7:00
P.M.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
MACK CUNNINGHAM
PAULA J. GAMACHE
CATHERINE F. PARKER (Arrived at 7:10 p.m.)
Councilmembers

ABSENT: GEORGE S. PRATT
JOSEPH A. SACK
Councilmembers

1. Pledge of Allegiance

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

2. Roll Call

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

3. Budget Workshop

Mayor Otis said this was the first of the budget workshops on the proposed 2010 budget. This workshop would focus on capital projects, buildings and vehicles and the Department of Public Works. The Mayor said that no decisions would be made, but the Council will go through questions they have on particular items. City Manager Culross noted the presence of City Engineer/Director of Public Works George Mottarella, City Planner Christian Miller and City Comptroller Jean Gribbins, who were in attendance to answer questions. He said many emails have been received from the Council and staff is in the process of preparing responses, which will be forwarded to the entire Council.

The first set of questions and comments related to the Department of Public Works (DPW).

- The DPW instituted a program of replacing street lamps with LED lights. It is a significant opportunity to save money. What are the cons vs. pros of the lighting since these fixtures are not in the proposed budget? (\$200,000 is spent a year on street lighting. There are 2,100 hundred lamps in the City. Unless the City receives a grant, it is not

feasible to change over all lights at once. It is the way to go for the future, but the cost is \$500 or \$600 a piece compared to \$150 for the currently used lights. The only way would be to set up a program to change over a certain number of lights a year because there is only one employee who does this job along with his other work activities. Possibly the State might set up a program where the lights can be purchased off state contract for a cheaper price. The City would also need to do a study before creating specifications of what bulbs would be appropriate. Once all the lights are replaced it should yield a 50% reduction in costs.)

- How was the amount for removal of the oil tank at the Rye Arts Center arrived at? (It is a guess based on a worst case scenario where there has been a leak that has traveled requiring material to be removed to a special landfill. The City would be charged by how many yards are taken out and taken to the landfill.)
- Who is responsible for the utilities at the Rye Arts Center? (The Rye Arts Center is responsible for utilities and the City is responsible for the grounds maintenance.) Staff should look for grants for solar panels for this location.
- A suggestion has been made that the sewer vacuum truck is a piece of equipment that should be shared with other communities in order to save money. (If replacement of this equipment, originally scheduled to be replaced in 2009, was authorized for 2010, it would take almost a year to get another one. The truck is in use every day to check out sanitary sewers, clean drains, and cut roots. It is too important a piece of equipment to be shared with other municipalities.) Staff should provide the Council with a three-year record of the down time of this vehicle.
- The revenue for recyclables is down from 2008 figures as well as pounds per household. Why is this trending down? (The final numbers for 2009 are not in yet. There is little revenue for bulk metal pickup but the City would lose money if it had to transport the bulk metal to another facility. The City has an IMA with the County for co-mingled recyclables and pulp. It is a set price that does not reflect what the County makes or loses. The City is the number one city in recycling in pounds per capita in the County of Westchester and second or third overall of all the cities, towns and villages.)
- There are seven areas in the budget where contractual costs go up, some in whole dollars and others by percentage, and five are DPW related, can this be explained? (City-wide across the board contractual expenses went up. In the 2010 budget there is over \$200,000 for OPEB [Other Post Employment Benefits] expenses in the Building and Vehicle Fund that are allocated back to all City departments through the contractual services line.) The distribution of the cost is not uniform. (The Building and Vehicle fund gets allocated based on square footage, with smaller departments being less impacted.) Could staff provide a memo on how the internal accounting formula functions as well as on why this trend in increasing contractual costs is happening? (The City has to state what its OPEB costs are but does not have to set aside money to pay for them right now.)
- Will there be any impacts on 2010 service levels? (The community should not see a marked difference in service levels.)
- Has the City gone away from using pesticides in public property maintenance? (The program, Compost T, costs the City money but is staying in the budget. The City is involved in a three-year program which hopefully will be funded through next year. The idea is to eventually train staff and purchase the equipment to do the work ourselves and eliminate pesticides in all City parks.)

- What is done with grass clippings? (They are recycled with leaves through the IMA with the County, which costs the City \$10 less than the cost for solid waste.)
- Is the City using leaf blowers and, if so, has the usage been reduced? (Not really, but no complaints have been received.)
- How is the City doing on salt supplies for the upcoming winter season? (The remainder of funding from the 2009 budget was used to fill the salt shed under the new contract which runs from September to April. The City will be in good shape if it is not hit with storms before the end of the year like last year.)
- How is the \$50,000 in the budget for repair of city-owned sidewalks determined? (During the year the City receives complaints about sidewalks. If a City tree caused the damage, it is the City's responsibility to fix it. The budgeted amount is spent every year on just the City's responsibility. Property owners receive notices that they are responsible for repairing other sidewalks that need to be repaired. If they are not repaired by the residents, the repairs are made when the City repairs its sidewalks and the residents are billed.)
- What is the timing for getting work done on residential sidewalks? (Letters are sent out to homeowners. They have the right to repair the sidewalk themselves but must notify the city if they intend to do so. The sidewalks will be looked at again in a couple of months to determine if the work has been done, or if it will be included under the City repair work. Repair work is usually done from mid-March through November.)
- What would be involved in instituting a Sidewalk Management System similar to the Pavement Management System? (Every sidewalk in the City would have to be inspected first in order to come up with criteria. Staff is working on something now that will come before the Council in order to codify what is considered a faulty sidewalk.)
- Would homeowners take better care of their sidewalks if they were fined for bad sidewalks? (The City does not issue fines for broken sidewalks. Homeowners are billed for sidewalk repairs if they do not do it themselves; if they do not pay, the amount is added to their taxes.)

The next category for questions and comments was Building and Vehicles.

- Has the City ever considered leasing equipment such as the mower and field conditioner used by the Recreation Department? An analysis should be done to see if there is an advantage of leasing these pieces of equipment rather than buying. (Usually the City can borrow money cheaper, but it can be looked into.)
- Is anything being done regarding the vehicle replacement policy? (A zero based review is being proposed to determine the need for replacement of vehicles. All equipment must be evaluated and will not be replaced if it is not necessary, with the goal being to ultimately reduce the amount of equipment owned. Every department will be asked to justify every piece of equipment assigned to it.)
- Is there a limit to the number of personal miles used on City vehicles? (Not many people have unlimited personal use – most vehicles are used for commuting. The City does not have many take home cars, but the policy could be reviewed.)
- How old were the police cars that caught on fire? (One had 50,000 miles on it and the other 60,000 on it. It is believed that defective installation of wiring was the cause of the problem. The City has stopped using the installer and gone back to doing it in house.)

Arthur Stampleman, representing the Rye Record, spoke about the Projects in Progress reports in the budget for Building and Vehicle and Capital Project plans. He said the balance column showing money that is to be spent, indicates the same amount as last year. He suggested looking to see if the money can be used for other purposes. He also asked if the money previously put aside for studies relating to projects that will be started such as bridge projects, had been included in the new estimate or is that money available to be assigned for other projects.

The final round of questions and comments dealt with Capital Improvement Projects (CIP).

- What are the plans for repairing the footbridge in the Milton Cemetery that was damaged during the 2007 floods? (There are plans to replace the bridge. Some funding was left over from repairing the Morehead Bridge but another \$15,000 to \$20,000 is needed to go out to contract. The community has to decide if it wants to keep the bridge or remove it.)
- What is the status of the Purchase Street/Ridge Street project that is in the CIP? (A portion of the money originally budgeted for the traffic signal has been reprogrammed for design of a roundabout. Staff is looking at alternatives that the design engineer has put together and trying to schedule a meeting with the State Roundabout Division for approval of the preliminary design. The County must also be consulted to determine what contribution they would want to make towards the project because it is a County road. The concept is that the County would implement the project and the City would take over the maintenance responsibility and ownership of Wappanocca Avenue and Ridge Street, which are County roads.) Do we expect to spend more of the \$118,400 balance in the budget for the project? (It depends on what is required by the approving agencies such as environmental review or additional traffic studies.)
- \$120,000 from the Peck Avenue Intersection project was supposed to be reallocated to the Orchard Avenue Bridge but is still in the CIP for Peck Avenue. Staff should provide clarity on what will be done relative to funding the two projects.
- \$40,000 is proposed for covers for the pay stations. The money to pay for the covers should come from the parking fund. The covers should improve the operability of the pay stations, which do not operate efficiently in wet weather. This should provide a true cost of the operations of the meters. (When the City was reimbursed by FEMA for one of the pay stations, they viewed a shelter over the pay station as mitigation and it has enhanced performance during wet weather. The shelters also add convenience to the users.)
- Does the \$40,000 cover eight pay stations? (It also covers the cost of a new pay station near the Rye Bar & Grill, where the single head meters will be replaced, as well as the cost of spare parts.)
- Did the City purchase the wrong type of pay stations? (They were expected to perform in all weather conditions, but there has been a problem in wet weather. The City has done a variety of things to improve performance but it is believed the shelters will provide the best enhancement.)
- Is the balance of the cost of the Locust Avenue/Purchase Street signal project included in the Central Business District (CBD) signals line? Money from the meters should be used to fund projects in the CBD. (It is proposed to be funded from the Designated Fund Balance, which includes parking revenues.)

- If the Council decides that approved projects are not valid does the money get shifted back to Fund Balance to be reprogrammed? (Yes)
- Is the reprogramming of money from the City Hall steps project into the Square House roof project reflected in the budget? (Yes)
- Why has work at Milton Harbor House been scheduled for 2010 and the LaSalle Avenue drainage project not on until 2011 when it has been in the CIP longer? (More research has been done on the LaSalle Avenue project and, in order to get more relief than for a two-year storm event, it would take a more complex and expensive project. The \$150,000 in the budget is for the most expensive option. A phased approach could be taken and continued if needed, but the challenge with drainage projects is they are expensive and do not always yield as much benefit as hoped for. The Harbor House project is an issue of liability during flooding situations. When the complex was constructed the City had a drainage system going through the property that they tied into. The proposed project would segregate the City drainage from Harbor House entirely.)
- How much of the Theodore Fremd/Purdy/Purchase Street intersection project has been designed? (50%) Does the \$165,000 in the CIP include the rest of the design and the construction? (It also includes widening of the street to accommodate left turns. Replacing the signal might also improve the delays at the intersection.)
- If the pay station revenue for 2010 was put back into the Designated Fund would it affect the tax rate? (Yes)
- Why can't the widening of Forest Avenue for walkers be done until after the Stoneycrest drainage project is done? (The preliminary concept for the Stoneycrest project might involve going down Forest Avenue rather than replacing the existing drain. While the road is ripped up for the drainage project it would provide a logical opportunity to look for pedestrian enhancements.)

Arthur Stampleman asked if unused money that goes back into the General Fund could be used to reduce the tax rate. City Manager Culross said that would not happen, because it is City Council policy that Fund Balance is used for capital projects, not to change the tax rate.

After the discussion of the workshop topics, City Comptroller Jean Gribbins said that the City has an opportunity to refund some of its outstanding debt, similar to a mortgage refinancing. A Resolution will be on the November 18th Agenda. The City has \$14.8 million in original debt that was borrowed at interest rates from 3 ¼% to 5 ¼%. Currently \$11.8 million is outstanding and can be refinanced and brought down to \$11.2 million which will save the City approximately \$600,000 over the next 10 or 11 years depending on how the rates are on the day of closing. The proposed resolution will allow the City do to the refunding and caps it so that at least \$400,000 must be saved in order for the deal to go through.

8. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the meeting at 8:55 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

DRAFT UNAPPROVED MINUTES of the
Budget Workshop of the City Council of the City of
Rye held in City Hall on November 16, 2009 at 7:00
P.M.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
MACK CUNNINGHAM
PAULA J. GAMACHE
CATHERINE F. PARKER (Arrived at 7:10 p.m.)
GEORGE S. PRATT
JOSEPH A. SACK
Councilmembers

ABSENT: None

1. Pledge of Allegiance

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

2. Roll Call

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

3. Presentation and discussion on Roof Replacement Project for Tower Building at Rye Town Park

Mayor Otis said that Lisa Easton, the project architect, would be making the presentation and no vote would be taken by the Council at this meeting. He noted that several years ago the Pavilions at Rye Town Park were redone at the expense of Seaside Johnnies Restaurant as part of the expense of a lease extension. The roof on the Administration Building or Tower Building is in worse condition and has been leaking for about 20 years. In 2003 the Rye Town Park Commission commissioned a study to evaluate the building for uses and repairs. Lisa Easton did that study. What is before the Council and Town of Rye at this point is just to fix the roof. Two grants were obtained in 2004 and 2005 for about \$398,000 towards the rehabilitation.

Lisa Easton said she was a Preservation Architect who had been involved with Rye Town Park for eight years and had helped to get the property listed on the State National Register in 2002, which opened up funding options for the park. The park consists of 28 acres; the beachfront is 34 acres and there are 17 buildings in the park. She utilized a slide presentation to show the deterioration in the Main Administration Building from 2003 to the present. There has been little maintenance to the building over the years and water has infiltrated the building primarily through the roof and the stucco. She likened the building to a sponge, absorbing water

over the years that is now affecting its structure. The building has ten roofs, six are tiled and the remainder are flat roofs. Many of the tiles have slid off, which is a life/safety hazard. The structure under the tiles is in relatively good shape, but if the problem is not addressed soon, its structure will be impaired and not worth salvaging. The Rye Town Park Commission tried to get money through grants using the historic significance of the building and ran a private fund-raising campaign which yielded over \$435,000 in contributed dollars toward the project. The feasibility study looked at all the problems in the building and prioritized them in order to determine how the building could be viably used to get a tenant that would generate income. Design documents went out to bid according to state and federal guidelines. The lowest bidder has been approved in terms of doing the work if the project goes forward. The balance of the work must now be funded.

Mayor Otis said it had been the assumption that bonded capital projects at the park were split 50/50 by the Town and City of Rye, but City Manager Frank Culross said the City's share is 39.52% based upon a 1953 statute. This means the City's share of the project will be approximately 40%. The project is expected to cost about \$1.4 million, minus \$400,000 in grants. The Town of Rye will be bonding about \$600,000 and the City about \$400,000. Councilman Cunningham, who represents the City on the Rye Town Park Commission along with Mayor Otis, said the project is time sensitive. The work should be done prior to the park opening in May and grant money must be drawn down prior to June 2010 or lost. If the grant money is lost, it will be more difficult to obtain other grant funding in the future. Mayor Otis said that if it was not for the potential loss of grant money, he would recommend putting off the project. City Manager Culross said that his understanding of how the process works is that the Rye Town Park Commission makes a determination of need, which is then taken to the two boards that are responsible for approving or disapproving the project. If they approve the project they are each responsible for providing a funding source to cover their share. If the City chooses to bond, those bonds are not subject to the other limitations in the Charter. He said it was his belief that the project should not have gone out to bid prior to this process.

Comments and questions from Council Members included:

- The Town of Rye should be asked to provide information about what the \$1.3 million project cost covers. (All of the roofing material. The bid came in October 26th and was broken down by roof and included all material and labor within each roof. There is no breakdown of labor to material.)
- The City Council should have a discussion and vote before the Town Park Commission meeting in order to give direction to the City of Rye representatives on how they wish them to vote on the need for the project.
- Why is there a discrepancy in the proposed cost of the project between memoranda from the former City Manager and current City Manager? (The quotes came in lower than anticipated.)
- Have last year's and this year's operational deficits for the park been figured out? (2009 deficit amount will be smaller than in last 10 years, possibly \$65,000. The 2007 financials remain in dispute.)

- In the past the City has opposed the Town of Rye bonding for projects in order to keep their spending under some control. The City wants the funds for this project to be segregated from the rest of the funds for the Town of Rye.
- Mayor Otis and Councilman Cunningham should tell the Town Park Commission not to award the bids before we receive more information on the project.
- How can the Town Park Commission award a contract when it does not have the money?
- When a building is on the National Register is there an obligation to use the same materials as originally used? (Not when private money is used, only when state and federal money is used.)
- Waiting to approve the project would mean the loss of grant money and more damage to the property, which would increase the cost of the project.
- If the bid is awarded and either of the two municipalities decides not to fund it, is anyone on the hook for the money? (No, because contracts have not been awarded.)
- How many bids were there and what was the spread of the high to low bids? (Four contractors submitted bids. The difference between the high and low bids was about \$1 million. The high bid was twice the low bid and the spread between 1, 2 and 3 was roughly \$125,000.)
- What is the usable square footage of the building? (Approximately 4,500 or 4,600 square feet.) How much of the building is usable? (The entire building, but it is primarily being used for storage. An enclosed building that is no longer leaking would be more appealing to a potential tenant.)

4. Continuation of Budget Workshops on Proposed 2010 Budget

The discussion at this workshop covered the Police Department, Fire Department and Recreation Department.

Police Department

Commissioner William Connors began his presentation by offering a note of appreciation to Gail Klepps, who retired this year after 35 years of service to the Department and had prepared the Department budgets for most of that time, and to Police Officer David Rivera, who is a trained accountant and has helped with the preparation of the 2010 budget. He said the theme of budgeting for the Police Department was to prepare for the possibilities while budgeting for the probabilities and ask for what is necessary to accomplish the mission. In the non-personnel area there is only one big ticket item for 2010, the replacement of body armor, which is replaced in five-year cycles. On the technology side, there are two large items, the replacement of mobile computers and replacement of servers necessary to implement data storage requirements. The Commissioner said that the staffing mission includes providing adequate patrol coverage, desk coverage, proper supervision, response to emergencies, policing special events, conducting investigations, enforcement initiatives and dealing with crime. Specialized responsibilities include Village patrol, Youth liaison; DARE, Marine Patrol, traffic enforcement; counter terrorism and victim assistance. The Back Office operation includes technology, scheduling, training, community relations, records management, community relations, arrest processing, evidence management, equipment maintenance, accreditation and NIMS. He said there has been criticism that 25 members of the Department earned over

\$100,000 due to overtime, but 11 of those employees' base salary is at least \$100,000 and others are close to that figure. Additional compensation for all salaries comes from holiday pay, longevity and uniform allowance. He gave an overview of department staffing numbers (3 Lieutenants, 7 Sergeants, 3 Detectives, 26 Officers, which includes 2 on extended sick leave and one vacancy) and how they will be utilized to cover shifts in 2010, with the goal being to maintain service levels in current budget conditions. All midnight shifts will be filled and there is one vacancy in each of the rotating squads. The goal is to maintain service levels in a tight budget. Staffing levels are adequate to accomplish the mission but the department is virtually never fully staffed. Vacancies in the squads are frequently filled by those assigned to the Village, Marine and traffic enforcement Units in order to reduce overtime. He added that reduced staffing limits the availability for proactive enforcement. The Commissioner said that 2009 overtime figures to date are 4.79% of the budget, which is below 2008 and below the current budget. This is due to increased staff availability, careful monitoring and management and limited weather, operational events and crime patterns. He said that in the last eight or nine years the general range of police overtime has been between 5% and 6%, and in police departments a range of 5% to 10% is considered doing well. Some overtime is covered by grants; reimbursement for special event coverage, agreements and back fill from workers' compensation and 207(c) sick leave and vacation leave. He said that in the past the policy has been not to seek reimbursement from the special events and walks but going forward it may be time to reevaluate the policy. Some situations require automatic overtime but all other occasions require approval by a lieutenant and all submissions for overtime are reviewed by a lieutenant and the Commissioner. The assignment of overtime is covered by work rules that were established through negotiations and all members of the Department, except the Commissioner, are eligible for overtime. He concluded by saying the Department is composed of dedicated and professional men and women who will adjust in these extraordinary economic time and continue to provide the highest level of service to the community.

Council comment and questions included:

- Part of the new Council's orientation should include an explanation of how contracts work.
- Would the increased revenue generated from an additional Parking Enforcement Officer (PEO) offset the expense of an additional employee? (There is not necessarily a down side to the idea because, ideally, the position should be self-funding. Sometimes increased enforcement equals more compliance, which could mean the position would not be self-funding. Another PEO could also help with the increased demand for school crossings.)
- Should the City look at a shared services agreement with Mamaroneck for the Marine Unit? Could Bay Constables hired by the City be supervised by Mamaroneck? (With grant funding the unit has been a bargain, but if the funding is lost, the City should look at sharing the service.)
- The City probably has more special events and walkathons because of its proximity to Playland and the beach. Is there a written policy about seeking reimbursement for these events? (There is no written policy. Charitable events were just covered. The policy decision would be how are reimbursable events determined -- local community events vs. outside events; single merchant events vs. general Chamber of Commerce events. With

new events, they are trying to push for reimbursement.) The Council should have a discussion about establishing a new policy.

- How are squads assigned? (By strict rotation. Officers can volunteer for steady midnights and if there is not a sufficient amount the slots are filled by reverse seniority. The other squads are filled with strict seniority rotation. Special assignments are selected by management.)
- What is the percentage of reimbursement by utility companies for police overtime? (100% of overtime.)
- More overtime hours should go towards traffic enforcement in the hour prior to the 8:00 a.m. shift
- Were there more calls received in connection with the leaf blower law and has there been any improvement in compliance? (There were more complaints in the beginning, but more compliance as the summer went on. Currently, now that leaf blowers are allowed to be used, complaints about use of multiple blowers are increasing.)

Fire Department

Chiefs Hogben and Scarfone represented the volunteer Department and Lt. Dianni and Firefighters McDwyre and Northshield represented the career Department.

Chief Hogben said the Department operates out of two stations (Locust and Milton) and is a combination department staffed by career firefighters (17) and volunteers (100 on the rolls with 25-30 active). There are three volunteer chiefs who run the department along with Lt. Dianni. There are 12 pieces of equipment. The department responded to 854 alarms in 2008 and 724 to date this year. He said they will do their best to maintain their budget. Firefighter McDwyer said that the department is buying small quantities of big ticket items, such as turn out gear, annually rather in large numbers in five year increments. Lt. Dianni noted that the second biggest line item in the budget is for fire hydrant rental, which is set by the water company. Overtime at the Fire Department is similar to the Police Department. There are four groups of four fighters and the lieutenant. At most times there is one person off in each group which incurs an overtime situation. There is only one person on each fire truck so that must be covered. The Department also must be prepared for emergencies, so people are brought in on overtime in anticipation of that need. All overtime stems from lack of staffing based on sickness, contractual personal days, State mandated training and storms. It usually runs about 10% to 11% of the budget, but is below that so far this year due to a lack of storms.

Council questions and comments included:

- Is there any way to reduce the number of false alarms and reduce costs? (A minimum requirement of apparatus is required to respond to a call in order to maintain the ISO rating. The cost incurred by reducing this rating would exceed any savings.)
- The suggestion to charge for a second false alarm that is proposed in the budget is a good idea.
- The incoming Counsel should be familiarized with the ISO rating and how it works.
- Department revenue is up significantly from 2008 in the area of fire inspections. (These are yearly inspections that were not charged for prior to 2002. More inspections are

being done, the fees are being broken down more to charge multiple tenants in a building and a fee increase is included for next year.)

- It may be time to talk to the County about an IMA to provide reimbursement for coverage to Playland.
- Where is the volunteer budget included in the budget? (It is part of the operation budget.)
- The volunteer chiefs are given vehicles that give them the tools to do their jobs.
- Thanks to Lt. Dianni for working with the residents on Hen Island to identify problems and working with them to improve safety.

Recreation

Recreation Superintendent Sally Rogol said the Department offers a comprehensive array of services from pre-school age to seniors. It is staffed by nine full-time employees and supplemented by part-timers and seasonal help. The services continue to evolve and change with the community. The department strives to return 40% of its operational budget through fees and charges.

Council comments and questions included:

- Was camp enrollment up or down in 2008? (The numbers decreased with more people looking for assistance through scholarships. It was also more difficult for the Department to find donations from organizations to pay for the scholarships and a sliding scale was used in some instances.)
- The Department provides great value for seniors in their programs. (The senior program covers about 7% of its costs. A part-time employee runs the program and there are approximately 50 programs run for seniors.)
- Have picnic rentals gone down with the economy? (Yes. Last year the user fees were reorganized from seven to three schedules and the trend is down in all areas.)
- Is the \$146,000 for Damiano improvements part of the original bond referendum?
- Could a surveillance camera be added to the Gagliardo storage facility renovations to deal with possible vandalism concerns? (Staff can go back and reevaluate the need because problem areas tend to shift.)
- Is the Gagliardo project the wisest expenditure of money that might be needed more at another facility in the future? (The new proposal is to find a vandalism proof type building that will allow it to be more open to residents on a day-to-day basis. The Recreation Commission can always go back and reevaluate and prioritize projects.)
- The Gagliardo project should go ahead if at all possible because the facility is the epicenter to the location and is currently substandard. (The money proposed for this project is from the 2003 bond issue and there are limited alternative uses for the money.)
- Will there be a grant for Senior golf next year? (The one \$500 grant that was received is not renewable but the program brought in more in fees than the 40% recovery rate, so the Commission would like to see it continue.)
- Since non-residents in the camp are charged twice the resident fee, how many use the camp? (Maybe a dozen. Some go to Rye schools, some are children of people who work in Rye and some are looking for a full-day kindergarten program.) Does the Department seek out non-residents? (The primary focus is on residents.)

- How many seniors participate in programs? (There are currently 313 senior members, but the amount fluctuates. The program starts at age 60 and the oldest participant is 102. They meet every Wednesday from September to June and there are many special interest groups.)
- How are they charged? (The seniors have their own club and certain things are paid through their dues. Program fees are kept low to allow for more participation. Core program registration is three times a year. Newer programs have higher fees because they have outside instructors.)

Arthur Stampleman said that the budget document does not indicate that the Recreation Department covers 40% of its costs. Ms. Rogol said that the Department budget is made up of 10 cost centers but only eight are included as part of the recovery.

5. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

DRAFT UNAPPROVED MINUTES of the
Regular Meeting/Budget Workshop of the City
Council of the City of Rye held in City Hall on
November 18, 2009 at 7:00 P.M.

PRESENT:

STEVEN OTIS, Mayor (Arrived at 7:10 p.m.)
ANDREW C. BALL (Arrived at 7:40 p.m.)
MACK CUNNINGHAM
PAULA J. GAMACHE
CATHERINE F. PARKER
GEORGE S. PRATT
JOSEPH A. SACK
Councilmembers

ABSENT: None

1. Pledge of Allegiance

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

2. Roll Call

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

Budget Workshop

Workshop presentations were made by the Boat Basin, Golf Club and Rye Free Reading Room.

Boat Basin

Boat Basin Supervisor Peter Fox said it was the mission of the Boat Basin to provide an affordable recreational boating facility aimed primarily at City of Rye residents. It is operated as a fully-sustained enterprise fund, covering 100% of its operating costs. Docking is provided for 425 boats. Approximately 80% of permit holders are City residents and 20% are non-residents. Additionally, the Boat Basin is charged with covering the costs associated with dredging the municipal basin as well as the mile-long federal channel. Dredging has an approximate 10-year life span. Prices for dredging have escalated tremendously over the years due primarily to environmental restrictions placed upon the project. Permits are required from eight different regulatory agencies and three additional state and federal agencies must concur prior to a permit being issued. New York State policy has closed New York open water disposal sites in Long Island Sound and of the remaining four sites located in Connecticut; the City of Rye is only

allowed to use one site. The Boat Basin also bears the cost of billing for over 300 moorings in the outer harbor and provides summer and winter docking space and storage space for the Police and Fire boats. There is a five-member resident permit-holder Boat Basin Commission, serving two-year terms, which meets regularly. Rate increases have historically been increased from 3-5% each year. The Boat Basin operates at a profit and typically delivers \$100,000 to \$150,000 a year to the fund balance intended for future dredging. Expenses have decreased each year and during 2009 no part-time seasonal staff was used. Revenue goals have been met.

Council questions and comment included:

- What is the status of the fund balance post dredging? (The fund balance is currently approximately \$266,000.)
- Has the Boat Basin Commission looked at developing a long-term master plan regarding dredging. (It is the number one topic at every meeting. There have been meetings with the Golf Club and New York State DEC trying to find a local upland disposal site.)
- What is being done regarding Phase II requirements? (Meetings have been held with the DEC. Currently as long as power washing is done over gravel or earthen surfaces and not blacktop, it is acceptable but may change in the future. Connecticut has recently implemented stricter requirements regarding power washing.)
- When are permits renewed? (Renewals are sent out in the beginning of January for renewal by February 15. There is little attrition of permit holders because prices for selling boats are down. There is a waiting list, but instead of going through two or three people before filling a slip, they are now going to about ten people.)
- The goal is to keep as many boats in the water or in storage as possible.

Golf Club

Golf Club Manager Scott Yandrasevich said that as an Enterprise Fund the Golf Club is charged with being totally self-supporting and responsible for all costs associated with the operation and maintenance of the Club, which includes operating expenses, debt service and capital improvements as well as its contribution to the City's general fund. No tax dollars or City subsidies are used to fund the club. The economy has taken its toll in the area, but with proper planning and management the Golf Club was prepared to face the challenges. The full-time City staff was reduced from eleven to eight employees; the use of outside staffing agencies was utilized for per diem workers and an international visa program was utilized to fill seasonal needs. Planned projects were done primarily by in-house staff, which allows more work to be done at a lower cost. Greenskeeper Chip Lafferty not only maintains the golf course and club grounds but also many of the grounds maintenance duties of the Nature Center. He also headed up the paving project, which paved the cart path and pool parking areas. The reduction of dust from this project in the pool area reduced the number of hours needed to make the pool ready on a daily basis. A new deck constructed on the back of the Castle has increased event space and allowed for additional functions. Closing the golf course on Monday was a 2008 decision. It is standard practice for most membership golf clubs in the area to close on Monday to allow for increased maintenance turf management. The benefits from this have exceeded expectations. A golf cart rotation policy was eliminated, which provides better access to the course for the

members and snack bar and other staff were rescheduled saving \$85,000 this year. It also provides sufficient maintenance time and uninterrupted irrigation cycles to allow for better turf management practices. The club has been experimenting with different organic alternatives to pesticides. Fungicide use has been reduced by 75% resulting in an 85% reduction in synthetic nitrogen sources. A decision was made to keep the course open on Monday holidays and those holding weekday memberships are now allowed to play on those days. As directed by the Council the club voluntarily reduced the use of backpack blowers whenever possible and will continue to explore alternative options. Year to date revenues exceed expenses. In 2010 the club will continue its relationship with the Nature Center; continue working with the Recreation Department; embark on a membership drive; continue with master plan projects; implement new marketing and promotional ideas and start planning on pool facility projects and a new fitness facility. The proposed budget provides for a 0% dues increase.

Council questions and comments included:

- Congratulations for following wise business practices and taking measures to reduce expenses based on reduced revenues in a difficult economy.
- If Whitby was the “black hole” it was pictured as in newspaper articles last year, it would not be running so efficiently this year.
- It is time to revisit the Maximus study that determined how the Enterprise Funds are allocated costs.
- The wetlands area of the golf course is a showpiece of the community.
- The 0% increase in membership dues is great. It helps keep the club affordable.
- The “green” measures the Golf Club is taking are very impressive. (The City is in the forefront of many other golf courses.)
- What are the bookings like for Whitby Castle? (About the same as going into this year. An extra person has been added to the sales team in order to promote more business. People are not booking major events two year out at this time, but on a shorter timeframe.)
- The faith the Council put in Scott to run Whitby Castle was well justified.

Rye Free Reading Room

Kurt Haedler, Director of the Library said the Rye Free Reading Room (RFRR) is a private, non-for-profit Association Library funded in large part by the City of Rye. It is governed by an 18 member Board of Trustees, elected by the RFRR membership. The RFRR provides access to 90,000 books, audio books, DVD’s, music CD’s and magazines and about 9,000 new items are added every year. The RFRR also provides access to the Westchester Library System, on-line subscription services and downloadable books. There are many community programs offered each year that are highly attended, particularly the children’s programs, which were the third most attended of any library in the County in 2008. The RFRR also has 18 computers available, wireless access, provides homework help and the assistance of a professional staff. In 2009 City funding was \$1.155 million. The RFRR anticipated that private funding would be down by 20% due to the economy and budgeted accordingly. Expenses were cut by reducing the materials, operations, facility maintenance and personnel budgets and by funding most programs by the Auxiliary Board and private donations. Hours were reduced by 20% in 2009, which

resulted in a drop in borrowing and computer usage. The number of new patrons increased in 2009 as well as the number of reference questions answered and program attendance. The RFRR request the same amount of funding for 2010 which will allow it to maintain equivalent hours, a comparable collection and services as provided in 2009. The City will be providing 75% of the RFRR budget, with the remainder coming from private donations, direct fund raising, overdue fines and fees, New York State aid, photocopies and room usage. The RFRR has increased its private fund raising goal by 5.6% for 2010; increased its revenue stream by increasing the amount charged for overdue fines; will most likely increase the transfer from the Endowment and is looking at other revenue streams. They will continue to look at ways to control costs, while maintaining services.

Council questions and comments included:

- Compliments to the RFRR for managing in the current economy and finding creative solutions for dealing with the situation.
- The RFRR is a jewel in the community and it is important to keep it sustainable but the Council has a duty to balance things out. Have there been any discussions with the union to reduce labor costs? (The approach has been to utilize staff better. Renegotiation of the contract, which expires in 2011, has not been discussed. The contract will be a major focus at that time.)
- What were the observed affects of the budget and hours cuts on the operation of the RFRR in 2009? (Staff has done a good job of continuing to provide service. The most apparent impact on the community is the reduction of hours.)
- Is the 20% projected reduction in giving for 2009 being realized? (The RFRR is on track now to meet its fund raising goal of \$180,000 for the year and might exceed it.)

The Budget Workshop portion of the meeting ended at 8:15 p.m.

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

Ed Shindo, 39 Helen Avenue spoke about current policies at the Golf Club that he said were discriminatory to seniors and those with disabilities. He protested the closing of the club on Mondays and the policy of not allowing golf carts on drivable fairways and said there were no special provisions for individuals with disabilities. He provided the Council with a document that included information from a 2008 survey conducted by the Golf Club as well as a survey he had conducted himself of weekday members of the Rye Golf Club and other golf courses in the area regarding the issues he raised. He requested that the Council direct the Rye Golf Club Commission to change their current policies.

Council comment:

- What is the policy of County-owned golf courses? (They have the same policies as private clubs, which allow people to drive carts on the course.)

- Any allegations of discrimination are taken seriously.
- Closing on Mondays must be looked at in terms of how it affects every member of the Club not just seniors. The Golf Commission must have had a reason for their decisions but the Council will ask why they were made.
- When Mr. Shindo was on the Golf Commission does he ever remember an issue when the Council intervened with a Commission decision? (Not when he was on the Commission and he is not aware of any instance when he was not on the Commission.)

Thomas O'Connor, 26 Johnson Place, said he came to make the Council aware of a flaw in the Building Department process. He said he and four other neighbors were not notified of an application that recently came before the Board of Architectural Review, even though a document in the Building Department indicates that notification had been sent. He would have come and made comments at the meeting because it involves replacing a home with a much larger home, which he believes will affect his quality of life. He suggested requiring all notices to neighbors be sent by certified mail. Mayor Otis explained that notification requirements are from the applicant to the neighbors who then file an affidavit with the Building Department. He added that Deputy Corporation Counsel Kristen Wilson researched Mr. O'Connor's options and determined that under the City Code only an applicant can appeal to the Zoning Board of Appeals and his only option was to bring an action against the builder to stop the project. A suggestion was made that changes should be considered for noticing requirements as well as who is allowed to bring an appeal to the Zoning Board.

Prior to the next speakers, Mayor Otis indicated that he believed a better forum for their discussion would be at a joint meeting between the City Council and the School Board, which would also include City staff. He said he had discussed it with School Board President Josh Nathan. He said it was important that issues that relate to traffic and pedestrian safety around the schools should be addressed jointly. In the interim the City is getting a survey done of the property line between Sonn Drive and Oakland Beach Avenue, and Brian Dempsey, the Chair of the Traffic and Transportation Committee, has been asked to provide feedback on erecting jersey barriers.

Happy Mullooly, 20 Fordham Avenue, and Laura Christopher, 20 Franklin Avenue, came to present a petition asking that the City provide for a crosswalk and police crossing guard at Sonn Drive and the Boston Post Road. They said they want the City to provide them with the resource for getting their children to school safely. They said they believe it is safer to cross four lanes of traffic on the Boston Post Road at Sonn Drive than to walk to the crosswalk at Oakland Beach Avenue. They said that since 1998 people have been told that the problems in this area are complex and not easily solved and this is unacceptable. The City Council has an obligation to solve the problem by providing a crosswalk and police crossing guard and they would like it addressed in the current budget process.

Council comment included:

- The issue has not been ignored, but the solution being proposed has not been considered safe based on traffic safety standards. This is the highest trafficked area along the Boston

Post Road. A solution would have to be implemented in conjunction with the School Board.

- Could Assistant City Manager Scott Pickup give an update? (Staff met recently with members of the PTO and Rye Gardens residents. The right-of-way survey came in and staff is working on options within the survey, including the potential of implementing a three lane road diet in the area. The diet would impact left turns into the school property. Issues related to other schools should also be included in a joint discussion with the School Board.)
- The City should do everything it can to make the area between Sonn Drive and the Oakland Beach Avenue crossing safer.
- Putting in a crosswalk and crossing guard is not a monetary issue; it is a liability issue because it would create a dangerous situation.

Bob Zahm, 7 Ridgewood Drive, came to again discuss the issue of pedestrian safety. He encouraged the City Manager and City Council to communicate with the community about plans and timelines in place for pedestrian projects because the greatest enemy is lack of clarity. He suggested the meeting with the School Board should be held prior to the budget deadline. He also offered that he had spoken with County Legislator Judy Myers regarding the North Street overpass and she indicated that there may be an infrastructure project for that area in the County budget for 2010 where the City would pay for the sidewalk. He said he hoped the project would not fall between the cracks of the two organizations. He also asked when the crosswalks at the Playland Access would be repainted. City Manager Culross said there was a question as to whether they were legal crosswalks and he has been advised not to repaint them. Mr. Zahm also said he had suggested collecting enforcement statistics for moving violations and jaywalking and making them generally available and has not seen this done yet. Assistant City Manager Pickup said the Traffic and Transportation Committee has statistics based on summonses issued. Mr. Zahm said he had prepared another list of sidewalks that he believes need to be repaired that he would give to the City Manager and suggested the next City Council should look at balancing the risk sharing and cost of maintaining sidewalks.

Council comment included:

- The County likes to make improvements to local infrastructure and hand them over to the local municipalities. The project may be in the budget for 2010, but could be deferred. The County's position is that the City should pay for a sidewalk on a bridge that the County owns.
- What is the liability to repainting the crosswalks at Playland Access? (It encourages people to cross at a location where it is not an appropriate place to have a painted crosswalk. It is not a City street and it is not a designed crosswalk.)
- The real issue is not what the Council wants to do with taxpayer's money; it is what we are being told to do by traffic experts. If a crosswalk is put in the wrong location it puts people at risk.
- Drop off time at the schools is the "crunch time". Is there any way the schools could be opened earlier to dissipate the crush of traffic? (There is a contractual start time for when the teachers are required to be at school. Most Administrators manage the building to allow all children entrance to the building at the same time.)

4. Public hearing regarding the New York State Capital Assistance Program for flood mitigation for the Sluice Gate project

Mayor Otis opened the public hearing. He said that holding the hearing is one of the requirements of the grant funding the City is receiving from the New York State Capital Assistance Program through Assemblyman George Latimer for the Sluice Gate project at Bowman Avenue Dam. Assistant City Manager Pickup said that at this point the \$400,000 grant is programmed for the Sluice Gate and along with the County money, additional monies from the Village of Rye Brook and the City's share. The Mayor noted that the City's share of the \$2.2 million project will be under \$400,000. He added that the County is processing the money that the City will be receiving. Mr. Pickup said the City has received additional commentary back from the NYS Department of Environmental Conservation indicating that all of their permitting requirements have been met. The City has now gone as far as it can without having a formal set of bid documents and an actual project to go out and get stream control permits and any permits required from the Town of Harrison and Village of Rye Brook. Rye Brook is not required to hold a public hearing because the City of Rye is the lead agency. The Mayor asked if there was any public comment. *Bernard Althoff, 34 Mendota Avenue*, said that the City Council and City staff, in particular Scott Pickup, have done a good job in pushing the project forward. He said he believed the amount that the City was required to fund was a great cost/benefit ratio. There being no one else wishing to comment, the public hearing was closed.

5. Resolution authorizing the refunding of \$11.8 million of serial bonds of the City of Rye, Westchester County, New York as a cost saving measure
Roll Call.

City Comptroller Jean Gribbins, said the City will be refunding \$11.8 million of debt resulting in \$11.2 million in debt, which will save the City about \$600,000 over the next 10 or 11 years. The refunding is subject to the rules of the Office of State Comptroller and requires that at least three percent must be saved in order to refund. Ms. Gribbins has been speaking with the City's Bond Counsel and financial advisers and one of the series is questionable as to whether or not it will be beneficial to refinance. The proposed Resolution allows the City to enter the market and adjust the refunding. If one of the series does not pass the three percent test, it will not be refinanced. The City's entire exposure is \$6,000 if the Resolution is approved and the market rates are not favorable enough to move forward. Once the refunding is done all savings are net of underwriter fees and attorney fees. It will not impact the 2010 budget. The savings will be realized as the City makes its debt service payments over the next ten years. It will impact budgets from 2011 going forward. All proceeds of the refunding go to an escrow Agent and it is the responsibility of the Escrow Agents to pay the old debt. The City is responsible for the new debt.

Councilman Pratt made a motion, seconded by Mayor Otis, adopt the following Resolution:

REFUNDING BOND RESOLUTION, DATED NOVEMBER 18, 2009, AUTHORIZING THE ISSUANCE OF REFUNDING SERIAL BONDS OF THE CITY OF RYE, IN THE COUNTY OF WESTCHESTER, STATE OF NEW YORK, PURSUANT TO SECTION 90.10 OF THE LOCAL FINANCE LAW OF THE STATE OF NEW YORK, PROVIDING FOR OTHER MATTERS AND MAKING CERTAIN DETERMINATIONS IN RELATION THERETO AND PROVIDING FOR THE PAYMENT OF THE BONDS TO BE REFUNDED THEREBY.

WHEREAS, the City of Rye, located in the County of Westchester, State of New York (the “City”) previously issued \$3,657,000 principal amount of Public Improvement (Serial) Bonds, Series 1998A (the “Series 1998A Bonds”) pursuant to a certificate of determination of the City Comptroller (sometimes referred to herein as the “Chief Fiscal Officer”), which Series 1998A Bonds are dated September 15, 1998 and matured or mature in annual installments on September 15 in each of the years 2000 to 2018, inclusive, as follows:

\$127,000 in the year 2000,
\$130,000 in the year 2001,
\$135,000 in the year 2002,
\$140,000 in the year 2003,
\$150,000 in the year 2004,
\$155,000 in the year 2005,
\$165,000 in the year 2006,
\$170,000 in the year 2007,
\$180,000 in the year 2008,
\$185,000 in the year 2009,
\$195,000 in the year 2010,
\$205,000 in the year 2011,
\$215,000 in the year 2012,
\$225,000 in the year 2013,
\$235,000 in the year 2014,
\$245,000 in the year 2015,
\$255,000 in the year 2016,
\$265,000 in the year 2017, and
\$280,000 in the year 2018

WHEREAS, the Series 1998A Bonds were authorized pursuant to a serial bond resolution duly adopted by the City Council of the City for the objects or purposes described therein on March 19, 1997 and delegated to the Chief Fiscal Officer the power to prescribe the terms, form and contents of and to sell and deliver such serial bonds of the City; and

WHEREAS, \$2,120,000 aggregate principal amount of the Series 1998A Bonds currently remain outstanding and unredeemed as of the date hereof; and

WHEREAS, it is hereby determined to be in the public interest of the City to refund a portion of said outstanding Series 1998A Bonds in the aggregate principal amount of \$2,115,000, by the issuance of the refunding bonds authorized herein pursuant to Section 90.10 of the Local Finance Law; and

WHEREAS, the City of Rye, located in the County of Westchester, State of New York (the “City”) previously issued \$3,825,000 principal amount of Public Improvement (Serial) Bonds, Series 2000 (the “Series 2000 Bonds”) pursuant to a certificate of determination of the City Comptroller (sometimes referred to herein as the “Chief Fiscal Officer”), which Series 2000 Bonds are dated October 1, 2000 and matured or mature in annual installments on October 1 in each of the years 2001 to 2020, inclusive, as follows:

\$110,000 in the year 2001,
\$115,000 in the year 2002,
\$120,000 in the year 2003,
\$130,000 in the year 2004,
\$135,000 in the year 2005,
\$140,000 in the year 2006,
\$150,000 in the year 2007,
\$160,000 in the year 2008,
\$165,000 in the year 2009,
\$175,000 in the year 2010,
\$185,000 in the year 2011,
\$195,000 in the year 2012,
\$210,000 in the year 2013,
\$220,000 in the year 2014,
\$235,000 in the year 2015,
\$250,000 in the year 2016,
\$260,000 in the year 2017,
\$275,000 in the year 2018
\$290,000 in the year 2019, and
\$305,000 in the year 2020

WHEREAS, the Series 2000 Bonds were authorized pursuant to serial bond resolutions duly adopted by the City Council of the City for the objects or purposes described therein on July 21, 1999 and January 19, 2000 and delegated to the Chief Fiscal Officer the power to prescribe the terms, form and contents of and to sell and deliver such serial bonds of the City; and

WHEREAS, \$2,425,000 aggregate principal amount of the Series 2000 Bonds currently remain outstanding and unredeemed as of the date hereof; and

WHEREAS, it is hereby determined to be in the public interest of the City to refund all of said outstanding bonds aggregate principal amount Series 2000 Bonds, by the issuance of the refunding bonds authorized herein pursuant to Section 90.10 of the Local Finance Law; and

WHEREAS, the City of Rye, located in the County of Westchester, State of New York (the “City”) previously issued \$1,965,000 principal amount of Public Improvement (Serial) Bonds,

Series 2001 (the “Series 2001 Bonds”) pursuant to a certificate of determination of the City Comptroller (sometimes referred to herein as the “Chief Fiscal Officer”), which Series 2001 Bonds are dated December 1, 2001 and matured or mature in annual installments on October 1 in each of the years 2002 to 2021, inclusive, as follows:

\$75,000 in the year 2002,
\$65,000 in the year 2003,
\$65,000 in the year 2004,
\$70,000 in the year 2005,
\$75,000 in the year 2006,
\$75,000 in the year 2007,
\$80,000 in the year 2008,
\$85,000 in the year 2009,
\$90,000 in the year 2010,
\$95,000 in the year 2011,
\$95,000 in the year 2012,
\$100,000 in the year 2013,
\$105,000 in the year 2014,
\$110,000 in the year 2015,
\$115,000 in the year 2016,
\$120,000 in the year 2017,
\$125,000 in the year 2018,
\$135,000 in the year 2019,
\$140,000 in the year 2020, and
\$145,000 in the year 2021

WHEREAS, the Series 2001 Bonds were authorized pursuant to serial bond resolutions duly adopted by the City Council of the City for the objects or purposes described therein on July 21, 1999 and April 18, 2001 and delegated to the Chief Fiscal Officer the power to prescribe the terms, form and contents of and to sell and deliver such serial bonds of the City; and

WHEREAS, \$1,285,000 aggregate principal amount of the Series 2001 Bonds currently remain outstanding and unredeemed as of the date hereof; and

WHEREAS, it is hereby determined to be in the public interest of the City to refund all of said outstanding aggregate principal amount Series 2001 Bonds, by the issuance of the refunding bonds authorized herein pursuant to Section 90.10 of the Local Finance Law; and

WHEREAS, the City of Rye, located in the County of Westchester, State of New York (the “City”) previously issued \$5,389,500 principal amount of Public Improvement (Serial) Bonds, Series 2002 (the “Series 2002 Bonds”) pursuant to a certificate of determination of the City Comptroller (sometimes referred to herein as the “Chief Fiscal Officer”), which Series 2002 Bonds are dated December 15, 2002 and matured or mature in annual installments on December 15 in each of the years 2003 to 2020, inclusive, as follows:

\$214,500 in the year 2003,
\$220,000 in the year 2004,

\$230,000 in the year 2005,
\$235,000 in the year 2006,
\$240,000 in the year 2007,
\$250,000 in the year 2008,
\$260,000 in the year 2009,
\$275,000 in the year 2010,
\$285,000 in the year 2011,
\$300,000 in the year 2012,
\$310,000 in the year 2013,
\$325,000 in the year 2014,
\$340,000 in the year 2015,
\$350,000 in the year 2016,
\$365,000 in the year 2017,
\$380,000 in the year 2018
\$395,000 in the year 2019, and
\$415,000 in the year 2020

WHEREAS, the Series 2002 Bonds were authorized pursuant to serial bond resolutions duly adopted by the City Council of the City for the objects or purposes described therein on January 16, 2002 and April 10, 2002 and delegated to the Chief Fiscal Officer the power to prescribe the terms, form and contents of and to sell and deliver such serial bonds of the City; and

WHEREAS, \$3,180,000 aggregate principal amount of the Series 2002 Bonds currently remain outstanding and unredeemed as of the date hereof; and

WHEREAS, it is hereby determined to be in the public interest of the City to refund all of said outstanding Series 2002 Bonds, by the issuance of the refunding bonds authorized herein pursuant to Section 90.10 of the Local Finance Law; and

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RYE, IN THE COUNTY OF WESTCHESTER, STATE OF NEW YORK (BY THE AFFIRMATIVE VOTE OF NOT LESS THAN TWO-THIRDS OF THE VOTING STRENGTH OF THE CITY COUNCIL OF THE CITY), AS FOLLOWS:

Section 1. For the purpose of refunding a portion of the \$2,120,000 outstanding principal amount of the Series 1998A Bonds in the principal amount of \$2,115,000; all of the \$2,425,000 outstanding principal amount of the Series 2000 Bonds; all of the \$1,285,000 outstanding principal amount of the Series 2001 Bonds; and all of the \$3,180,000 outstanding principal amount of the Series 2002 Bonds, providing moneys which, together with the interest earned from the investment of certain of the proceeds of the refunding bonds herein authorized shall be sufficient to pay: (i) the principal amount of the Refunded Bonds; (ii) the aggregate amount of the unmatured interest payable on the Refunded Bonds to and including the date on which any series of the Refunded Bonds which are callable are to be redeemed prior to their respective maturities in accordance with the Refunding Financial Plan (as hereinafter defined) and attached hereto as Exhibit B and made a part of this resolution; (iii) the costs and expenses incidental to the issuance of the Series 1998A Refunding Bonds, the Series 2000 Refunding Bonds, the Series 2001 Refunding Bonds, and the Series 2002 Refunding Bond sometimes hereinafter referred to

collectively as (the “Refunding Bonds”) as hereinafter authorized and as described in Exhibit A, including without limitation, the development of the Refunding Financial Plan, costs and expenses of executing and performing the terms and conditions of the Escrow Contract (as hereinafter defined), and any securities supply contract, the premium with respect to any bond insurance policy or policies acquired with respect to the Refunding Bonds (as defined below), discount or compensation of underwriters, fees of bond counsel and financial advisors, rating agency fees, printing and service agency fees and expenses, and fees and charges of the Escrow Holder (as hereafter described); and (iv) the redemption premium, if any, to be paid on any series of the Refunded Bonds which are to be called prior to their respective maturities; there are hereby authorized to be issued in one or more series not exceeding \$9,225,000 aggregate principal amount of refunding serial bonds of the City pursuant to the provisions of Section 90.10 of the Local Finance Law (the “Refunding Bonds”), it being anticipated that the amount of Refunding Bonds actually to be issued will be approximately \$9,225,000 as provided in Section 4 hereof. The proposed principal amounts and dates of maturity of such Refunding Bonds are set forth in the Refunding Financial Plan attached hereto.

Section 2. It is hereby determined pursuant to Section 90.10 that:

(a) the maximum amount of the Refunding Bonds authorized to be issued pursuant to this resolution does not exceed the limitation imposed by subdivision 1 of paragraph (b) of Section 90.10 of the Local Finance Law with respect to each series of the Refunded Bonds;

(b) the aggregate amount of estimated present value savings computed in accordance with subparagraph (a) of subdivision 2 of paragraph b of Section 90.10 of the Local Finance Law is not expected to be less than three percent (3.0%) of debt service on the Refunded Bonds paid to stated maturity.

(c) The City Comptroller is hereby authorized and directed to enter into an escrow contract (the “Escrow Contract”) with a bank or trust company located and authorized to do business in this State as the City Comptroller shall designate (the “Escrow Holder”) for the purpose of having the Escrow Holder act, in connection with the Refunding Bonds, as the escrow holder to perform the services described in Section 90.10 of the Local Finance Law. In addition, the Escrow Contract may include a forward supply or purchase contract or agreement as part thereof or as a separate agreement for the provision of acquiring obligations of the United States of America or unconditionally guaranteed by the United States of America or other obligations or instruments qualified under Section 90.10 of the Local Finance Law or may be necessary for the completion of the Refunding Financial Plan. The Escrow Contract shall contain such terms and conditions as shall be necessary or required, including terms and conditions required for the completion of the Refunding Financial Plan, including provisions for the Escrow Holder, without further authorization or direction from the City Council of the City, except as otherwise provided therein, including, without limitation, (i) to make all required payments of principal, interest and any redemption premiums to appropriate paying agents with respect to the Refunded Bonds, (ii) to pay costs and expenses incidental to the issuance of the Refunding Bonds, including the development of the Refunding Financial Plan, and of executing and performing the terms and conditions of the Escrow Contract by the Escrow Holder, (iii) at the appropriate time or times, to cause to be given on behalf of the City in the manner provided by law the notice of redemption authorized to be given pursuant to Section 8 hereof, and (iv) to invest the moneys held by the Escrow Holder pursuant to the terms of the Escrow Contract and consistent with the provisions of the Refunding Financial Plan. The

Escrow Contract shall be irrevocable and shall constitute a covenant with the owners of the Refunding Bonds.

(d) The proceeds, inclusive of any premium, from the sale of the Refunding Bonds, immediately upon receipt, shall be placed in escrow by the City with the Escrow Holder pursuant to the terms of the Escrow Contract. All moneys held by the Escrow Holder shall be invested only in direct obligations of the United States of America, in obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or in obligations or instruments qualified under Section 90.10 of the Local Finance Law, which obligations or instruments shall mature or be subject to redemption at the option of the Escrow Holder not later than the respective dates when such moneys will be required to make payments in accordance with the Escrow Contract and the Refunding Financial Plan. Any such moneys remaining in the custody of the Escrow Holder after the performance in full of the Escrow Contract by the Escrow Holder shall be returned to the City and shall be applied by the City Comptroller to the payment of the principal of or interest on the Refunding Bonds then outstanding, to the payment of any amounts required to be paid to the United States of America in connection of with the refunding of the Refunding Bonds or to the payment of or reimbursement for the costs of issuance or other administrative costs incurred in connection with the issuance of the Refunding Bonds. In connection with the investment of moneys held by the Escrow Holder under the Escrow Contract, the City Comptroller is authorized to execute on behalf of the City any forward purchase or supply contract for the purchase or supply of the securities described in this subsection (d) at a date subsequent to the delivery of the Refunding Bonds, as is needed to accomplish the purposes of the Refunding Financial Plan.

Section 3. It is hereby determined that the maximum period or periods of probable usefulness permitted by law at the time of the issuance of the Refunded Bonds for each of the objects or purposes for which the Refunded Bonds were issued is no less than as shown on Exhibit A attached hereto and made a part of this resolution taking into account the earlier of the original date of issuance of any such series of serial bonds or bond anticipation notes funded by such series of Refunded Bonds; and

Section 4. The financial plan for the refunding authorized by this resolution (the “Refunding Financial Plan”), showing the sources and amounts of all moneys required to accomplish such refunding, the estimated present value of the total debt service savings and the basis for the computation of the aforesaid estimated present value of total debt service savings, are set forth in Exhibit B attached hereto and made a part hereof. The Refunding Financial Plan has been prepared based upon the assumption that the Refunding Bonds will be issued in the aggregate principal amount of \$9,225,000 if fully issued and will mature, be of such terms, and bear such interest as set forth in the Refunding Financial Plan. The City Council of the City recognizes that the principal amount of the Refunding Bonds, the series, maturities, terms, interest rate or rates borne by the Refunding Bonds, the provisions for redemption thereof prior to maturity and whether or not all of the Refunding Bonds will be insured, and the resulting present value savings are likely to vary from such assumptions and that the Refunding Financial Plan will likely vary from that attached hereto as Exhibit B. The City Comptroller is hereby authorized and directed to determine the principal amount of the Refunding Bonds to be issued, the series and designation or designations thereof, the time or times of the sale thereof, the maturities and terms thereof, the provisions relating to the redemption of the Refunding Bonds prior to maturity, if any, the rate or rates of interest to be borne thereby, whether or not the Refunding Bonds will be insured in whole or in part or uninsured,

and to prepare, or cause to be provided, a final Refunding Financial Plan, all in accordance herewith, and all powers in connection therewith may be exercised by the City Comptroller; provided, that the terms of the Refunding Bonds to be issued, including the rate or rates of interest borne thereby, shall comply with the requirements of Section 90.10 of the Local Finance Law. The City Comptroller shall file a copy of a certificate determining the details of the Refunding Bonds and the final Refunding Financial Plan with the City Clerk within ten (10) days after the delivery of the Refunding Bonds, as herein provided.

Section 5. The faith and credit of the City are hereby irrevocably pledged to the payment of the principal of and interest on the Refunding Bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on the Refunding Bonds becoming due and payable in such year. To the extent that the same are not paid from other sources, there shall be annually levied on all the taxable real property in the City a tax sufficient to pay the principal of and interest on the Refunding Bonds as the same become due and payable.

Section 6. Proceeds from the sale of the Refunding Bonds, including any accrued interest and, together with interest earned thereon, which shall be required for the payment of the principal of and interest on the Refunded Bonds, including any redemption or call premiums, in accordance with the Refunding Financial Plan, shall be irrevocably committed and pledged to such purpose and the owners of the Refunded Bonds shall have a lien upon such moneys and the investments thereof held by the Escrow Holder. The pledge and lien provided by this resolution shall become valid and binding upon the issuance of the Refunding Bonds and the moneys and investments held by the Escrow Holder shall immediately be subject thereto without any further act. Such pledge and lien shall be valid and binding against all parties having claims of any kind in tort, contract, equity, at law or otherwise against the City irrespective of whether such parties have notice thereof. Neither this resolution, the Escrow Contract, nor any other instrument relating to such pledge and lien, need be filed or recorded.

Section 7. In accordance with the terms of the Refunded Bonds and the provisions of Section 53.00 and of paragraph (h) of Section 90.10 of the Local Finance Law, and subject only to the issuance of the Series 1998A Bonds, the Series 2000 Bonds, the Series 2001 Bonds and the Series 2002 Bonds, as herein authorized, the City hereby elects to call in and redeem all Series 1998A Bonds maturing on and after September 15, 2010 on December 31, 2009, all Series 2000 Bonds maturing on or after October 1, 2011 on October 1, 2010, all Series 2001 Bonds maturing on or after October 1, 2011 on October 1, 2010, and all Series 2002 Bonds maturing on or after December 15, 2012 on December 15, 2011. The sum to be paid therefor on such redemption dates shall be the par value thereof plus the redemption premium, if any, as provided in the issuance proceedings for the Series 1998A Bonds, the Series 2000 Bonds, the Series 2001 Bonds and the Series 2002 Bonds and the accrued interest to such redemption date. The Escrow Holder is hereby authorized and directed to cause notice of such call for redemption to be given in the name of the City in the manner and within the times provided in the issuance proceedings for the Series 1998A Bonds, the Series 2000 Bonds, the Series 2001 Bonds and the Series 2002 Bonds respectively. Such notice of redemption shall be in substantially the form attached to the Escrow Contract. Upon the issuance of the Refunding Bonds, the election to call in and redeem the applicable portion of the callable Series 1998A Bonds, Series 2000 Bonds, Series 2001 Bonds and Series 2002 Bonds the direction to the Escrow Holder to cause notice thereof to be given as provided in this paragraph

shall become irrevocable, provided that this paragraph may be amended from time to time as may be necessary in order to comply with the notice, requirements of paragraph (a) of Section 53.00 of the Local Finance Law, or any successor law thereto. It is hereby determined that with respect to the series of Refunded Bonds to be called in and redeemed as provided in this Section 7, it is to the financial advantage of the City not to charge, impose and collect or receive from registered owners of the Refunded Bonds mailing, shipping, insurance or other similar charges in connection with such redemption or calls. Accordingly, pursuant to paragraph (c) of Section 70.00 of the Local Finance Law, no such charges shall be so charged, collected or received by the Chief Fiscal Officer, as fiscal agent.

Section 8. The Refunding Bonds shall be sold at a private sale, and the City Comptroller is hereby authorized to execute a purchase contract on behalf of the City for the sale of the Refunding Bonds, provided that the terms and conditions of such sale shall be approved by the State Comptroller and further provided that, prior to the issuance of the Refunding Bonds the City Comptroller shall have filed with the city Council of the City a certificate approved by the State Comptroller pursuant to subdivision 2 of paragraph (g) of Section 90.10 of the Local Finance Law setting forth the present value savings to the City resulting from the issuance of the Refunding Bonds. In connection with such sale, the City Council of the City hereby authorizes the preparation of an Official Statement and approves its use in connection with such sale, and further consents to the distribution of a Preliminary Official Statement prior to the date said Official Statement is executed and available for distribution, all in accordance with applicable State and Federal securities laws, rules and regulations.

Section 9. The City Council of the City hereby appoints the law firm of Squire, Sanders & Dempsey L.L.P., of New York, New York, as bond counsel in connection with the issuance and sale of the Refunding Bonds. The City Council of the City hereby appoints the firm of New York Municipal Advisory Corporation (“NYMAC”) of Syosset, New York, as financial advisor in connection with the issuance and sale of the Bonds. The power to appoint an Escrow Holder, as that term is referred to herein, and a senior managing underwriter for the sale of the Refunding Bonds, is hereby delegated to the Comptroller of the City, as chief fiscal officer of the City.

Section 10. Each of the Refunding Bonds authorized by this resolution shall contain the recital of validity prescribed by Section 52.00 of the Local Finance Law and the Refunding Bonds shall be general obligations of the City, payable as to both principal and interest by a general tax upon all the taxable real property within the City, without limitation as to rate or amount.

Section 11. The City Comptroller, pursuant to Sections 50.00, 90.00, 90.10 and 168.00 of the Local Finance Law, and all other officers, employees and agents of the City are hereby authorized and directed for and on behalf of the City to execute and deliver all certificates and other documents, perform all acts and do all things required or contemplated to be executed, performed or done by this resolution or any document or agreement approved hereby, including to correct or amend the documents and certificates authorized to complete the transactions contemplated by this resolution.

Section 12. All other matters pertaining to the terms, issuance and sale of the Refunding Bonds consistent with the provisions of Section 90.10 of the Local Finance Law shall be determined

by the City Comptroller and the powers in connection therewith not otherwise heretofore delegated thereto are hereby delegated to the City Comptroller.

Section 13. The City intends to issue the obligations authorized by this resolution to finance the costs of the purposes described herein for the completion of the Refunding Financial Plan. The City covenants for the benefit of the holders of the Refunding Bonds that it will not make any use of (a) the proceeds of the Refunding Bonds, any funds reasonably expected to be used to pay the principal of or interest on the Refunding Bonds or any other funds of the City, and (b) the purposes financed with the proceeds of the Refunding Bonds, which would cause the interest on which to become subject to Federal income taxation under the Internal Revenue Code of 1986, as amended (the “Code”) (except for the federal alternative minimum tax imposed on corporations by Section 55 of the Code), or subject the City to any penalties under Section 148 of the Code, and that it will not take any action or omit to take any action with respect to the Refunding Bonds or the proceeds thereof, if such action or omission would cause the interest on the Refunding Bonds to become subject to Federal income taxation under the Code (except for the federal alternative minimum tax imposed on corporations by Section 55 of the Code), or subject the City to any penalties under Section 148 of the Code. The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the Refunding Bonds or any other provision hereof until the date which is sixty (60) days after the final maturity date or earlier prior redemption date thereof. The proceeds of the Refunding Bonds may be applied to reimburse expenditures or commitments made for the purposes on or after a date which is not more than sixty (60) days prior to the adoption date of this resolution by the City.

Section 14. For the benefit of the holders and beneficial owners from time to time of the Refunding Bonds, the City agrees, in accordance with and as an obligated person with respect to the Refunding Bonds under, Rule 15c2-12 promulgated by the Securities Exchange Commission pursuant to the Securities Exchange Act of 1934 (the “Rule”), to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of the Rule. In order to describe and specify certain terms of the City’s continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the City Comptroller is authorized and directed to sign and deliver, in the name and on behalf of the City, the commitment authorized by subsection 6(c) of the Rule (the “Commitment”) to be placed on file with the City Clerk, which shall constitute the continuing disclosure agreement made by the City for the benefit of holders and beneficial owners of the Refunding Bonds in accordance with the Rule, with any changes or amendments that are not inconsistent with this resolution and not substantially adverse to the City and that are approved by the City Comptroller, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Commitment or amendments thereto. The agreement formed, collectively by this paragraph and the Commitment, shall be the City’s continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform thereunder. The City Comptroller is further authorized and directed to establish procedures in order to ensure compliance by the City with its continuing disclosure agreement, including the timely provision of information and notices. Prior to making any filing in accordance with the agreement or providing notice of the occurrence of any material event, the City Comptroller shall consult with, as appropriate, the City Attorney and bond counsel or other qualified independent special counsel to the City and

shall be entitled to rely upon any legal advice provided by the City Attorney or such bond counsel or other qualified independent special counsel in determining whether a filing should be made.

Section 15. The validity of the Refunding Bonds may be contested only if such obligations are authorized for objects or purposes for which the City is not authorized to expend money, or the provisions of law which should be complied with at the date of the publication of this resolution, are not substantially complied with, and an action, suit or proceeding contesting such validity, is commenced within twenty (20) days after the date of publication, or if said obligations are authorized in violation of the provisions of the Constitution of New York.

Section 16. When this bond resolution takes effect, it shall be published in full by the City Clerk, together with a notice in substantially the form prescribed by Section 81.00 of the Local Finance Law, and such publication shall be in The Journal News a newspaper having a general circulation in the City and which is hereby designated as the official newspaper of the City for such purpose.

Section 17. This bond resolution shall take effect immediately upon its adoption by the City Council of the City.

Exhibit A to the Refunding Bond Resolution,
Dated November 18, 2009,
of the City of Rye
in the County of Westchester, State of New York
Series 1998A Bonds - Refunding Bonds

<u>Maturity Date</u>	<u>Principal Amount</u>
10/1/2010	\$215,000
10/1/2011	\$210,000
10/1/2012	\$220,000
10/1/2013	\$225,000
10/1/2014	\$235,000
10/1/2015	\$240,000
10/1/2016	\$250,000
10/1/2017	\$255,000
10/1/2018	\$265,000

Series 2000 Bonds–Refunding Bonds

10/1/2010	\$35,000
10/1/2011	\$210,000
10/1/2012	\$215,000
10/1/2013	\$225,000
10/1/2014	\$230,000
10/1/2015	\$245,000
10/1/2016	\$255,000
10/1/2017	\$255,000
10/1/2018	\$270,000

10/1/2019	\$275,000
10/1/2020	\$290,000

Series 2001 Bonds–Refunding Bonds

10/1/2010	\$15,000
10/1/2011	\$105,000
10/1/2012	\$105,000
10/1/2013	\$105,000
10/1/2014	\$110,000
10/1/2015	\$115,000
10/1/2016	\$115,000
10/1/2017	\$120,000
10/1/2018	\$125,000
10/1/2019	\$130,000
10/1/2020	\$135,000
10/1/2021	\$140,000

Series 2002 Bonds–Refunding Bonds

10/1/2010	\$35,000
10/1/2011	\$15,000
10/1/2012	\$315,000
10/1/2013	\$325,000
10/1/2014	\$335,000
10/1/2015	\$350,000
10/1/2016	\$355,000
10/1/2017	\$370,000
10/1/2018	\$380,000
10/1/2019	\$395,000
10/1/2020	\$410,000

Exhibit B to the Refunding Bond Resolution,
dated November 18, 2009,
of the City of Rye,
in the County of Westchester, State of New York
Refunding Financial Plan

SOURCES AND USES OF FUNDS

City of Rye
Sample Composite 2009 Refunding Bonds
Level Savings Structure @ MMD + .25%

Sources:	Series 2009 (Refunding of 1998A Bonds)	Series 2009 (Refunding of 2000 Bonds)	Series 2009 (Refunding of 2001 Bonds)	Series 2009 (Refunding of 2002 Bonds)	Total
Bond Proceeds:					
Par Amount	2,115,000.00	2,505,000.00	1,320,000.00	3,285,000.00	9,225,000.00
Net Premium/OID	65,647.50	93,385.95	37,322.45	123,143.70	319,499.60
	<u>2,180,647.50</u>	<u>2,598,385.95</u>	<u>1,357,322.45</u>	<u>3,408,143.70</u>	<u>9,544,499.60</u>
	2,180,647.50	2,598,385.95	1,357,322.45	3,408,143.70	9,544,499.60
Uses:					
Refunding Escrow Deposits:					
Cash Deposit	0.29	0.52	0.27	0.71	1.79
SLG Purchases	2,157,957.00	2,570,385.00	1,343,859.00	3,372,920.00	9,445,121.00
	<u>2,157,957.29</u>	<u>2,570,385.52</u>	<u>1,343,859.27</u>	<u>3,372,920.71</u>	<u>9,445,122.79</u>
Delivery Date Expenses:					
Underwriter's Discount	10,575.00	12,525.00	6,600.00	16,425.00	46,125.00
Cost of Issuance	11,463.41	13,577.24	7,154.47	17,804.88	50,000.00
	<u>22,038.41</u>	<u>26,102.24</u>	<u>13,754.47</u>	<u>34,229.88</u>	<u>96,125.00</u>
Other Uses of Funds:					
Additional Proceeds	651.80	1,898.19	-291.29	993.11	3,251.81
	<u>2,180,647.50</u>	<u>2,598,385.95</u>	<u>1,357,322.45</u>	<u>3,408,143.70</u>	<u>9,544,499.60</u>

SUMMARY OF FINANCING RESULTS

City of Rye
Sample Composite 2009 Refunding Bonds
Level Savings Structure @ MMD + .25%

Series	Bond Par	Bond Yield	Contingency	Escrow Yield	Negative Arbitrage	Net Savings
Series 2009 (Refunding of 1998A Bonds)	2,115,000.00	2.528%	651.80	0.039%	4,949.64	147,296.00
Series 2009 (Refunding of 2000 Bonds)	2,505,000.00	2.839%	1,898.19	0.268%	52,781.15	201,109.79
Series 2009 (Refunding of 2001 Bonds)	1,320,000.00	2.941%	-291.29	0.268%	27,621.64	98,656.24
Series 2009 (Refunding of 2002 Bonds)	3,285,000.00	2.882%	993.11	0.958%	120,690.47	21,220.51
	9,225,000.00		3,251.81		206,042.89	468,282.54

Aggregate:

Arbitrage Yield 2.814639%
Escrow Yield 0.722166%

SAVINGS

City of Rye
 Sample Composite 2009 Refunding Bonds
 Level Savings Structure @ MMD + .25%

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 12/01/2009 @ 2.8146389%
Dec 31, 2010	605,493.76	552,750.00	52,743.76	52,586.55
Dec 31, 2011	887,206.26	834,300.00	52,906.26	50,622.33
Dec 31, 2012	1,184,598.76	1,133,100.00	51,498.76	46,298.64
Dec 31, 2013	1,190,063.76	1,132,450.00	57,613.76	50,465.70
Dec 31, 2014	1,193,231.26	1,136,050.00	57,181.26	48,616.40
Dec 31, 2015	1,198,621.26	1,148,750.00	49,871.26	40,982.82
Dec 31, 2016	1,196,851.26	1,145,250.00	51,601.26	41,221.89
Dec 31, 2017	1,192,731.26	1,141,000.00	51,731.26	40,100.36
Dec 31, 2018	1,196,100.00	1,146,000.00	50,100.00	37,660.38
Dec 31, 2019	906,662.50	869,600.00	37,062.50	26,377.29
Dec 31, 2020	907,900.00	872,600.00	35,300.00	24,299.94
Dec 31, 2021	152,250.00	144,200.00	8,050.00	5,798.45
	11,811,710.08	11,256,050.00	555,660.08	465,030.74

Savings Summary

PV of savings from cash flow	465,030.74
Plus: Refunding funds on hand	3,251.81
Net PV Savings	<u>468,282.55</u>

6. Proposal to create a Parking Benefit Fund for the Central Business District

Councilwoman Parker said she is asking for the creation of a Parking Benefit District. When voting on the 2008 budget, the Council voted to put 100% of the pay station revenue funds into the Central Business District (CBD). Projects for the CBD have been identified during the Capital Improvements Workshop and in the Streetscape Plan. The proposed Parking Benefit District could be created in one of two ways: (1) take the 2010 pay station money and create a “savings account” which will allow for improvements to go forward by “taking small change and turning it into big changes”, or (2) allow the pay station money to go into the General Fund and keep a scorecard of the revenues coming in and take money for capital improvements out of the Capital Fund. She feels that scenario (1) is the most secure method because future Councils will learn to live without the revenue and the community will benefit greatly because everyone uses the downtown. She said signage should be put up in the lots indicating that the money was being utilized for the downtown. This option will increase the proposed tax increase by approximately \$27 per household over last year’s tax. She said she would like feedback from the Council and the community.

Council comment included:

- If a Parking Benefit Fund is created and later budgets become more difficult, it will take a legislative action to free the money up.
- It is a good idea in principal but not for this year because it would add to the tax rate if cuts are not made.
- There are CBD related projects in the Capital Improvement Plan that will utilize some of this revenue. If the money is designated for CBD use, it might preclude other projects from being done that are higher in priority.
- There are two issues: (1) should money be allocated to be spent downtown, and (2) should pay station money automatically be put in a fund for that purpose. Automatically taking money and putting it into a fund would limit the City in how the money can be spent.
- To date the money has provided the City with the money to do projects that fit the funding.
- Because of the pay stations and increased enforcement the General Fund is getting revenue that wasn’t there before. A portion of the money should be going into downtown improvements. There should be some discipline in how the money is used so the public will see a net result in the downtown from the money they put in the pay stations.
- Can staff investigate the concept of a Parking Benefit Fund that has a trigger that will not restrict future Councils on how the money can be used? (Anything done by Resolution can be rescinded and changed by a future Council Resolution.)
- Any allocation of pay station revenues should begin with net revenues not gross revenues.
- The Finance Department could keep a running tabulation of the money that comes in from the pay stations, and each year part of that revenue stream could be dedicated to CBD projects. A draft Resolution should be prepared for possible adoption with the Budget.

- Has any other revenue stream been limited to a particular purpose? (The Hotel Tax revenue is restricted to capital projects.)

Nick Everett, 19 Palisade Road, said he had served on the Central Business District Task Force and was in support of Councilwoman Parker's proposal. He said the City must be disciplined in the use of pay station money.

6A. Consideration to approve the Rye Town Park Capital Improvement project
Roll Call.

Mayor Otis said the Rye Town Park Commission meeting was held on November 17, 2009 and had been attended by himself, Councilman Cunningham and City Manager Culross. Rye Town officials agreed not to vote on awarding the bids at that meeting, but to wait until each municipal Board had approved the project by passing a Resolution certifying the need for repairing the roof. In addition, another \$30,000 in costs has been deleted from the City's portion. City Manager Culross says that the project has been certified to the City Council for a maximum project cost of \$1.482 million based on a firm bid. The Town of Rye has approved the project. If the Council approves the project, the City will have an obligation to fund its 37.89%, if the Council does not approve it, the project will not go forward. Councilman Cunningham said that the Town of Rye drives the project as the majority owner of the facility. He added that the new Supervisor of the Town of Rye Joe Carvin has a business background and has provided more discipline to the operation of the Park and controlling expenses.

Council comments and questions included:

- The percentage that the City would be responsible for was not resolved until recently, but there is a push for the Council to approve the project. The difference in the amount of the City's share is not a savings; it is an avoided overpayment. Adding the amount saved by the reduced percentage and additional cost reductions comes close to wiping out the City's percentage of the \$400,000 grant funding. The City is committing to spend \$400,000 to save \$170,000.
- The Council should have a fuller discussion of the issue before taking a vote. The project may not be necessary. The Town Park Commission does not have a capital project plan. If it were a City project it would have been vetted better.
- The timeline should have been better, but the City cannot control the way the Town of Rye manages projects. The project has been discussed by the Town of Rye for about two years and they have vetted it. The prior City Manager notified the Council of the project.
- The park is a good value for the amount of tax dollar and it will be a tragedy if an historical area of Rye is allowed to deteriorate because of an issue of differences between two municipalities.
- This is not the first time the Council has not liked the timing of a decision it had to make. A fast process in order to chase grant money is meaningful in this economy. The City is moving faster to avoid spending \$575,000 rather than \$400,000. There is also a seasonal issue for moving forward.

- Should money be invested to save historical buildings in these economic times? Do we want to spend \$1.4 million to put a new roof on a building that will take \$10 million to put into working shape?
- The business model for operation of Rye Town Park has been a concern for years.
- The Town of Rye has acted in good will in terms of this project, and the money for the project will be kept separate from other Town of Rye capital or operating projects.
- From a debt standpoint the City is in good shape.
- The Council has to decide if they want to save the building or not.
- What is the absolute deadline for the Council to approve the project? (If the project is not approved prior to April, the work will not be done. The urgency now is to get the bid awarded so the work can begin.)

Mayor Otis made a motion, seconded by Councilman Cunningham, to adopt the following Resolution:

WHEREAS, the Rye Town Park Commission has certified the need to replace the 100 year old roof of the park’s Main Administration Building; now, therefore, be it

RESOLVED, the City Council hereby directs the City Manager to work with outside bond counsel to prepare the necessary documents to authorize bonding for the City of Rye share of the Rye Town Park Main Administration Building Roofing Project, not to exceed \$415,000.00; and, be it further

RESOLVED, that the City Council hereby authorizes the Town of Rye to proceed with the project as per the approved bid, related documents and the controlling state statute.

ROLL CALL

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker,
and Pratt

NAYS: Councilman Sack

ABSENT None

7. Authorization for City Manager to enter into an Agreement with the County of Westchester for the disposal of Recyclable Material as well as a disposal of Solid Waste for Members of Refuse Disposal District #1

City Manager Culross said the length of the agreement was for 10 years with up to three additional five year terms. It is the first major renewal of the agreement for Refuse District #1. It is where the City takes its solid waste and recyclables. It freezes the current prices for one year and then adjusts by the Consumer Price Index. The old agreement expired in October.

Councilman Cunningham made a motion, seconded by Councilman Pratt, to adopt the following Resolution:

RESOLVED, that the City Manager is hereby authorized to enter into an Agreement with the County of Westchester for the disposal of Recyclable Material as well as disposal of Solid Waste for Members of Refuse Disposal District #1.

ROLL CALL

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker,
Pratt and Sack
NAYS: None
ABSENT None

7A. Resolution to accept the \$200,000 grant from Westchester County for the Bird Homestead Property

Deputy Corporation Counsel Kristen Wilson said that she learned yesterday that this item for one of the grants that will reimburse the City for the purchase of the Bird Homestead, may be put on a Committee Agenda for Monday if the City passes a Resolution tonight agreeing to the terms with respect to use of the property going forward. The County needs this Resolution in order to process the grant.

Council comment included:

- There are two strings attached to the grant. The City must grant a Conservation Easement to the County and all County residents will have access to the property.
- County residents also have access to the Skateboard Park, which received a County grant.
- Nothing has been recovered yet of the money the City fronted for the purchase of the property. The money for the grants could disappear.
- The County generally asks for an ownership interest but in this case is getting a Conservation Easement, not an ownership interest.
- All the grant agencies are still on board and the money should continue to come in. If any grants disappear it is the obligation of the Save the Bird Homestead Committee to make the City whole.
- Kristen Wilson should be congratulated for her hard work on moving the grant process along as well as Anne Stillman.

Councilman Pratt made a motion, seconded by Councilman Cunningham, to adopt the following Resolution:

WHEREAS, Westchester County has awarded the City of Rye (the “City”) a grant of \$200,000 (the “Grant Award”) through its Legacy Program to cover part of the acquisition cost of the Bird Homestead property (the “Property”); and

WHEREAS, as part of the Grant Award, the City, in part through the Memorandum of Agreement (“MOA”) with the Committee to Save the Bird Homestead, Inc. (the “Committee”) has agreed to the following:

1. The City will grant a conservation easement to the County for bonding purposes for the life of the bonds;
2. County residents will have access to the Property in perpetuity;
3. Operation and maintenance of the Property will be the responsibility of the Committee;
4. The Committee has added the City and the County as additional insureds on its General Liability insurance policy;
5. The Committee, will develop a plan to provide access to the Long Island Sound as part of the Blue Trail program;
6. The Committee will develop a resource management plan for the Property with the assistance of the County Parks Department; and
7. Public parking will be available for users of the Property.

NOW, THEREFORE, BE IT RESOLVED, that the City agrees to the aforementioned items and, although the Committee has responsibility to perform many of the items through the MOA, the County will look to the City as the responsible party.

ROLL CALL

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker,
and Pratt
NAYS: Councilman Sack
ABSENT None

8. Acceptance of Grant Award from Governor’s Traffic Safety Committee in the amount of \$2,400 for participation in the “Child Passenger Safety” program
Roll Call.

Councilman Pratt made a motion, seconded by Councilwoman Gamache, to adopt the following Resolution:

WHEREAS, the City of Rye has been awarded a New York State grant in the amount of \$2,400 for participation in the statewide 2009 “Child Passenger Safety” program; now, therefore, be it

RESOLVED, that the City of Rye accepts the aforementioned grant.

ROLL CALL:

AYES: Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker,
Pratt and Sack
NAYES: None
ABSENT: None

9. Miscellaneous communications and reports

Councilman Cunningham said that at the next budget workshop he wanted the Council to have an opportunity to receive answers to verbal questions they have asked. Mayor Otis advised Council Members to look over the responses they have received to date and continue forwarding questions to the City Manager in writing. Councilman Cunningham referred to a letter in the weekly Council packet that complimented Deputy Corporation Counsel Kristen Wilson for her work in Rye City Court and said it was recognition of her fine work. He also suggested that a Proclamation be prepared in recognition of a public safety Eagle Scout project that had been performed in coordination with Lt. Dianni.

10. Old Business

There was no old business to be discussed.

11. New Business

There was no new business to be discussed.

12. Draft unapproved minutes of the regular meeting of the City Council held November 4, 2009 and the special meeting of the City Council held November 9, 2009

Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to approve the minutes of the regular meeting of the City Council held on November 4, 2009 and the special meeting held on November 9, 2009, with Councilman Sack recusing himself from voting on the November 9th meeting.

13. Adjournment

There being no further business to discuss, Mayor Otis made a motion, seconded by Councilman Cunningham and unanimously carried, to adjourn the meeting at 11:35 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk