

License Agreement

This license agreement ("License Agreement") is between the City of New York ("City"), a municipal corporation organized and existing under the laws of the State of New York, acting by and through the Commissioner of the Department of Environmental Protection ("DEP"), having its principal offices at 59-17 Junction Boulevard, Flushing, New York 11373-5108, and Westchester County, having an address at 450 Saw Mill River Road Ardsley, NY 10502 ("Licensee") (collectively, the "Parties")

Background:

City is the owner in fee of certain real property in the Town of Somers, County of Westchester, State of New York, designated as section, block and lot no. 28.14-25-1 on the Tax Maps for Westchester ("City Property"), which is managed by DEP and is owned for the protection of City's drinking water supply.

Licensee is the owner in fee of certain real property that is adjacent to the City Property on which the Licensee operates a Westchester County Park known as Muscoot Farm.

The City previously issued Licensee a Revocable Land Use Permit (Land Use Permit # 3338) to allow it to use a portion of the City Property for the construction and use of a parking area for visitors to Muscoot Farm ("Parking Lot").

Licensee is seeking to reconstruct and repair the Muscoot Farm Parking Lot to change the surface from impervious to pervious pavement to address flooding issues and has requested from the City this License Agreement to allow for the repair, reconstruction and continued use of the Muscoot Farm Parking Lot by the Licensee.

Accordingly, the Parties wish to enter into this License Agreement to allow the Licensee to reconstruct, repair, and operate the Muscoot Farm Parking Lot.

The Parties, therefore, agree as follows:

1. Grant of a license for construction activities. The City grants the Licensee, its agents, contractors, subcontractors, consultants, and subconsultants a revocable license for the access, ingress, egress, maintenance, repair, inspection, construction, reconstruction of the Parking Lot on City-property ("Construction License") as depicted in the map attached as Appendix 1 ("License Area").
 - a. This Construction License is valid 7-days a week and is subject to all local codes and ordinances as related to construction activities.
 - b. The Licensee shall submit all plans for work under this Construction License for approval to DEP. DEP may request changes to plans at its discretion and for water quality improvement. The Licensee shall not begin any work under this Construction License until it receives written approval of plans from DEP.
 - c. There is no tree or vegetation removal under this License. Should the need for trimming or removal of trees or vegetation arise, DEP must approve such in

advance in writing. If trimming or removal of trees or vegetation is necessary to remedy a hazardous situation posing an immediate risk to life, limb or property, verbal approval by DEP will suffice. Such approval may include restrictions to protect the City's interests, including compensation for removed trees, protection of remaining trees, and site restoration measures to mitigate the potential for water quality impairment. Any approved tree removal or trimming, including any restrictions imposed by DEP, shall be by and at the sole expense of the Licensee, and performed to the satisfaction of the DEP.

- d. No fill material may be imported onto or exported from City property without prior DEP approval. Should it become necessary to import or export fill material, the Licensee shall contact DEP and follow DEP protocols to be provided.
 - e. The Parking Lot surface shall be gravel or other porous material and under no circumstances shall any part of the Parking Lot or License Area be paved.
 - f. DEP reserves the right to require the construction of any additional drains or draining water facilities deemed necessary for the protection of the City's water supply from contamination from the use of the License Area at the cost of the Licensee.
 - g. The Licensee shall not expand the footprint of the License Area beyond the original area approved for this License.
2. Grants of a license for parking activities. The City hereby grants to the Licensee and its invitees, including the traveling public, a revocable license (the "Parking Activities License") for access, ingress/egress, parking vehicles, and other parking lot activities in the License Area.
- a. This Parking Activities License is valid during the Westchester County Park hours for Muscoot Farm.
 - b. No charge shall be made for parking under this Parking Activities License.
 - c. No vehicles shall be parked overnight under this Parking Activities License.
 - d. No vending of any kind shall be allowed under this Parking Activities License.
 - e. DEP has a right to enter the parking lot for use of official City vehicles without obtaining permission from the Licensee.
3. Maintenance. The Licensee shall be responsible for the maintenance of the License Area, and City shall have no maintenance obligations under this License Agreement. Licensee's failure to maintain the License Area may result in the revocation of the Construction License and/or the Parking Activities License by the City.
- a. The Licensee shall maintain all drainage systems in the License Area.
 - b. The Licensee shall be responsible for all debris, snow and ice removal in the License Area.
 - c. The Licensee shall, at its own cost and expense, provide for the weekly removal of all rubbish deposited in the License Area.
 - d. The Licensee shall be responsible for the maintenance of all surfaces, lighting, traffic within the License Area.
 - e. There is no fueling or maintenance of vehicles or equipment allowed on City property. Any equipment including vehicles operated on City property must be operated in a manner that will prevent spills. Spill containment equipment must be

on site at all times. Should a spill or any release occur, it must be immediately reported to DEP Police (914-593-7500) or 888-H2O-SHED (888-420-7433.)

- f. Chemicals of any kind or any other hazardous materials, including but not limited to gasoline, fuel, or oil, shall not be used on City property.
4. Security. Licensee shall be solely responsible for security and safety in the License Area, including damage, theft or injury to property or the traveling public in License Area. The Licensee shall not allow any practice or activity within the License Area that may pose a hazard to persons or property. DEP shall not be responsible for policing activities within the License Area.
5. Effective date and duration.
 - a. This License Agreement will take effect on the date that the last party signs ("Effective Date").
 - b. The duration of this License Agreement is twenty (20) years from the Effective Date ("License Term").
 - c. The Licensee acknowledges and agrees that no representations are made on the part of the City as to the continuation of the License Agreement beyond the License Term or as to the possibility of any renewal of the License Agreement.
6. Revocation & Surrender.
 - a. The City may revoke this License Agreement at any time by providing the Licensee twenty-eight (28) day written notice of the revocation in accordance with Section 15 below.
 - b. The Licensee may surrender or cancel the License at any time by providing the City twenty-eight (28) days written notice in accordance with the Section 15 below.
7. Consideration.
 - a. The Licensee will pay the City \$1,650.13 ("Annual Fee Payment") annually and shall make the first Annual Fee Payment prior to or on the Effective Date. The Licensee shall pay DEP the Annual Fee Payment annually within thirty (30) days of the anniversary of the Effective Date. The Annual Fee Payment shall submitted to:

New York City Department of Environmental Protection
City Lands Stewardship
465 Columbus Avenue
Valhalla New York 10595
 - b. Licensee agrees as part of consideration for the use of this land, to except the City Property from all local and state taxes and cause to exempt the City of New York from:
 - i. Any expenses for this improvement.
 - ii. Any and all real property taxes or special assessment which may be levied against this, and all abutting property of the City as a result of the improvement.
 - iii. Taxes for the improvements shall be paid directly to the Town of Somers

and kept up to date.

8. Signage.

- a. The Licensee is authorized to maintain a Muscoot Farm Park sign at the entrance to the License Area, along with any Manual on Uniform Traffic Control Devices signs required for public safety.
- b. No other signs shall be allowed in or on the License Area without obtaining the prior written approval of DEP.
- c. The City shall have the right to mark the location of the License Area by suitable markers set on the ground or on improvements constructed by the Licensee or and shall have the right to place signs within the License Area.
- d. No commercial advertising signs shall be allowed within the License Area.

9. Governing Law. This License shall be governed by, and construed in accordance with, the laws of the State of New York.

10. Modification. This License cannot be altered or amended except in writing agreed to and signed by both Parties.

11. Indemnification.

- a. To the fullest extent permitted by Law, the Licensee shall defend, indemnify, and hold harmless the City and the New York City Water Board, including their respective officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City, the New York City Water Board, or their respective officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Licensee and/or its subcontractors and/or invitees under this License to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with the law or any of the requirements of this License. Insofar as the facts or the law relating to any of the foregoing would preclude the City, the New York City Water Board or its officials or employees from being completely indemnified by the Licensee, the City, the New York City Water Board, and their respective officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.
- b. The Licensee's obligation to indemnify, defend and hold harmless the City, the New York City Water Board, and their respective officials and employees shall neither be (i) limited in any way by the Licensee's obligations to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of the City, the New York City Water Board, or their respective officials or employees to avail themselves of the benefits of such insurance.

12. Insurance.

- a. The Licensee shall comply with the insurance requirements in Appendix 2 of this License Agreement for the full term of the License.

- b. The Licensee agrees that all contractors or subcontractor of the Licensee performing work under this License Agreement shall sign the Acknowledgement Agreement in Appendix 3 ("Acknowledging Contractors"). All Acknowledging Contractors shall carry insurance in accordance with the insurance requirements in Appendix 2 and DEP may require such additional limits and additional coverages as it may deem advisable, at its sole option.

13. Conditions of Entry, Occupation and Use.

- a. This License Agreement is not a lease and does not create a tenancy.
- b. The License Area is part of the public water supply, and the Licensee shall exercise extreme caution at all times to prevent contamination, degradation, and pollution of the water supply or acts likely to lead to contamination, degradation, and pollution of the water supply.
- c. A copy of the License Agreement shall be kept readily available by the Licensee while on site and shall be produced upon the request of the DEP Police or other DEP personnel.
- d. The Licensee shall provide immediate written notice to DEP of any known problems, disagreements, emergencies, hazards, or questions arising or resulting from the use of the License Area.
- e. There shall be no vending of any kind in the License Area.
- f. This License Area shall be used at all times in strict accordance with the sanitary rules and regulations of DEP and the New York State Department of Health. The County of Westchester shall assume the obligation of compliance with those rules.
- g. No structures shall be placed in the License Area without written approval by the City.
- h. At the termination of this License, the Licensee shall restore the License Area to its natural state and to the satisfaction of DEP.

14. Non-Waiver provision.

- a. The failure of either party to insist upon strict performance of any term, condition or covenant herein shall not be deemed a waiver of any rights or remedies that the party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions or covenants herein.
- b. The invalidity of any provisions, articles, paragraphs, portions, or clauses of this License Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement.

15. Notices. The Parties shall make all notices, requests, demands, or other communications required or permitted pursuant to this License Agreement in writing. The Parties shall deliver all notices by hand or mail them with postage prepaid, certified mail, return receipt requested to the respective Party at the following addresses:

To the City or DEP:

New York City Department of Environmental Protection
71 Smith Avenue
Kingston, New York 13401
Attention: City Land Stewardship Watershed Lands Coordinator

With a copy to:

**New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373-5108
Attention: General Counsel**

To Licensee:

**Westchester County Department of Parks, Recreation & Conservation
450 Saw Mill River Road
Ardsley, New York 10502
Attn: Kathleen O'Connor, Commissioner**

16. **Headings.** Headings are for the convenience of the Parties and will not be deemed a part of this License.
17. **Entire Agreement.** This License Agreement is the entire agreement between the Parties with respect to the subject matter, and no oral statement or prior written material will have any force or effect. This License Agreement cannot be modified except by amendments that are approved by both Parties in writing.
18. **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original. Facsimile and portable document format (PDF) signatures shall have the same force and effect as original signatures.

In witness whereof, the Parties have duly executed this License as of the latest date written below.

[signature page to follow]

Date: Oct 11, 2022
By: Kathleen O'Connell
LICENSEE

Date: 11/7/2022
By: [Signature]
[Title] Chief operating officer
CITY OF NEW YORK
Acting by and through the
New York City Department of Environmental Protection

Approved as to Form and Legal Authority:

Isabel Galis-Menendez
Acting Corporation Counsel KL

Dated: 7/27/2022

Appendix 1 – License Area

All that certain piece or parcel of land situate, lying and being in the Town of Somers, County of Westchester and State of New York, being more particularly bounded and described as follows:

Commencing at a point on the northeast corner of lands of the City of New York being shown as N.Y.C. Mon. No. 52 on a map entitled, "Survey of Property to be acquired by the County of Westchester from Ferdinand T. Hopkins and Others", dated August 1, 1968 and filed October 17, 1968 in the Westchester County Clerk's Office (Division of Land Records) as County Clerk Map No. 16372, the point of beginning.

Thence from said point of beginning southerly along the easterly face of a stone wall, S.02°34'19"E., a distance of 862.19 feet to the westerly side of State Highway No. 9024 on said Map No. 16372;

Thence along the westerly side of State Highway No. 9024, S 55°39'00" E 176.45 feet to the southwest corner of the herein described parcel;

Thence northerly through lands of the City of New York, N.02°34'19"W., a distance of 958.10 feet to a point on the northerly face of a stone wall;

Thence easterly along said northerly face of stone wall being lands of the City of New York, N.88°34'09"E., a distance of 150.03 feet to a point; the point and place of beginning.

Containing 136,522 sq. ft. or 3.1341 Acres.

Appendix 2

Insurance Requirements

1. **Self-Insurance:** There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under this Appendix 2 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City, its officials and employees as additional insured with all rights that would be provided by traditional insurance required under this Appendix 2, including but not limited to the defense obligations that insurers are required to undertake in liability policies.
2. **Worker's Compensation, Employer's Liability and Disability Benefits Coverage:** The Licensee and any contractor or subcontractor hired to perform work in the License Area must maintain workers' compensation insurance, employers' liability insurance, and disability benefits insurance, in accordance with law on behalf of, or in regard to, all employees providing services in the License Area.

Prior to performing any work in the License Area, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Licensee shall submit proof of the workers' compensation insurance and disability benefits insurance (or proof of a legal exemption) described above to DEP in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

- a. Form C-105.2, Certificate of Workers' Compensation Insurance;
 - b. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
 - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance;
 - d. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
 - e. Form DB-120.1, Certificate of Disability Benefits Insurance;
 - f. Form DB-155, Certificate of Disability Benefits Self-Insurance;
 - g. Form CE-200 – Affidavit of Exemption;
 - h. Other forms approved by the New York State Workers' Compensation Board; or
 - i. Other proof of insurance in a form acceptable to the City.
3. **Liability Insurance:** For the term of the License, the Licensee shall maintain a Commercial General Liability insurance policy as described below covering all activities to be performed under the License by the Licensee or its agents:

Combined Single Limit - Bodily Injury and Property Damage
\$ 2,000,000 per occurrence
\$ 5,000,000 aggregate, per project

\$ 25,000 claim maximum deductible.

Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the City, together with its officials and employees, and the New York City Water Board as additional insureds with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

The Licensee shall also maintain Commercial Auto Liability Insurance for liability arising out of ownership, maintenance or use of any owned, non-owned and hired vehicles to be used in connection with activities performed under the License by the Licensee or its agents. Coverage must be at least as broad as the latest edition of ISO Form CA0001.

The Commercial General Liability and Commercial Auto Liability Insurance policy (the "Liability Policies") shall not contain exclusions or endorsements that are unacceptable to the City.

Notices and other correspondences regarding the Liability Policies shall be in writing and provided to DEP City Lands Section.

The Liability Policies shall not be cancelled, terminated, modified or changed by the Licensee without notice to and approval by the DEP.

The following proof of the Liability Policies are acceptable: (1) certificate of insurance accompanied by a completed certification of insurance broker or agent (in a form acceptable to the City) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or (2) a copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

4. The policy shall not be cancelled, terminated, modified, or changed by the Licensee unless thirty (30) days prior written notice is sent to DEP in accordance with the notice address in paragraph 4 of this Appendix.
5. Broker's Certification. The Licensee shall provide DEP with the following brokers certification:

CITY OF NEW YORK

CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker or agent]

[Name and title of authorized official, broker or agent (typewritten)]

State of.....)

)ss.:

County of.....)

Sworn to before me this ____ day ____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

Appendix 3 – Acknowledgement Agreement

Acknowledgement Agreement

I have read and understand the terms and conditions of the License Agreement between the City of New York and Westchester County dated OCT. 11, 2022 ("Agreement"). In consideration of WESTCHESTER COUNTY ("Company") being granted access to the City Property to perform Construction Activities (this and other undefined, capitalized terms having the meaning as set forth in the Agreement). I, in my capacity as COMMISSIONER of the Company, hereby bind the Company to the terms and conditions of the Agreement to the same extent, as, and as if the Company were, a signatory thereof.

IN WITNESS WHEREOF, the undersigned has executed this Acknowledgement Agreement as of this 11th day of October, 2022

Name: Kerry J. Ruggieri
Title: Coordinator - Fiscal Operations
Address: 450 Sawmill River Rd
Hudson, NY 10502
Phone: 914-995-4056



KERRY J. HIGGINS - Ruggieri
Notary Public-State of New York
No. 01HI6260493
Qualified in Westchester County
Commission Expires April 30, 2024

George Latimer
County Executive

John M. Nonna
County Attorney

Office of Risk Management

Kandy Davenport
Director

June 29, 2022

City of New York
c/o NYC Dept. of Environmental Protection
59-17 Junction Blvd. 19th floor
Flushing, NY 11373
Attn: General Counsel

To Whom it May Concern:

Listed below is a statement of understanding regarding the County of Westchester's Insurance:

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

Sincerely,

Paul L. Gionta

Paul Gionta
Office of Risk Management

DESCRIPTION OF OPERATION:

2022- License Agreement to allow the Licensee to reconstruct, repair, and operate the Muscoot Farm Parking Lot.

cc: N. Squillante, PRC

Michaelian Office Building, Room 241
148 Martine Avenue
White Plains, New York 10601

Telephone: (914)995-2740 Fax: (914) 995-2707 Website: westchestergov.com





**Workers'
Compensation
Board**

KATHY HOCHUL
GOVERNOR

CLARISSA M. RODRIGUEZ
CHAIR

**Office of the Secretary
Compliance With Workers' Compensation Law**

I, Kim McCarroll, Secretary for the Workers' Compensation Board, DO HEREBY Certify that:

Name: Westchester, County of

WCB #: W878755

Tax ID #: 13-6007353

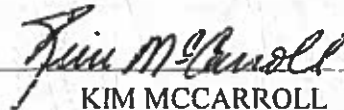
Qual Date: 1/1/1983

has secured compensation to its employees as a self-insurer in the following manner:

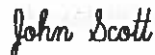
Pursuant to Section 50, subdivisions 3 and 4 of the Workers' Compensation Law. (County, city, village, town, school district, fire district or other political subdivision)

The status of the self-insurer was effective as noted above and remains in full force.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Workers' Compensation Board this 24th day of January 2022.


KIM MCCARROLL
SECRETARY

Status Confirmed By



1/24/2022



Rohit T. Aggarwala
Commissioner

59-17 Junction Blvd.
Flushing, NY 11373

Tel. (718) 595-6565
Fax (718) 595-3525
raggarwala@dep.nyc.gov

Memorandum

To: Paul V. Rush, P.E. Deputy Commissioner
Bureau of Water Supply

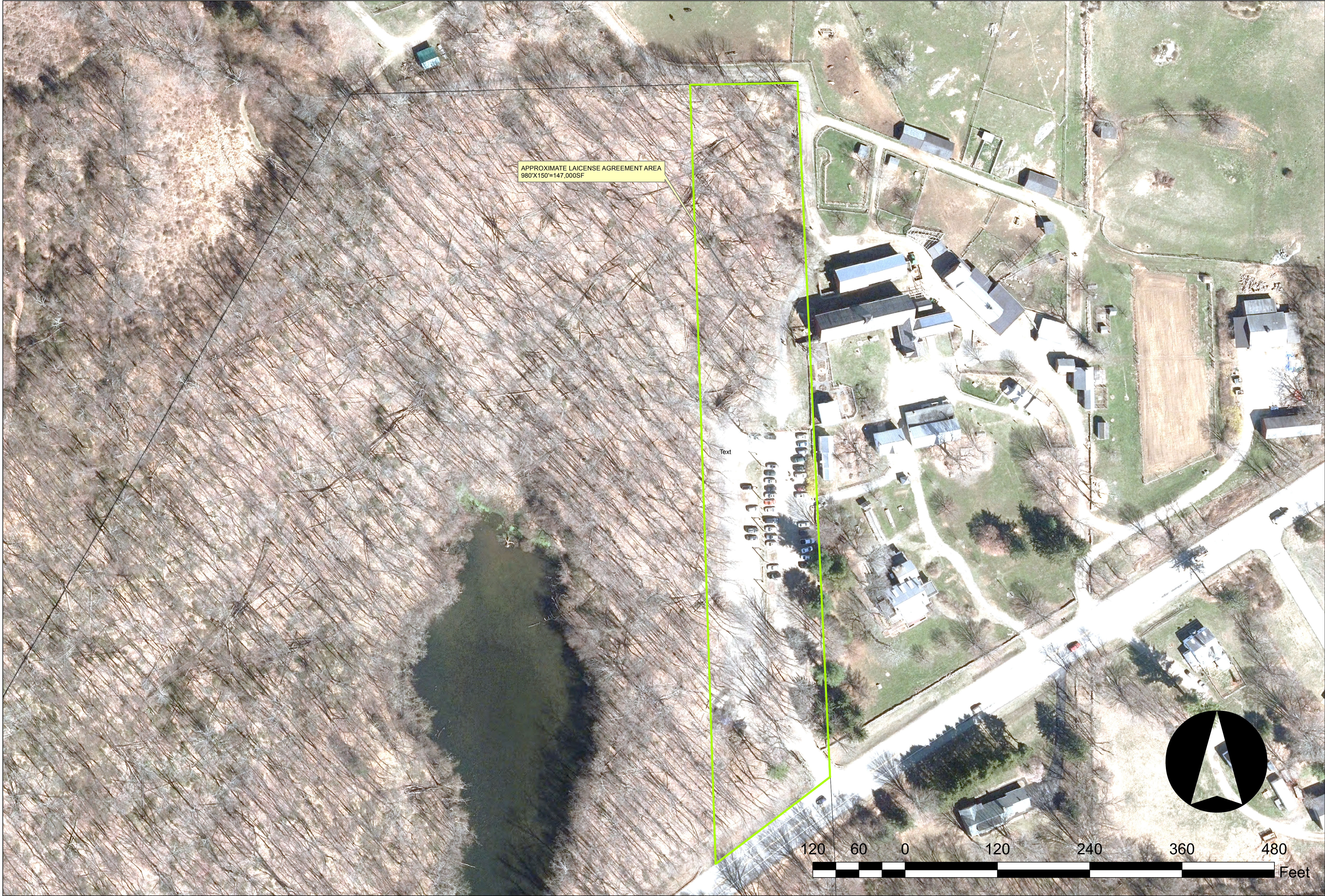
From: Rohit T. Aggarwala, Commissioner

Date: October 24, 2022

Re: Acceptance of the County of Westchester's Self-Insurance

JS for RTA
11/7/22

In response to your memorandum dated October 24, 2022, attached herein, this memorandum confirms my approval for the County of Westchester's proof of self-insurance in accordance with Appendix 2, Section 1 of the attached Westchester County Muscoot Farm License Agreement.



APPROXIMATE LAICENSE AGREEMENT AREA
980'X150'=147,000SF

Text

120 60 0 120 240 360 480 Feet



MUSCOOT FARM LICENSE AGREEMENT