

INTERMUNICIPAL AGREEMENT-MILL BROOK PRESERVE

THIS AGREEMENT made and entered into as of the ____ day of July, 2015 by and between:

THE VILLAGE OF NEW PALTZ, a municipal corporation of the State of New York, maintaining its offices at the Village Hall, 25 Plattekill Avenue, New Paltz, New York 12561 (the “Village”), and

THE TOWN OF NEW PALTZ, Ulster County, New York, a municipal corporation of the State of New York, maintaining its offices at 1 52 Clearwater Road, P.O. Box 550, New Paltz, New York 12561 (the “Town”),

W I T N E S S E T H :

WHEREAS, the Village is in the process of acquiring real property from Shawangunk Reserve, Inc., Tax Map # 86.2-1-12.110, (“the **Village** Property”), with portions lying within the Village and portions lying within the Town of New Paltz; and

Whereas, the Town has previously acquired real property, formerly known as Stoneleigh Woods, Tax Map....., (the “Town Property”); and

Whereas, if the CFA Grant Request is awarded and funded, the village and town wish to improve these properties as Open Space, with public access, (collectively the “Preserved Property”), and to be known as the “Mill Brook Preserve”; and

WHEREAS, the Parties hereto view the addition of the **Preserved** Property as a critical ecological open space that must be preserved and protected **in perpetuity**, and which addition would connect the property, formerly known as Stoneleigh Woods which was purchased by the Town, to the forever green parcel of Woodland Pond, subject to a grant of public access from Woodland Pond, thus potentially creating a significant continuous wilderness park in the heart of the New Paltz community, and

WHEREAS, because the Preserved Property lies within both the Town and the Village, it is necessary for both municipalities to have a clear understanding with respect to the rights and responsibilities, financial and otherwise, of each party regarding design, operation, maintenance, improvement and repair of the entire Preserved Property; and

WHEREAS, the Village is willing to assume the lead role in the design, operation, maintenance, improvement and repair of the entire Preserved Property, upon the terms and conditions contained herein; and

WHEREAS, good government, efficiency, prudent spending, and effective public policy and service delivery are all best served by strong collaboration among public entities; and

Whereas, the Village is submitting a request for Grant funding through the NYS CFA application process by not later than July 31, 2015; and

WHEREAS, Article 5-G, Section 119-o of the General Municipal Law specifically authorizes municipal corporations to enter into inter-municipal cooperative agreements,

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties agree as follows:

1. **Protection of Open Space.** The Village and Town agree that the Preserved Property should be protected in perpetuity. To assure this, the parties agree that by not later than June 30, 2016 they will execute Conservation Easements for their respective Property. If the CFA Grant is awarded, the Parties agree that the Preserved Property will become Designated Parkland, and no Conservation Easement will be needed
2. **Improvements.** The Improvements are what are described in the above referenced CFA Grant Application, which, when submitted, shall be attached hereto and made a part hereof. It describes the trailheads, trails, bog bridges, stream crossing bridges, signs, kiosks, etc.. Because these documents are preliminary in nature, the construction related parts are referred to as the "Preliminary Plans and Specifications". If the grant is awarded, then The Village shall prepare, or cause to be prepared, Final Plans and Specifications for the installation of the Improvements at the Preserved Property. Village shall not initiate any substantial changes, additions, alterations, or deletions to the Preserved Property without prior, written approval of the Town Board.
3. **XXXXXX.** The Village shall provide all materials and labor for the design and improvement of the entire Preserved Property with the costs of such work to be paid for out of the Grant Fund, village employees and/or volunteers. ~~Shared proportionately by the Town and Village based on the acreage owned by each municipality.~~ The Village also agrees that it is solely responsible to satisfy any "matching" requirements required by the granting agency. All costs shall be agreed to in advance between the municipalities prior to the Village entering into any agreements relating to these services.
4. **XXXXXX.** Future capital improvements shall also be shared proportionately by the Town and Village with prior written approval by both municipalities.
5. **Plans and Specifications.** ~~[I copied this to above] The Village shall prepare, or cause to be prepared, Plans and Specifications for the installation of the Improvements at the Preserved Property. Village shall not initiate any substantial~~

~~changes, additions, alterations, or deletions to the Preserved Property without prior, written approval of the Town Board.~~

6. **Easement.** The Town hereby conveys to the Village an easement for maintenance, repair and improvement purposes, covering any portion of the Preserved Property owned by the Town as depicted on Exhibit A (hereinafter the “Easement”), which Easement shall terminate in the event this Agreement is terminated pursuant to the terms of this Agreement or by order of a court of competent jurisdiction.
7. **Installation.** The Village may hire a private contractor, utilize Village personnel or use volunteers to install the improvements to the Preserved Property in accordance with Plans and Specifications approved by the Town. The Village shall cause any private contractors to comply with appropriate insurance requirements. Volunteers of the Village shall submit an appropriate Acknowledgement and General Release if engaged in planting of flowers, litter and branch pickup, edging, supplemental mowing, building bridges or trails, installing benches, signs, or sheds, or similar activities. If volunteers are engaged in irrigation work, construction, or similar activities, the Village must comply with all appropriate insurance requirements. All work shall conform to applicable local, state and federal laws. Any existing overhead and underground utilities shall be located prior to commencement of work.
8. **Maintenance.** The Village agrees that upon completion of all agreed upon initial Improvements to the Preserved Property, it will assume all costs related to the general maintenance of the Preserved Property, including, but not limited to, all operations, activities and processes required on a continuing basis for the preservation of the Preserved Property. The Village, its contractors or volunteers shall maintain the Preserved Property during the term of the Agreement, provided, however, that the Village shall enforce all warranties and guarantees attributable to any infrastructure, or related improvements. The Village, its contractor or volunteers shall conduct any necessary watering; fertilizing; herbicide, pesticide, or insecticide applications; brush and debris removal, tree trimming and similar maintenance tasks for the Preserved Property. (But trees die from various diseases. I wouldn’t commit to replacing trees.)
9. **Signs.** Proposed signage within the Preserved Property must meet applicable municipal codes.
10. **Environmental.** The Village or its agents, employees, or contractors shall notify the Town when it intends to utilize any chemical substances or hazardous materials, including, but not limited to, fertilizer, pesticides, herbicides, or insecticides, in or about the Preserved Property.

11. **Tree Trimming.** The Village may only use its own Public Works personnel, professional tree trimmers, or arborists licensed by the State of New York for pruning and trimming of trees at the Preserved Property.
12. **Term.** This Agreement shall be effective for five (5) years from the date of final approval by the parties' respective municipal boards, which date shall be set forth above. This Agreement shall renew automatically for successive five (5) year terms unless either party provides written notice of its intention not to renew no later than one-hundred twenty (120) days from the applicable expiration date.
13. **Event of Non-Renewal** If this Agreement is not renewed or is terminated, both parties shall be responsible for the care and maintenance of those portions of the Preserved Property that lie within said parties territorial borders
14. **Hazards.** If the Improvements at the Preserved Property become a hazard or safety risk either party may remove them immediately.
15. **Existing Driveways and Parking Lot.** The Parties agree that driveways and the parking area existing at the time of completion of any contemplated improvements may continue to be maintained. The Parties further agree, however, that construction by either Party of any additional driveways or roadways shall require the prior written approval of both Parties. The Village shall be responsible for all maintenance, and replacement of traffic/parking barriers (i.e. gates, berms, rocks, etc.) to contain motor vehicles within the parking area.
16. **Liability.** Each Party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each Party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies, and representatives. It is not the intent of the Parties to waive any statutory protections or impose liability beyond that imposed by state statutes. Both the Town and Village shall maintain their respective and customary general liability insurance policies with respect to those portions of the Preserved Property which said municipality owns in fee. Evidence of such insurance shall be provided by each municipality to the other upon written request.

17. **Termination.** Except as provided in Paragraph 15, this Agreement may be terminated only upon written mutual consent of the Town and the Village. In the event that this Agreement is terminated pursuant to this Paragraph 14, the Town and the Village agree that all jurisdiction and maintenance obligations of the Town portion of the Millbrook Preserve Property shall revert to the Town.
18. **Default.** If either Party materially defaults under any of its duties or obligations under this Agreement, and (1) if the default can reasonably be cured within thirty (30) calendar days and the defaulting Party fails to cure that default within thirty (30) calendar days after receiving notice thereof from the other Party, or (2) the default cannot be reasonably cured within thirty (30) calendar days and the defaulting Party fails to begin curing that default within thirty (30) calendar days of receiving notice thereof from the other Party, or thereafter fails to act with reasonable diligence to cure that default, the other Party may terminate this Agreement and/or pursue any and all legal and/or equitable relief available(including attorneys' fees and costs).
19. **Notices.** Any notices required or permitted hereunder shall be given in writing and shall be delivered (a) in person, with proof of service (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, or (d) by facsimile and email. Such notices shall be addressed as follows:

To The Town:

Office of the Supervisor
The Town of New Paltz
52 Clearwater Road, P.O. Box 550
New Paltz, New York 12561
Fax No. (845) _____
supervisor@townofnewpaltz.org

To The Village:

Office of the Mayor
The Village of New Paltz
25 Plattekill Avenue
New Paltz, New York 12561
Fax No. (845) 255-4305
Mayor@villageofnewpaltz.org

Either Party may, from time to time, specify in writing to the other Party a different person or address for notice. Any notice shall be effective only upon delivery.

17. Miscellaneous.

A. The Parties each agree to exercise good faith, make reasonable efforts, and take whatever cooperative action is necessary to fulfill the intent and purposes of this Agreement.

B. The privileges and/or obligations under this Agreement may not be assigned without the prior written authorization of both Parties.

C. If a dispute between the Parties arises out of or relates to this Agreement and cannot be settled through direct discussions, the parties irrevocably submit themselves to the original jurisdiction of the Supreme Court, County of Ulster, State of New York, with regard to any controversy arising out of, relating to, or in any way concerning this Agreement.

D. This Agreement shall be subject and subordinate to applicable federal or state laws, codes, regulations, ordinances, rules and orders.

E. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, unless a provision which is of the essence to this Agreement be determined void.

F. Failure of a Party to insist on strict performance of any of the provisions of this Agreement, or failure to exercise any of a Party's rights hereunder, shall not waive such rights.

G. This Agreement constitutes the entire Agreement and understanding of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both Parties.

H. That the Supervisor of the Town has executed this Agreement pursuant to Resolution adopted by the Town Board, at a meeting thereof held on the ____ day of _____, 2015 and the Village Mayor has executed this Agreement pursuant to Resolution adopted by the Village Board of Trustees, at a meeting thereof held on the 24th day of June, 2015.

I. This Agreement shall be binding upon and shall inure to the benefit of

the Parties hereto and their respective legal representatives, and permitted successors and/or assigns.

J. Each of the Parties acknowledges having read and understands the provisions of this Agreement.

IT IS UNDERSTOOD AND AGREED THAT THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL SUCH TIME AS THE VILLAGE ACQUIRES A FEE SIMPLE OWNERSHIP INTEREST IN ALL OR A PORTION OF THE PROPERTY CURRENTLY OWNED BY SHAWANGUNK RESERVE, INC., TAX MAP # 86.2-1-12.110 AND SHALL BECOME EFFECTIVE IMMEDIATELY UPON COMPLETION OF SAID CLOSING.

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

**TOWN OF NEW PALTZ
BY:**

**VILLAGE OF NEW PALTZ
BY:**

SUSAN ZIMET, Supervisor

TIMOTHY E. ROGERS, Mayor

STATE OF NEW YORK)

ss.

COUNTY OF ULSTER)

On the ____ day of July, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared **SUSAN ZIMET**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public of the State of New York

STATE OF NEW YORK)
 ss.
COUNTY OF ULSTER)

On the ____ day of July, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared **TIMOTHY E. ROGERS**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public of the State of New York

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