

Appendix E-2
Fire Services Agreement

THIS AGREEMENT, made this _____ day of March ____, 2018 by and between

THE VILLAGE OF PORT CHESTER, a municipal corporation of the State of New York, having offices at 222 Grace Church Street, Port Chester, New York 10573 (hereinafter sometimes referred to as “Port Chester”), and

THE VILLAGE OF RYE BROOK, a municipal corporation of the State of New York, having offices at 938 King Street, Rye Brook, New York 10573 (hereinafter sometimes referred to as “Rye Brook”).

WITNESSETH:

WHEREAS, by agreement dated February 25, 2013 Port Chester and Rye Brook entered into a Fire Protection Agreement for the period of June 1, 2013 to May 31, 2018; and

WHEREAS, the Agreement was modified by a so ordered court Settlement Agreement signed by Rye Brook on May 1, 2017 and Port Chester on May 4, 2017; and

WHEREAS, Port Chester and Rye Brook desire to continue their long-standing history of shared services and enter into a new Fire Protection Agreement (the “Agreement”); and

WHEREAS, such Agreement is authorized by Village Law § 4-412(3)(9) and Article 5-G of the General Municipal Law.

NOW, THEREFORE, for such good and valuable consideration of the agreements hereinafter set forth, the receipt of which is acknowledged by each Village, Port Chester and Rye Brook do mutually agree as follows:

FIRST: Port Chester shall make available and provide fire protection services to Rye Brook. Such fire protection services shall include, Port Chester making its best effort to provide all necessary and appropriate fire apparatus and fire department personnel to respond to all fire alarms, and calls for fire service, and shall specifically include services in the following

areas: (1) Fire Suppression, (2) Hazardous Materials Mitigation, (3) Public Assistance Incidents, (4) Heavy Rescue, (5) Hazardous Conditions, (6) Public fire education and educational programs, (7) Carbon monoxide detection and mitigation equipment, (8) Pre-incident deployment for fire apparatus and/or preplanning, and (9) sponsorship opportunities.

Port Chester will use its best efforts to respond to all incidents in accordance with the Apparatus Response Guidelines of the Port Chester Fire Department, which are attached hereto as Exhibit A, to the extent that those guidelines apply to the services being provided under this Agreement. Said Apparatus Response Guidelines are hereby incorporated in and shall become a part of this Agreement. The Apparatus Response Guidelines may be amended at the Discretion of the Port Chester Fire Chief. No amendment can be made to the Apparatus Response Guidelines unless it provides, at a minimum, the same level of protection as is provided by the current Apparatus Response Guidelines, a copy of which is attached hereto and made a part hereof. Any long term permanent changes to the Apparatus Response Guidelines shall be reviewed with and approved by the Fire Advisory Board prior to their implementation.

SECOND: Port Chester and Rye Brook intend, in good faith and so far as practicable, to maintain their apparatus and equipment in good working order. Rye Brook intends, in good faith and so far as practicable, to maintain career personnel sufficient to provide 24 hour – 7 days per week coverage. Port Chester and Rye Brook shall each be responsible for fire inspection services in their respective municipalities.

THIRD: The fire protection services to be provided under this Agreement shall commence on June 1, 2018 and shall terminate on May 31, 2023, subject to the terms and conditions of this agreement.

FOURTH: Rye Brook will pay Port Chester for the fire protection services provided hereunder in accordance with the terms and condition hereof as follows:

(a) For the period from June 1, 2018 to May 31, 2019, Rye Brook shall pay Port Chester the sum of \$625,000.00.

(b) For the period from June 1, 2019 to May 31, 2020, Rye Brook shall pay Port Chester the sum of \$638,750.00.

(c) For the period from June 1, 2020 to May 31, 2021, Rye Brook shall pay Port Chester the sum of \$652,500.00.

(d) For the period from June 1, 2021 to May 31, 2022, Rye Brook shall pay Port Chester the sum of \$666,250.00.

(e) For the period from June 1, 2022 to May 31, 2023, Rye Brook shall pay Port Chester the sum of \$680,000.00.

(f) The payments under this agreement shall be made by Rye Brook to Port Chester in three (3) equal amounts on August 31, January 31 and May 10 in each contract year (June 1 to May 31).

(g) The payments under sub paragraph (a) to (f) of this Agreement are to be applied to the operating and or capital costs of the Port Chester Fire Department.

FIFTH: Rye Brook may, in its sole discretion, own and maintain fire apparatus and staff a paid fire department that will consist of Rye Brook employees. For any calls within the Village of Rye Brook or the Village of Port Chester, the Rye Brook Fire Department will report to and be under the command and supervision of the Port Chester Fire Chief, or Assistant Chief,

but, nevertheless, will remain the ultimate responsibility of the Village of Rye Brook. Rye Brook firefighters and apparatus will be regularly stationed at the Rye Brook fire station. The Port Chester Fire Chief, however, may schedule or station the Rye Brook firefighters and fire apparatus as the Fire Chief deems proper in an emergency, or as may be agreed to in writing between the Port Chester Village Manager, Fire Chief and Rye Brook Village Administrator to improve fire protection. After consulting with the Port Chester Fire Chief, Rye Brook may increase, decrease or change the operating schedule of the Rye Brook Fire Department as Rye Brook deems warranted.

SIXTH: The Port Chester Village Manager, Port Chester Fire Chief and Rye Brook Village Administrator, on request of any of them, will promptly meet to discuss personnel issues or other operational issues as they may arise. Port Chester and Rye Brook may, as to their respective firefighters, initiate appropriate disciplinary procedures or other such personnel actions, through applicable procedures, as may be deemed warranted by each Village.

SEVENTH: The Port Chester Village Manager and Port Chester Fire Chief will coordinate and consult with the Rye Brook Village Administrator with respect to complaint procedures and personnel matters regarding Rye Brook firefighters and the acquisition and disposal of Rye Brook fire apparatus and equipment. The acquisition and disposal of Rye Brook fire apparatus and equipment shall remain the sole responsibility of Rye Brook.

EIGHTH: Rye Brook and Port Chester are each responsible for the training of the firefighters in their own municipality. However, both departments are encouraged to train together and it shall be mandatory to have at least two (2) cooperative training sessions per year that includes firefighters and apparatus from both departments. The cost of the instructor for the

cooperative training sessions shall be shared equally between both Villages. All fire call reports, 60 Control records and reports, and firefighter training records for both the Rye Brook Firefighters and the Port Chester Firefighters shall be made available to the Port Chester Village Manager, Rye Brook Village Administrator, and the Fire Chiefs for inspection upon request. Summary reports shall also be made available to the members of the Fire Advisory Board upon request.

NINTH: Port Chester and Rye Brook will each be solely and separately responsible for their respective fire department personnel costs, training mandates, benefits, and for the costs of maintaining, repairing and replacing their respective fire apparatus, equipment and fire stations. Port Chester and Rye Brook will maintain workers' compensation insurance to protect against claims for injuries by their respective paid and volunteer firefighters and provide the other village with a certificate of insurance evidencing that said Workers Compensation coverage is in full force and effect.

TENTH: The services of the Port Chester Fire Department shall be and remain under the sole discretion of the Fire Chief of the Port Chester Fire Department or Assistant Chiefs designated by the Port Chester Fire Department. Nothing herein shall restrict or limit Port Chester or Rye Brook in the internal management or internal supervision of its fire department or companies, or restrict or limit the stationing, acquisition, response areas, mutual or automatic aid each provides to or receives from other municipalities, or disposal of its equipment consistent with the purpose and scope of this Agreement. It is also understood that Rye Brook firefighters may be utilized for additional services outside of Port Chester, not inconsistent with fire protection services under this Agreement, such as fire inspections, EMS, code enforcement, or mutual or automatic aid in consultation with the Port Chester Fire Chief.

ELEVENTH: to the extent permitted by law, Rye Brook will, at its own cost and expense, defend, indemnify and hold Port Chester, its boards, officials, employees, fire chiefs and firefighters free and harmless from and against any and all suits, proceedings, claims, damages, liabilities, demands, costs and expenses on account of: (1) death or injury of a Rye Brook firefighter(s), while performing services under this Agreement; (2) damage to fire apparatus and equipment owned or leased by Rye Brook while performing services under this Agreement; and (3) personal injury or property damage claims made by third parties to the extent Rye Brook owned or leased fire apparatus or Rye Brook firefighters are alleged to have been involved, except for such claims arising in connection with fire protection services hereunder where the alleged act or omission was undertaken in compliance with the directive or order of the Port Chester Fire Chief or Assistant Chief.

TWELFTH: to the extent permitted by law, Port Chester will, at its own cost and expense, defend, indemnify and hold Rye Brook, its boards, officials, employees and firefighters free and harmless from and against any and all suits, proceedings, claims, damages, liabilities, demands, costs and expenses on account of: (1) death or injury of a Port Chester firefighter(s) while performing services under this Agreement; (2) damage to fire apparatus and equipment owned or leased by Port Chester while performing services under this Agreement; (3) personal injury or property damage claims made by third parties to the extent Port Chester owned or leased fire apparatus are alleged to have been involved; and (4) acts and/or omissions committed in the provision of fire protection services hereunder, under the command and supervision of the Port Chester Fire Chief or Assistant Chief, to the extent they do not involve matters for which Rye Brook is required to indemnify Port Chester under paragraph ELEVENTH.

THIRTEENTH: Port Chester and Rye Brook shall each provide general liability insurance with minimum limits equal to those currently maintained under their respective insurance program. Port Chester and Rye Brook may maintain umbrella insurance coverage to cover these minimum liabilities. Rye Brook and Port Chester will each be named as an additional named insured on the other's General Liability Policies in relation to matters covered by this Agreement. Each Village shall provide the other Village with a Certificate(s) of Insurance verifying that these coverages are in effect. Each Village may choose to satisfy any or all of its obligations hereunder by a program of self-insurance and the amounts of such self-insured retention shall be provided to the other.

FOURTEENTH: An amount representing seven-eighths (7/8ths) of the proceeds of taxes on fire insurance premiums distributed to Rye Brook under Article 91 of the Insurance Law (known as 2% money), accruing after the commencement of services hereunder, shall be paid by Rye Brook to the Port Chester Fire Department promptly after receipt thereof for use and distribution consistent with applicable law.

FIFTEENTH: The "Port Chester – Rye Brook Fire Advisory Board" is hereby continued and shall consist of five (5) members, of which four (4) members shall be voting members. Of the four (4) voting members, one member shall be the Port Chester Village Manager (or acting Port Chester Village Manager), one member shall be the Rye Brook Village Administrator (or acting Rye Brook Village Administrator), one member shall be an elected official appointed by the Port Chester Board of Trustees to serve at its pleasure, and one member shall be an elected official appointed by the Rye Brook Board of Trustees to serve at its pleasure. The Port Chester Fire Chief shall serve on the Board, ex officio, as a non-voting member. The Port Chester-Rye Brook Fire Advisory Board shall act in an advisory capacity to the Port Chester and Rye Brook

Village Boards. The governing boards of both villages shall review the Fire Advisory Board's recommendations and, if acceptable, shall cause this Agreement to be amended consistent with applicable law.

- (a.) The Port Chester – Rye Brook Fire Advisory Board shall act by the majority vote of its total voting membership, may adopt and amend rules of procedure, and shall select a chair from among its voting members.
- (b.) The Port Chester – Rye Brook Fire Advisory Board shall:
 - i. Annually review the proposed fire protection budgets for Port Chester and Rye Brook and may render an advisory recommendation to the Port Chester and Rye Brook Boards of Trustees, respectively, as may be deemed warranted; and
 - ii. Study and make recommendations as to the best use of both Village departments' personnel and equipment between the two communities.
 - iii. Meet with the Mayors and/or Board of Trustees of Port Chester and/or Rye Brook to discuss fire protection as may be deemed warranted
 - iv. Study and develop policy recommendations on the management of the fire department, including, but not limited to more efficient allocation of firefighter personnel and equipment in the fire service response area(s), sharing of resources, joint training, joint procurement, mutual and automatic aid, and other potential cost-efficiencies.
 - v. Consider and approve any modifications to the Standard Operating Guidelines (SOG's), based upon recommendations of the Fire Chief. It is acknowledged that the current (2008) SOG's have been previously

reviewed by the Fire Advisory Board and are hereby accepted by the Village of Port Chester, the Port Chester Fire Department, and the Village of Rye Brook and are incorporated by reference herein.

SIXTEENTH: The failure of Port Chester or Rye Brook to provide any of the services hereunder shall not be deemed a breach of this Agreement, if such failure is caused by “Force Majeure”, to wit, acts of God, acts of a public enemy, acts of the Federal, State or County Government, or other acts and conditions of a similar nature. No person or party, other than the parties hereto, shall be deemed to be a beneficiary under this Agreement, nor is this agreement intended, in any manner, to create any rights or cause(s) of action, in favor of or in behalf of any third party against either Port Chester or Rye Brook.

SEVENTEENTH: Service of all written notices to the Village of Port Chester shall be by certified or registered mail addressed to: Village Clerk, Village of Port Chester, 222 Grace Church Street, Port Chester, New York 10573. Services of all written notices to the Village of Rye Brook shall be by certified or registered mail address to: Village Clerk, Village of Rye Brook, 938 King Street, Rye Brook, New York 10573.

EIGHTEENTH: Port Chester and Rye Brook each affirm that it has held a public hearing on this Agreement prior to the execution of the same.

NINETEENTH: This Agreement may not be assigned or subcontracted by either Port Chester or Rye Brook without the prior written consent of the other.

TWENTIETH: This Agreement constitutes the entire agreement of the parties and may not be changed except in writing signed by both Port Chester and Rye Brook.

TWENTY-FIRST: The Port Chester Fire Chief shall provide a report to the Rye Brook Board of Trustees on fire service issues on or about the month of January of each year, and at other times upon special request of Rye Brook. The annual report shall include, at a minimum, (a) the status of equipment and (b) alarm responses by volume and type of call for the prior calendar year.

TWENTY-SECOND: Port Chester and Rye Brook affirm their long-standing contractual relationship and are committed to ensuring that such relationship will continue to the benefit of both communities. The parties agree to perform their mutual obligations under this Agreement in good faith. Port Chester and Rye Brook will each endeavor notify the other of their intentions regarding negotiation of a successor Agreement at least one year prior to the expiration of this Agreement.

TWENTY-THIRD : If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the agreement and the application of such provisions to such persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

TWENTY-FOURTH: In the event that a dispute arises concerning the interpretation or application of the terms of this Agreement, either Village shall submit their dispute in good faith to mediation. Such mediation shall be conducted by a single mediator chosen by the parties. Upon the failure to agree upon a mediator one shall be selected in accordance with the applicable rules of the American Arbitration Association.

The mediator shall mediate the dispute until he/she declares that an impasse has occurred. Such declaration shall not take place prior to ninety (90) calendar days following the first

mediation session. The cost of the mediator shall be shared equally by the parties. Following such declaration of impasse, either Village shall be free to pursue their rights under this Agreement through litigation. Notwithstanding the above, either party may seek temporary and/or permanent injunctive relief or other equitable relief to remedy or prevent irreparable harm.

TWENTY-FIFTH: The provisions of this Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

TWENTY-SIXTH: The Agreement may be executed in two or more counterparts, each of which together shall constitute one and the same instrument but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile or transmission or by e-mail delivery of an "ADOBE PDF" format data file, such signature shall create a valid and binding obligation of the party executing it (or on whose behalf it is executed) with the same force and effect as if this facsimile or "PDF" signature page was an original.

IN WITNESS WHEREOF, after a public hearing held individually by each of the undersigned Villages, Port Chester has caused this Agreement to be signed by its Mayor and Village Manager, and Rye Brook has caused this Agreement to be signed by its Mayor and Village Administrator and they each have caused their respective corporate seals to be hereunto affixed the day and year above written.