

MUNICIPAL COOPERATION AGREEMENT FOR
THE SUSTAINABLE WESTCHESTER ALTERNATIVE FUEL PROGRAM

This **MUNICIPAL COOPERATION AGREEMENT**, dated as of the ____ day of _____, 2018 is entered into by and among those several municipal corporations, organized and existing under the laws of the State of New York, which may from time to time execute and deliver this Agreement, thereby agreeing to be bound by its terms and conditions, and which are hereinafter individually referred to as a “Participant” and collectively referred to as the “Participants.”

RECITALS

WHEREAS, Article 5-G of the New York General Municipal Law authorizes municipal corporations to enter into agreements for the performance or exercise of services, functions, powers or activities on a cooperative or contract basis among themselves or one for the other; and

WHEREAS, Section 119-n of the General Municipal Law defines the term “municipal corporation” for the purposes of Article 5-G as a county outside the city of New York, a city, a town, a village, a board of cooperative educational services, a fire district or a school district; and

WHEREAS, each of the Participants is a “municipal corporation” as defined above; and

WHEREAS, Electric Vehicles (“EVs”)...

- ... cost 50-70% less in fuel to operate than combustion engines;
- ... have 90% fewer parts and are less expensive to maintain;
- ... produce zero emissions and reduce local air pollution;
- ... dramatically decrease greenhouse gases;
- ... are growing worldwide at an annual rate of 70% per year; and

WHEREAS, the Participants wish to enter into a cooperative agreement for the purpose of identifying and qualifying auto dealers and manufacturers interested in EV Discounts for Municipal Fleets and in comarketing programs and aggregation discounts for municipal, institutional & private citizen purchases of plug in electric passenger vehicles, plug-in hybrid electric vehicles, electric vehicle charging systems, electric landscaping equipment, and such other related Alternative Fuel equipment and services (collectively “AF Equipment”) that advance Participants’ sustainability goals and facilitate the deployment of AF Equipment within Westchester County;

IN CONSIDERATION OF the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Participants covenant and agree as follows:

1. PARTICIPANTS

The Participants hereby designate themselves under this Agreement as the Sustainable Westchester Alternative Fuel Program (“SW AFP”) for the purpose of soliciting bids for municipal fleets as well as comarketing and aggregate purchasing of EVs and other AF Equipment for businesses and private citizens.

The following Participants shall constitute the initial membership of the SW AFP: _____ . Membership in the SW AFP may be offered to any municipal corporation, as that term is defined in Section 119-n of the General Municipal Law, within the State of New York.

Notwithstanding anything to contrary set forth in this Agreement, admission of new Participants shall not require amendment of this Section 1. Membership shall be subject to the terms and conditions set forth in this Agreement, any amendments hereto, and applicable law.

2. JOINT SERVICE DESCRIPTION

The Participants hereby agree to cooperatively solicit bids (“IFBs”) and/or proposals from automobile dealers and manufacturers interested in offering Participants discounts on AF Equipment for their Fleets as well as offering their respective constituents discounted AF Equipment sales and leases, and co-marketing the availability of such discounts with the Participants.

3. PARTICIPATION

Participants shall each execute and deliver to the Administrative Agent (as defined below) a counterpart of this Agreement, together with a resolution authorizing participation in the SW AFP, duly adopted by the Participant’s governing body substantially in the form annexed to this Agreement as Exhibit A. Each Participant hereby agrees to:

- a. Cooperate with the SW AFP and the Administrative Agent in the execution of the Administrative Agent’s duties and functions as set forth herein; and
- b. Provide promptly such information to the Administrative Agent as the Administrative Agent may reasonably request in order for the Administrative Agent to execute its duties and functions as set forth herein.

4. TERM AND RENEWAL

Each Participant’s contractual commitment to participate under this Agreement shall be for a period of five (5) years from the date that the Participant adopts a resolution authorizing the execution of this Agreement and participation in the SW AFP. Participation may be renewed by a Participant’s delivery to the Administrative Agent of an authorizing resolution which adopts the most current terms of this Agreement.

5. MANAGEMENT

Administrative services and duties required by this Agreement shall be performed by the Administrative Agent. The Administrative Agent shall be Sustainable Westchester, Inc., a New York not-for-profit corporation. The business, property, affairs, and activities of the Administrative Agent shall be governed by its Board of Directors (the “Board of Directors”) in accordance with its bylaws. The Board of Directors, which consists of representatives elected by the Participants in accordance with the By-Laws, shall also be the governing body of the SW AFP.

6. AUTHORITY AND RESPONSIBILITY OF ADMINISTRATIVE AGENT

a. The Administrative Agent is hereby authorized and hereby agrees to perform the following duties as agent for and on behalf of each Participant:

- i to prepare, disseminate and, if necessary or desirable, advertise, Invitations for Bids IFBs and/or Requests for Proposals (“RFPs”) (each a “Solicitation”) containing appropriate details and bid specifications as the Administrative Agent deems appropriate to solicit offers from car dealers and manufacturers interested in offering Fleet EVs or EV and/or other AF Equipment purchase and/or lease solutions to SW AFP Participants and their respective constituents, and comarketing the availability of such solutions with the Participants. The contents of the Solicitations will be based upon the needs of Participants determined from information provided to the Administrative Agent by the Participants. The bid process shall be conducted in accordance with the requirements of the General Municipal Law. Participants otherwise agree to comply with the requirements of any statute or regulation specifically applicable to them with respect to the advertisement of public bids;
- ii in accordance with such bid specifications, to select one or more qualified AF Equipment dealers or manufacturer (“Provider”) that meets all qualifications deemed appropriate by the Administrative Agent;
- iii to negotiate with a Provider the essential terms of one or more forms of AF Equipment sale or lease agreements, which shall be memorialized in an agreement with SW (the “Provider Agreement”);
- iv to procure, at the Administrative Agents expense, the services of professionals such as consultants, attorneys, independent auditors (each a “Professional” and together, “Professionals”) and any other professional services it deems appropriate to assist the Administrative Agent and the Board of Directors in fulfilling its responsibilities under this Agreement, provided that: (i) the Professionals who will render such service, individually and collectively, shall meet all qualifications deemed appropriate by the Board of Directors; and (ii) the

procurement of such services shall, to the extent necessary, be in compliance with the General Municipal Law;

- v to designate the bank(s) or trust company(ies) in which moneys, if any, received by the Administrative Agent on behalf of Participants shall be deposited;
- vi if applicable, to receive, deposit and, to the extent they are not required for immediate expenditure, temporarily invest moneys received from Participants or from such other sources on behalf of Participants. The deposit and investment of funds, if any, shall in all respects comply with the requirements of Sections 10 and 11 of the General Municipal Law and shall be held in the custody of the Administrative Agent on behalf of the Participants. Participants' moneys may be commingled and administered as a common fund in one or more accounts as determined by the Administrative Agent, provided that such moneys may not be commingled with other moneys or investments of the Administrative Agent;
- vii unless otherwise determined by the Administrative Agent, the fiscal year for the administration of this Agreement shall be May 1 to April 30;
- viii to designate a representative of the Administrative Agent as Chairman of the SW AFP. Except as specifically required herein with respect to the custody of funds, the responsibility for the administration and management of this Agreement shall be delegated to such officers or employees of the Administrative Agent as the Board of Directors shall deem appropriate. The Administrative Agent shall enter into such contracts as it deems appropriate to assist in the administration and management of this Agreement;
- ix to perform such studies and gather such information as it deems appropriate to accomplish the purposes of this Agreement; and
- x to take all such other actions as may be reasonably necessary and appropriate to provide for the efficient administration and management of this Agreement.

b. The Parties agree that the Solicitation documents shall include a provision for, and that the Administrative Agent may enter into a separate written agreement with each Provider that includes terms providing for the payment by the Provider to the Administrative Agent **a success fee of one and one-half percent (1.5%)** of the purchase price (or lease price, as the case may be) per item of AF Equipment sold through the program offered as a result of the Solicitation. The success fee will be built into the prices offered to Participants by the Providers. Under no circumstances will any Participant pay or be charged for a success fee related to any purchase or lease made by any other participant. The foregoing success fee shall be the sole and exclusive compensation paid to the Administrative Agent.

7. AWARD OF CONTRACTS

a. The Participants may, at their discretion, enter into binding agreements, substantially in the form of the template documents developed by the Administrative Agent, with the Provider(s) recommended by the Administrative Agent, provided that each Participant determines to its satisfaction that the Provider(s) is/are responsible, and complies with each of the Participant's terms, conditions, and requirements. The Participants are under no obligation to enter in to any agreement with the Provider(s) recommended for selection through the Solicitation process.

b. Each Participant is responsible for meeting its individual legal, procedural, and other requirements for the award of any contracts as a result of the Solicitation, including, but not limited to, those requirements applicable to each Participant, if any, under applicable law, such as the General Municipal Law, the Public Authorities Law, the Energy Law, City Law, County Law, Town Law, Village Law, the State Finance Law, and its own internal policies, procedures and rules.

8. NON-EMPLOYEES OF PARTICIPANTS

The Administrative Agent's officers and employees who assist or participate in the administration and management of this Agreement shall solely by reason of such role, not be deemed employees of any Participant. No Participant shall have any authority to engage the services of any person as an employee under this Agreement on behalf of the SW AFP. The Administrative Agent shall provide for all necessary services and materials for the administration and management of this Agreement.

9. WAIVER OF CONFLICT RELATED TO PROFESSIONALS

Each Participant agrees that the services rendered to the SW AFP or the Administrative Agent by any Professional shall not form the basis for any Participant to claim that such Professional is, or should or shall be, (a) conflicted out of performing services for any other Participant or entity, or (b) disqualified from or otherwise unfit to perform services for any other Participant or entity.

10. TERMINATION OF AGREEMENT

If for any reason, prior to the expiration of its term, the services described in this Agreement can no longer be performed or provided, the Administrative Agent, after consultation with the Board of Directors and with as much prior notice to the Participants as is practical, may in its discretion terminate this Agreement.

11. DISCLAIMER OF WARRANTIES

THE PARTICIPANTS ACKNOWLEDGE AND AGREE THAT NO PARTY TO THIS AGREEMENT HAS MADE NOR HEREBY MAKES ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF ELECTRIC VEHICLES IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF THE PARTICIPANT, NOR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND NO PARTY TO THIS AGREEMENT SHALL BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO THE PARTICIPANT OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OF ELECTRIC VEHICLES. All manufacturers', suppliers', or other warranties, if any, express or implied, with respect to AF Equipment, which are negotiated by the Administrative Agent in connection with this Agreement, are hereby assigned to the respective Participant, and the Participant is hereby authorized to obtain the customary services furnished in connection with such warranties at the Participant's expense.

12. LIABILITY AND RELEASE

The Participants understand that this Agreement only affords a cooperative bidding service and that no Participant is in any way responsible for the sale or lease of AF Equipment unless and until the Participant executes a transaction with a Provider. Each Participant hereby releases the Administrative Agent and all other Participants from any and all claims arising from or related in any way to its participation in this Agreement, except that the Administrative Agent shall be liable solely for negligence in connection with its custody of the Participant's funds, if any, in accordance with this Agreement.

13. ASSIGNMENT AND AMENDMENT

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that no party may assign this Agreement or any of its rights or obligations hereunder. This Agreement may be amended only in writing agreed to by each of the Participants.

14. APPROVAL AND EXECUTION; WARRANTIES AND REPRESENTATIONS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement shall be approved by each Participant's governing body in accordance with the requirements of law applicable to such Participant. By entering into this Agreement, each Participant warrants and represents that this Agreement is within its lawful powers, that this Agreement has been approved by its governing body in compliance with all applicable laws and procedures, that all necessary approvals necessary for execution, delivery and performance by such Participant have been obtained, that no litigation is pending or to its knowledge threatened

regarding its execution, delivery or performance of this Agreement, and that this Agreement is lawful and binding upon it in accordance with its terms.

15. DISPUTE RESOLUTION

Any dispute between or among the Participants arising from or related to this Agreement shall be determined by mediation and, if not successfully mediated, by arbitration. In either case, the proceedings shall be conducted in accordance with the applicable commercial mediation or arbitration rules of the American Arbitration Association, provided that any statutory notice of claim or statute of limitations provisions applicable to the Administrative Agent or to a Participant are also complied with. Unless otherwise agreed by the parties to any such dispute, the mediation and arbitration shall occur at a location within Westchester County reasonably specified by the Administrative Agent.

16. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The venue of any action or proceeding arising from or related to this Agreement shall be Westchester County, New York.

17. MISCELLANEOUS

- a. Each Participant represents and warrants that its governing body has duly authorized its entering into and performing the terms of this Agreement.
- b. Any notice or other communication given under the terms of this Agreement shall be in writing and delivered personally or mailed or delivered by facsimile (with copy delivered by mail) to the last known post office address or telefax number of the party. All notices shall be effective when delivered, deposited in the mail, or delivered by facsimile, whichever first occurs.
- c. Every provision of this Agreement is intended to be severable. If any provision is held to be invalid or unenforceable by a court or administrative agency of competent jurisdiction, all other provisions shall continue in full force and effect.
- d. Paragraph headings have been provided for convenience of reference only and shall not control, affect the meaning of, or be used in the interpretation of any provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized officers of the undersigned.

Date: _____

“Participant”

By: _____
(Signature of Officer)

Its: _____
(Title of Officer)

Date: _____

Sustainable Westchester, Inc.
“Administrative Agent”

By: _____
(Signature of Officer)

Its: _____
(Title of Officer)

EXHIBIT A

RESOLUTION AUTHORIZING PARTICIPATION IN THE SUSTAINABLE WESTCHESTER ALTERNATIVE FUEL PROGRAM

WHEREAS, Article 5-G of the New York State General Municipal Law authorizes municipal corporations to enter into cooperative agreements for the performance or exercise of services, functions, powers or activities on a cooperative or contract basis among themselves or one for the other,

WHEREAS, Section 119-n of the General Municipal Law defines the term “municipal corporation” for the purposes of Article 5-G as a county outside the city of New York, a city, a town, a village, a board of cooperative educational services, a fire district or a school district;

WHEREAS, the {Village}{Town} of is a “municipal corporation” as defined above;

WHEREAS, Electric Vehicles (“EVs”)...

- ... cost 50-70% less in fuel to operate than combustion engines;
- ... have 90% fewer parts and are less expensive to maintain;
- ... produce zero emissions and reduce local air pollution;
- ... dramatically decrease greenhouse gases;
- ... are growing worldwide at an annual rate of 70% per year; and

WHEREAS, this Board wishes for this municipal corporation to become or to remain a Participant pursuant to the Municipal Cooperation Agreement for the Sustainable Westchester Alternative Fuel Program dated the ____ of _____, 2017(2018) (the “Agreement”), among municipal corporations collectively identified as the Sustainable Westchester Alternative Fuel Program (“SW AFP”) upon the terms of the Agreement;

NOW THEREFORE, BE IT RESOLVED that the Board hereby determines that it is in the interests of the {Village}{Town} of _____ (hereinafter “Participant”) to participate in the SW AFP, and hereby authorizes and directs *_{name or title of representative}_* to sign the Agreement on Participant’s behalf and further authorizes Participant’s officers and employees to execute such other documents and take such other actions as may be necessary or appropriate to carry out the intent of this resolution; and

BE IT FURTHER RESOLVED that the Participant agrees to participate in future municipal cooperative bids pursuant to the Agreement and subject to subsequent approval by this Board; and

BE IT FURTHER RESOLVED that the Participant authorizes the Administrative Agent (as defined in the Agreement), in accordance with the requirements of the General Municipal Law to prepare, disseminate and, if necessary or desirable, advertise, an Invitation to Bid (“IFB”) for fleet/aggregate purchases of EVs and other alternative fuel equipment (collectively “AF Equipment”) and Request for Proposals (“RFPs”) containing appropriate details and bid specifications as the Administrative Agent deems appropriate to solicit offers from car dealers and manufacturers interested in offering AF Equipment purchase and/or lease solutions to Participant and its constituents, and comarketing the availability of such solutions with Participant, or to accept or reject any or all such bids; and

BE IT FURTHER RESOLVED that the actions of the Administrative Agent heretofore taken on behalf of the Participant in connection with the preparation and issuance of the Request for Proposals are hereby ratified and approved; and

BE IT FURTHER RESOLVED that the officers and employees of Participant are authorized to execute such other documents and take such other actions as may be necessary or appropriate to carry out the intent of this resolution.

I certify that the foregoing resolution was duly adopted by the governing body named therein at a duly convened meeting thereof, held upon due notice and in accordance with all applicable laws, charters, by-laws and ordinances, including but not limited to the Open Meetings Law, as follows:

Date of Meeting: _____

Vote: Yes _____
Abstaining/Absent _____

No _____

Clerk of governing body
of municipal Participant

Date