

*Late item E-8*

**TOWN OF HARRISON  
VILLAGE OF HARRISON  
ATTORNEY'S OFFICE**

**MEMORANDUM**

---

**TO:** Ronald W. Belmont, Supervisor  
Members of the Village Board

**FROM:** Fred J. Castiglia, Deputy Town Attorney *FJC*

**DATE:** November 30, 2012

**RE:** Inter-municipal Agreement between the Town of Harrison  
and Westchester County for Police Academy Instructors

Attached herewith is a copy of the above referenced Agreement between the County of Westchester and the Town of Harrison for police instructors. The term of this Agreement shall be for five (5) years commencing on March 21, 2012 and expiring on March 20, 2017.

I have reviewed the Agreement, deemed it to be in order, and accordingly, recommend that the Town Board approve the Agreement and authorize the Supervisor to execute same.

FJC:ap  
Attachment  
cc: Officer Kevin Kraus

TOWN CLERK  
HARRISON, N.Y.

2012 NOV 30 PM 3:35

RECEIVED

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between:

**THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (hereinafter referred to as the "County")

and

\_\_\_\_\_ a municipal corporation of the State of New York having an office and place of business at \_\_\_\_\_, New York (hereinafter referred to as the "Municipality")

**WHEREAS**, the County has a police training facility located in Valhalla, New York; and

**WHEREAS**, under New York State Law a newly appointed police officer of any county, city, town, village or police district ("Police Officer") must satisfactorily complete an approved municipal police basic training program within 12 months of being hired and may also be required as part of ongoing training to take additional courses as part of their employment requirements, including seminars, conferences, exercises, drills or workshops at the County's police training facility as well as at any off-site location where such training takes place, (collectively, the "Police Academy"); and

**WHEREAS**, in order to comply with New York State Law, Police Officers from the County and other municipalities attend the Police Academy; and

**WHEREAS**, from time to time the Municipality will assign one or more of its police officers who are certified police instructors ("Instructor"), as part of his or her employment duties, to the Police Academy to provide instruction.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the parties agree as follows:

**Section 1.** The County and the Municipality agree that the County may utilize Instructors provided by the Municipality to teach Police Officers training courses, seminars, conferences, exercises, drills or workshops conducted at the police training facility located in Valhalla, NY as well as any off-site location where such training takes place (collectively, the

---

“Police Academy”). Instructors must submit a lesson plan as well as a copy of any other presentation material to be used in conjunction with the lesson plan, excluding copyrighted material, to the Westchester County Commissioner of Public Safety, or his duly authorized designee (the “Commissioner”). Once approved, the Instructor shall teach in accordance with the approved lesson plan. Under no circumstances shall the Instructor cause any portion of any Police Academy training program to be audio or video recorded without the written consent of the Commissioner. During the period of time the Instructor is teaching at the Police Academy, the Instructor shall be under the control and direction of the Commissioner. Notwithstanding the foregoing, during the time that the Instructor is teaching at the Police Academy, in the event of a conflict because an Instructor is directed to act by both the Commissioner and the Municipality, the Commissioner’s direction shall take priority.

**Section 2.** The Municipality agrees that the Instructor will retain his or her status as an employee of the Municipality during the time that the Instructor is teaching at the Police Academy. The Municipality shall remain responsible for establishing the salary and benefits of the Instructor assigned to the Police Academy and for making all payments due the Instructor. Nothing contained herein shall be intended to create an employer/employee or agency relationship between the County and the Instructor or to confer on the Instructor any rights other than those that accrue to the Instructor as an employee of the Municipality.

**Section 3.** The Municipality agrees to cooperate with the County in coordinating and organizing the use by the County of the Instructors. In no event will the Municipality charge any indirect cost to the County for the administration or implementation of this Agreement.

**Section 4.** ~~The County shall defend and indemnify the Municipality in connection~~ with any action or proceeding brought by a party other than the County or the Instructor against the Municipality, its officers, employees and/or elected officials, based on a claim or cause of action arising out of the Instructor's acts or omissions while acting within the scope of his or her duties as an Instructor at the Police Academy, provided that the Municipality shall (i) give the County prompt written notice of such action or proceeding, by delivering to the Westchester County Attorney ("County Attorney") the original or a copy of any summons, complaint, process, notice, demand, pleading or other communication regarding such claim, within five (5) days after the Municipality receives such document and prior to the entry of any default judgment; (ii) provide the County with a written request from the Municipality for defense and indemnification and (iii) give the County the full cooperation of both the Municipality and the Instructor in the defense of such action or proceeding and in defense of any action or proceeding against the County based upon the same act or omission. The duty to defend and indemnify shall not arise where injury or damage resulted from intentional wrongdoing or recklessness on the part of the Instructor. The County Attorney shall have full and complete discretion and control over the conduct of such defense.

The Municipality may, at any time, seek other representation and make an application for substitution of counsel of its choosing. In such event, the County shall have no further liability

or responsibility to provide defense or indemnification for the Municipality pursuant to this Agreement.

If, in any action or proceeding where the Municipality and the County, its officers, employees or elected officials are named as co-defendants, facts shall be disclosed such that the interests of the Municipality and the County shall, in the sole opinion of the County Attorney, be adverse, then the County Attorney shall, upon written notice, decline or withdraw from representation of the Municipality. The written notice shall, to the extent practicable, set forth the reason for such conflict. In the event the County Attorney makes such a determination, then the County shall seek other representation, and make an application for substitution of counsel of the County's choosing, to defend the Municipality under this Agreement.

In no event shall the County's obligation to provide defense and indemnification pursuant to this paragraph be construed to include claims arising outside the scope of the Instructor's teaching services or in connection with the Instructor's travel to and from the Police Academy to carry out such teaching services.

In no event shall the County have any obligation to the Municipality or its Instructor for any claim raised or benefits provided pursuant to New York General Municipal Law Section 207-c. Additionally, if an Instructor is injured during the time he or she is teaching at the Police Academy, it is understood that the Instructor, as an employee of the Municipality, would apply for coverage under the Municipality's workers compensation policy.

**Section 5.** Except as set forth in Section 4 above, the Municipality agrees:

(a) that, except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees and agents from and against all liability, damage, claims, demands, costs, judgments, attorneys' fees or loss arising directly or indirectly out of this Agreement, including without limitation the acts or omissions hereunder by the Municipality or the Municipality's Instructors or third parties under the direction or control of the Municipality, and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and for which indemnification is required to be provided under paragraph (a) above, and to bear all other costs and expenses related thereto.

**Section 6.** This Agreement shall commence on March 21, 2012 and continue in full force and effect through March 20, 2017.

**Section 7.** This Agreement may be terminated by either party by giving written notice of the termination to the other party not less than thirty (30) days prior to the effective date of such termination.

**Section 8.** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses set forth below or to such other addresses

as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner - Sheriff of Public Safety  
Saw Mill River Parkway  
Hawthorne, New York 10532

---

With a copy to:

County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

To the Municipality:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 9.** 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.

**Section 10.** This Agreement shall not be enforceable until it has been approved by the Westchester County Board of Legislators and the Westchester County Board of Acquisition and Contract and the governing body of the Municipality and has been signed by both parties and approved by the Office of the County Attorney.

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

**THE COUNTY OF WESTCHESTER**

By \_\_\_\_\_  
George N. Longworth  
Commissioner -Sheriff of Public Safety

**MUNICIPALITY**

By \_\_\_\_\_  
(Name and Title)

Approved by the Westchester County Board of Legislators by Act No 2012-117 on the 10<sup>th</sup> day of September 2012.

Approved by the Board of Acquisition and Contract of the County of Westchester on the 11<sup>th</sup> day of October, 2012.

Approved as to form and  
Manner of execution:

\_\_\_\_\_  
Assistant County Attorney  
County of Westchester  
K/O/dps/instructoragr2012.doc

\_\_\_\_\_  
Date

**MUNICIPALITY'S ACKNOWLEDGEMENT**

STATE OF NEW YORK )

) ss.:

COUNTY OF WESTCHESTER )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, to  
me known, and known to me to be the \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, the municipal corporation described in and which executed the within  
instrument, who being by me duly sworn did depose and say that he/she, the said \_\_\_\_\_  
\_\_\_\_\_ resides at \_\_\_\_\_ and that he/she is the  
\_\_\_\_\_ of said municipal corporation.

\_\_\_\_\_  
Notary Public      County

**CERTIFICATE OF AUTHORITY**  
(Municipality)

I, \_\_\_\_\_, certify that I am the  
(Officer other than officer signing contract)

\_\_\_\_\_ of the \_\_\_\_\_  
(Title) (Name of Municipality)

(the "Municipality") a corporation duly organized in good standing under the \_\_\_\_\_

(Law under which organized, e.g., the New York Village Law, Town Law, General Municipal Law)

named in the foregoing agreement that \_\_\_\_\_ who signed said  
(Person executing agreement)

agreement on behalf of the Municipality was, at the time of execution \_\_\_\_\_ of  
(Title of such person),

the Municipality, that said agreement was duly signed for on behalf of said Municipality by  
authority of its \_\_\_\_\_ thereunto duly authorized,  
(Town Board, Village Board, City Council)

and that such authority is in full force and effect at the date hereof.

\_\_\_\_\_  
(Signature)

STATE OF NEW YORK )

ss.:

COUNTY OF WESTCHESTER)

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally came \_\_\_\_\_  
whose signature appears above, to me known, and know to be the  
\_\_\_\_\_ of \_\_\_\_\_  
(Title)

the municipal corporation described in and which executed the above certificate, who being by  
me duly sworn did depose and say that he, the said \_\_\_\_\_  
resides at \_\_\_\_\_, and that  
he/she is the \_\_\_\_\_ of said municipal corporation.  
(Title)

\_\_\_\_\_  
Notary Public County