

Village of Sleepy Hollow

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Deputy Mayor

TRUSTEES
Bruce R. Campbell
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Glenn Rosenbloom
Susan MacFarlane
Evelyn R. Stupel
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1874
More than a Legend

Anthony P. Giaccio
Village Administrator
(914) 366-5105

Paula A. McCarthy Tompkins
Village Clerk/Foil Officer
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Sara A. DiGiacomo
Village Treasurer
(914) 366-5144

Janet Gandolfo
Village Attorney
(914) 332-0505

August 23, 2013

I am pleased to announce that the Village of Sleepy Hollow has arrived at an agreement with our sister Village of Tarrytown regarding the pending litigation that has halted the development of the General Motors site.

The agreement, that Mayor Fixell and I have signed, addresses Tarrytown's concerns about the cost of certain traffic mitigation measures Tarrytown believes necessary to undertake.

Through these negotiations, we have arrived at a number for the developer's contribution toward traffic mitigation.

It has always been our wish to build a project that both Villages can be proud of.

Sleepy Hollow is thrilled that this development can now move forward to the next phase, the site plan review.

Kenneth G. Wray
Mayor
Village of Sleepy Hollow

Meeting Date: 08/23/2013
Resolution #: 08/130/2013

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE VILLAGE OF SLEEPY HOLLOW
APPROVING AGREEMENT WITH TARRYTOWN**

WHEREAS, the Mayor and Board of Trustees of the Village of Sleepy Hollow and the Village of Tarrytown ("collectively Tarrytown") commenced a proceeding entitled the Mayor and Board of Trustees of the Village of Tarrytown *et al* against the Mayor and Board of Trustees of the Village of Sleepy Hollow *et al* (Westchester County, Index No. 11630-2011, hereinafter referred to as Tarrytown Article 78 Proceeding); and

WHEREAS, in a Decision, Order and Judgment dated September 12, 2012, the Supreme Court, County of Westchester (Hon. James W. Hubert, JSC), dismissed the Petition filed by Tarrytown in the Tarrytown Article 78 Proceeding; and

WHEREAS, in a Decision and Order dated February 15, 2013, the Supreme Court, County of Westchester (Hon. James W. Hubert, JSC), denied a Motion for Leave to Reargue/Leave to Renew filed by Tarrytown in the Tarrytown Article 78 Proceeding; and

WHEREAS, Tarrytown has filed a Notice of Appeal from the Supreme Court Decision in the Article 78 Proceeding (the "Appeal"); and

WHEREAS, the Villages of Tarrytown and Sleepy Hollow are desirous of resolving the issues set forth in the Article 78 Proceeding and avoid the expense and uncertainty of further litigation; and

WHEREAS, the Board of Trustees of the Village of Sleepy Hollow believes that settling the Article 78 Proceeding is beneficial to the taxpayers of Sleepy Hollow and will allow the filing and review of the site plan application for the development of the General Motors site to proceed without further delay; and

WHEREAS, the attached Agreement between the Village of Tarrytown and the Village of Sleepy Hollow has been reviewed by Special Counsel in the litigation, Joel Sachs, Esq., and Village Counsel and both counsel recommend the Village of Sleepy Hollow enter into the attached Agreement; and

WHEREAS, the Board of Trustees is desirous of acting expeditiously and forthwith regarding this matter; and

WHEREAS, the rules of operation and procedure adopted by the Board of Trustees at the Village Organization meeting held on April 4, 2013 for the 2013-2014 year, allow the Mayor to call a meeting of the Board of Trustees upon 48 hour notice to each member of the Board of Trustees; and

WHEREAS, pursuant to said rules of operation and procedure the Mayor called a meeting to be held on August 23, 2013 at 8 a.m. at Village Hall, 28 Beekman Avenue, Sleepy Hollow, NY; and

WHEREAS, 48 hour notice of said meeting was duly waived by each member of the Board of Trustees; and

WHEREAS, pursuant further to said rules of operation and procedure the Village Clerk noticed the meeting by posting the date, time and place of the meeting in the official newspaper of the Village of Sleepy Hollow, The Journal News, on August 23, 2013 as well as on the Village's official website and the governmental channel (Cablevision Channel 78 and Verizon Channel 43) as soon as was possible after the Mayor's call for the meeting; and

WHEREAS, the Board of Trustees of the Village of Sleepy Hollow has conducted an assessment pursuant to State Environmental Quality Review Act (SEQRA) of the potential environmental impact on the environment of the execution, delivery and performance of the attached Agreement and has determined that they will not have a significant adverse environmental impact because they are in furtherance of a previously approved action and make no significant changes to it;

NOW, THEREFORE BE IT RESOLVED that the Board of Trustees of the Village of Sleepy Hollow hereby approves the attached Environmental Assessment Form and makes the determination set forth in the attached Negative Declaration.

NOW, THEREFORE, BE IT RESOLVED the Board of Trustees of the Village of Sleepy Hollow hereby authorizes the Mayor to execute the attached Agreement.

Moved: Trustee Campbell

Seconded: Trustee Rosenbloom

Vote: All Aye

I, Paul A. McCarthy the undersigned Clerk/Deputy Clerk, do hereby certify that the foregoing is a true copy of an extract duly adopted by the Board of Trustees of the Village of Sleepy Hollow, on the 23 day of August, 2013 and of the whole thereof, and I further certify that the same was entered into the minutes of the meeting of said Board of Trustees held on said date.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 23 day of August, 2013.

Paul A. McCarthy
Clerk/Deputy Clerk

Deputy Clerk do hereby certify that the foregoing is the correct and true copy of the original as the same appears in the records of the Court.

and I further certify that the same was entered into the minutes of the meeting of said Board of Trustees held on _____, 20____, and of the whole thereof, a true copy of an exact duly attested by the Clerk of the Village of Steeple Hollow, on the _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and
day of _____ 20____

AGREEMENT

AGREEMENT made this 23rd day of August 2013 by and between the Village of Sleepy Hollow (“Sleepy Hollow”) and the Village of Tarrytown (“Tarrytown”), collectively “the Parties.”

WHEREAS, on January 25, 2011, the Sleepy Hollow Board of Trustees adopted a Supplemental Environmental Findings Statement for a project (“the Project”) providing for the redevelopment of property owned by General Motors (the “2011 Findings”); and

WHEREAS, on June 7, 2011, the Board of Trustees adopted a Resolution Granting Special Permit and Approving Riverfront Development Concept Plan for the Project (“the Special Permit”); and

WHEREAS, on May 24, 2011, the Mayor and the Board of Trustees of the Village of Tarrytown and the Village of Tarrytown (collectively, “Tarrytown”) commenced a proceeding entitled *The Mayor and Board of Trustees of the Village of Tarrytown, et. al, v. The Mayor and Board of Trustees of the Village of Sleepy Hollow, et. al.* (Westchester County Index No. Index No.: 11630-2011, hereinafter the “Tarrytown Article 78 Proceeding”) alleging *inter alia* an insufficient review of the traffic impacts of the Project on Tarrytown; and

WHEREAS, in a Decision, Order and Judgment (the “Supreme Court Decision”) dated September 12, 2012, the Supreme Court, County of Westchester (Hon. James W. Hubert, JSC), dismissed the Petition filed by Tarrytown in the Tarrytown Article 78 Proceeding; and

WHEREAS, in a Decision and Order dated February 15, 2013, the Supreme Court, County of Westchester (Hon. James W. Hubert, JSC), denied a Motion for Leave to Reargue/Leave to Renew filed by Tarrytown in the Tarrytown Article 78 Proceeding; and

WHEREAS, Tarrytown has filed a Notice of Appeal from the Supreme Court Decision in the Tarrytown Article 78 Proceeding (the “Appeal”); and

WHEREAS, the Parties wish to resolve the issue of providing traffic mitigation measures in the Village of Tarrytown without further litigation; and

WHEREAS, the Parties have been represented by counsel, and are not entering into this Agreement under duress or under disability of any kind; and

WHEREAS, the Parties have read this Agreement and understand its terms and consequences; and

WHEREAS, the 2011 Findings, and/or the Special Permit set forth certain traffic mitigation measures to be implemented within the municipal boundaries of Tarrytown, all of which were subject to the acceptance and approval of all applicable jurisdictions, including the New York State Department of Transportation (“DOT”) and Tarrytown; and

WHEREAS, Tarrytown raised objections to certain traffic mitigation measures proposed to be implemented within the municipal boundaries of Tarrytown as set forth in the 2011 Findings and/or the Special Permit; and

WHEREAS, Tarrytown consents to the implementation of the mitigation measures for Tarrytown (described in paragraph 2 below and hereinafter referred to as “the Mitigation Measures”) in accordance with the terms of this Agreement; and

WHEREAS, the Mitigation Measures will mitigate the potential traffic impacts in the Village of Tarrytown from the Project to the maximum extent practicable and improve future traffic operations in the Village of Tarrytown; and

WHEREAS, the Mitigation Measures will satisfy all traffic mitigation obligations arising from the Project within the municipal boundaries of Tarrytown; and

WHEREAS, Tarrytown will prepare or cause to be prepared all required engineering studies and designs for the Mitigation Measures, will apply for and seek to obtain all necessary approvals and/or permits necessary for such Mitigation Measures and will perform or cause to be performed such Mitigation Measures as set forth herein below; and

WHEREAS, as set forth below, the Parties have agreed upon the amount of the contribution that Sleepy Hollow shall make or cause to be made to Tarrytown for a fair share (the “Fair Share”) of the costs of the Mitigation Measures in consideration of Tarrytown not proceeding with its Appeal of the Supreme Court Decision;

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, the terms and provisions herein, and other good and valuable consideration, the receipt of which is hereby acknowledged by all Parties, it is hereby **AGREED** as follows:

1. All **WHEREAS** provisions set forth above are incorporated herein as if set forth fully and verbatim and are acknowledged by each Party to be true and accurate.

2. The following Mitigation Measures to be performed by Tarrytown or its contractors within the municipal boundaries of Tarrytown will provide comprehensive traffic mitigation within Tarrytown to the maximum extent practicable:

(a) (i) The elimination of up to four (4) parking spaces on the southbound side of Broadway just north of Main Street, and/or on the northbound side of Broadway just south of Neperan Road, and (ii) the relocation of an existing fire hydrant on the southbound side of Broadway;

(b) The completion of a warrant analysis for and, if permitted by the Nw York DOT, the installation of a traffic signal at the intersection of Broadway and West Franklin Street;

(c) The implementation of traffic calming measures in the Miller Park neighborhood of Tarrytown;

(d) The installation of a total of two traffic signals on the H Bridge at the point on both the east side and west side of the bridge where the ramps connect to that portion of the structure that crosses the railroad tracks; and

(e) The installation of a traffic signal at the intersection of West Franklin Street and White Street;

(the “Mitigation Measures”); and

3. The Parties stipulate and agree that Sleepy Hollow shall contribute or cause to be contributed toward implementation of the Mitigation Measures, the aggregate sum of Three Hundred Eighty-Four Thousand (\$384,000.00) Dollars (the “Fair Share Contribution”) in full and complete satisfaction of the Fair Share obligation for the costs of the Mitigation Measures.

4. Tarrytown shall use diligent and good-faith efforts to cause all of the Mitigation Measures to be approved by all applicable jurisdictions, including the New York State DOT. Other than the Fair Share Contribution as expressly set forth herein, Tarrytown shall not seek from Sleepy Hollow, General Motors (“GM”), or any developer of the Project any additional obligation to design, construct, or contribute any portion of the costs for any other traffic mitigation measure within the municipal boundaries of Tarrytown, but Sleepy Hollow shall and to the extent necessary Sleepy Hollow shall require the Developer of the Project (to the extent Sleepy Hollow may legally set such requirements) to cooperate (without additional cost or significant investment of time) to the extent it may be necessary to implement the Mitigation Measures.

5. All other traffic calming and mitigation measures, not required to implement the Mitigation Measures within the municipal boundaries of Tarrytown as set forth in the 2011 Findings, and/or the Special Permit may be performed by Tarrytown in its sole discretion, and at its sole and exclusive expense, if it deems such measures to be appropriate, and neither Sleepy Hollow, GM or any developer of the Project shall have any obligation to pay for any portion of such expense.

6. Sleepy Hollow shall deposit or cause to be deposited in escrow with Keane & Beane PC ("Escrow Agent") the Fair Share Contribution upon the later of (i) within one hundred and twenty (120) days after the closing of title to a developer of the Project (or a determination by GM to proceed with development without a third party developer), or (ii) within one hundred and twenty (120) days after Preliminary Subdivision Approval and Site Plan Approval for the Project have been granted. After the Fair Share Contribution is deposited with the Escrow Agent, the Fair Share Contribution shall be released, without delay, by the Escrow Agent to Tarrytown to pay for the Mitigation Measures for Tarrytown, within five (5) business days of written notice to the Escrow Agent, of each of the following, with the understanding that no specific portion of the Fair Share Contribution is attributable to any one or more of the Mitigation Measures:

a. Ten (10%) percent within thirty (30) days after Tarrytown enters into a written contract with an engineer to prepare a warrant applications and/or design of any two (2) or more of the Mitigation Measures, one of which shall be the warrant application for the installation of the traffic light at Broadway and West Franklin Street referenced in paragraph 2 (b) above,

(which traffic light is subject to and must be approved by the New York State DOT;

b. Twenty (20%) percent within thirty (30) days after Tarrytown receives all necessary approvals and/or building permits, or commits to proceeding (where no permits or approvals are required from other entities) with two or more of the Mitigation Measures;

c. Twenty- five (25%) percent within thirty (30) days after work commences by Tarrytown or its contractor on two or more of the Mitigation Measures; provided, however, that such release of the Fair Share Contribution shall not occur earlier than when GM or the developer of the Project commences construction of the Project;

d. Forty- Five (45%) within thirty (30) days after two or more of the Mitigation Measures are completed and final approvals and/or certificates of completion for same have been issued.

7. The Fair Share Contribution is specifically intended to be used to pay for the Fair Share of the costs for implementing the Mitigation Measures, and shall not be used by Tarrytown for any other purpose whatsoever. Upon written request of Sleepy Hollow, Tarrytown shall provide Sleepy Hollow with a written accounting, supported by reasonable back-up documentation, detailing the costs and expenses of the Mitigation Measures and the expenditure of the Fair Share Contribution, provided that so long as the Fair Share Contribution is used for matters described in paragraph 2, there shall be no basis for objection to the utilization by Tarrytown of the funds contained in the Fair Share Contribution

8. In the event any of the conditions in paragraphs 6(a) through (d) (the “Conditions”) are not achieved by or before Five (5) years from the date the first payment is released from Escrow to Tarrytown by the Escrow Agent, such that a portion of the Fair Share Contribution (the “Escrow Balance”) remains held in Escrow as of that date, the Escrow Balance shall be returned to the depositor or depositors following seven (7) days written notice by the Escrow Agent by Federal Express delivery to both Tarrytown’s Mayor and Village Administrator at the then current Village Hall address, provided however that the Fair Share obligation shall continue notwithstanding the return of the Escrow Balance, and the funding of the Fair Share Contribution to Tarrytown shall take place thereafter upon achievement of said Conditions.

9. Tarrytown shall not take any action or cause any other party to take any action to obstruct, impede or interfere with traffic flow from Sleepy Hollow into Tarrytown, including but not limited to, at the location of the H-Bridge, except that Tarrytown may route traffic and/or install such additional traffic control devices as, in its sole discretion, it deems appropriate to provide for the reasonable flow of traffic between Sleepy Hollow and Tarrytown, provided such measures shall not unreasonably interfere with the flow of traffic between Sleepy Hollow and Tarrytown.

Notwithstanding the foregoing, in the event Tarrytown proposes to install traffic control devices or signage on or leading to the H Bridge, other than the two traffic signals contemplated by this Agreement, such additional traffic control devices or signage shall not be installed without the consent of Sleepy Hollow, which consent shall not be unreasonably withheld, delayed or denied.

10. No party hereto is an infant, incompetent person for whom a committee has been appointed or a conservatee.

11. This Agreement shall be governed by the laws of the State of New York and the Parties consent to the jurisdiction of the Supreme Court of the State of New York Westchester County for the enforcement of this Agreement.

12. In the event any third-party brings an action challenging any portion of this Agreement the Parties shall use their best efforts to defend against such action.

13. Tarrytown shall withdraw, with prejudice, its Appeal filed herein within three (3) business days of the date of exchange of a fully executed copy of this Agreement and shall cease all efforts to delay or prevent implementation of the Project as currently approved.

14. The provisions of this Agreement are severable. If any provision of this Agreement shall be prohibited, found to be invalid under applicable law, or disregarded or stricken by a Court of competent jurisdiction, the other provisions shall remain fully valid and enforceable.

15. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their agents, successors and assigns.

16. This Agreement represents the entire agreement between the Parties hereto, may not be modified orally, and may only be amended pursuant to a writing signed by all Parties. None of the Parties is entering into this Stipulation in reliance upon any oral representations.

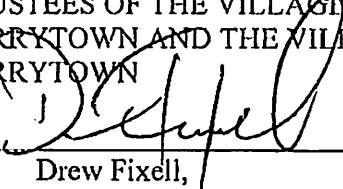
17. This Agreement has been prepared after negotiations between the Parties and/or their respective counsel, and if any ambiguity is contained herein, then in resolving said ambiguity, no weight shall be given in favor or against any party solely on an account of his, her or their drafting of this Agreement.

18. This Stipulation may be executed in counterparts, which taken together, shall constitute one complete document. Facsimile and electronic signatures shall be deemed original signatures.

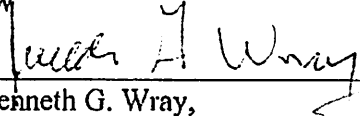
19. Tarrytown and Sleepy Hollow represent that they are each duly authorized to enter into this Stipulation pursuant to duly issued Resolutions adopted by the Board of Trustees of Sleepy Hollow on August 23, 2013 and the Board of Trustees of Tarrytown on August 22, 2013.

filed
Dated: August _____, 2013

THE MAYOR AND THE BOARD OF
TRUSTEES OF THE VILLAGE OF
TARRYTOWN AND THE VILLAGE OF
TARRYTOWN

By: 
Drew Fixell,
Mayor of the Village of Tarrytown

THE MAYOR AND THE BOARD OF
TRUSTEES OF THE VILLAGE OF SLEEPY
HOLLOW AND THE VILLAGE OF SLEEPY
HOLLOW

By: 
Kenneth G. Wray,
Mayor of the Village of Sleepy Hollow