

NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT, dated as of January 21, 1997, agreed to and executed by and among the following parties (collectively, the "Parties" and individually a "Party"):

The City of New York, a municipal corporation with its principal office at City Hall, New York, New York 10007 (the "City");

The State of New York, with its principal office at The Capitol, Albany, New York 12224 (the "State");

The United States Environmental Protection Agency, an executive agency of the United States, organized and existing under the laws of the United States, with its principal office at 401 M Street, S.W., Washington, D.C. 20460 ("USEPA");

The Coalition of Watershed Towns, an inter-municipal body composed of the municipalities located wholly or partially within that portion of the New York City Watershed that lies west of the Hudson River, which have duly entered into a cooperative agreement pursuant to Section 119-o of the New York General Municipal Law, having its principal office at Delhi, New York (the "Coalition");

The Catskill Watershed Corporation, an independent locally-based and locally administered not-for-profit corporation, organized and existing under section 1411 of the New York State Not-For-Profit Corporation Law and having its principal office in Margaretville, New York ("CW Corporation")

The County of Putnam, New York, a municipal corporation with its principal office at 40 Gleneida Avenue, Carmel, New York 10512 ("Putnam County");

The County of Westchester, New York, a municipal corporation with its principal office at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 ("Westchester County");

Each of the counties, towns and villages identified in Attachment A appended hereto and made a part hereof, constituting municipal corporations and having their principal offices at the respective addresses shown for each in Attachment XX (collectively, the "Municipal Parties" and individually a "Municipal Party"); and

Each of the environmental organizations identified in Attachment B appended hereto and made a part hereof, constituting not-for-profit corporations and having their principal offices at the respective addresses shown for each in Attachment XX (collectively, the "Environmental Parties" and individually an "Environmental Party").

WITNESSETH:

1. WHEREAS, the Parties, being the State of New York, the City of New York, the Coalition of Watershed Towns (whose membership is set forth in Attachment E), the CW Corporation, the United States Environmental Protection Agency, Westchester County, Putnam County, the Municipal Parties, and the Environmental Parties recognize that an adequate supply of clean and healthful drinking water is vital to the health and social and economic well being of the People of the State of New York; and

2. WHEREAS, it is the intention of the Parties to assure the continued adequate supply of exceptional quality drinking water for the eight million residents of the City of New York and the one million New York State residents outside the City who depend upon the New York City drinking water supply system; and

3. WHEREAS, the New York City water supply system is a monumental hydraulic and civil engineering achievement, consisting of an interconnected series of reservoirs, controlled lakes, and several hundred miles of underground tunnels and aqueducts that collect and transport approximately 1.5 billion gallons of water daily to a customer distribution system containing thousands of miles of water mains; and

4. WHEREAS, the primary sources of water for the New York City water supply system originate in portions of the Catskill Mountain Region and the Hudson River Valley, commonly referred to as the watershed of the New York City water supply and its sources (the "Watershed"), which span over 1,900 square miles and portions of eight counties, sixty towns, and twelve villages; and

5. WHEREAS, the Parties agree that the New York City water supply is an extremely valuable natural resource that must be protected in a comprehensive manner; and

6. WHEREAS, the Parties recognize that the goals of drinking water protection and economic vitality within Watershed communities are not inconsistent and it is the intention of the Parties to enter into a new era of partnership to cooperate in the development and implementation of a Watershed protection program that maintains and enhances the quality of the New York City drinking water supply system and the economic vitality and social character of the Watershed communities; and

7. WHEREAS, after extensive negotiations the Parties now enter into legally enforceable commitments, as set forth in this Agreement, on issues related to the Watershed protection program, including the Watershed rules and regulations, the land acquisition program, and Watershed partnership initiatives; and

8. WHEREAS, the Parties agree that the City land acquisition program, as described below in Article II, is a purely voluntary program which provides the opportunity to the Watershed communities to review parcels and to provide comments to the City on

potential acquisitions, and that Towns and Villages may exempt areas of their communities from purchase under the City's land acquisition program; and

9. WHEREAS, the Parties agree that the City's land acquisition program, the City's Watershed Regulations, and the other programs and conditions contained in this Agreement, when implemented in conjunction with one another, would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character and planning goals of each of the Watershed communities; and that the City's land acquisition goals insure that the availability of developable land in the Watershed will remain sufficient to accommodate projected growth without anticipated adverse effects on water quality and without substantially changing future population patterns in the Watershed communities; and

10. WHEREAS, the City is currently under a stipulation with the New York State Department of Health which requires the City to design and construct a filtration facility for the Croton System; and

11. WHEREAS, the City has applied for and received an interim filtration avoidance determination from USEPA which declares that the source waters of the Catskill and Delaware Watershed may continue to be used as a public drinking water supply without filtration provided that the City implement measures to assure the continued protection of water quality and the objective criteria of the Surface Water Treatment Rule continue to be met; and

12. WHEREAS, the Parties have agreed to act in good faith and to take all necessary and appropriate actions, in cooperation with one another, to effect the purposes of this Agreement.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein set forth, and of the undertakings of each party to the other parties, the Parties do hereby promise and agree as follows:

ARTICLE I DEFINITIONS

The following terms, as used in this Agreement, shall have the meaning set forth below:

13. "CAPA" means the City Administrative Procedure Act, chapter 45 of the New York City Charter.

14. "Catskill and Delaware System" means the Ashokan, Cannonsville, Kensico, Neversink, Pepacton, Rondout, Schoharie, and West Branch/Boyd's Corner Reservoirs, and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs.

15. "Catskill and Delaware Watershed" means the drainage basins of the Catskill and Delaware System. A map of this watershed is set forth in Attachment C.

16. "City" means the City of New York, a municipal corporation with its principal office at City Hall, New York, New York 10007.

17. "Coalition of Watershed Towns" or "Coalition" means the inter-municipal body composed of the municipalities located wholly or partially within that portion of the New York City Watershed that lies west of the Hudson River, which have duly entered into a cooperative agreement, pursuant to §119-o of the New York General Municipal Law, having its principal office at Delhi, New York. A list of the members of the Coalition is set forth in Attachment E.

18. "Croton System" means the Amawalk, Bog Brook, Cross River, Croton Falls, Diverting, East Branch, Middle Branch, Muscoot, New Croton, and Titicus Reservoirs; Kirk Lake, Lake Gleneida and Lake Gilead ("controlled lakes"); and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs and controlled lakes.

19. "Croton Watershed" means the drainage basins of the Croton System. A map of this watershed is set forth in Attachment D.

20. "December 1993 Filtration Avoidance Determination" or "December 1993 FAD" means the written determination of the United States Environmental Protection Agency, dated December 30, 1993 and signed by Acting Region II Administrator William J. Muszynski, entitled Surface Water Treatment Rule Determination New York City's Catskill and Delaware Water Supplies, declaring that the source waters of the Catskill and Delaware Watershed could continue to be used as a public drinking water supply without filtration provided that the City implement measures to assure the continued protection of water quality and the objective criteria of the Surface Water Treatment Rule continue to be met.

21. "Drainage Basin" means, for the purpose of defining the boundaries of the drainage basin of each reservoir or controlled lake, the area of land that drains surface water into, or into tributaries of, a reservoir or controlled lake of the Catskill and Delaware or Croton Systems.

22. "East of Hudson" or "EOH" means the drainage basins of the specific reservoirs and controlled lakes of the New York City Watershed located east of the Hudson River in the New York counties of Dutchess, Putnam, and Westchester.

23. "East of Hudson Communities" or "EOH Communities" means the municipal corporations (as defined by § 66(2) of the New York General Construction Law, but not including school districts) which are located wholly or partially within the EOH portion of the Watershed. The EOH Communities are set forth below in Attachment G.

24. "ECL" means the New York Environmental Conservation Law.
25. "Effective Date of Agreement" shall be January 21, 1997.
26. "Environmental Parties" means the not-for-profit corporations listed in Attachment B.
27. "GOL" means the New York General Obligations Law.
28. "Governor" means the Governor of the State of New York.
29. "Hamlet" or "Hamlets" means the population centers listed in Attachment R with the boundaries to be established by the Towns pursuant to the procedure set forth in paragraph 68 of this Agreement.
30. "Mayor" means the Mayor of the City of New York.
31. "NYCDEP" means the New York City Department of Environmental Protection, a mayoral agency of the City of New York organized and existing pursuant to the New York City Charter.
32. "NYCDOH" means the New York City Department of Health, a mayoral agency of the City of New York organized and existing pursuant to the New York City Charter.
33. "NYSDEC" means the New York State Department of Environmental Conservation, an executive agency of the State of New York organized and existing pursuant to the New York Environmental Conservation Law.
34. "NYSDOH" means the New York State Department of Health, an executive agency of the State of New York organized and existing pursuant to the New York Public Health Law.
35. "NYSEFC" means the New York State Environmental Facilities Corporation, a public benefit corporation organized pursuant to New York Public Authorities Law § 1280 et seq.
36. "PHL" means the New York Public Health Law.
37. "Primacy Agency" means the United States Environmental Protection Agency or the New York State Department of Health, whichever has primary enforcement responsibility for implementation of the federal Surface Water Treatment Rule (40 CFR § 141.70 et seq.) pursuant to §1413 of the federal Safe Drinking Water Act (42 U.S.C. § 300g-2).
38. "RPTL" means the New York State Real Property Tax Law.

39. "SAPA" means the New York State Administrative Procedure Act and regulations promulgated pursuant thereto (9 NYCRR Part 260).

40. "SEQR" means the New York State Environmental Quality Review Act (ECL Article 8) and regulations promulgated pursuant thereto (6 NYCRR Part 617).

41. "Total Maximum Daily Loads" or "TMDLs" means the sum of the wasteload allocations for point sources plus the load allocations for nonpoint sources plus a margin of safety to account for uncertainties in the development process. (From the USEPA guidance document, "Guidance for Water Quality Based Decisions; The TMDL Process - April 1991.")

42. "Uninhabitable Dwelling" means a dwelling which is deteriorated to the extent that: either the cost of rehabilitation which would prevent the continued deterioration of primary components will exceed sixty percent (60%) of the fair market value of the structure, or rehabilitation will not prevent the continued deterioration of primary components of the dwelling which will result in unsafe living conditions; and it has not been occupied for one year immediately prior to the signing of an option. The fair market value of the existing dwelling shall be as established by the City's appraisal. As used herein, the term "primary components of a dwelling" shall include: foundations, exterior wall framing, rafters, roof decks, roof coverings, porches, floor joists, sills, headers, electrical systems, heating systems, plumbing systems and septic systems.

43. "UPA" means the Uniform Procedures Act (ECL Article 70) and the regulations promulgated pursuant thereto (6 NYCRR Part 621).

44. "USEPA" means the United States Environmental Protection Agency, an executive agency of the United States, organized and existing under the laws of the United States, with its principal office at 401 M Street, S.W., Washington, D.C. 20460.

45. "Watershed" or "New York City Watershed" means the drainage basins of the Catskill and Delaware and Croton Systems. Maps of the Watershed are set forth in Attachments C and D.

46. "Watershed Agricultural Council" or "WAC" means the Watershed Agricultural Council for the New York City Watershed, Inc., a not-for-profit organization with its principal place of business at NYS Route 10, Walton, New York 13856.

47. "Watershed Agricultural Easement" means a Watershed Conservation Easement, as defined below in paragraph 48, on real property in active agricultural production or designated for future agricultural production. Such easements shall allow agricultural production.

48. "Watershed Conservation Easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of Article 49 of the New York Environmental Conservation Law, which limits or restricts development,

management or use of such real property for the purpose of maintaining the open space or natural condition or character of the real property in a manner consistent with the protection of water quality generally and the New York City drinking water supply specifically.

49. "Watershed Regulations" means the watershed rules and regulations applicable to the New York City Watershed which were submitted by New York City Department of Environmental Protection to the New York State Department of Health for approval pursuant to Public Health Law Section 1100 consistent with this Agreement and which are appended hereto as Attachment W.

50. "Water Supply System" means the system of reservoirs, controlled lakes, structures and facilities such as dams, tunnels, and aqueducts which collect source water for the New York City drinking water supply and transport it to the City of New York.

51. "West of Hudson" or "WOH" means the drainage basins of the specific reservoirs of the New York City Watershed located west of the Hudson River in the New York counties of Greene, Delaware, Ulster, Schoharie, and Sullivan.

52. "West of Hudson Communities" or "WOH Communities" means the municipal corporations (as defined by § 66(2) of the New York General Construction Law, but not including school districts) which are located wholly or partially within the WOH portion of the Watershed. The WOH communities are set forth below in Attachment F.

53. "WWTP" means wastewater treatment plant.