

NEW YORK CITY WATERSHED MEMORANDUM OF AGREEMENT

January 21, 1997

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87. Submission of Watershed Regulations. NYCDEP has submitted to NYSDOH, pursuant to Section 1100 of the PHL, the proposed Watershed Regulations which were negotiated and agreed to by the Parties and are attached hereto as Attachment W, together with all the necessary SEQR documentation to enable NYSDOH to approve such Regulations pursuant to the Public Health Law. NYSDOH has issued a SEQR Findings Statement with respect to the proposed Watershed Regulations.

88. NYSDOH Approval. Within two (2) business days of the Effective Date of this Agreement, NYSDOH will approve the proposed Watershed Regulations pursuant to Section 1100 of the PHL, as set forth in and in accordance with Attachment RR. Such approval shall provide that the City's failure to comply with the terms and conditions of the approval shall not constitute grounds for reversal of the approval. However, NYSDOH may enforce compliance with such terms and conditions. NYSDOH's approval of the Watershed Regulations shall provide that the approval will be effective only after:

(a) The City has registered fully executed program contracts pursuant to section 328 of the City Charter which include the terms and conditions required by Article V of this Agreement for the following programs: Catskill Watershed Corporation Funding (paragraph 120); SPDES Upgrades (paragraph 121); New Sewage Treatment Infrastructure Facilities (paragraph 122); Septic System Rehabilitations and Replacements (paragraph 124); Stormwater Retrofits (paragraph 125); Sand and Salt Storage Facilities (paragraph 126); WOH Future Stormwater Controls (paragraph 128); Alternate Design Septic Systems (paragraph 129); Public Education (paragraph 131); WOH Economic Development Study (paragraph 134); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136); Funding of the Watershed Protection and Partnership Council (paragraph 137); Watershed Planning in the Croton System (paragraph 138); Sewage Diversion Feasibility Studies (paragraph 139); EOH Water Quality Investment Program (paragraph 140); Upgrades to Existing WWTPs (paragraph 141); Payment of Costs and Expenses (paragraph 146); Good Neighbor Payments (paragraph 147); and Local Consultation on Land Acquisition (paragraph 148); and

(b) The City has paid in full the first payment due and owing for each of the following programs under this Agreement and the program contract for such program: Catskill Watershed Corporation Funding (paragraph 120); Septic System Rehabilitations and Replacements (paragraph 124); WOH Future Stormwater Controls (paragraph 128); Alternative Design Septic Systems (paragraph 129); Catskill Fund for the Future (paragraph 135); Tax Consulting Fund (paragraph 136); Funding of the Watershed Protection and Partnership Council (paragraph 137); EOH Water Quality Investment Program (paragraph 140); Payment of Costs and Expenses (paragraph 146) (but only in the amount for which an invoice is submitted in form and substance acceptable to the City within fifteen days of the Effective Date); and Good Neighbor Payments (paragraph 147). The City shall notify NYSDOH after it has made such first full payments. Within two business days of receiving notice from the City, NYSDOH shall notify the other Parties by mail or fax that the City has made such full payment and, if applicable, that Watershed Regulations have become effective. In the case of the EOH Water Quality Investment Program (paragraph 140) the term first payment shall mean the entire amount to be funded under such program. In the case of the Good Neighbor Payments (paragraph 147), the term first payment shall mean the entire amount to be funded under such program except for any amounts payable to Dutchess County municipalities or to EOH Municipal Parties pursuant to paragraph 147(d).

89. City CAPA Promulgation. Once NYSDOH approves the Watershed Regulations, NYCDEP will complete its CAPA process by publishing the Watershed Regulations in the City Record, in accordance with CAPA, and will comply with the requirements of the Public Health Law by publishing the Watershed Regulations in newspapers with a distribution in the Watershed counties. After the Watershed Regulations are duly approved by NYSDOH and promulgated by the City pursuant to CAPA and the PHL, and after the City registers contracts and makes first payments and notifies NYSDOH of such payments as specified in paragraph 88, the Regulations will be effective and enforceable throughout the Watershed. While the Parties agree that these Regulations will become

effective after the City complies with Section 1100 of the PHL, completes the CAPA process and after the City registers contracts and makes first payments as specified in paragraph 88, they reserve their rights to assert otherwise with respect to future rulemakings under CAPA or SAPA.

90. NYSDOH SAPA Promulgation.

(a) No later than sixty (60) days after the Effective Date of this Agreement, NYCDEP will submit to NYSDOH all necessary SAPA documentation to enable NYSDOH to file and publish a Notice of Proposed Rulemaking with respect to the proposed Watershed Regulations. Within ninety (90) days of the Effective Date of this Agreement, NYSDOH shall file with the New York Secretary of State a Notice of Proposed Rulemaking with respect to such Regulations pursuant to § 202 of SAPA, proceed to schedule a hearing date or dates which will be set forth in the Notice of Proposed Rulemaking, and thereafter promulgate, provided that the City has complied with the conditions for approval set forth in paragraph 88, in accordance with SAPA and Section 1100 of the PHL, the Watershed Regulations to replace the current Part 128 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, provided however, that if NYSDOH, in consultation with the City, determines that completion of the SAPA rulemaking process for the Watershed Regulations will, or is likely to, result in there being no enforceable regulations adopted under section 1100 of the Public Health Law for the Watershed, it shall suspend the SAPA rulemaking process. The SAPA rulemaking process will remain suspended until NYSDOH, in consultation with the City, determines that completion of the SAPA rulemaking process for the Watershed Regulations is not likely to result in there being no enforceable regulations adopted under section 1100 of the Public Health Law for the Watershed or until NYSDOH and the City otherwise agree that the SAPA process should be re-instituted.

(b) If, upon the close of the SAPA public comment period, NYSDOH determines that it is necessary to revise the Watershed Regulations previously approved by NYSDOH, it shall, within 30 days of the close of the public comment period, convene a meeting of the City, the State, USEPA, the Coalition, Putnam County, Westchester County and the Environmental Parties to review the proposed revisions. Such Parties thereupon agree that they will, in good faith, seek to resolve any dispute over such change, consistent with the purposes of this Agreement, within such thirty (30) day period, or within an extended period agreed upon by all such Parties.

(i) If all such revisions are non-material (as defined in paragraph 91), the City shall promptly commence and complete an administrative proceeding under CAPA to incorporate the revisions into the Watershed Regulations as promulgated by the City under CAPA. The NYSDOH shall simultaneously complete its promulgation of the Watershed Regulations as State law under SAPA in the shortest timeframe permitted by SAPA.

(ii) If, however, any revision proposed by the NYSDOH is material, the City may choose either to repromulgate the Watershed Regulations under CAPA incorporating the

NYSDOH's revisions, or, alternatively, to leave the Watershed Regulations in place as promulgated by the City under CAPA. If the City chooses to leave the Watershed Regulations in place, the Parties agree that the Watershed Regulations promulgated by the City under CAPA shall remain in full force and effect and shall be enforceable in the Watershed. Notwithstanding any other provision of this Agreement, each of the Parties reserves the right to seek judicial review of any material change made under this subparagraph (b) in the Watershed Regulations as promulgated by NYSDOH pursuant to SAPA or by the City pursuant to CAPA.

91. Non-material Revisions. As used in paragraph 90, a "non-material" revision to the Watershed Regulations approved by NYSDOH shall mean a revision which:

(a) Corrects any typographical or similar error; or

(b) Clarifies an ambiguity without changing the substance of, or reducing or increasing the level of protection afforded to the Watershed by, the provision of the Watershed Regulations in question; or

(c) Is necessary in order to comply with the requirements of SAPA, provided that the revision does not change the substance of, or reduce or increase the level of protection afforded to the Watershed by, the provision of the Watershed Regulations in question.

92. Waiver of Rights Regarding Approval and Promulgation. Except as provided in paragraph 176(c), the Parties hereby waive their respective rights to all administrative and legal proceedings concerning NYSDOH approval and NYSDOH and NYCDEP promulgation of the Watershed Regulations as set forth in Attachment W or with such revisions as are agreed to by the Parties. Should entities other than the Parties request or commence administrative or legal proceedings, the Parties agree to actively support the approval and promulgation by the NYSDOH and NYCDEP of the Regulations which are set forth in Attachment W or with such revisions that are agreed to by the Parties.

93. Septic System Delegation.

(a) At the option of the relevant County Health Department, the City shall enter into separate agreements pursuant to Subchapter G of the Watershed Regulations with Putnam County Health Department, Ulster County Health Department, and Westchester County Health Department to delegate to such County Health Department administration of Section 18-38 of the Watershed Regulations with respect to the review and approval of certain new subsurface sewage treatment systems proposed for the portion of the Watershed within the respective County, in accordance with the terms and conditions set forth in the proposed delegation agreement executed concurrently with this Agreement and appended hereto as Attachment BB. At the option of Schoharie County, the City shall also enter into an agreement pursuant to Subchapter G of the Watershed Regulations with the Schoharie County Health Department to delegate to the Schoharie County Health Department administration of section 18-38 of the Watershed Regulations under terms and conditions similar to those contained in the proposed delegation agreements

appended as Attachment BB. The City shall reimburse each County Health Department for its incremental costs and expenses in administering the delegated program beyond the activities required by County or NYSDOH regulations and standards pursuant to the terms agreed to in the delegation agreement. If any of the other Counties in the Watershed has or establishes a County Health Department with a NYSDOH certified program to review and approve subsurface sewage treatment systems, or contracts with an existing County Health Department with such a program, such County Health Department may apply to NYCDEP for delegation of NYCDEP's authority to review and approve new subsurface sewage treatment systems in that portion of the Watershed that is within the County. NYCDEP shall consider such application in accordance with Subchapter G of the Watershed Regulations and the above-referenced agreements giving due consideration to the relative experience of each applicant agency in reviewing and approving subsurface sewage treatment systems.

(b) In case of disagreement between NYCDEP and a County Health Department regarding the review and approval of a subsurface sewage treatment system undergoing joint review and approval pursuant to a delegation agreement, NYSDOH or NYSDEC, whichever has jurisdiction over the subsurface sewage treatment system, shall act as mediator as provided in such agreement. As mediator, NYSDOH or NYSDEC, as the case may be, shall attempt to resolve any technical or interpretive disputes between NYCDEP and the County Health Department within 15 days of submission of the dispute to NYSDOH or NYSDEC. In the event that a mutually acceptable resolution cannot be reached within 15 days, both NYCDEP and the County Health Department retain their independent review and approval authority.

94. Stormwater Project Review Committees.

(a) The City will establish review committees to assist in the implementation of subdivisions 18-39(b), (c) and (d) of the Watershed Regulations (the "Stormwater Project Review Committees"). The Stormwater Project Review Committees shall function in accordance with subdivision 18-39(d) of the Watershed Regulation and this paragraph.

(b) Within 15 days after the Effective Date of this Agreement, NYCDEP, NYSDEC, each County Health Department or, if there is no County Health Department, the County Soil Conservation District, and each Town shall each designate, by name or title, by written notice to the other members of the committee their respective representatives to the Stormwater Project Review Committee for each Town in the Watershed. If the Town does not designate a representative within 15 days, the County Planning Department may designate a representative. However, a Town may at any time designate a representative to replace one designated by the County Planning Department. Representatives may be changed at any time by written notice to the members of the appropriate Stormwater Project Review Committee at least 15 days prior to the change.

95. Review of Proposed Croton Plan. If NYCDEP and the Counties and municipalities participating in the development of a Comprehensive Croton System Water Quality Protection Plan ("Croton Plan") pursuant to Section 18-82 of the Watershed Regulations

do not reach an agreement on the Croton Plan, then participating Counties and municipalities may refer the proposed Croton Plan to the East of Hudson Advisory Committee of the Watershed Protection and Partnership Council created pursuant to paragraph 108 below. The EOH Advisory Committee may then refer the proposed Croton Plan to the Executive Committee of the Partnership Council as provided for in paragraph 105(e) below. NYCDEP shall agree to the Croton Plan recommended by the Executive Committee, provided that the Executive Committee may not recommend that the City agree to a Croton Plan that imposes additional financial obligations on the City without the City's consent. For purposes of SEQR, NYCDEP's determination on the Croton Plan, not the Executive Committee's recommendation to NYCDEP, shall be considered a final decision.

96. Review of Modified Croton Plan. If any County or municipality which has agreed to the Croton Plan proposes to modify the Plan and if NYCDEP determines that the Croton Plan, as modified and taken as a whole, does not meet the overall goals of the Croton Plan as required by Section 18-82 of the Watershed Regulations, then the participating Counties or municipalities may refer the modified Croton Plan to the East of Hudson Advisory Committee. The EOH Advisory Committee may then refer the modified Croton Plan to the Executive Committee of the Partnership Council as provided for in paragraph 105(e) below. NYCDEP shall agree to any modifications to the Croton Plan recommended by the Executive Committee, provided that the Executive Committee may not recommend that the City agree to a Croton Plan that imposes additional financial obligations on the City without the City's consent. For purposes of SEQR, NYCDEP's determination on the Croton Plan, not the Executive Committee's recommendation to NYCDEP, shall be considered a final decision.