



George Latimer  
County Executive

February 2, 2021

Westchester County Board of Legislators  
800 Michaelian Office Building  
White Plains, New York 10601

Dear Members of the Board of Legislators:

Transmitted herewith for your consideration is a proposed Act, which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to renew an intermunicipal agreement (the "IMA") with the New York City Department of Environmental Protection (the "NYCDEP"), pursuant to which the NYCDEP will delegate to the County, acting by and through its Department of Health ("DOH"), the administration and enforcement of Section 18-38 of Subchapter G of New York City's "Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources". DOH will continue to review and issue written determinations for all new, altered, modified, or remediated subsurface sewage treatment systems ("SSTSS") located in the portion of the watershed of the New York City water supply situated within Westchester County. The renewal will be for a five year period effective January 1, 2021 and terminating on December 30, 2025.

Your Honorable Board, by Act No. 341-2016, on November 14, 2016, authorized the County to enter into the IMA which was subsequently executed. The IMA provides for one five year renewal by both parties. The IMA is attached for your Honorable Board's reference.

The Planning Department has advised that based on its review, this action has been classified as "Type II" action pursuant to the State Environmental Quality Review Act ("SEQRA") and its implementing regulations, 6 NYCRR Part 617. Therefore, no further environmental review is required. As you know, your Honorable Board may use such expert advice to reach its own conclusion.

I believe it is in the County's best interests to renew the IMA. Accordingly, I recommend and urge

Office of the County Executive

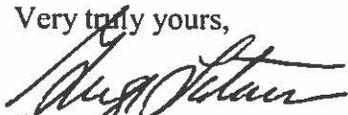
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your Honorable Board to adopt the proposed Act.

Very truly yours,



George Latimer

County Executive

GL/LAC

Attachments

**HONORABLE BOARD OF LEGISLATORS  
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive recommending approval of an Act that would, if approved, authorize the County of Westchester (the “County”) to renew an intermunicipal agreement (the “IMA”) with the New York City Department of Environmental Protection (the “NYCDEP”), pursuant to which the NYCDEP will delegate to the County, acting by and through its Department of Health (“DOH”), the administration and enforcement of Section 18-38 of Subchapter G of New York City’s “Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources”, whereby DOH will review and issue written determinations for all new, altered, modified, or remediated subsurface sewage treatment systems (“SSTSs”) located in the portion of the watershed of the New York City water supply situated within Westchester County. The renewal will be for a five year period effective January 1, 2021 and terminating on December 30, 2025.

Your Honorable Board, on November 14, 2016, by Act No. 341-2016 authorized the County to enter into the IMA which was subsequently executed. The IMA provides for one five year renewal by both parties. The IMA is attached for your Honorable Board’s reference.

The Planning Department has advised that, based on its review, this action has been classified as a “Type II” action pursuant to the State Environmental Quality Review (“SEQR”) Act and its implementing regulations, 6 NYCRR Part 617. Therefore, no further environmental review is required. Your Committee has reviewed the attached SEQR documentation prepared by the Planning Department and concurs with this conclusion.

Your Committee has been advised that the adoption of the proposed Act requires an affirmative vote of a majority of the members of your Honorable Board.

After due consideration, your Committee recommends the adoption of the proposed Act.

Dated: \_\_\_\_\_, 2021  
White Plains, New York

COMMITTEE ON

C: lac/1/19/21

# FISCAL IMPACT STATEMENT

SUBJECT: NYCDEP Watershed Delegation  NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND       AIRPORT FUND       SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense      \$ 198,000

Total Current Year Revenue      \$ 198,000

Source of Funds (check one):  Current Appropriations       Transfer of Existing Appropriations

Additional Appropriations       Other (explain)

Identify Accounts: 101-27-0010-8600-9216-HSDS

Fund from NYCDEP Watershed Delegation

Potential Related Operating Budget Expenses:      Annual Amount 198,000

Describe: Performance based billing

Potential Related Operating Budget Revenues:      Annual Amount \_\_\_\_\_

Describe: \_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \$198,000 Expense & Revenue

Next Four Years: \$792,000 Expense & Revenue

Prepared by: Joseph Mathews *Joseph Mathews*

Title: Director of Fiscal Operations

Department: Health

Date: 1/25/21

Reviewed By: *Joseph Mathews*

Budget Director

Date: 2/9/21

TO: Lynne Colavita, Senior Assistant County Attorney  
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM  
Director of Environmental Planning



DATE: January 20, 2021

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR DELEGATION  
AGREEMENT WITH NEW YORK CITY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

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**PROJECT/ACTION:** Renewal of an agreement with the New York City Department of Environmental Protection (NYCDEP) which delegates to the County the administration and enforcement of Section 18-38 of Subchapter G of New York City's "Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources." The County has been assuming this responsibility under prior delegation agreements since 1997. Pursuant to the agreement, the Westchester County Department of Health reviews and issues written determinations for all new, altered, modified, or remediated subsurface sewage treatment systems ("SSTs") located in the portion of the watershed of the New York City water supply that is within Westchester County. The renewal will be for a five-year period effective January 1, 2021 and terminating on December 30, 2025.

**With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:**

- DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTIONS:**
- **617.5(c)(20):** routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment.

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**COMMENTS:** None.

cc: Andrew Ferris, Chief of Staff  
Paula Friedman, Assistant to the County Executive  
Norma Drummond, Commissioner  
Claudia Maxwell, Associate Environmental Planner

**DELEGATION AGREEMENT**

**BETWEEN**

**NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**WESTCHESTER COUNTY DEPARTMENT OF HEALTH**

**CRO 561**

**WHEREAS:**

Pursuant to Subchapter G of New York City's "Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources" ("Watershed Regulations") and the Memorandum of Understanding ("MOU") entered into between the New York City Department of Environmental Protection ("DEP") and the New York State Department of Health ("NYSDOH") on November 4, 1994, attached hereto as Attachment A, the City of New York, acting by and through DEP, and Westchester County, acting by and through the Westchester County Department of Health ("WCHD"), enter into this Delegation Agreement ("Agreement") in order to delegate to WCHD the administration and enforcement of Section 18-38 of the Watershed Regulations whereby WCHD shall review and issue written determinations for all new, altered, modified, or remediated subsurface sewage treatment systems ("SSTSs") located in the portion of the watershed of the New York City water supply situated within Westchester County;

DEP and WCHD (the "Parties") recognize the protocol established in the MOU between the New York State Department of Environmental Conservation ("NYSDEC") and NYSDOH, dated March 22, 1984, attached hereto as Attachment B, that specifically delegates NYSDEC's approval authority for on-site treatment and disposal systems with a design capacity of 10,000 gallons per day ("gpd") or less, without the admixture of industrial wastes or other wastes as such wastes are defined in the New York State Environmental Conservation Law Section 17-0701 to the local Health Department having jurisdiction; and

Nothing contained in this Agreement shall alter or diminish DEP's or WCHD's status as an involved agency pursuant to the State Environmental Quality Review Act ("SEQRA") and both DEP and WCHD may continue to comment independently, each as an involved agency, during the SEQRA review of any project in the Watershed (as defined in Paragraph 1, below) in which DEP or WCHD, as the case may be, has status as an involved agency. However, it is not the intent of DEP to review proposed SSTSs during the review process required by SEQRA at the level of detail required for final design review and approval.

**NOW, THEREFORE,** in consideration of the mutual representations and agreements hereinafter contained, together with such other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

The following terms shall have the meanings stated below when used in this Agreement, except as otherwise specifically provided:

- a. Alteration or Modification with respect to an SSTS shall mean any change in physical configuration, intensity of use, location, plans, design, site, capacity, treatment standard or method, or other change in a regulated activity or a noncomplying regulated activity. This term does not include Remediation, Routine Repairs or maintenance of structures or equipment. Activities that are considered alterations or modifications include, but are not limited to: increasing flow to a previously approved system, changing the nature of the waste to be treated, and adding new laterals outside the previously approved replacement area.
- b. City shall mean the City of New York.
- c. County shall mean the County of Westchester.
- d. DEP shall mean the New York City Department of Environmental Protection.
- e. Determination shall mean the written approval or denial that shall be issued as required by Section 18-23 of the Watershed Regulations by WCHD for all SSTS applications reviewed through the delegated administration of Section 18-38 of the Watershed Regulations.
- f. Existing shall mean physically constructed, functioning, and operational prior to the effective date, May 1, 1997, of the Watershed Regulations.
- g. Fringe Benefits shall mean employment benefits (such as a pension or a paid holiday) granted by an employer that have a monetary value but do not affect basic wage rates.
- h. Individual SSTS shall mean an on-site SSTS serving one or two family residential properties and receiving sewage without the admixture of "industrial wastes" or "other wastes," as such wastes are defined in the Environmental Conservation Law, Section 17-0701.
- i. Intermediate Sized SSTS shall mean an on-site SSTS serving an industrial, institutional, municipal, commercial, or multi-family residential facility and receiving sewage without the admixture of "industrial wastes" or "other wastes," as such wastes are defined in the Environmental Conservation Law section 17-0701.
- j. Law or Laws shall mean the New York City Charter, the New York City Administrative Code, a local rule of the City of New York, the Constitutions of the

United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

- k. New SSTS shall mean any SSTS undertaken, constructed, installed, or implemented on or after May 1, 1997.
- l. Noncomplying regulated activity shall mean any regulated activity or existing activity which does not conform to the standards set forth in the Watershed Regulations, but has obtained all discretionary approvals necessary for construction and operation, prior to the effective date of the Watershed Regulations and/or prior to the effective date of an amendment to the Watershed Regulations that made the activity noncomplying.
- m. Other Than Personal Services (OTPS) shall mean expenses other than salaries, including, but not limited to: communications, infrastructure, supplies, equipment, and contractual services directly related to administering the delegation program beyond the activities required by the WCHD or NYSDOH regulations and standards.
- n. Remediation, with respect to an SSTS, shall mean the repair or replacement, other than routine repair or maintenance as described in Section 18-38(a)(9)(iii) of Subchapter C of the Watershed Regulations (described in Subparagraph "o" below), of an SSTS that is failing.
- o. Routine Repair, with respect to an SSTS, shall mean the maintenance of, minor physical change(s) to, or the replacement in kind of broken, damaged, or worn part(s) of an SSTS, none of which would require approval from DEP under Section 18-38(a)(9)(iii) of the Watershed Regulations. Activities that are considered Routine Repairs include, but are not limited to: the pump out of a septic tank; the replacement of a septic tank, whether in kind or with a larger tank of an appropriate size for the SSTS and compliant with the standards in the Watershed Regulations Section 18-38 (until DEP revises the Watershed Regulations referencing a later version of the design standards); the repair of a broken lateral; the leveling of a distribution box; or the removal of a blockage.
- p. Subdivision shall mean any tract of land which is divided into five (5) or more parcels of five (5) acres or less, along an existing or proposed street, highway, easement or right-of-way, for sale or for rent as residential lots. A tract of land shall constitute a subdivision upon the sale, rental or offer for sale or lease of the fifth residential lot therefrom within any consecutive three (3) year period.
- q. Subsurface Sewage Treatment System (SSTS) shall mean any underground system used for collecting, treating, and disposing of sewage into the ground including, but

not limited to, Individual SSTs and Intermediate Sized SSTs, as defined in the Watershed Regulations and this Agreement.

- r. SSTS Failure or Failed SSTS shall mean the discharge of wastewater from an SSTS to the surface of the ground, to a storm sewer, or to a Watercourse or to a water body.
- s. Watercourse shall mean a visible path through which surface water travels on a regular basis, including an intermittent stream, which is tributary to the water supply. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or a snowmelt shall not be considered to be a Watercourse.
- t. Watershed/Watershed area shall mean those portions of the County lying within the land area contributing surface water to the New York City water supply system.
- u. Watershed Regulations shall mean the "Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources," Title 15, Chapter 18 of the Rules of the City of New York, as may be amended from time to time.
- v. WCHD shall mean the Westchester County Department of Health.

## 2. Standards for Review

- a. All Determinations for all new, altered, modified or remediated SSTs located in the Watershed shall be based upon the design standards referenced in the Watershed Regulations, and any other applicable standards as agreed to in writing between DEP and WCHD. The most stringent current standards from amongst the applicable standards shall apply. For informational purposes only, the most stringent current standards for SSTs are set forth in Attachment C hereto. Attachment C will be promptly modified if any of the rules, regulations, or standards set forth therein are amended.
- b. WCHD may, in the course of reviewing any SST for which it has received delegation of review and approval authority pursuant to Paragraph 3 of this Agreement, issue waivers with respect to standards or requirements imposed solely by WCHD's "Rules and Regulations For the Design and Construction of Residential Subsurface Sewage Treatment Systems and Drilled Wells" and not involving a waiver of or variance from any standards or requirements imposed by the Watershed Regulations or any other applicable rules, regulations, or standards. Any such waiver shall be issued pursuant to Section 9.0 of WCHD's "Rules and Regulations for the Design and Construction of Residential Subsurface Sewage Treatment Systems and Drilled Wells", as may be amended from time to time. Anything in this Agreement to the contrary notwithstanding, WCHD may not, in

the course of reviewing any SSTS for which it has received delegation of review and approval authority pursuant to Paragraph 3 of this Agreement, issue any waivers or variances with respect to standards or requirements imposed by the Watershed Regulations without the prior written consent of DEP.

- c. In accordance with the provisions of Section 18-38(a)(9)(ii) of the Watershed Regulations in effect on the effective date of this Agreement, any proposed remediation of any part of an SSTS shall be performed to the extent possible, in accordance with the design standards set forth in the Watershed Regulations. DEP acknowledges that WCHD has authority to approve Remediation of an SSTS that has site specific limitations that preclude full compliance with the design standards set forth in the Watershed Regulations so long as design standards are met to the extent possible as may be determined by the WCHD and in accordance with the terms of this Agreement.
- d. The Parties acknowledge that they will continue to work together to find mutually acceptable long term solutions to issues arising out of areas and/or conditions, including without limitation, those identified in the 1998 Croton Watershed Wastewater Diversion Study by Savin Engineers, P.C., where traditional systems and/or approaches to construction, alteration, modification and/or remediation are not appropriate or feasible.

3. Joint and Delegated Review and Approval (Scope of Delegation)

Upon the effective date of this Agreement, DEP hereby delegates to WCHD administration and enforcement of Section 18-38 of the Watershed Regulations with respect to the review and issuance of Determinations for all new, altered, modified, or remediated SSTSs located in the Watershed, except in the following instances:

- a. DEP and WCHD will have joint review and approval of the following new, altered, modified, and remediated SSTSs:
  - i) All SSTSs which are located or proposed to be located within 200 feet of either a Watercourse or a NYSDEC mapped wetland;
  - ii) All SSTSs which are located or proposed to be located within 500 feet of a reservoir, reservoir stem or controlled lake, as defined in the Watershed Regulations;
  - iii) All SSTSs which are proposed to be located within the drainage basins of Kensico Reservoir, Croton Falls Reservoir or Cross River Reservoir;
  - iv) All Intermediate Sized SSTSs;

- v) All SSTSs that fail within five (5) years of receiving an approval from WCHD for Remediation of that system;
  - vi) All SSTSs that require a variance from Section 18-38 of the Watershed Regulations; and
  - vii) All SSTSs which are located or proposed to be located in an area of a lot which has been modified to meet the minimum standards set forth in the Watershed Regulations Section 18-38. Modified sites may require a Variance from DEP before WCHD can issue a Determination for the SSTS application. Examples include lots with modified slopes or relocated Watercourses.
- b. DEP may exercise joint review and approval with WCHD of all new, altered, modified, or remediated SSTSs deemed by DEP to constitute a threat to water quality.
- c. DEP delegates to WCHD responsibility for inspections of SSTSs as follows:
- i) DEP delegates responsibility, and will reimburse WCHD, for all inspections during construction of all new, altered, modified, or remediated SSTSs listed in Paragraph 3(a) of this Agreement.
  - ii) DEP delegates responsibility, and will reimburse WCHD, for no more than one (1) inspection during construction of all new, altered, modified or remediated SSTSs that do not fall within a category listed in Paragraph 3(a) of this Agreement.
  - iii) DEP does not delegate responsibility, and will not reimburse WCHD, for inspections during construction of Routine Repairs of SSTSs.
4. WCHD recognizes that projects which fall under the categories set forth in Paragraph 3(a) of this Agreement are of the greatest concern to DEP and DEP will participate with WCHD in the simultaneous and joint review and, where specified, approval for the siting, design and construction of proposed new, altered, modified, or remediated SSTSs.

5. Previously Approved Subdivisions

DEP recognizes that in issuing approvals for SSTSs located in the Watershed, WCHD shall require that all SSTSs in previously approved Subdivisions be designed to meet all current standards to the extent WCHD determines possible. DEP agrees to accept Subdivision approvals issued by WCHD or NYSDOH prior to May 1, 1997, except as follows:

- a. All SSTSs which are proposed to be located either within the drainage basin of Kensico Reservoir, Croton Falls Reservoir, or Cross River Reservoir or within 500

feet of a reservoir, reservoir stem or controlled lake, and which have not been approved by DEP shall require DEP approval;

- b. All SSTSs which are proposed to be located within 200 feet of either a Watercourse or a NYSDEC mapped wetland, and which received final Subdivision approval after December 31, 1992<sup>1</sup> but which have not been approved by DEP shall require DEP approval; and
- c. DEP and WCHD shall work together to require all SSTSs which are proposed to be located within 200 feet of either a Watercourse or a NYSDEC mapped wetland, and which received final Subdivision approval on or before December 31, 1992 but which have not been approved by DEP, to meet all current standards, including the Watershed Regulations, to the extent possible.

6. Uniform Procedures

- a. WCHD shall issue a written Determination for every application for an SSTS where required by Section 18-23 of the Watershed Regulations. In reviewing and making written Determinations regarding SSTSs pursuant to this Agreement, WCHD shall comply with the procedures and time frames set forth in Section 18-23 of the Watershed Regulations, and shall be responsible for issuing in a timely manner all notices and Determinations, including but not limited to: notices that applications are complete ("NOCA") or incomplete ("NOICA"), Determinations, and Determination renewals. Determinations shall include, at a minimum, the following information: name of property owner, address of property, tax map number, town, drainage basin, soils test results, a description of the proposed work and approved plans, the contact information of the WCHD employee handling the matter, and the date upon which an approval, if issued, will expire under Section 18-38(a)(10) of the Watershed Regulations. WCHD shall mail or email a copy of all Determinations to DEP within five (5) business days of issuance per the Contact Schedule Attachment E.
- b. WCHD's application packet for any project within the Watershed involving an SSTS shall have a cover sheet stating that WCHD is administering and enforcing Section 18-38 of the Watershed Regulations pursuant to this Agreement and that although the application for review and approval of a new, altered, modified, or remediated SSTS located or proposed to be located within the Watershed shall be sent to WCHD, and need not be sent in duplicate to DEP, the project may also require DEP Notice of No Objection to of the SSTS prior to final approval by WCHD. The application cover sheet shall further state that DEP is an involved agency pursuant to SEQRA and that the applicant may also be responsible for seeking DEP's review and approval of other aspects of the project, including, but not limited to, stormwater plans or the creation of impervious surfaces, and that the

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<sup>1</sup> December 31, 1992 is a date from the original Delegation Agreement in the 1997 Watershed Memorandum of Agreement.

applicant should obtain the appropriate forms for such activities from DEP, and submit those forms to DEP for review and approval.

- c. WCHD shall notify DEP of all applications sent to WCHD for review of projects involving new, altered, modified, or remediated SSTs subject to joint review and approval as specified in Paragraph 3(a) of this Agreement, by forwarding copies of all such applications and accompanying plans to DEP within two (2) business days after WCHD accepts the application for processing. WCHD shall also promptly forward copies of any amended applications and plans as well as any correspondence relating to projects subject to joint review to DEP within five (5) business days after WCHD accepts the application for processing. DEP shall promptly forward to WCHD copies of any materials submitted by an applicant seeking approval of an SST which appear not to have also been submitted to WCHD.

7. Procedures for Review of Delegated SSTs

For all SSTs subject to this Agreement that are delegated to WCHD and not subject to joint review in accordance with Paragraph 3 of this Agreement, an employee of WCHD shall:

- a. Schedule and witness soils tests, including percolation tests and deep hole tests for the primary and reserve field site, as part of the review and approval process for any SSTs;
- b. Enter all soils test results onto a Soils Test Report or other similar report, signed by the WCHD employee who observed the tests; and
- c. In accordance with Paragraph 3(c) of this Agreement, DEP delegates, and will reimburse WCHD, for one (1) inspection during construction of all new, altered, modified, or remediated SSTs that have been delegated to WCHD but are not subject to joint review.
- d. Issue NOCA letters, NOICA letters, comment letters, and Determinations as required by Section 18-23 of the Watershed Regulations and Paragraph 6(a) of this Agreement.
- e. Forward to DEP, each month or sooner, all WCHD-accepted copies of as-builts or final plans.

8. Procedures for Joint Review and Approval of SSTs

- a. For SSTs that are subject to joint review and approval, WCHD shall schedule and witness all required soils testing, including percolation tests and deep hole tests for the primary and reserve field site, and shall notify DEP in writing, which may

include email, at least five (5) calendar days prior to the times and locations for such tests. DEP in its discretion may witness percolation tests and inspect deep holes.

- b. WCHD shall enter all soils test results onto a Soils Test Report or other similar report, including a soils location sketch with reference points or a labeled aerial image, signed by the WCHD employee who observed the tests. Notwithstanding the foregoing, if DEP does not inform WCHD whether it intends to exercise its right of joint review by the date set for such tests to occur, WCHD may proceed with such tests as if DEP had indicated its intention not to exercise its right of joint review and determination.
- c. WCHD shall issue NOCA letters, NOICA letters, and comment letters. NOICA letters shall include any items which DEP determines are missing from an SSTS application. DEP shall provide any comments to WCHD within ten (10) business days of receipt of applications and plans. Comment letters shall include any technical comments received from DEP.
- d. WCHD shall issue Determinations as required by Section 18-23 of the Watershed Regulations and Paragraph 6(a) of this Agreement. WCHD will not issue its Determination until DEP has issued its Notice of No Objection letter to WCHD or the Parties have agreed to retain independent review and approval authority for a particular matter or attempted to resolve any disagreement in accordance with the procedures set forth in Paragraph 10 of this Agreement. If WCHD and DEP agree on whether to approve or disapprove an SSTS, WCHD shall issue the approval or disapproval, as the case may be, on behalf of both agencies, to the applicant. If WCHD and DEP disagree as to the appropriate determination, even after dispute resolution by NYSDOH or NYSDEC pursuant to paragraph 10(a)-(c) of this Agreement, then each agency shall issue its own Determination and each Determination shall state that DEP and WCHD are issuing separate Determinations and that the approval of both DEP and WCHD is necessary before the SSTS can be constructed, altered, modified or remediated, as the case may be.
- e. For all SSTSs which are subject to joint review and approval, WCHD and DEP will provide each other copies of all Notice of Violations or Letters of Non-compliance (NOVs), inspection reports, site plans, Determinations, and stipulations relating to such SSTSs.
- f. WCHD shall schedule and perform construction inspections to visually inspect installation of an SSTS and completion of construction prior to backfilling of the site. WCHD shall create a Construction Inspection and Compliance Report, or equivalent, signed by the WCHD employee who inspects the construction, that will include where possible the following: the size, bedding, and levelness of the septic tank; the size, bedding, and levelness of the distribution box; the slope of the sewer pipes connected to the septic tank, the distribution tank, and headers and laterals; and

the distances between the SSTS and dwellings, wells, property lines, Watercourses, wetlands, reservoirs, and reservoir stems and controlled lakes.

- g. WCHD shall require applicants to submit a copy of the as-built plans for the SSTS that is certified by the project design engineer and is acceptable to WCHD.
- h. WCHD shall forward to DEP, within five (5) business days of issuance or acceptance, copies of all Soils Test Reports or equivalents, Construction Inspection and Compliance Reports or equivalents, NOCA letters, NOICA letters, comment letters, Determinations, and as-built plans.
- i. DEP may choose to perform periodic inspections on joint SSTSs.

9. Procedures for Failed SSTSs

- a. WCHD shall respond to and keep records of all complaints received regarding any suspected Failed SSTS.
- b. WCHD shall review its records to determine if an approval had been issued for a Remediation to this system within the past five (5) years. If an approval had been issued within such five-year period, and if the proposed solution is determined by either WCHD or DEP to be a Remediation, the Parties will notify each other, and the Remediation will be subject to joint WCHD-DEP review and approval.
- c. If a septic complaint is received or SSTS Failure is suspected, WCHD shall visit the site and investigate the SSTS on the next business day. WCHD shall notify DEP if a dye test is being performed to allow the opportunity for DEP to observe the dye test results.
- d. If the dye test confirms a failure, WCHD shall issue a NOV to the property owner within two (2) business days of observing the failure. WCHD shall send a copy of the NOV to DEP within two (2) business days of the date the NOV was issued. NOVs must require the property owner to immediately cease any discharge, immediately pump out the system, and complete satisfactory Routine Repairs within fifteen (15) calendar days of the date of issuance of the NOV or submit an application and complete an approved Remediation within thirty (30) calendar days of the date of issuance of the NOV. WCHD has discretion to allow for longer time frames where the property owner can show that all surface discharge has ceased.
- e. All Remediations in the Watershed area must have an approval or denial issued by WCHD. Copies of all Determinations shall be transmitted electronically to DEP within five (5) business days of issuance. Determinations shall include, as a minimum, name of property owner, address of property, tax map number, a description of the Remediation work approved, and the name, address, and telephone number of the licensed septic system contractor.

- f. All Remediations and repairs shall be constructed by an SSTS contractor licensed by the County.
- g. Upon issuance of an NOV, WCHD shall require the property owner to cease further discharge of sewage effluent on to the surface of the ground and shall provide the property owner with either fifteen (15) days from issuance of the NOV to perform satisfactory repairs; or thirty (30) days, or longer at the discretion of WCHD, from issuance of the NOV to perform satisfactory Remediation. WCHD shall provide the property owner with sufficient time, at the discretion of WCHD, to determine the cause and remedy the failure. During this period, the septic tank shall be pumped out within twenty-four (24) hours of the confirmation of any sewage discharge and as needed in order to prevent continuing and future failures. WCHD shall require the property owner to submit pump-out receipts within three (3) business days of each pump-out, which WCHD shall forward to DEP upon request. WCHD shall perform weekly inspections to monitor the failure until the discharge has ceased. WCHD shall perform, at a minimum, monthly inspections of Failed SSTSs until the SSTS is remediated. The Remediation will be subject to either WCHD or joint WCHD/DEP review and approval as provided in Paragraph 3, depending on the type and location of the system and any history of prior failures.
- h. For proposed Remediations of SSTSs included in Paragraph 3(a) of this Agreement, each agency shall review the plans and exchange comments within five (5) business days.
- i. WCHD shall inspect the SSTS within five (5) business days following Remediation to determine that the Remediation has been made as approved and described in the approval. If the Remediation has not been made as approved and described in the approval then WCHD shall issue an NOV and a copy of the NOV shall be transmitted electronically to DEP on the date of issuance thereof.
- j. An adjudicatory hearing shall be conducted by WCHD if: 1) the property owner fails to cease further discharge of sewage effluent on to the surface of the ground; 2) the Remediation is not satisfactorily completed within the timeframe allotted by WCHD; or 3) the Remediation has not been performed as approved and described in the approval. Copies of the hearing notice and charges shall be transmitted electronically to DEP within twenty-four (24) hours of issuance. WCHD shall provide DEP with additional information regarding the date and time of any hearing, upon request. WCHD shall notify DEP in writing within five (5) business days of the outcome of each hearing and whether the property owner has complied with the terms of the hearing order.
- k. If WCHD has knowledge of a suspected SSTS Failure that does not result in a positive dye test, or of any other suspected violation of Section 18-38 of the Watershed Regulations that WCHD is unable to pursue, including, but not limited

to, a discharge of sewage to groundwater or an improperly operated or maintained SSTS, WCHD shall notify DEP of such condition immediately so that DEP may take independent enforcement action in its discretion.

10. Resolution of Technical and Interpretive Disputes

- a. In case of any disagreement between DEP and WCHD regarding the review and approval of an SSTS undergoing joint review and approval, DEP and WCHD may agree to retain independent review and approval authority and issue separate Determinations for a particular matter or the Parties may opt for mediation. NYSDOH shall act as a mediator where NYSDOH is the agency with jurisdiction and NYSDEC shall act as a mediator where NYSDEC is the agency with jurisdiction. In that role, NYSDOH or NYSDEC, as the case may be, shall attempt to resolve any technical or interpretive disputes between DEP and WCHD.
- b. Either DEP or WCHD may seek NYSDOH or NYSDEC mediation, as applicable, by notifying NYSDOH or NYSDEC and the other Party to the dispute. In order to give NYSDOH or NYSDEC an opportunity to propose a mutually acceptable resolution, neither Party shall issue any notices or Determinations with respect to a matter which has been referred for mediation unless the failure to issue a notice or Determination would result in an application being deemed complete or approved pursuant to Section 18-23(d)(3) or (6) of the Watershed Regulations.
- c. In the event mediation is chosen and a mutually acceptable resolution of a dispute cannot be reached within fifteen (15) business days of submission of the matter to NYSDOH or NYSDEC, both DEP and WCHD may conduct independent reviews and issue separate Determinations.

11. Independent Enforcement Authority

DEP retains independent enforcement authority and reserves its right to proceed with enforcement independently; however, DEP will make every effort to proceed in a coordinated manner with WCHD. In the event that DEP determines that the enforcement actions taken by WCHD have not secured, or are unlikely to secure, prompt compliance, DEP will notify WCHD within five (5) business days following proceeding with any independent enforcement action.

12. Periodic Review

- a. WCHD shall comply with the reporting requirements set forth throughout this Agreement.
- b. WCHD shall provide to DEP on a monthly basis, by the last day of each month, a report and chart (the "Monthly Status Report and Chart") detailing the following: (1) all Failed SSTSs in the Watershed known to WCHD that have not been remediated

or repaired; (2) all Failed SSTs in the Watershed known to WCHD that have been remediated or repaired in the thirty (30) calendar day period prior to the date of the report; and (3) all complaints of Failed SSTs in the Watershed received by WCHD. The Monthly Status Report and Chart shall include: status of the failure including whether it is currently discharging to the surface of the ground, date of last inspection, tax map number, address, property owner's name, basin, town, date of the last pump-out as reflected in the receipt(s) received by WCHD, application status, date of initial hearing, and hearing status, as applicable.

- c. An annual meeting between DEP and WCHD shall be held for the purpose of reviewing the status of and evaluating this delegation to WCHD of the administration and enforcement of Section 18-38 of the Watershed Regulations for all SSTs covered by this Agreement. A minimum of forty-five (45) calendar days' notice must be provided for this meeting, which may be held in conjunction with and as part of NYSDOH's annual Article 6 review of WCHD's SST program. At least thirty (30) calendar days prior to the annual meeting, WCHD shall provide DEP with a written summary of all projects that were submitted to WCHD pursuant to this Agreement within the prior year and their current status (e.g., approved, under review, denied).

### 13. Effective Date and Duration

- a. This Agreement shall become effective on January 1, 2016, and will be effective for a term of five (5) years, unless terminated sooner pursuant to the terms of this Agreement. The Parties may renew the Agreement once for five (5) years, subject to receipt of all applicable approvals, including without limitation the Westchester County Board of Legislators and Board of Acquisition and Contract, unless DEP determines otherwise, based on the annual reviews and meetings. A new delegation agreement shall be negotiated after the one (1) five (5) year renewal.
- b. Five (5) years from the effective date of this Agreement and every five (5) years thereafter, DEP and WCHD, together with the federal Environmental Protection Agency, NYSDOH, and NYSDEC, may conduct an evaluation of the efficiency, benefit, and terms of this Agreement and this delegation to WCHD of the administration of Section 18-38 of the Watershed Regulations with respect to review of, issuance of Determinations for, and enforcement of all SSTs covered by this Agreement. As part of the evaluation, DEP and WCHD will review the sufficiency of this program to protect water quality, the scope of SST reviews, and the duration of this Agreement, and will determine whether, and to what extent, this Agreement should be modified. It is DEP's intent to reduce the number and types of SSTs subject to joint review and approval as this delegation proves sufficient to protect the water supply and as DEP increases its coordination with WCHD.
- c. In accordance with the procedures set forth in Section 18-74 of the Watershed Regulations, and in consultation with NYSDOH, and notwithstanding anything in

this Agreement, the Commissioner of DEP retains his/her authority to decertify the delegated program of SSTS review and approval set forth in this Agreement and to terminate this Agreement at any time, following provision of written notice to WCHD, upon a determination that WCHD's administration of any element of the delegated program is inadequate to protect the water supply. In making a determination that WCHD's administration of an element of the delegated program is inadequate to protect the water supply, DEP shall be entitled to rely on whether a significant pattern of SSTS Failures exists as a result of the approval of system siting, design, or installation by WCHD after the effective date of, and pursuant to, this Agreement.

- d. Upon ninety (90) days' notice to DEP, WCHD may withdraw from this Agreement and the authority delegated with respect to the review and Determinations of new, altered, modified and remediated SSTSs shall revert back to DEP.

14. General Provisions

- a. DEP agrees to provide funding to the County to reimburse WCHD for its incremental costs and expenses in administering this delegated program, and complying with the terms of this Agreement, including reasonable costs associated with the dispute resolution procedures of this Agreement, beyond the activities required by WCHD and NYSDOH or NYSDEC regulations and standards as more particularly set forth in Attachment D of this Agreement.
- b. WCHD and DEP shall each defend, indemnify and hold harmless (as the "Indemnifying Party") the other (as the "Indemnified Party") and the other's officers and employees from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages arising out of this Agreement on account of any injuries or death to any person or damage to any property and from costs and expenses to which the Indemnified Party, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Indemnifying Party related to this Agreement to the extent resulting from any negligent act of commission or omission or any intentional tortious act. Insofar as the facts or Law relating to any claim would preclude the Indemnified Party from being completely indemnified by the Indemnifying Party, the Indemnified Party shall be partially indemnified by the Indemnifying Party to the fullest extent permitted by Law.
- c. Except for Attachments C and E, there shall be no modifications to this Agreement without the written consent of both the Commissioner of WCHD and the Commissioner of DEP, or their designated agents, subject to each Party's receipt of all necessary legal approvals.

15. Attorney's Fees

If the County substantially prevails in an action to enforce this Agreement, the City will pay the County's reasonable attorney's fees which have been actually incurred, including, without limitation, reasonable in-house counsel fees. In addition, if the County substantially prevails in such action, it may recover consequential damages, where appropriate.

16. **Right to Audit and Records**

- a. The County shall maintain accurate and complete records detailing the receipt and expenditure of all funds provided by DEP under this Agreement together with appropriate back-up documentation to the extent required by this Agreement, shall maintain such documents for a period of seven (7) years from document generation, and shall allow DEP access thereto for inspection and photocopying at all reasonable times.
- b. All receipts and disbursements of City funds are subject to audit by the City or New York State, and the County agrees to cooperate with any audit of this Agreement undertaken by the City or New York State.

17. **Contacts**

All correspondence related to this Agreement shall be sent to the contacts named in Attachment E. Attachment E will be promptly updated when the contacts for either Party change.

[NO FURTHER TEXT ON THIS PAGE.]

**CORPORATION COUNSEL CONTRACT APPROVAL**

**Agency DEP**

**E-PIN 82617T0013001**

**Contractor WESTCHESTER COUNTY**

**Approved as to form**

**Certified as to legal authority**

**Electronically Signed By ISABEL GALIS-MENENDEZ Date 06/06/2017 18:12**

**Acting Corporation Counsel**

Approved by the Board of Legislators by Act No. 2016-341

Approved by the Board of Acquisition and Contract of the County of Westchester. 12/15/16

Approved as to form:

 9/28/17

Senior Assistant County Attorney  
The County of Westchester

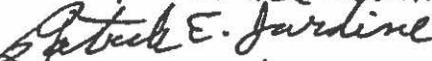
SHERLITA AMLER, MD



, Commissioner

Westchester County Department of Health

ON 22 OF AUGUST, 2017, SHERLITA AMLER,  
KNOWN TO ME, FIXED HER SIGNATURE ABOVE



  
Vincenz Sapienza, Acting Commissioner  
New York City Department of Environmental Protection

AUGUST 22, 2017

Date

Patrick E. Jardine  
Notary Public, State of New York  
No. 01JA8262554  
Qualified in Westchester  
Commission Expires May 29, 2020

10/11/17  
Date

Approved as to form:

\_\_\_\_\_

Acting Corporation Counsel

**ACKNOWLEDGMENT BY COMMISSIONER**

STATE OF NEW YORK )

)ss:

COUNTY OF QUEENS )

On this 11<sup>th</sup> day of October, 2017, before me personally came Elisa Velazquez to me known and known to me to be the SecD of the Department of Environmental Protection of the City of New York, the person described as such in and who as such executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as Commissioner for the purposes therein mentioned.

  
\_\_\_\_\_  
Notary Public or Commissioner of Deeds

NAOMI BURRUS  
Notary Public, State of New York  
No. 01BU6304146  
Qualified in Queens County  
Commission Expires May 27, 2018



**ATTACHMENT A**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
NEW YORK STATE DEPARTMENT OF HEALTH  
AND  
NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**WHEREAS:**

1. New York City Department of Environmental Protection ("DEP") and the New York State Department of Health ("DOH") enter into this Memorandum of Understanding ("MOU") with regard to the provisions in DEP's proposed watershed rules and regulations ("proposed regulations") pertaining to the delegation of the administration and enforcement of the subsurface sewage treatment systems ("SSTS") programs from DEP to the County Departments of Health ("CDOH") located within the New York City watershed;

2. DEP recognizes that DOH has jurisdiction to delegate DOH's authority to review and approve SSTS to individual CDOH programs and that DOH performs an annual review of said delegation pursuant to its authority under Article 6 of the Public Health Law;

3. DOH recognizes that DEP has the authority to promulgate regulations, subject to approval by DOH, for the protection from contamination of the public supplies of potable waters and their sources, from which the City obtains its water supply, pursuant to Public Health Law section 1100(1), and that DEP's jurisdiction includes reviewing, approving and regulating SSTS located in the watershed;

4. DOH recognizes that DEP has authority to delegate the administration and enforcement of the SSTS programs to County Departments of Health (CDOH) under Subchapter G [Subpart 128-7] of the proposed regulations;

5. After the effective date of the proposed regulations, the CDOH may apply to DEP to be delegated the authority contained in the proposed regulations to administer and enforce DEP's SSTS programs in accordance with the terms of Subchapter G [Subpart 128-7] of the proposed regulations; and

6. DEP and DOH recognize that it is important to coordinate review and approval of SSTS between the DEP, CDOH and DOH, and to establish time-frames for making final determinations on a permit application undergoing a coordinated review.

WHEREFORE, it is agreed by and between DEP and DOH as follows:

1. Any delegation by DEP to CDOH of the administration and enforcement of DEP's SSTS programs does not affect DEP's ultimate approval authority over all determinations regarding SSTS.

2. Pursuant to Section 18-72 (a) (1) [Subpart 128-7.2(a)(1)] of the proposed regulations, DEP may exercise its prerogative for a 30 day review period of all draft determinations made by the CDOH prior to the determination becoming final. It is the intent of DEP to seek to minimize duplicative approvals and to develop a method to selectively review CDOH determinations;

3. With respect to disagreement between DEP and CDOH on whether or not a specific proposed determination made by CDOH should become final, DOH shall serve as a mediator. In that role, DOH shall attempt to mediate such disputes and propose a resolution acceptable to both parties. In the event an agreement cannot be reached, DEP retains its final approval authority over individual determinations.

4. Upon any delegation of the administration and enforcement of DEP's SSTS programs by DEP to CDOH, DOH will invite DEP to participate in DOH's

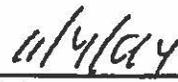
annual review under Article 6 of the Public Health Law of the DOH delegated CDOH programs. DOH shall address and incorporate DEP's comments into its decision to continue delegation, and if appropriate, require modifications to the CDOH program.

5. DEP shall coordinate its annual review of its delegation to the CDOH pursuant to Section 18-73 [Subpart 128-7.3] and Section 18-76 [Subpart 128-7.6] of the proposed regulations with DOH's annual Title 6 review of its delegation to the CDOH.

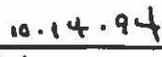
6. DEP agrees to develop and enter into additional MOUs with DOH and CDOH as may be appropriate.

7. There shall be no modifications to this agreement without the written consent of both parties.

  
\_\_\_\_\_  
Mark Chassin, Commissioner  
New York State Department of Health

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Marilyn Gelber, Commissioner  
New York City Department of Environmental Protection

  
\_\_\_\_\_  
Date

## ATTACHMENT B

Memorandum of Understanding  
Between the  
State Department of Health (DOH)  
and the  
State Department of Environmental Conservation (DEC)  
Regarding  
On-site Sewage Treatment and Disposal Systems

### A. Policy

1. It shall be the policy of DEC and DOH to promote and require the proper design, construction and maintenance of all on-site sewage treatment and disposal systems in New York State in order to protect and preserve water quality and public health.
2. It is the intent of this memorandum to clarify the responsibilities of both agencies with respect to the systems and facilities regulated by each.
3. It is recognized that the agency with primary responsibility for the control and prevention and correction of public health nuisances and/or hazards is DOH and for the control and prevention of water pollution is DEC.

### B. Implementation

#### 1. Jurisdiction

- a. DOH shall be responsible for approval and regulatory activities regarding all on-site sewage treatment and disposal systems with a design of 1,000 gallons per day (GPD) or less from a residential dwelling which do not have the admixture of industrial wastes or other wastes as defined in Section 17-0701 of the Environmental Conservation Law of the State of New York.
- b. DEC shall be responsible for the determination and designation of State Pollution Discharge Elimination System (SPDES) permits as either "Significant" or "Non-significant" as defined as follows:
  - (i) Significant: All SPDES permits designated as EPA major, minor municipal and minor toxic industrial permits, plus a limited number of minor sewage-type and minor non-toxic industrial SPDES permits which are identified by DEC for inclusion in this class.
  - (ii) Non-significant: Minor sewage-type SPDES permits and minor non-toxic industrial SPDES permits less those limited number of SPDES permits of this type identified for inclusion as Significant.

- c. DEC shall be responsible for plan approvals and regulatory actions as well as SPDES permit issuance activities for all "Significant" discharges. For all "Non-significant" discharges DEC shall be responsible for SPDES permit issuance.
- d. DOH shall be responsible for plan approval and regulatory actions except for SPDES permit issuance activities for all surface and sub-surface dischargers designated by DEC as "Non-significant" at facilities permitted by DOH under Parts 6, 7, 14, 15 and 17 of the State Sanitary Code except where written agreements are entered into by DEC with any Federal, State, or local governmental agency to perform this responsibility. This responsibility is limited to systems of 10,000 (GPD) or less without the admixture of industrial wastes or other wastes.

## 2. Standards

- a. All surface and subsurface systems less than and equal to 10,000 gpd under DOH jurisdiction shall be designed, constructed, and maintained in accordance with the minimum statewide standards and procedures acceptable to DOH.
- b. All other systems shall be designed in accordance with the minimum statewide standards and procedures acceptable to DEC.

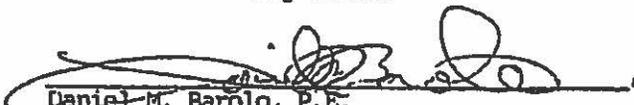
## 3. Compliance

- a. DOH shall be responsible for obtaining compliance at facilities under its jurisdiction. Regulatory action or non-action by DOH does not preclude DEC from pursuing independent regulatory action for non-compliance of DEC law or regulations by these facilities.
- b. DEC shall be responsible for obtaining compliance to systems under its jurisdiction.

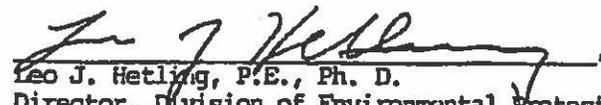
## 4. Administration and Cooperation

Appropriate offices and personnel of DOH and DEC shall cooperate to provide mutual assistance in:

- a. Project reviews of a complex nature.
- b. Resolving any technical and/or administrative differences that may arise.

  
Daniel M. Barolo, P.E.  
Director, Division of Water

  
Date

  
Leo J. Hetling, P.E., Ph. D.  
Director, Division of Environmental Protection

  
Date

## ATTACHMENT C

1. Pursuant to Paragraph 2 in the main body of this Agreement, the following list represents the most stringent requirements set forth in the DEP Watershed Regulations and the WCHD Rules & Regulations (the "WCHDRR"), as of the effective date of this Agreement. If any of the standards change subsequent to the effective date of this Agreement, this list may be changed and updated as needed to incorporate any amendments to the underlying regulations and standards.
  - A. Design sewage flow to be 200 gallons per day per bedroom with application rates as set forth in WCHDRR. (WCHDRR Section 6.0(a))
  - B. Acceptable percolation rate can range from 3 to 60 minutes per inch. (Watershed Regulations Section 18-38(b)(6))
  - C. At least two percolation tests and at least two deep hole tests shall be performed in the primary absorption field. At least one percolation test and one deep hole test shall be performed in the reserve absorption field area. (WCHDRR Section 5(c))
  - D. A minimum usable disposal area of twice the size of the proposed system must be designated for the subsurface disposal system. (WCHDRR Section 4.0(a))
  - E. Minimum center to center trench spacing shall be seven feet. (WCHDRR Section 6.0)
  - F. Minimum separation distance from bottom of absorption system to bedrock, impervious layer or groundwater is five (5) feet. Deep hole tests are to be dug to a minimum of 84 inches, where possible, to show the five (5) foot separation requirement from trench to rock/groundwater. (WCHDRR Section 4.0(a))
  - G. No more than 3 ½ feet of fill may be utilized in Subdivisions approved after September 1, 1971, to obtain the five (5) foot separation distance. Suitable fill material shall consist of only run-of-bank sand and gravel. Such a system is considered "conventional." Fill stabilization may be achieved by mechanical compaction in six-inch lifts or by a natural settling period of at least six months which includes a freeze-thaw cycle. Percolation tests must be conducted in the stabilized fill and range from three to thirty minutes per inch. (WCHDRR Section 4.0(b))
  - H. No portion of an absorption field will be constructed under pavement or other impervious surface. (Watershed Regulations Section 18-38(b)(4))
  - I. Mound, galley systems, seepage pits, evaporation – transpiration systems, and experimental systems, as defined in Appendix 75-A, are prohibited from use for SSTs in the Watershed for new systems. Sand filters are prohibited from use for Individual SSTs in the Watershed. (Watershed Regulations Section 18-38(b)(2))
  - J. No part of an absorption field for an SST shall be located within 100 feet from a Watercourse or wetland or 300 feet from a reservoir or a reservoir stem. (Watershed Regulations Section 18-38(a)(4))
  - K. Raised systems, as defined in Appendix 75-A and when allowed by WCHD, must be located at least 250 feet from any Watercourse or wetland and 500 feet from any reservoir or reservoir stem. (Watershed Regulations Section 18-38(a)(5))

For those sites where the groundwater or distinct mottling is observed within 30 inches from grade, testing of the effectiveness of the curtain drain must be performed in accordance with accepted NYSDOH procedures for method, location and setbacks. The effectiveness of the curtain drain must be determined during a representative high groundwater period. The WCHD may determine the acceptable measures for determining the effectiveness of subsurface drains whenever groundwater levels or distinct soil mottling is observed greater than or equal to 30 inches below grade of in-situ soil.

## ATTACHMENT D – WESTCHESTER COUNTY

1. DEP shall pay the County an amount calculated as set forth below, representing the cost and expenses of the County in administering the delegated responsibilities under this Agreement. The responsibilities are those which the County undertakes on behalf of DEP that are beyond the activities required by WCHD and NYSDOH or NYSDEC regulations and standards but with no additional compensation for profit. Attachment D1 provides an Invoice Sample that illustrates the necessary information required for DEP to reimburse the County. The County must provide a similar or equivalent level of detail in its quarterly invoices.
2. The County shall submit an invoice to DEP for the County's personnel costs and expenses within sixty (60) calendar days following the end of the quarter in which the costs and expenses were incurred, except the fourth quarter and the first invoice after execution of this Agreement is completed. The County shall submit the fourth quarter invoice for work done from April 1 to June 30 each calendar year within fifteen (15) calendar days after the end of that quarter. The County shall submit the first invoice within 30 days after this Agreement is fully executed.
3. The invoice being submitted by the County for reimbursement by DEP shall include the following details:
  - a. Employee, title or staff grade level, hours, project name, type of project, and rate of pay (excluding personnel costs);
  - b. Breakdown of the tasks. Tasks include such things as: percolation testing, site evaluation, change of use applications, Onsite Wastewater Treatment Systems (OWTS) applications for new construction and Remediation, open works, Remediation by licensed septic system contractors, and complaints;
  - c. Summation of the employee name, rate of pay and fringe benefits for each employee; and
  - d. Attach to the invoice a list of each project worked on during the quarter, noting "fully delegated" or "joint review" next to each project. The reservoir basin where the project is located should also be noted, if possible.
4. The County must provide verification to DEP of how the County provides fringe benefits to its employees. This proof should be supplied to DEP at the start of each project year or at any time the benefit amount changes.
5. If the County incurs costs for Other Than Personal Services (OTPS) while performing the work under this Agreement, those expenses may be reimbursable by DEP. For these expenses to be eligible for reimbursement, the invoice submitted to DEP must have a separate section that includes the following information: the type of OTPS expense incurred

during the invoice period, the calculated amount the County pays for each expense during the invoiced quarter; and the percentage of each OTPS expense being submitted for reimbursement that quarter. DEP shall have the right to review any of the OTPS monthly bills that the County has included in the quarterly invoice.

6. The County's amended budget for the five-year term beginning the effective date of this Agreement and ending five (5) years from the effective date of this Agreement shall be a maximum of \$990,000. Each yearly total shall not exceed 22% of the total contract amount, including the one-time purchase of a vehicle and one-time purchase of computers.
7. DEP shall pay the County within sixty (60) calendar days of DEP approving the quarterly invoice that is provided for in accordance with this Agreement.
8. DEP shall pay to the County the actual cost to purchase a vehicle, up to a maximum of \$35,000.00 (in the aggregate) for uses related to the delegated responsibilities under this Agreement, upon the last vehicle, purchased in December 2004 under a previous delegation agreement between DEP and WCHD, reaching an eight (8) year operating term or one hundred thousand (100,000) miles, whichever occurs first. Upon five (5) years of service of the last computer, purchased in September 2004 under a previous delegation agreement between DEP and WCHD, as of the effective date of this Agreement, the City shall pay to the County the actual cost to purchase computers, printers, and/or software or the cost to modify existing software up to a maximum of \$5,000.00 (in the aggregate). Both the vehicle and computers are to be included in the annual budgeted amount set forth in Paragraph 6 of this Attachment, for whichever year(s) in which they are purchased. WCHD shall provide DEP with six (6) months' notice before purchasing a vehicle or computers.
9. All purchased vehicles and computers shall remain in the County's possession and shall continue to be used for public health related activities until such time as said equipment is rendered inoperable. The cost to operate and maintain the replaced items for work performed under this Agreement shall be paid for by the County. DEP shall not reimburse the County for operation and/or maintenance costs related to said equipment.
10. Upon expiration or termination of this Agreement, the Parties agree to a reconciliation of the actual costs within one hundred and twenty (120) calendar days of said expiration or termination.
11. Rates on Attachment D1 will be changed in January of each year in order to reflect any increase in salary and/or fringe benefits for each of WCDH's personnel.

**ATTACHMENT D1**  
**Invoice Sample**

<b>SITE INVESTIGATION - PERCOLATION TESTING</b>				
<u>PERSONNEL</u>	<u>GRADE</u>	<u>TOTAL RATE/HR</u>	<u>HOURS</u>	<u>TOTAL</u>
SANITARIAN/ENV. TECH - PERCOLATION TESTING	C10/7	\$57.47	3.5	\$201.14
<b>TOTAL</b>				<b>\$201.14</b>

<b>SITE INVESTIGATION - SITE INVESTIGATION</b>				
<u>PERSONNEL</u>	<u>GRADE</u>	<u>TOTAL RATE/HR</u>	<u>HOURS</u>	<u>TOTAL</u>
SR. ENGINEER/ASST ENGINEER - SITE EVALUATION	C13/12	\$87.64	2.5	\$219.10
<b>TOTAL</b>				<b>\$219.10</b>

<b>OWTS APPLICATIONS FOR NEW CONSTRUCTION AND REMEDIATIONS* REQUIRING A DESIGN PROFESSIONAL</b>				
<u>PERSONNEL</u>	<u>GRADE</u>	<u>TOTAL RATE/HR</u>	<u>HOURS</u>	<u>TOTAL</u>
OFFICE STAFF (STAFF ASST/SECRETARY)	C8/6	\$49.53	0.5	\$24.77
SR. ENGINEER/ASST. ENGINEER - PLAN REVIEW	C13/12	\$87.64	3	\$262.92
SR. ENGINEER/ASST. ENGINEER - AS BUILTS	C13/12	\$87.64	1.5	\$131.46
<b>TOTAL</b>				<b>\$419.15</b>

<b>OPEN WORKS</b>				
<u>PERSONNEL</u>	<u>GRADE</u>	<u>TOTAL RATE/HR</u>	<u>HOURS</u>	<u>TOTAL</u>
SR. ENGINEER/ASST. ENGINEER - OPEN WORKS	C13/12	\$87.64	2	\$175.28
<b>TOTAL</b>				<b>\$175.28</b>

<b>REMEDICATIONS ** BY WESTCHESTER COUNTY LICENSED SEPTIC SYSTEM CONTRACTORS</b>				
<u>PERSONNEL</u>	<u>GRADE</u>	<u>TOTAL RATE/HR</u>	<u>HOURS</u>	<u>TOTAL</u>
OFFICE STAFF (STAFF ASST/SECRETARY)	C8/6	\$49.53	0.25	\$12.38
SR. ENGINEER/ASST. ENGINEER - REVIEW	C13/12	\$87.64	2	\$175.28
<b>TOTAL</b>				<b>\$187.66</b>

<b>CHANGE OF USE APPLICATIONS</b>
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<u>PERSONNEL</u>	<u>GRADE</u>	<u>TOTAL RATE/HR</u>	<u>HOURS</u>	<u>TOTAL</u>
OFFICE STAFF (STAFF ASST/SECRETARY)	C8/6	\$49.53	0.5	\$24.77
SR. ENGINEER/ASST. ENGINEER - REVIEW	C13/12	\$87.64	3	\$262.92
<b>TOTAL</b>				<b>\$287.69</b>

<b>COMPLAINTS</b>				
<u>PERSONNEL</u>	<u>GRADE</u>	<u>TOTAL RATE/HR</u>	<u>HOURS</u>	<u>TOTAL</u>
SR. ENGINEER	C13	\$91.74	0.5	\$45.87
SANITARIAN	C10	\$65.63	3.5	\$229.71
<b>TOTAL</b>				<b>\$275.58</b>

TITLE	GRP	RATE/HR	FRINGE RATE	TOTAL RATE/HR
SR ENGINEER	13	\$56.05	\$35.69	\$91.74
ASST ENGINEER	12	\$51.04	\$32.50	\$83.54
SANITARIAN	10	\$40.10	\$25.53	\$65.63
ENV TECH I	7	\$30.12	\$19.18	\$49.30
OFFICE STAFF (STAFF ASSISTANT/SECRETARY)	8/6	\$30.26	\$19.26	\$49.53

\*FOR OWTS LOCATED ON PROPERTIES WITHIN KENSICO, CROSS RIVER, AND CROTON FALLS RESERVOIR BASINS; REMEDIATIONS FOR OWTS LOCATED ON PROPERTIES WITHIN NEW CROTON, MUSCOOT, AMAWALK AND TITICUS RESERVOIR BASINS; AND ALL INTERMEDIATE SIZED OWTS AND APPLICATIONS WHICH DEP HAS ISSUED A VARIANCE APPROVAL.

\*\* REMEDIATIONS AS DEFINED IN THE DEP WATERSHED REGULATIONS - EFFECTIVE MAY 1, 1997 AS AMENDED APRIL 4, 2010

**ATTACHMENT E**  
**Contacts**

1. **DEP Contacts:**

All correspondence including Determinations to DEP arising under this Agreement shall be sent by regular mail, except where other means are specified, to the following person (or to his/her successor in the same title) at the following address:

Danny Shedlo, P.E., EOH Project Review Supervisor  
New York City Department of Environmental Protection  
465 Columbus Avenue  
Valhalla, NY 10595

Except that all termination notices shall be sent by certified mail, return receipt requested, to the following persons (or to each such person's successor in the same title) at the following addresses:

\_\_\_\_\_, Chief, Regulatory and Engineering Programs  
New York City Department of Environmental Protection  
71 Smith Avenue  
Kingston, NY 12401

New York City Department of Environmental Protection  
59-17 Junction Boulevard, 19<sup>th</sup> Floor  
Flushing, NY 11373  
Attn: General Counsel

2. **WCHD Contacts:**

All correspondence to WCHD arising under this Agreement shall be sent to the following persons (or to each such person's successor in the same title) at the following addresses:

Paul Kutzy, P.E., Assistant Commissioner  
Westchester County Health Department  
25 Moore Avenue  
Mount Kisco, NY 10549

Renee Recchia, Acting Deputy Commissioner for Administration  
Westchester County Department of Health  
10 County Center Road, 2<sup>nd</sup> Floor  
White Plains, NY 10607-1541

3. **NYSDEC Contacts:**

All disputes shall be sent to the following person (or to his/her successor in the same title) at the following address:

Shohreh Karimipour, P.E., Regional Water Engineer  
New York State Department of Environmental Conservation  
100 Hillside Avenue, Suite 1W  
White Plains, NY 10603

4. **NYSDOH Contacts:**

All disputes shall be sent to the following persons (or to each such person's successor in the same title) at the following addresses:

Pamela L. Young, Ph. D., Chief, New York City Watershed Section  
New York State Department of Health  
Bureau of Water Supply Protection  
Empire State Plaza  
Corning Tower, 11<sup>th</sup> Floor  
Albany, NY 12237

Christine Westerman, Director, Environmental Health  
New York State Department of Health  
50 North Street  
Monticello, NY 12701

**ACT NO. \_\_\_\_-2021**

AN ACT authorizing the County of Westchester to renew an intermunicipal agreement with the New York City Department of Environmental Protection for the delegation to the County of Westchester the administration and enforcement of Section 18-38 of Subchapter G of New York City's "Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources", whereby the County will review and issue written determinations for all new, altered, modified, or remediated subsurface sewage treatment systems located in the portion of the watershed of the New York City water supply situated within Westchester County.

**BE IT ENACTED** by the County Board of the County of Westchester, as follows:

Section 1. The County of Westchester (the "County") is hereby authorized to renew an intermunicipal agreement (the "Agreement") with the New York City Department of Environmental Protection (the "NYCDEP"), pursuant to which the NYCDEP will delegate to the County, acting by and through its Department of Health ("DOH"), the administration and enforcement of Section 18-38 of Subchapter G of New York City's "Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources", whereby DOH will review and issue written determinations for all new, altered, modified, or remediated subsurface sewage treatment systems ("SSTs") located in the portion of the watershed of the New York City water supply situated within Westchester County, for a five year period effective January 1, 2021 and terminating on December 30, 2025.

§2. The County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to carry out the purposes of this Act.

§3. This Act shall take effect immediately.