

Authorizing The Chairman Of The Ulster County Legislature To Execute A Second Supplemental Agreement, And Any Amendments Thereto, With The City of New York And The West Of Hudson Stakeholders, Modifying The 2010 Water Supply Permit Thereby Enabling The City of New York To Fund a City of New York Flood Buyout Program As Provided For In The Filtration Avoidance Determination Midterm Revisions With Fewer Restrictions In Participating Municipalities – Department of Planning

Referred to: The Economic Development, Tourism, Housing, Planning and Transit Committee (Chairman Maloney and Legislators Berky, Delaune, Lapp, Litts, Maio and Rodriguez), and The Energy and Environment Committee (Chairman Richard Parete and Legislators Bartels, Heppner, Lapp and Wawro)

Chairman of the Economic Development, Tourism, Housing, Planning, and Transit Committee, James F. Maloney, and Deputy Chairman Hector Rodriguez offer the following:

WHEREAS, this resolution has been submitted by the County Executive on behalf of the Department of Planning; and

WHEREAS, on January 21, 1997, the County of Ulster (hereinafter the “County”) and other entities entered into the Watershed Memorandum of Agreement (hereinafter the “MOA”) with the City of New York (hereinafter “NYC”), which MOA established a partnership in which the parties agreed “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

WHEREAS, among the programs agreed to in the MOA is a program for the New York City Department of Environmental Protection (hereinafter the “DEP”) to acquire land in the Watershed for watershed protection (hereinafter the “Land Acquisition Program” or the “LAP”), subject to the terms of both the MOA and of a water supply permit issued to the DEP by the New York State Department of Environmental Conservation (hereinafter the “DEC”) on January 21, 1997 (hereinafter the “1997 Permit”); and

WHEREAS, the County subsequently agreed, by its signature on the “Agreement Among West of Hudson Watershed Stakeholders Concerning NYCDEP’s Continuation of its Land Acquisition Program,” (herein after the “LAP”) dated December 27, 2010, to the terms and conditions of the successor 1997 Permit, the “2010 Water Supply Permit, “(the “2010 Permit”) which continued the DEP’s LAP through December 23, 2025; and

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WHEREAS, the 2013 Supplemental LAP Agreement memorialized the Parties' agreement to modifications of Special Condition 7(b) of the 2010 Water Supply Permit (WSP) to facilitate the Hurricane Irene Buyout Program. In particular, the modifications allowed for the use of the FEMA procedures for determining the fair market value of properties participating in the Hurricane Irene Buyout Program. The modifications also allowed for local communities to take and retain title to properties acquired through that Program, establishing a requirement that in such situations, those communities will grant conservation easements to DEC with certain restrictions, including both the restrictions FEMA requires for all buyout properties ("FEMA Deed Restrictions") and additional restrictions memorialized in the 2013 Supplemental LAP Agreement; and

WHEREAS, the May 2014 Midterm Revisions to the City's 2007 Filtration Avoidance Determination ("FAD") require DEP to commit \$15 Million to a New York City-funded flood buyout program ("NYCFBO") to be implemented in accordance with the conditions of the 2010 Water Supply Permit, as amended. In accordance with the FAD, after extensive negotiations and outreach, Watershed Stakeholders have agreed upon a process for property evaluation and selection, as documented in "NYC-Funded Flood Buyout Program Property Evaluation and Selection Process," dated June 1, 2016 ("Process Document"), which relies on a further amendment of the 2010 Water Supply Permit, as described below, to allow DEP to implement the NYCFBO in communities that elect to participate in the Program ("Communities"); and

WHEREAS, MOA Paragraph 67 prohibits DEP from acquiring property in the West of Hudson watershed with structures other than uninhabitable dwellings or accessory structures unless the property is acquired through an acquisition and relocation program administered pursuant to the Hazard Mitigation Grant Program of the Federal Disaster Assistance Act; and

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WHEREAS, on December 23, 2015, the Coalition of Watershed Towns (CWT) acting on behalf of the watershed communities submitted to DEP and the regulatory agencies the following list of proposed modifications and enhancements to the Watershed Protection and Partnership Programs (“Supplemental Partnership Program”), which the CWT asserts are critical to the long-term sustainability of the watershed communities:

1. Future Stormwater Fund
 - (a) Replenishment
 - (b) Eligible costs/allocation

2. MOA Paragraph 145 Stormwater Costs Paid by the City
 - (a) CWC to administer program
 - (b) Payments as project proceeds within 90 days of invoice submission
 - (c) Eligible costs to be consistent with MOA Attachments II and WW and to be determined by CWC

3. Small Business Septic Fund
 - (a) Expansion to public entities and institutions
 - (b) Engineering evaluations and funding of upgrades to noncomplying regulated activities
 - (c) Expansion to include all incremental costs of equipment and methods required by the Watershed Regulations that are not required by State or federal law

4. CWC to administer program concerning the City’s obligations to pay certain wastewater treatment plant costs under Public Health Law Section 1104; and

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WHEREAS, in order for NYCFBO to progress as desired by the communities within the watershed, DEP has requested a modification to Special Condition 7(b) of the 2010 WSP to allow DEP to acquire when agreed to by the community and the property owner, property with structures (other than uninhabitable dwellings or accessory structures). Based on extensive negotiations, the Parties have reached agreement on a Second Supplemental Agreement among the West of Hudson Watershed Stakeholders concerning the NYCFBO Program. As part of that agreement, the communities have requested, and the City has agreed to: (1) negotiations concerning the Supplement Partnership Programs and the incorporation of those supplemental programs into the NYC Long Term Watershed Protection Program; (2) to work together with the communities, in consultation with New York State Department of Health and the DEC, to identify and promulgate amendments to the Watershed Regulations that will reduce the regulatory burden on the West of Hudson communities without compromising water quality; and (3) to work together with the communities to identify efficiency improvements to the City's contracting, procurement, and contract administration processes; and

WHEREAS, the DEP has held multiple stakeholder meetings to reach consensus on the NYCFBO and completed an environmental impact review under the State Environmental Quality Review Act (SEQRA) and determined that the proposed changes would not introduce new or previously undisclosed significant adverse impacts and therefore, in accordance with 617.9(a) (7), a Supplemental EIS is not required, and the impact conclusions from the 2010 Final EIS and Findings Statement for the Extended Watershed Land Acquisition Program remain; now, therefore, be it

RESOLVED, that the Ulster County Legislature authorizes the Chairman of the Ulster County Legislature to execute the Second Supplemental Agreement among the West of Hudson Watershed Stakeholders concerning the New York City – Funded Flood Buyout Program, and any amendments thereto, in the form as filed with the Clerk of the Ulster County Legislature or as modified with the approval of the County Attorney,

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and move its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

No Action Taken in Committee: Economic Development, Tourism, Housing, Planning and Transit on September 6, 2016

Passed Committee: Economic Development, Tourism, Housing, Planning and Transit on _____.

Passed Committee: Energy and Environment on _____.

FINANCIAL IMPACT:

NONE