

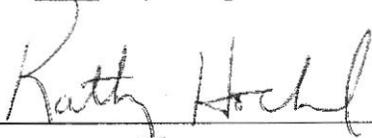
ENDORSEMENT
OF
Memorandum of Agreement
between

The State of New York, The City of Mount Vernon and the County of Westchester

Now, Therefore, I, Kathy Hochul, Governor of the State of New York, along with the County Executive George Latimer and the Mayor of the City of Mount Vernon Shawyn Patterson-Howard, having read the Memorandum of Agreement between the State of New York, County of Westchester, and the City of Mount Vernon endorse the principles set forth.

IN ADDITION, This agreement forges a path forward to comprehensibly improve sanitary sewer and storm sewer systems within the City of Mount Vernon and undertake related efforts to increase flood resilience of these systems in the face of increasing storm intensity resulting from climate change and provides a framework for cooperation of the State, City and County for the benefit of the City and its residents.

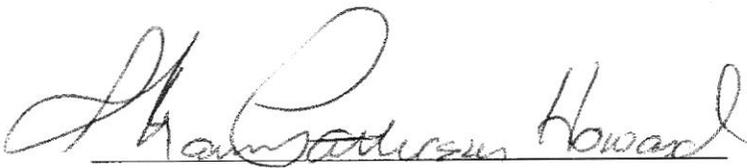
Signed this 15th Day of April 2022



Governor of the State of New York, Kathy Hochul



Westchester County Executive, George Latimer



Mayor of Mount Vernon, Shawyn Patterson-Howard

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF NEW YORK,
THE CITY OF MOUNT VERNON AND
THE COUNTY OF WESTCHESTER

THIS MEMORADUM OF UNDERSTANDING (“MOU”) by and between the City of Mount Vernon, having its principal offices at 1 Roosevelt Square N. Mt. Vernon, New York 10550 (hereinafter referred to as the “City”), the County of Westchester, a municipal corporation, having its principal offices at 148 Martine Avenue, White Plains, New York 10601 (hereinafter referred to as the “County”) and the New York State Department of Environmental Conservation on behalf of the State of New York (hereinafter referred to as the “DEC,” “Department” or “State”), having its principal offices at 625 Broadway, Albany, New York 12233.

The purpose of this MOU is to describe a City-County-State proposed partnership and path forward to comprehensively improve sanitary sewer and storm sewer systems within the City, and undertake related efforts to increase the flood resilience of these systems in the face of increasing storm intensity resulting from climate change. This MOU outlines the financial, oversight and construction activities designed to achieve substantial progress, and ultimately full compliance by the City with Federal and State laws and regulations associated with sanitary sewer and storm sewer systems.

Witnesseth

WHEREAS, the Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment; and

WHEREAS, in June 2018 the United States Department of Justice (“DOJ”), along with the New York State Attorney General’s Office on behalf of the Department, filed a complaint against the City, United States v. City of Mount Vernon, 18 Civ. 5845, in federal court to address discharges of raw sewage and other illicit pollutants from its storm sewer system into the Hutchinson and Bronx Rivers. The United States District Court in the Southern District of New York (“Court”) entered a series of remedial orders against the City, starting on September 21, 2020 (“Federal Court Order”), directing the City to bring its Municipal Separate Storm Sewer System (“MS4”) into compliance under the Clean Water Act, the New York Environmental Conservation Law and New York State Pollutant Discharge Elimination System Permit No. GP-0-15-003 (“MS4 General Permit”); and

WHEREAS, the purpose of the Federal Court Order is to bring the City into compliance with its MS4 obligations, and the Federal Court Order’s obligations include identifying and addressing each condition in the City’s sanitary sewer system that could

lead to discharge of sewage to the City's MS4. Problems associated with defective and leaking sanitary sewers contribute significantly to pollution discharges from the City's MS4. This MOU acknowledges the Federal Court Order requirements as well as other various environmental and health related problems that need to be addressed by the City; and

WHEREAS, the City's sanitary and storm sewers require inspection and repair after a long history of leaking pipes, clogged sewers and basement backups. Sewage backups into residences and businesses within the City have persisted over the last few years, and investigation and remediation are necessary for the health and safety of the affected community; and

WHEREAS, in an effort to repair and upgrade the City's sanitary and storm sewers, and abate all sewage backups into homes and businesses, the parties agree to enter into this MOU that sets forth a path to achieve these goals and describes the contemplated roles of the parties to facilitate the City's efficient and comprehensive compliance with applicable Federal and State laws; and

WHEREAS, the City expresses its understanding that, consistent with the terms of the Federal Court Order and any State and Federal statutes and regulations, this MOU provides a framework for cooperation of the State, City and County for the benefit of the City and its residents as outlined below; and

WHEREAS, the State contemplates a significant investment of financial and technical resources toward the partnership presented in this MOU and has provided the following financial assistance or announced the following grant awards to the City to date:

- \$10,000,000 DEC grant to address sewage discharges at two outfalls and their associated collection systems;
- \$200,000 in two separate Environmental Facilities Corporation ("EFC") Engineering Planning Grants;
- \$75,000 DEC Non-Point Planning Grant for location mapping of its storm sewer system; and
- \$1,600,000 DEC grant to remedy storm sewer system issues by addressing such items as illegal connections to the storm and sanitary sewer systems.

NOW, THEREFORE, in the spirit of partnership and mutual aid the parties express their understanding as follows:

ARTICLE I. Term

This MOU takes effect upon the signature of the parties and will continue for one year. The parties contemplate that additional agreements and understandings will be developed and finalized in the future to effectuate this partnership and achieve its beneficial purposes.

ARTICLE II. Scope of Work

The State, the City and the County will seek to make reasonable and good faith efforts to advance the Scope of Work as described below:

Understandings as to the State:

1. The State will serve as a facilitator in providing assistance, guidance and direction on applying for all available State and Federal loan and grant funds to modernize the sanitary and storm sewer systems, reduce the inflow infiltration, and increase system resilience against flooding.
2. The State will seek to fund the City's initial comprehensive asset management program with respect to sanitary sewers, storm sewers, pumpstations and the like in the context of climate resiliency enhancements to adequately and efficiently track, repair and update the City's clean water systems and infrastructure. The asset management program will provide budget information to assist in maintaining a state of good repair and create an overlay of flood and sewer backup areas.

Understandings as to the County:

1. The County, at no cost to the County, will seek to serve as an administrator by aiding and obtaining, disbursing and/or managing for the benefit of the City, Federal and State grants, loans or any other financial assistance, with respect to sanitary sewer and storm sewer systems.
2. Upon receipt of funds from New York State, as an administrator the County, at no cost to the County, will seek to provide assistance by contracting for engineering, construction, consulting assistance and oversight, and related services as needed to implement the remedial and upgrade work contemplated in this MOU with respect to sanitary sewer and storm sewer systems infrastructure of the City.
3. The County, at no cost to the County, with retained consulting assistance, will seek to provide engineering design, construction assistance, and financial management of work to repair and upgrade City sanitary sewer and storm sewer systems in close coordination with the City.
4. The County, at no cost to the County, will seek to accept and disburse funds that are available to the City for the purposes of achieving the sanitary sewer and storm sewer system work contemplated under this MOU.
5. The County, working with the City, at no cost to the County and with retained consulting assistance, will seek to develop a solution to the blockage, faulty connections and system capacity constraints in the City's sanitary sewer system in the vicinity of the connection to the County's Hutchinson Valley High Level Interceptor on West Third Street between South Ninth and Tenth Avenues ("Third

Street Project”). The proposed solution is the construction of a below-grade sewer pumping station which, upon completion, will be owned, operated and maintained by the City. Under this MOU the consultant will, among other actions, prepare biddable construction plans and specifications.

6. The County will seek to prepare and pass any necessary resolutions or authorizations to act on the items set forth in this MOU.

City’s Responsibilities:

1. The City will commit at least \$6,500,000 of the City’s allocated federal American Rescue Plan Act funds and additional allocated federal funding to projects contemplated by this MOU.
2. The City will cooperate in the establishment of a State-funded asset management program. After the State-funded establishment of the asset management program, the City will seek to maintain the asset management program to assess the status of, and track, the City’s clean water infrastructure, and create a plan to fund and maintain such infrastructure in future years.
3. The City will seek to create, update and implement an Illicit Discharge Detection and Elimination Plan, Storm Water Management Plan; Sanitary Sewer Evaluation Survey, Capacity Management Operations and Maintenance (“CMOM”) Plan, as well as, reline, replace or upgrade storm sewers and sanitary sewers when any illicit discharge is discovered. These plans and programs are part of the City’s Corrective Action Plan (“CAP”) to address the corrective measures required by the Federal Court Orders, which will be prioritized amongst the projects of this MOU.
4. The City will also seek to prioritize the engineering, design and construction of remedial work necessary at the Third Street Project as referenced above.
5. The City will seek to declare an emergency and otherwise proceed promptly in applying for EFC emergency loan funds.
6. The City will seek to prepare and pass any necessary resolutions or authorizations to act on the items set forth in this MOU.

ARTICLE III. ENSURING THAT CORRECTIVE MEASURES COUNTINUE TO ADDRESS FEDERAL COURT ORDER

As of the date of this MOU, the City has completed many of the actions required by the Federal Court Order, including: inspections of residential addresses identified within the Federal Court Order; construction and repair of sanitary and storm sewers at 4th Avenue, Overlook Street, Haven Avenue, Washington Street and Lyons Place; development of a spreadsheet of all MS4 outfalls; creation of an updated map with GIS

coordinates of the visual inspection of 77 outfalls; designating a stormwater coordinator; the updating of the City's CMOM; submission of the Edison Avenue pump station report; purchasing a sewer line rapid assessment tool, a manhole scanner, new clamshell truck and four street sweepers; and completing approximately \$2 million of sanitary and storm sewer construction rehabilitation actions.¹ See attached City Report for the period of January 1, 2021 through December 31, 2021.

The City shall develop a CAP for the work contemplated in this MOU. The CAP will address all outstanding issues associated with the Federal Court Order.

Upon execution of this MOU, the Department, as a plaintiff in the federal case, shall work with the City and DOJ to negotiate a Consent Decree or other legally enforceable instrument with the intent of superseding the Federal Court Order.

ARTICLE IV. Additional Funding

The State will seek to provide up to \$150,000,000 in State funds to achieve the beneficial purposes of this MOU, additional to the grants described at page 2 above. A separate funding mechanism will be necessary for any transfer of appropriated funds. The State will also make reasonable and good faith efforts to deploy available Federal financial resources to assist in accomplishing the purposes of this MOU. Any and all commitment of State and Federal funds are subject to and predicated upon compliance with all applicable laws, regulations, permits and reviews, including applicable environmental reviews.

As a predicate for the State to commit to providing the funding described herein, the City shall:

1. Execute any necessary intermunicipal agreement with the County.
2. Apply for an EFC Emergency loan up to \$5,000,000 after declaration of an emergency regarding the need for certain clean water infrastructure projects.
3. Create a CAP.
4. Obtain any authorizations and/or resolutions necessary to ensure completion of the CAP.

ARTICLE IV. Termination

This non-binding MOU may be terminated by any party giving the others 30 days advance written notice of such intent and the reasons thereof. All parties agree to enter into good faith negotiations to resolve any differences and provide for an orderly closure of this MOU.

ARTICLE V. Notice

¹ As reported in the City of Mount Vernon's January 31, 2022 MS4 Annual and Semi-Annual Report for the period of January 1, 2021 through December 31, 2021.

All notices shall be in writing and either sent by certified mail postage pre-paid, or delivered by hand or overnight courier, as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

Notices shall be sent to the following:

To the STATE:

Deputy Commissioner for Water Resources
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1010

with a copy to:

General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1010

To the COUNTY

Westchester County Executive
Michaelian Office Building, 9th Floor
148 Martine Avenue
White Plains, NY 10601

with a copy to:

Westchester County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, NY 10601

To the CITY:

City of Mount Vernon Mayor
1 Roosevelt Square N.
Mount Vernon, NY 10550

with a copy to:

Commissioner of Public Works
City of Mount Vernon
1 Roosevelt Square N.
Mount Vernon, NY 10550

In **WITNESS WHEREOF**, the individuals listed below are authorized to sign and execute this MOU on behalf of the parties, on the date appearing below their respective signatures.

New York State Department of Environmental Conservation		Westchester County
By 		By _____
Basil Seggos		George Latimer
Title: Commissioner		Title: County Executive
Dated <u>4/15/22</u>		Dated _____

City of Mount Vernon
By 
Shawyn Patterson-Howard
Title: Mayor
Dated <u>5/10/2022</u>
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