

Resolution 22-26

Finger Lakes Regional Land Bank Corporation Board of Directors

Moved by Kyle Barnhart, Jill Henry

RESOLUTION TO AUTHORIZE AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE OFFICE OF THE STATE COMPTROLLER – NEW YORK ENVIRONMENTAL PROTECTION AND SPILL COMPENSATION FUND AND SENECA COUNTY

WHEREAS, Seneca County is required by the Real Property Tax Law of the State of New York to bring tax foreclosure proceedings against tax delinquent properties within Seneca County; and

WHEREAS, many of the properties against which the County is required to bring tax foreclosure proceedings pose environmental issues of contamination by oil or other hazardous substances which subjects the County to potential liability under existing state and federal environmental protection laws; and

WHEREAS, Seneca County transfers many of the properties it acquires through tax foreclosure to the Finger Lakes Regional Land Bank Corporation (FLRLBC) for purposes consistent with the Land Bank's mission of returning vacant, condemned, and tax abandoned properties to beneficial use; and

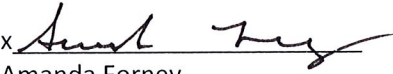
WHEREAS, Seneca County and the FLRLBC have negotiated an agreement with the New York State Department of Environmental Conservation and the Office of the New York State Comptroller -- New York Environmental Protection and Spill Compensation Fund which provides some protection to both Seneca County and the FLRLBC against financial liability under existing New York State Environmental Protection Laws for contaminated properties acquired by the County and the FLRLBC; and

WHEREAS, the agreement negotiated is attached to this resolution as Schedule A; and

RESOLVED, that the FLRLBC Board of Directors authorizes the CEO/President to sign and execute an Agreement with the New York State Department of Environmental Conservation, the Office of the New York State Comptroller – New York Environmental Protection and Spill Compensation Fund, and Seneca County providing for covenants not to sue the FLRLBC for environmental contamination existing on properties acquired by the FLRLBC after tax foreclosure by Seneca County provided the FLRLBC meets the conditions set forth in said agreement.

I, Amanda Forney, Secretary of the Finger Lakes Regional Land Bank Corporation, a corporation organized and existing under the laws of the State of New York (the "Corporation"), do hereby certify that the above is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of the Corporation duly held and convened on September, 27th, 2022, at which meeting a duly constituted quorum of the Board of Directors was present and acting throughout, and that such resolution has not been modified, rescinded, or revoked, and is at present in full force and effect.

IN WITNESS THEREOF, the undersigned has affixed their signature this 27 day of September, 2022. The Corporation has no corporate seal.

x 
 Amanda Forney
 Corporation Secretary

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	Yes	Nay	Abstain	Absent
Kyle Barnhart	[x]	[]	[]	[]
Ernie Brownell	[x]	[]	[]	[]
Jill Henry	[x]	[]	[]	[]
Les Marquart	[]	[]	[]	[x]
Don Northrup	[]	[]	[]	[x]
Frank Sinicropi	[x]	[]	[]	[]
David Wood	[x]	[]	[]	[]

Schedule A:

**Agreement
Among
The New York State Department of Environmental Conservation,
Office of the State Comptroller - New York Environmental
Protection and Spill Compensation Fund,
Seneca County and Finger Lakes Regional Land Bank**

This Agreement is entered on this _____ day of _____, 2022, by and among the County of Seneca ("County") with offices at 1 Dipronio Dr., Waterloo, NY, 13165 the Finger Lakes Regional ("Land Bank") with offices at 1 Dipronio Dr., Waterloo, NY, 13165 the New York State Department of Environmental Conservation ("NYSDEC"), with offices at 625 Broadway, Albany, New York 12233, and the Office of State Comptroller, New York Environmental Protection and Spill Compensation Fund ("Oil Spill Fund"), with offices at 110 State Street, Albany, New York 12236 (collectively, "Parties").

WHEREAS, NYSDEC is the Executive Agency of the State of New York responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL") and the New York State Finance Law ("SFL") and cleanup of contaminated properties pursuant to the ECL and Article 12 of the Navigation Law ("NL"); and

WHEREAS, NYSDEC is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the NYSDEC and its Commissioner by Article 1, Title 3 of the ECL; and

WHEREAS, NYSDEC also has the authority, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.1; and

WHEREAS, Chapter 847 of the Laws of 1982 created the Hazardous Waste Remedial Fund and assigned custody to the Office of the State Comptroller who is to make funds available to NYSDEC for the investigation and remediation of hazardous waste. These funds are not to be made available until the Commissioner of the NYSDEC has ensured that all reasonable efforts have been taken to secure the voluntary agreement for costs of necessary remedial action from owners, operators or other responsible persons for inactive hazardous waste sites;

WHEREAS, Chapter 845 of the Laws of 1977 created the Oil Spill Fund and

assigned to the Office of the State Comptroller administrative and operational responsibility for the Oil Spill Fund ("Administrator"); and

WHEREAS, the Administrator is empowered to settle all claims involving liability under Article 12 of the NL for all petroleum discharges; and

WHEREAS, NL §173 prohibits the discharge of petroleum, and NL §181 provides that any person who discharges petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs; and

WHEREAS, the Land Bank is a duly organized Not-For-Profit Corporation, existing pursuant to Article 16 of the New York Not-For-Profit Corporation Law, created to assist the County with problems stemming from vacant, abandoned, tax delinquent and underutilized properties; and

WHEREAS, the Land Bank, in furtherance of its mission and purpose, may take title to tax delinquent, tax foreclosed, vacant or abandoned residential, commercial or industrial properties located in the County, or other properties consistent with a redevelopment plan approved by the County, and the County may take title to property through bankruptcy, tax delinquency, abandonment or other circumstances in which the County acquire title by virtue of its function as a sovereign ("Property" or "Properties"); and

WHEREAS, Land Bank will hold and market such Properties in order to repurpose, redevelop and resell such Properties and restore them to the tax rolls, and the County may take title to such Properties in order to sell such Properties, whether at public auction or otherwise, in order to restore them to the tax rolls; and

WHEREAS, the Land Bank shall seek to divest itself of such Property at the earliest practicable commercially reasonable time on commercially reasonable terms, consistent with its mission and purpose, taking into account market conditions and legal and regulatory requirements, and the County takes title to such Properties immediately prior to sale; and

WHEREAS, the Parties have a shared interest in ensuring that any environmental issues associated with the Properties do not interfere with the return of the Properties to the tax rolls, and to productive use, and that such issues are timely and appropriately addressed in order to protect public health and the environment; and

WHEREAS, the Parties have a shared interest in recovering any costs as defined herein; and

WHEREAS, this Agreement sets forth mutually agreeable principles which are intended to ensure cooperation between NYSDEC, the Oil Spill Fund, the Land Bank,

and the County to establish an understanding regarding clean-up liability for the Land Bank and County, and to provide a mechanism for sharing of sale proceeds from Properties. This Agreement is intended to recognize that the best interests of the public, including the reimbursement of costs, are served by the coordination and cooperation of the Parties. The objective of this Agreement is to ensure that full consideration is afforded these interests, and that the individual missions and responsibilities of each Party are fully considered in the advancement of the Land Bank's mission and the County's sovereign functions; and

WHEREAS, it is in the interest of all Parties to help return properties covered by this Agreement to the tax rolls.

NOW, THEREFORE, it is agreed among NYSDEC, the Oil Spill Fund, the County, and Land Bank that:

ARTICLE I PARTIES

- 1.1 For purposes of this Agreement the following terms shall apply:
 - 1.1.1 the County shall mean the County of Seneca, its departments, agencies, agents, servants, officials, and employees.
 - 1.1.2 the Land Bank shall mean the Finger Lakes Regional Land Bank, Corporation, its departments, agencies, agents, servants, officials, and employees.

ARTICLE II COOPERATION

2.1 The Parties shall, on a regular basis, keep each other informed of and consult on matters of common interest, which in their opinion are likely to lead to mutual collaboration.

2.2 Consultation and exchange of information and documents under this Article shall be without prejudice to arrangements which may be required to safeguard the confidential and restricted character of certain information and documents.

2.3 The Parties shall, at such intervals as deemed appropriate, convene meetings to review the progress of activities being carried out under this Agreement and to plan future activities.

2.4 The Parties may invite each other to send observers to meetings or conferences convened by them or under their auspices in which, in the opinion of a Party, another may have an interest. Invitations shall be subject to the procedures applicable to such meetings or conferences.

2.5 The Parties agree to cooperate and share information in furtherance of identifying the nature and extent of contamination on the Properties, determining the extent of the remediation that is likely to be required, and the most efficient manner of and pursuing remediation, if and to the extent it is needed on one or more Properties.

2.6 Land Bank and/or the County will share all environmental studies it conducts on the Properties with NYSDEC. NYSDEC will share, upon request, information in its possession provided such information can appropriately be released pursuant to the Freedom of Information Law ("FOIL"). Unless legally required, no formal FOIL request shall be necessary in order for such information to be provided.

2.7 Land Bank may request NYSDEC assistance, e.g., access to one or more Properties, to obtain environmental information. NYSDEC will consider such requests and will endeavor to approve such requests, but nothing herein contained shall require the NYSDEC to provide such assistance.

2.8 Oil Spill Fund and NYSDEC will use best efforts to notify Land Bank and the County in writing no later than 90 days after the effective date of this Agreement, which of the Properties identified on Schedule A that it has expended funds on, and will endeavor to timely respond to requests going forward regarding whether funds have been expended with respect to additional Properties that come into the County's and/or Land Bank's possession.

ARTICLE III COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

3.1 Subject to Sections 3.3 and 3.4 below, to the extent that Land Bank takes title to a Property or a tax lien for a Property for the sole purpose of advancing its mission, NYSDEC and the Oil Spill Fund covenant not to sue or seek payment from the Land Bank as a responsible party as that term is defined in New York State law (ECL §27-1301 et seq. and NL Article 12) and federal law (42 U.S.C. §9607(a)).

3.2 In circumstances where the County is in the chain of title of a Property held or redeveloped by the Land Bank or in circumstances where the County takes title to Property by virtue of their sovereign functions (e.g., tax foreclosure, tax delinquency, abandonment), the covenant not to sue or seek payment shall apply to the County provided, however, that the County meets all of the requirements that apply to the Land Bank in Sections 3.3, 3.4(A)(ii) and 3.4(B). In any event, the County retains all relevant

statutory defenses available under any applicable state or federal environmental law including, but not limited to, those provided within the ECL, NL or Comprehensive Environmental Response, Compensation and Liability Act. Other than the Land Bank and County, this Agreement, except as provided in Paragraph 4.1.3, shall not inure to the benefit of any third party, including successors in title or assigns of tax liens and/or Properties transferred by the Land Bank.

3.3 Nothing in this Agreement shall be construed to enlarge the liability, responsibilities or duties of the Land Bank or the County pursuant to New York State law (ECL § 27-1301 et seq. and NL Article 12), federal law (42 U.S.C. § 9601, et seq.), or any other New York State or federal environmental laws. Nothing in this Agreement shall be construed to diminish the rights of the Land Bank or the County pursuant to any applicable New York State or federal law.

3.4 A) A covenant not to sue or to seek payment will not be available to the Land Bank for a Property if: (i) the Land Bank holds an interest in a property outside of its mission; (ii) the Land Bank owned or operated the Property at the time of unlawful disposal or release, discharge or spill of contaminants on the Property, or if the Land Bank participates in management of the Property at the time of disposal, as that term is defined in federal law (42 U.S.C. §9601(20)(F)), or (iii) Land Bank fails to divest itself of the Property or tax lien within four (4) years from the time Land Bank takes title to the Property.

B) The NYSDEC and the Oil Spill Fund hereby reserve all of their respective rights concerning:

1) circumstances where the Land Bank or County causes or contributes to the release or threat of release at the Property of any hazardous substance (as that term is defined at 42 USC §9601[14]) or becomes responsible according to applicable principles of statutory or common law for any discharge of petroleum occurring at the Properties, other than existing contamination;

2) circumstances where the Land Bank and/or County fail to exercise “appropriate care”¹ with respect to existing contamination by failing to take reasonable steps to: (i) stop any continuing release; (ii) prevent any threatened future release; and (iii) prevent or limit human, environmental, or natural resource exposure to any

¹ “Appropriate care” for purposes of this Agreement shall not include a requirement to remediate previously released contamination at the Property. Additionally, such acts constituting Appropriate Care shall not in and of itself constitute management of the Property. Nor shall marketing of such Property, the issuance of Requests for Proposal, the decision to sell, the negotiation and execution of a development agreement and related documents with terms acceptable to the seller, or, any acts by the Land Bank, County or City to bring about the cleanup of the Property, if desired, constitute management with respect to any liability protection afforded to the Land Bank, the County, or the City herein, or under any statute.

previously released contamination when the Land Bank and/or County has actual or constructive knowledge or notice of such exposure risk; and when such circumstances exist, the NYSDEC may take all appropriate action, including investigatory or remedial action, to protect public health and the environment;

3) circumstances where the Land Bank or County causes the use of the Property to change from the contemplated use to one requiring a greater level of cleanup of remaining contamination before that use can be implemented with sufficient protection of human health and the environment;

4) taking action based on fraud or gross negligence committed by the Land Bank or County in acquiring interest in the Property or in demonstrating compliance with any of the requirements of this Section 3.4.

3.5 In exchange for the benefits provided under this Article, Land Bank and County expressly waive any and all claims they ever had, now have, or may have in the future, as against the Oil Spill Fund relating to any petroleum contamination at the Properties on Schedule A, or any other Property covered by this Agreement.

3.6 Land Bank and County agree to allow the NYSDEC to determine whether remediation activities being conducted by the NYSDEC should continue at any Property.

3.7 Land Bank and County agree to require, as a condition of sale, that any party purchasing a property identified by NYSDEC as requiring remediation must, unless otherwise agreed by the NYSDEC, enter a remedial program approved by NYSDEC in order to undertake any necessary investigation and remediation. Further, such party shall be required to provide an Environmental Easement, pursuant to Article 71 of the ECL if requested by the NYSDEC.

3.8 For sites with petroleum contamination issues only, the covenant not to sue by the Oil Spill Fund shall only apply to those Properties where the Oil Spill Fund has incurred Costs and that have been included on Schedule A, or other Properties which are otherwise covered by this Agreement where the Oil Spill Fund has incurred Costs.

ARTICLE IV REIMBURSEMENT OF COSTS

4.1 To the extent that NYSDEC and the Oil Spill Fund have incurred administrative, investigative or remediation costs relative to the investigation or remediation of hazardous waste and/or petroleum at a Property, NYSDEC, Oil Spill Fund, County, and Land Bank agree as follows:

4.1.1 Costs, for purposes of this Agreement, will be defined as follows:

4.1.1.1 NYSDEC State administrative, investigative or remediation costs, shall be as set forth in 6 NYCRR §375-1.5(b)(3)(i).

4.1.1.2 County's costs shall be all tax lien amounts owed to the County or tax lien amounts that will be paid to another municipality, but shall not include any legally permissible penalties, interest, and fees.

4.1.1.3 Land Bank's costs shall be all acquisition and staff costs, contractual expenses associated with the environmental assessment, and the cost of marketing and management (including costs to undertake "Appropriate Care") of the Property.

4.1.1.4 Oil Spill Fund reimbursement costs shall be any costs incurred by the Fund to investigate, cleanup or otherwise remediate the Property or to pay third party damage claims but shall not include any legally permissible penalties and interest.

4.1.2 The sale² proceeds shall be disbursed as follows:

4.1.2.1 First to pay reasonable closing costs at a sale of a Property;

4.1.2.2 Next, to the extent that i) the NYSDEC has expended funds at a particular Property covered by this Agreement, and ii) the pro-rata payment under 4.1.2.4 (below) does not result in a minimum of a \$1,000 payment to NYSDEC, NYSDEC shall be paid the sum of One Thousand Dollars (\$1,000.00) by the Party selling the Property for providing the covenant not to sue/release of liability.

4.1.2.3 Next, to the extent that i) the Oil Spill Fund has expended funds at a particular Property covered by this Agreement, and ii) the pro-rata payment under 4.1.2.4 (below) does not result in a minimum of a \$1,000 payment to the Oil Spill Fund, the Oil Spill Fund shall be paid the sum of One Thousand Dollars (\$1,000.00) by the Party selling the Property for providing the covenant not to sue/release of liability. If the total amount of remaining available

² For purposes of this Agreement, a "sale" means a sale of real property by the County or Land Bank to a third party and does not include the original transfer of Property from the County to the Land Bank.

proceeds after paying the reasonable closing costs in 4.1.2.1 is insufficient to pay the Oil Spill Fund One Thousand Dollars (\$1,000.00), then the Party selling the Property shall be responsible for paying the One Thousand Dollars (\$1,000.00) to the Oil Spill Fund directly;

4.1.2.4 Next to pay the amount of costs, as defined in Subsection 4.1.1.1, 4.1.1.2, 4.1.1.3 and 4.1.1.4 owed to the NYSDEC, the Oil Spill Fund, the County, any other municipality and/or the Land Bank. Such costs shall be paid proportionally from the net proceeds of the sale. If Land Bank is the Party selling the Property, the County's share shall be paid to the Party selling the Property, i.e., the Land Bank;

4.1.2.5 Next to the Land Bank, if it is the Party selling the Property.

4.1.3 If all the requirements of Section 3.4 above are met, NYSDEC will refrain from bringing any administrative proceeding, and the Oil Spill Fund and NYSDEC will refrain from referring to the Attorney General, any claim for recovery of past costs incurred by NYSDEC or the Oil Spill Fund for the properties covered under this Agreement, as against Land Bank or the County, their secured creditors and insurers. Nothing in this Article IV shall be construed, or deemed, to preclude the State of New York from recovering claims for its costs from any party other than the Land Bank and County, their secured creditors, insurers. Successors and assigns in title of the Land Bank and County, except as provided for in Section 3.2, remain liable for any future costs incurred by the State related to the existing discharge or release to the extent allowed by law.

ARTICLE V TERM, TERMINATION AND AMENDMENT

5.1 This Agreement is effective upon execution by the NYSDEC and Oil Spill Fund (collectively, "State Parties") and shall be binding upon and inure to the benefit of every Party that signs the Agreement. This Agreement may be terminated or amended only in writing by all Parties to the Agreement.

5.2 This Agreement shall apply only to the Properties listed on the attached Schedule A, and additional Properties as added to Schedule A from time to time. The County may delete a Property under their jurisdiction without approval from the State Parties by providing notice as specified in Article VI of the intention to withdraw such Property from this Agreement. The County may add a property under their respective

jurisdiction to Schedule A with approval from the State Parties by providing notice as specified in Article VI of the intention to add a Property to this Agreement.

5.2.1 The initial listing of requests on Schedule A shall be at the discretion of NYSDEC and/or the Oil Spill Fund. NYSDEC and/or the Oil Spill fund may reject any property suggested by the County or Land Bank for listing on the initial Schedule A.

5.2.2 NYSDEC and the Oil Spill Fund shall use their best efforts to make a decision on the initial Schedule A, within 90 days of the effective date of this Order.

5.2.3 NYSDEC and the Oil Spill Fund shall use their best efforts to decide on any subsequent request to add a Property within 90 days. NYSDEC and/or the Oil Spill Fund, at their own discretion, may reject any property that the County or Land Bank seeks to add to Schedule A.

5.3 Articles III and IV shall survive any termination of this Agreement relative to any Property on Schedule A for which net sales proceeds have been distributed pursuant to Paragraph 4.1.2.

ARTICLE VI NOTICES AND ADDRESSES

6.1 Any notice or request required or permitted to be given or made under this Agreement shall be in writing and shall be deemed sufficient if sent by regular first-class mail and certified mail, or personally delivered during business hours, to the addresses for the parties set forth above.

ARTICLE VII MISCELLANEOUS

7.1 This Agreement comprises the complete understanding of the Parties in respect of the subject matter in this Agreement.

7.2 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

By: _____

Name: _____

Title: _____

Date: _____

NEW YORK ENVIRONMENTAL PROTECTION and SPILL COMPENSATION FUND:

By: _____

Name: _____

Title: _____

Date: _____

SENECA COUNTY

By: _____

Name: Robert Hayssen

Title: Chairman of the Board of Supervisors

Date: _____

SENECA COUNTY

By: _____

Name: C. Mitchell Rowe

Title: County Manager

Date: _____

FINGER LAKES REGIONAL LAND BANK CORPORATION

By: _____

Name: Joseph McGrath

Title: CEO/President

Date: _____

