

FOURTH SUPPLEMENTAL AGREEMENT AMONG WEST OF HUDSON WATERSHED STAKEHOLDERS

AGREEMENT, dated as of the 16 day of Dec., two thousand twenty-five, agreed to and executed by and among the following parties (collectively, the “Parties” and individually, a “Party”):

The City of New York (“City”), including the Department of Environmental Protection (“DEP”), a municipal corporation with its principal office at City Hall, New York, New York 10007;

The Coalition of Watershed Towns (“CWT”), an inter-municipal body composed of municipalities located wholly or partially within the portion of the New York City Watershed that lies west of the Hudson River, which have duly entered into a cooperative agreement pursuant to Section 119-o of the New York General Municipal Law, having its principal office at Neversink, New York;

The County of Delaware, a county corporation with its principal office at 111 Main Street, Delhi, New York 13753;

The Catskill Watershed Corporation (“CWC”), an independent locally-based and locally administered not-for-profit corporation, organized and existing under Section 1411 of the New York State Not-for-Profit Corporation Law and having its principal office at 669 County Highway 38, Suite 1, Arkville New York 12406.

WITNESSETH:

A. WHEREAS, on January 21, 1997, the Parties, among other entities, entered into the Watershed Memorandum of Agreement (“Watershed MOA” or “MOA”), which recognized the dual goals of source “water protection and economic vitality within Watershed communities” and 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” (“MOA Objectives”).

B. WHEREAS, based on extensive negotiations, the Parties and/or their representatives, among other entities, reached agreement on the successor to the 1997 Water Supply Permit (the “2010 Water Supply Permit”), which established the terms and conditions for DEP’s continuation of the Land Acquisition Program through December 23, 2025.

C. WHEREAS, the Parties’ agreement to the terms of the 2010 Water Supply Permit was memorialized in two similar Agreements, one among West of Hudson (“WOH”) Watershed Stakeholders and one among certain parties to an Article 78 Proceeding concerning DEP’s Continuation of its Land Acquisition Program, both dated December 27, 2010 (“2010 LAP Agreements”). The parties have also entered into the following agreements: the 2010 LAP Agreements, the 2013 Supplemental LAP Agreements, the July 2016 Second Supplemental Agreement, and the December 2018 Third Supplemental Side Agreement (hereinafter the “Supplemental Agreements”).

D. WHEREAS, in collaboration with the Parties and other stakeholders, DEP has agreed to replace the Streamside Acquisition Program (“SAP”) (identified in the 2010 WSP as the “Riparian Buffers Program”) with a Collaborative Streamside Acquisition Program (“CSAP”), which allows for protection of riparian buffers through license agreements with landowners, and to continue many other Watershed Protection Programs which benefit both the City and the other parties to the MOA.

E. WHEREAS, DEP reaffirms its commitments under the MOA, including, but not limited to, the Paragraph 85 commitment to fund Watershed Protection and Partnership Programs.

F. WHEREAS, DEP relies upon the cooperation of its contracting partners, including CWC and local stream management program delivery partners, to implement and administer the Watershed Protection and Partnership Programs.

G. WHEREAS, as additional background for this agreement, the Parties incorporate by reference the “WHEREAS” clauses of the Supplemental Agreements.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein set forth, and of the undertakings of each party to the other parties, the Parties do hereby promise and agree as follows:

1) Cessation of Certain Acquisitions. DEP intends to continue to pursue land acquisition in Priority Areas 1A, 1B and 2,¹ but will cease all purchases of land and easements under the LAP in Priority Areas 3 and 4, except under the following programs:

- i. Conservation Easement Programs: Acquisitions conducted through the Watershed Agricultural Council Farm and Forest conservation easement programs;
- ii. Collaborative Streamside Acquisition Program: In the WOH Watershed (not including Delaware County, subject to the qualifications set forth in Footnote 2),² acquisitions conducted through the new Collaborative Streamside Acquisition Program (“CSAP”);

¹ Priority Areas are defined in the 1997 NYC Watershed Memorandum of Agreement, Attachment I (Catskill and Delaware Watershed Priority Areas).

² Five years from the effective date of any successor to the 2010 Water Supply Permit, or renewal or modification of the 2010 Water Supply Permit, Delaware County shall have a 180-day window following the five (5) year anniversary date to reassess and, if it so chooses, to authorize acquisitions through fee or conservation easement that are conducted through the CSAP within Delaware County. If Delaware County chooses to authorize such fee acquisitions, the consent of the relevant town or village and supporting stream management program delivery partner(s) of the project in discussion, along with the City, is required for each acquisition for it to advance.

- iii. Buyout Programs: Acquisitions conducted through federal, state, or City-funded flood buyout programs.
- iv. Land Acquisition Program (“LAP”) may acquire land in Priority Areas 3 and 4 as part of a land exchange (“Swap”) where LAP-acquired lands that have lower water quality protection value and development potential are used to facilitate either: (i) Relocation of development out of floodplain as contemplated by the 2017 Filtration Avoidance Determination (“FAD”); or (ii) Municipality-initiated projects designed to meet community needs.
- v. LAP may acquire any property in Priority Area 3 or 4 for which an offer was extended by DEP and accepted by the landowner as of December 23, 2025, so long as a purchase agreement is fully executed by July 1, 2026.
- vi. SAP may acquire any property in Priority Area 3 or 4 for which an offer was extended by the Catskill Center for Conservation and Development and accepted by the landowner as of December 23, 2025, so long as a purchase agreement is fully executed by July 1, 2026. SAP may also acquire properties in Priority Areas 3 and 4 of the Schoharie Basin, except in Delaware County, if they are approved by the municipality of interest for SAP acquisition.

2) Size and Natural Features Criteria. As set forth in March 13, 2019 New York State Department of Health approval of criteria and DEP’s April 2023 response to the National Academies of Sciences, Engineering, and Medicine report recommendations, as incorporated into the Land Acquisition Program 2023-2033 Long-Term Land Acquisition Plan, all eligible and authorized core LAP parcels in Priority Area 2 must:

- i. Be no less than fifteen percent (15%) Surface Water Features for parcels under 200 acres in size adjoining City-owned lands and located outside the half-mile buffers around 1997 Designated Areas,
- ii. Be no less than twenty percent (20%) Surface Water Features for parcels under 200 acres in size that do not adjoin City-owned lands and are located outside the half-mile buffers around 1997 Designated Areas,
- iii. Be no less than thirty percent (30%) Surface Water Features, for all parcels over 200 acres in size or within the half-mile buffer zone around 1997 Designated Areas,
- iv. Be no less than fifty percent (50%) Surface Water Features for parcels located within the half-mile buffers around 1997

Designated Areas if LAP has acquired either 60% of the 2010 Extended LAP Final Environmental Impact Statement (FEIS) projection for that town or more than 2,000 acres in the town where the parcel is located since 2010, or

- v. Be no less than fifty percent (50%) slopes of 15% or greater.

All other Size and Natural Features Criteria in Special Condition 9 of the 2010 Water Supply Permit and any future Water Withdrawal Permit apply. If there is conflict between the criteria in this Section 2 of the Agreement and Special Condition 9 of the 2010 Water Supply Permit, this Section 2 shall govern.

- 3) Updated Model Conservation Easement. Conservation Easements that DEP grants to NYSDEC on LAP-acquired lands held by DEP, as required by Paragraph 82 of the 1997 NYC Watershed Memorandum of Agreement, shall henceforth follow the amended model attached as Appendix A, (“Amended CE”), which shall replace the model set forth in Exhibit 9 of the 2010 Water Supply Permit. For conservation easements entered into prior to the effective date of this Agreement, DEP agrees to provide copies of existing conservation easements previously granted on lands acquired under the LAP, conformed to incorporate the changes in the Amended CE, to NYSDEC in a timely fashion. The Parties shall work together diligently and cooperatively with DEC to ensure that all conservation easements entered into prior to the effective date of this Agreement are amended expeditiously.
- 4) Revised Hamlet Boundaries – Town of Olive. The Parties agree to revise the designated hamlet boundaries for the Town of Olive as established pursuant to the 1997 NYC Watershed Memorandum of Agreement (Attachments R and S) and the 2010 Water Supply Permit (Exhibits 4 and 5). The parties agree to support and implement the revised hamlet boundary map attached hereto as Appendix B and incorporated herein by reference. The City agrees that as of the effective date of this agreement, it shall not actively solicit for acquisition any parcels within the revised hamlet boundaries, except for parcels currently subject to a contract as of the effective date and subject to the exceptions set forth in Section 1 (i-vi). The Town of Olive may formally designate the revised hamlet area as ineligible for acquisition pursuant to the procedures set forth in Special Condition 10 of the 2010 Water Supply Permit at the next available designation date of February 28, 2026. The Town of Olive and the City may agree on an alternative to Special Condition 10 for the designation of the hamlet area ineligible for acquisition.
- 5) Collaborative Streamside Acquisition Program. The City intends to develop, fund and implement a collaborative stream buffer program for the entire WOH Watershed, subject to the limitations described in Footnote 2 above, (“Collaborative Streamside Acquisition Program” or “CSAP”), which would replace the Streamside Acquisition Program (“SAP”). The purpose of CSAP is to protect water quality through long-term stream buffer

establishment, management, restoration, and protection, including: (a) Reducing or preventing erosion and sediment loss, which can in turn reduce turbidity and nutrient loading to streams and reservoirs. (b) Providing on-site and off-site flood mitigation benefits. (c) Preserving or enhancing ecological function, health and stability. (d) Addressing community needs for long-term community sustainability, climate resiliency and recreational activities.

CSAP will support implementation of collaborative stream buffer projects through a series of Collaborative Project Working Groups (“CPWG”). The CPWG shall include DEP and the other members may vary from county to county with the following invited to participate as voting members: Soil and Water Conservation Districts, Cornell Cooperative Extension, and local municipalities (including counties). If the Catskill Center for Conservation and Development (“Catskill Center”) is selected as a contractor to support CSAP, the Catskill Center may participate in the CPWG as a non-voting member. CPWG members may initiate consideration of a prospective acquisition at the CPWG. The relevant town or village and supporting stream management program delivery partner(s) of the project in discussion, along with the City, must approve each acquisition for it to advance (“Collaborative Projects”). Outreach to individual landowners will not proceed until the local community has indicated its interest in moving forward with a Collaborative Project. Collaborative Projects must be approved by town or village board resolutions for the locale in which the parcel is located. The CPWG shall develop a stewardship plan for each parcel which articulates the landowner’s commitment in relation to the Collaborative Project (“Stewardship Plan”). The Stewardship Plan must be approved in writing by the relevant town or village, the stream management program delivery partner(s) for where the project is located, and the City. In addition, the City will provide support for stewardship plan implementation.

- 6) Capital Replacement of Regulatory Upgrades. The City is obligated under Section 1104 of the New York State Public Health Law and MOA Paragraphs 121 and 141–43 to pay the costs of equipment and methods of operation at wastewater treatment plants in the watershed which are required solely by the Watershed Regulations and not otherwise required by federal, State or local law, regulation or enforceable standard otherwise applicable to a wastewater treatment plant (“WWTP”). This obligation extends to replacing certain capital equipment installed during the initial Regulatory Upgrade Program as set forth in MOA Paragraph 141.

DEP shall work collaboratively with all stakeholders to ensure compliance with such obligations, to create a fund to support the West of Hudson Communities’ participation in the Regulatory Upgrade Program. Subject to program funding being made available by the New York City Office of Management and Budget, approval as to form by the New York City Law Department, and registration by the New York City Comptroller (DEP shall diligently pursue all such approvals), DEP and CWC shall commence contract negotiations, within three months of the effective date of this Agreement, for a fund that shall include a \$4,000,000.00 initial payment, followed by \$2,000,000.00 per year for three

years, for a total funding commitment not to exceed \$10,000,000.00 (“Regulatory Upgrade Support Fund”). The Regulatory Upgrade Support Fund shall be used to assist wastewater treatment plant owners to acquire resources, including professional services, such as legal and engineering services, and to identify grant and other funding opportunities necessary to implement a project to improve compliance, expand, upgrade and/or replace its WWTP, and for CWC personnel, to implement and maximize the program effectiveness equitably for all WWTP owners (collectively, “Eligible Expenses”). CWC shall maintain the Regulatory Upgrade Support Fund in a separate interest-bearing account and use such funds exclusively for Eligible Expenses, until the funds are exhausted.

The Parties shall cooperate to draft and implement program rules, including, but not limited to, rules delineating items compensable under the program.

- 7) Watershed Rules and Regulations. Consistent with the MOA Objectives and in consultation with the Parties, the City shall review and make recommendations on amendments to rules and regulations governing septic systems and stormwater management. The City shall also review its administration and enforcement of these rules and regulations with the goal of reducing compliance costs to the WOH watershed communities without impacting water quality and improving overall efficiencies and effectiveness in the WOH Watershed.
- 8) Funding for Watershed Protection and Partnership Programs. DEP will continue to fund the following programs as specified below:
 - i. CWC Septic Remediation and Replacement Program. Subject to program funding being made available by the New York City Office of Management and Budget, approval as to form by the New York City Law Department, and registration by the New York City Comptroller (DEP shall diligently pursue all such approvals), the City shall fund the program until December 24, 2029, adding \$30,000,000.00 to facilitate residential repairs. The City and CWC shall collaborate to assess the efficiency of the program and to identify and implement changes necessary to improve efficiency. Both the City and CWC are committed to jointly evaluating the program’s efficiency and implementing cost-reduction and performance-improvement strategies, including a collaborative review of Watershed Rules and Regulations as referenced in Paragraph 7. to improve efficiency. To effectuate this obligation, the City and CWC shall convene within six months of this Agreement’s execution of this Agreement to discuss progress and necessary actions.
 - ii. CWC Flood Hazard Mitigation Implementation Program. Subject to program funding being made available by the New York City Office of Management and Budget, approval as to form by the New York City Law Department, and registration by the New York City Comptroller (DEP shall diligently pursue all such approvals), the City shall provide funding at the

level set forth in SWP-110 (Registration No. 20238806862) until December 24, 2029.

- iii. Tax Litigation Avoidance Program (“TLAP”). The City shall provide funding at the level set forth in CAT-402 (Registration No. 20121432776) and shall execute a contract amendment with CWC to ensure the program’s operation for the duration of the next FAD. Such obligation to execute a new contract does not obligate the City to provide additional funding to the program.
- iv. MOA 128 and MOA 145 Stormwater Programs. CWC shall seek CWC Board approval to reallocate the \$3,000,000.00 cash on hand in Contract CATWAT3 to new stormwater projects. Once approval is obtained, DEP shall initiate an amendment to add \$3,000,000.00 to Contract CATWAT3, subject to program funding being made available by the New York City Office of Management and Budget, approval as to form by the New York City Law Department, and registration by the New York City Comptroller (DEP shall diligently pursue all such approvals). DEP shall work with CWC to discuss either a potential combination of the MOA 128 and MOA 145 Stormwater Programs into one funding contract to ensure more efficient management or a potential termination of each program to create a new program. Concerning the MOA 145 Stormwater Program, the City shall provide funding as set forth in CAT-449 (Registration No. 20191408542).
- v. CWC Operating Expenses. The City will continue to fund CWC General Operating Expenses as needed, based on requests for such funding from CWC, which the City shall not unreasonably deny. The City shall commit a minimum of Fifteen Million Two Hundred Dollars (\$15,200,000.00), including Two-Hundred Thousand Dollars (\$200,000.00) for the Stormwater Coordination Position over the ten-year period 2026-2036.
- vi. Watershed Agricultural Council (“WAC”) Operating Expenses. The parties acknowledge the need to support WAC in the long-term protection of lands for agricultural use consistent with whole farm planning, nutrient management and environmental BMP while, at the same time, keeping the farms viable into the future. The City will continue to fund WAC General Operating Expenses as needed, based on requests for such funding from WAC, which the City shall not unreasonably deny. The City shall provide funding at the level set forth in SWP-117 (Registration No. 20158804159) until March 30, 2030.
- vii. Local Consultation Funds. Pursuant to MOA Paragraph 148, the City provides Local Consultation Funds to assist Towns and Villages in the Watershed to review and comment on City land acquisition submissions (including participation in CSAP). The current funding cap of \$40,000.00 per incorporated town or village was established under the 2017 Revised

FAD. The City shall ensure that Watershed communities continue to have adequate funding to review the City's proposed land acquisitions, including an increase, if needed, to the funding cap per incorporated town or village. This represents an aggregate limit on total Local Consultation Funds payable to any municipality for reviewing all City submissions pursuant to MOA Paragraphs 60 and 71, consistent with MOA Paragraph 148(d).

- viii. Septage Acceptance Facilities. Subject to program funding being made available by the New York City Office of Management and Budget, approval as to form by the New York City Law Department, and registration by the New York City Comptroller (DEP shall diligently pursue all such approvals), DEP shall provide funding to CWC in an amount not to exceed \$5,000,000.00 for the engineering and construction of up to two septage acceptance facilities, which shall only accept septage from within WOH watershed or service area(s) jointly agreed upon by the community and DEP during contract negotiations. Such funding shall be used exclusively for capital and associated costs related to the development of said facilities. DEP shall retain final approval authority over the selection of any facilities funded under this agreement.
- ix. Inflow and Infiltration Control Measures. To facilitate the long-term sustainability of community sewer facilities, subject to program funding being made available by the New York City Office of Management and Budget, approval as to form by the New York City Law Department, and registration by the New York City Comptroller (DEP shall diligently pursue all such approvals), DEP shall provide CWC \$25,000,000.00, over a term of up to ten years, for the identification and remediation of inflow and infiltration ("I&I") concerns within municipal sewer systems located in the WOH watershed (the "I&I Fund"), including the collection systems of DEP-owned WWTPs. The I&I Fund shall serve as a long-term funding source to assist communities (including communities served by a City-owned WWTP) to address and mitigate I&I in a manner consistent with all applicable regulations. The program shall strive to utilize the I&I Fund as a local match for state/federal funding with the goal of expanding funding opportunities and project implementation.

DEP shall provide an initial payment of \$5,000,000.00 to CWC. A portion of these funds may be allocated for the immediate implementation of existing municipal I&I measures. Initial funding shall also be utilized to develop a programmatic strategic plan ("I&I Plan") that may be developed with a consultant retained by CWC, if necessary. The I&I Plan shall include a desktop survey of eligible municipal systems, current I&I plans/strategies, and existing I&I mitigation resources (e.g., cameras, watertight manholes, sewer meters, repair equipment); identify opportunities for collaboration

and equipment sharing; identify potential funding sources; and develop a strategy for program implementation. CWC, in consultation with DEP, will prepare program rules for program implementation (“I&I Program Rules”). The I&I Program Rules shall identify the criteria that shall be used by the CWC Board in making funding decisions. The criteria shall be developed with the dual goal of maximizing the return on the investment and while enabling necessary I&I projects that would not otherwise be affordable. After submission of the I&I Plan, CWC may request sufficient funds to bring the unallocated balance to \$5,000,000.00 in the event the balance of unallocated funds falls below \$5,000,000.00.

Periodically, DEP shall assess whether the program has reduced I&I sufficiently to create opportunities for expanding the service area of City-owned wastewater treatment facilities. The City and CWC shall commence negotiations within three months of the effective date of this Agreement.

- x. Public Education Program and Workforce Development. DEP has agreed to include a comprehensive Workforce Development Initiative for West of Hudson Watershed communities within CWC’s existing Public Education Program. The new 10-year contract, valued at \$7.5 million dollars, was registered in August 2025 with a commence work date of October 1, 2025. The contract establishes workforce development projects—those that provide residents with training, certifications, apprenticeships, and professional development opportunities in watershed-related careers such as wastewater treatment plant operations, floodplain management, and municipal infrastructure maintenance. The contract establishes detailed program parameters, including eligible project types and exclusions, and requires CWC to develop Program Rules in consultation with DEP for project selection and administration. This initiative addresses the critical need to develop and retain a skilled local workforce capable of supporting ongoing watershed protection activities while providing economic opportunities for watershed communities.
- xi. Stream Management Program. Consistent with the Watershed MOA Objectives and MOA Section 127, the City and local stream management program delivery partners (Soil and Water Conservation Districts and Cornell Cooperative Extension) have agreed to partner in an integrated stream management program which includes coordination; flood mitigation planning and implementation; entering into long-term agreements with other governmental entities, riparian landowners, and not-for-profit organizations for stream management implementation projects that provide water quality protection and enhance community resiliency as

well; overseeing and managing the design and construction of stream restoration projects within the New York City Watershed.

- 9) Land Exchanges or Swaps. The City shall continue to collaborate with the WOH watershed communities and DEC to facilitate the proposed Shandaken, Arkville, and Greene County Garage Swaps and to explore other opportunities for land Swaps, involving City-owned properties, to benefit the WOH watershed communities. The City shall identify parcels with the potential to enhance WOH watershed economic development that may be exchanged without impairing source water protection and report upon the results within six months of execution of this Agreement. CWC shall identify City-owned parcels that it views as having the highest economic value within six months of execution of this Agreement. After CWC identifies such parcels, CWC and DEP shall convene to jointly select parcels as candidates for Exchange.
- 10) Collaboration on WOH Watershed Economic Development. The Parties shall work together cooperatively and diligently to explore opportunities for economic development in the WOH watershed. The Parties shall also convene a work group of WOH Watershed stakeholders to review and implement, as appropriate, the findings of the CWC Economic Vitality Study. Subject to program funding being made available by the New York City Office of Management and Budget, approval as to form by the New York City Law Department, and registration by the New York City Comptroller (DEP shall diligently pursue all such approvals), the City shall fund the development of a pilot program at CWC that includes the retention of an economic development strategist via CWC to develop a three-year economic development strategy for three towns within the WOH watershed, or other items agreed upon through the working group.
- 11) Geographic Information System. The City will continue to disseminate data to stakeholders and the public as appropriate, including notification of data availability to communities and responses to requests for data including compliance with December 2018 Third Supplemental Side Agreement Sections 2 (s) and (u).
- 12) Partnership with Delaware County on Renewable Energy. Delaware County and the City (including DEP) agree to explore partnership opportunities on renewable energy projects on City-owned property within Delaware County. Delaware County's objectives are the adaptation necessary for electrification of building heating and travel, access to affordable renewable energy, protecting its farmland as farmland, protecting property with utility infrastructure as developable land and to be better prepared to mitigate robust storm events. By cooperating on these projects, Delaware County and the City intend to increase their efficiency and effectiveness, expedite the schedule, match needs with service and promote water quality protection/community vitality. The City shall invite the other WOH counties to explore partnerships for renewable energy projects.
- 13) Partnership on Cellular Phone Service Facilities. The City shall continue to collaborate with the WOH watershed communities and telecommunications companies to identify opportunities on City-owned properties for the development, design, and construction of cellular phone service facilities.

14) Long Term Watershed Protection Plan. The parties acknowledge and reaffirm their agreement “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.” As part of its development of the next Long Term Watershed Protection Plan, the City agrees to consult with and consider comments from the Parties prior to formal submission to New York State Department of Health per section 2 of the 2017 Filtration Avoidance Determination. Such consultation does not include the obligation to share a draft Long Term Watershed Protection Plan.

15) Taxes on City-Owned Land. For period of 30 years from the effective date of this Agreement:

- i. The City will not challenge the initial assessed value or adjustments to the assessed values to be acquired pursuant to the land acquisition program provided the initial assessment or adjusted value for such parcel does not exceed the fair market value of the parcel multiplied by the applicable equalization rate or a special equalization rate for that assessing unit. For purposes of this subparagraph, fair market value equals the parcel’s appraised value as finally determined by the City’s independent appraiser.
- ii. The City will not challenge future assessment on any parcel of land acquired under the land acquisition program after January 21, 1997 provided that in any Town or Village both of the following conditions are met: (1) the rate of increase of the total assessed value of all parcels purchased by the City since the date of the MOA, as measured from the assessment roll in any year over the assessment roll of the prior year is not greater than the equivalent rate of increase in total assessed value of all non-City owned parcels classified as forest or vacant; and (2) the ratio of assessed value of all parcels purchased by the City since the MOA in the town to the total assessed value of all taxable parcels in the town does not increase from the prior year (after excluding any City acquisitions not included in the prior year’s calculation).

16) Payment of Costs and Expenses. Delaware County and CWT will provide DEP with invoices for attorney fees incurred after January 1, 2022, for services rendered relating to DEP’s Land Acquisition Program. DEP will review the invoices and work in good faith to resolve any concerns. Once the amounts are agreed upon, Delaware County and CWT will submit invoices to DEP for the agreed amounts. DEP will issue payment within 60 days of receiving the respective approvable proper invoices.

17) Consideration. Consistent with the MOA Objectives and in consideration of the City’s commitments to provide funding for the Watershed Protection and Partnership Programs including funding for the programs described above and in exchange for the parties consent to the continuation land acquisition program for an additional period, the non-City Parties agree that they will not seek additional funding for such programs or any additional watershed protection programs in any Water Withdrawal Permit proceeding prior to the next FAD expected to be issued in 2027. The Communities reserve the right to seek

additional watershed protection programs in the context of the next FAD, and the Communities reserve the right to participate in the additional watershed protection programs, if any, included or required as part of the next Water Withdrawal Permit or modification to such permit required by the next FAD. Except as set forth above in this paragraph, the parties reserve all rights with to oppose, support and participate in any Water Withdrawal Permit proceeding including any renewal thereof.

- 18) Execution. This Agreement may be executed in one or more counterparts or by facsimile or other electronic means, each of which when executed and delivered shall be an original, and all of which executed shall constitute one and the same instrument.
- 19) Authorization to Execute. The Parties signing this Agreement represent that they have been duly authorized to enter into this Agreement pursuant to their respective lawful authorities.
- 20) Enforceability of this Agreement. The Parties to this Agreement intend this Agreement to be binding and enforceable commitments. These conditions may be enforced pursuant to paragraphs 177 and 180 through 183 of the MOA by the parties to the Watershed MOA. Nothing herein shall be construed to impair the rights of any party to the 1997 MOA or the Supplemental Agreements. This Agreement may be enforced in a court of competent jurisdiction, and such action shall be governed by the Laws of the State of New York. In any action relating to real property, the City will not oppose venue in the Supreme Court of the county in which the property is located. Except as set forth above in this paragraph, nothing in this Agreement shall act to confer third party beneficiary rights on any person or entity not party to this Agreement.

IN CONSIDERATION of the promises and of the mutual covenants and agreements set forth in this Agreement and of the undertakings herein of each Party to the other Parties, the undersigned Parties hereby promise and agree to be bound by the terms and conditions thereof:

THE CITY OF NEW YORK, by and through **THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: 
Rohit T. Aggarwala, Commissioner

COALITION OF WATERSHED TOWNS

By: 
Ric Coombe, Chairman

COUNTY OF DELAWARE

By:

Tina B. Molé

Tina Molé, Chairperson, Delaware County Board of Supervisors

CATSKILL WATERSHED CORPORATION

By:

Tina B. Molé

Tina Molé, President

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) ss.:
)

COUNTY OF Delaware)

On the 25th day of November in the year two thousand twenty-five, before me personally came Rohit T. Aggarwala, to me known, who, being by me duly sworn did depose and say that he is the Commissioner of the New York City Department of Environmental Protection described in and which executed the above instrument as authorized by said municipal corporation.

Penny Bishop
NOTARY PUBLIC

PENNY BISHOP
NOTARY PUBLIC-STATE OF NEW YORK
No. 01B16424183
Qualified in Delaware County
My Commission Expires 10-25-2029

STATE OF NEW YORK)
) ss.:
)

COUNTY OF Sullivan)

On the 16th day of December in the year two thousand twenty-five, before me personally came Ric Coombe, to me known, who, being by me duly sworn did depose and say that he is the Chairman of the Coalition of Watershed Towns described in and which executed the above instrument as authorized by said county corporation.

Kelley Johnson
NOTARY PUBLIC

KELSEY JOHNSON
Notary Public, State of New York
No. 01JO0017761
Qualified in Sullivan County
My Comm. Expires December 04, 2027

STATE OF NEW YORK)
)
) ss.:

COUNTY OF Sullivan)

On the 25 day of November in the year two thousand twenty-five, before me personally came Tina Molé, to me known, who, being by me duly sworn did depose and say that she is the Chairperson of the Delaware County Board of Supervisors described in and which executed the above instrument as authorized by said inter-municipal body.

Barney Bishop
NOTARY PUBLIC

PENNY BISHOP
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BI6424183
Qualified in Delaware County
My Commission Expires 10-25-2029

STATE OF NEW YORK)
) ss.:

COUNTY OF Delaware)

On the 25th day of November in the year two thousand twenty-five, before me personally came Tina Molé, to me known, who, being by me duly sworn did depose and say that she is the President of the Catskill Watershed Corporation described in and which executed the above instrument as authorized by said independent locally-based and locally administered not-for-profit corporation.

Barry Bish
NOTARY PUBLIC

PENNY BISHOP
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BI6424183
Qualified in Delaware County
My Commission Expires 10-25-2029

Appendix A

Please record and return
to: NYS Department of
Environmental
ConservationOffice of
Real Property
625 Broadway
Albany, New York 12233-4256

GRANT OF CONSERVATION EASEMENT

THIS INDENTURE, made this _____ day of _____, 20 ____ between **THE CITY OF NEW YORK**, a municipal corporation with its principal offices at City Hall, New York, New York 10007 (“Grantor” or “the City”), and **THE PEOPLE OF THE STATE OF NEW YORK** acting by and through their Commissioner of Environmental Conservation (“Grantee”), who has an office at 625 Broadway, Albany, NY 12233.

WHEREAS, the Grantor is the owner in fee of certain real property(ies) located in the Town(s) of _____, County of _____, more particularly described in Schedule A attached hereto and incorporated by this reference (“the Protected Property(ies)”; and **WHEREAS**, Article 49 of the New York State Environmental Conservation Law provides for the restriction of development and use of property through the establishment of conservation easements on land within the State of New York in order to permanently conserve and protect natural resources and open space; and

WHEREAS, the Protected Property(ies) in its present natural condition has substantial and significant natural resource value because it is located in the watershed of the City of New York, and has not been subject to any extensive development or exploitation; and

WHEREAS, the Grantor and Grantee are both parties to the New York City Watershed Memorandum of Agreement, executed January 21, 1997 (“Watershed MOA”), which provides for the protection of the water quality of the City’s drinking water supply by, *inter alia*, authorizing the City to acquire vacant, undeveloped land in this water supply watershed, subject to certain terms and conditions; and

WHEREAS, the parties to the Watershed MOA “recognize that the goals of drinking water protection and economic vitality within the watershed communities are not inconsistent and it is the intention of the parties to enter into a new era of partnership to cooperate in the development and implementation of a watershed protection program that maintains and enhances the quality of New York City drinking water supply and the economic vitality and social character of the watershed communities”; and

WHEREAS, the parties to the Watershed MOA “agree that the City’s land acquisition program, the City’s Watershed Regulations, and the other programs and conditions contained in [the Watershed MOA], when implemented in conjunction with one another, would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character and planning goals of each of the Watershed communities; and that the City’s land acquisition goals ensure that the availability of developable land in the Watershed will remain sufficient to accommodate projected growth without anticipated adverse effect on water quality and without substantially changing future population patterns in the Watershed communities”; and

WHEREAS, the City was granted a Water Supply Permit from the New York State Department of Environmental Conservation on January 21, 1997, and a successor Water Supply Permit on December 24, 2010, pursuant to the New York State Environmental Conservation Law, ECL § 15-1501 et seq., authorizing the Commissioner of the New York City Department of Environmental Protection (“NYCDEP”) to acquire, strictly from willing sellers, certain lands within the drainage basins of the Catskill, Delaware and Croton portions of the New York City Watershed (the “Watershed”) for the purposes of protecting the City’s water supply from degradation consistent with the Watershed MOA (DEC Permit No. 0-9999-00051/00001) (the “Watershed Land Acquisition Program”); and

WHEREAS, Article II, § 82 of the Watershed MOA and/or the Water Supply Permit provides that the City will grant to the Grantee a conservation easement that shall run with the land on all land acquired in fee under the City’s Watershed Land Acquisition Program to ensure that such land is held in perpetuity in an undeveloped state in order to protect the quality of the New York City drinking water supply; and

WHEREAS, the Watershed MOA and the December 27, 2010 Agreement Among West of Hudson Watershed Stakeholders Concerning NYCDEP’s Continuation of its Land Acquisition Program (“2010 Agreement”) include a variety of provisions intended, among other things, to mitigate potential impacts of the City’s Watershed Land Acquisition Program on community sustainability. These provisions include, but are not limited to, Watershed MOA Sections 71, 72, 79, 81, 82, 148, 151, 153 and 181 and paragraphs 15, 17, 19, and 23 of the 2010 Agreement; and

WHEREAS, Article II, § 72 of the Watershed MOA provides that historic recreational uses, including fishing, hiking, and hunting, will be allowed to continue on newly acquired fee property, subject to rules and regulations adopted, or permits issued, by the City, provided that they neither threaten public safety nor threaten to have an adverse impact on water quality. The parties to the Watershed MOA agree that the following recreational uses are more likely to be allowed on the Protected Property, if appropriate, subject to rules and regulations adopted, or permits issued, by the City: fishing (including fishing by boat) under regulation; hiking, especially where parcels intersect State trails; snowshoeing; cross country skiing; bird watching; educational programs, nature study and interpretation; and hunting (only in certain areas under certain conditions). The following activities are allowed subject to the City's sole discretion with the understanding that such activities are not likely to be allowed on the Protected Property even if the property was historically utilized for these purposes: boating (other than for permitted fishing by boat); snowmobiling; camping; motorcycling; mountain bicycling; and horseback riding.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreement set forth herein, and of the undertakings of each party to the other, the Grantor hereby grants and releases to the Grantee and its successors, pursuant to Article 49 of the Environmental Conservation Law, a Conservation Easement (the "Easement") as hereinafter more fully described running with the land in perpetuity in, on, over, under and upon the Protected Property(ies), more particularly described in Schedule A attached hereto and incorporated by reference.

1. **Purpose.** The purpose of this Easement is to ensure that the Protected Property(ies) is held in perpetuity in order to protect the Watershed and the New York City drinking water supply with the protections consistent with the Watershed MOA and incorporating the following considerations:

- (a) Maintaining land in an undeveloped state for purposes of watershed protection and/or proper floodplain management and flood hazard mitigation practices; and
- (b) Maintaining, enhancing and improving community attractiveness, balanced economic growth, quality of life in the community and community sustainability consistent with the Watershed MOA;
- (c) Maintaining and improving the quality of the environment in furtherance of the declaration of policy of the State of New York as set forth in Section 1-0101(1)

of the New York State Environmental Conservation Law, “to conserve, improve and protect its natural resources and the environment and to prevent, abate, and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.”

2. **Rights of Grantee.** To accomplish the purpose of this Easement (as set forth in Section 1), the Grantor grants to the Grantee the following rights, pursuant to Paragraph 5 herein:

(a) The right to enforce the terms, conditions, and restrictions set forth in this Easement.

(b) The right to enter upon and inspect the Protected Property(ies) at reasonable times to monitor the Grantor’s compliance with the terms, conditions and restrictions of this Easement.

3. **Declaration of Restrictions.** The Parties agree that, except as may be determined by the Grantor to be necessary, or where the Protected Property is owned by any person or entity other than the City, determined by the Grantee to be necessary, in the course of any activity allowed in Paragraph 4 herein (“Reserved Rights”), the following activities on or uses of the Protected Property(ies) are prohibited:

(a) construction of any new residences, mobile homes or other buildings and structures normally requiring a building code permit on the Protected Property(ies);

(b) dumping or storage of ashes, non-composted organic waste, sewage or garbage, scrap material, discharges or other such waste from off-site sources;

(c) dumping or storage of petroleum and its byproducts, leached compounds, toxic substances, and other hazardous materials;

(d) use of dune buggies, motorcycles, all-terrain vehicles or other motorized vehicles for recreational purposes;

(e) the local gathering, extraction or removal of gas or oil;

(f) the expansion of any existing or construction of any new paved driveways, roads, and parking lots;

(g) the commercial, residential or industrial use of the Protected Properties;

(h) use of the Protected Property(ies) in such a manner that: (i) causes the introduction of sediments, chemicals, microbiological pathogens, nutrients or other pollutants to any watercourse or wetland on the Protected Property(ies) that may adversely affect the quality of such watercourse or wetland; (ii) interferes with or disturbs open space, vegetated areas or steep slopes on the Protected Property(ies); or (iii) is otherwise inconsistent with the purpose of this Easement (as set forth in Section 1).

4. **Reserved Rights in Protected Property(ies).** Notwithstanding any provision in this Easement to the contrary, the City reserves for itself, its successors, lessees, invitees, contractors and assigns, subject to and in accordance with all applicable laws and regulations, including without limitation, the Environmental Conservation Law, Public Health Law and any rules and regulations promulgated thereto, the following rights with regard to the Protected Property(ies), whether or not Grantor receives any payment or other consideration in connection therewith:

(a) If the Protected Property is owned by the City, the right to construct, maintain, operate, or remove any buildings, structures, dams, gatehouses, aqueducts, pipes, pumps, monitoring stations, treatment facilities, roadways or any other structures or facilities necessary or appropriate for the operation and maintenance of the City's water supply system, and to take all other actions on the Protected Property(ies) as may be necessary to ensure the safe and efficient operation of such system;

(b) The right to rip-rap, plant, or remove vegetation, or otherwise stabilize or restore slopes and stream banks, undertake earthmoving activities, dredge, fill, dam, create, or divert water courses or wetlands, manage wildlife, or to take any other action necessary to protect and preserve the quality of the New York City drinking water supply and/or to protect and preserve other land in the watershed of the New York City drinking water supply;

(c) If the Protected Property is owned by the City, the right to harvest, plant, chemically treat, or otherwise manage trees and vegetation, and to build, maintain, and stabilize associated landings, enclosures or other related improvements pursuant to such management activity or, in its sole discretion, to authorize such activities or related improvements, in accordance with the recommendations and guidelines described in the most recent edition of the "New York State Forestry – Voluntary Best Management Practices for Water Quality Field Guide", prepared and published by the New York State Department of Environmental Conservation, or its successor, or a similar standard or guide approved by Grantee, or any

subsequent revisions thereto, hereby incorporated by reference. If the Protected Property is owned by any person or entity other than the City, all such activities and related improvements must be approved in writing by the Grantee;

(d) The right to prevent or respond to encroachments, emergencies, man-made or natural disasters, environmental hazards, or threats to human health or safety;

(e) The right to extract sand, stone, soil, and gravel on the Protected Property(ies) for use on-site for the purposes of the maintenance and construction of access roads, and parking areas as allowed by this Easement, or off-site for purposes of water quality protection in any area of the Watershed, provided such extraction is conducted in such a way as to minimize the adverse effects of such extraction on water quality;

(f) The right to conduct or, in its sole discretion, authorize mining on the Protected Property(ies), provided it is conducted 1) in accordance with any and all applicable laws or regulations, 2) in such a way as to minimize the adverse effects on water quality, and 3) either in accordance with subdivisions (i) through (xiii) below or approved by the Grantee before going into operation. For purposes of this Easement, “mining” shall mean the extraction of sand, stone, soil, and gravel for purposes other than those described in paragraph (e).

(i) In order to minimize overall impacts and conserve forested areas, Grantor shall use best efforts to use, or require the use of, existing pits and to avoid, or prohibit, opening new pits;

(ii) Operation of mining pits and the removal of sand, stone, soil, and/or gravel must be done in a manner to minimize adverse environmental impacts, including but not limited to, adverse effects on water quality, and comply with applicable local, state and federal laws and regulations;

(iii) Mining activities shall be subject to and comply with the most recent edition of the “New York Standards and Specifications for Erosion and Sediment Control,” prepared and published by the New York State Department of Environmental Conservation, or its successor, or a similar standard or guide approved by the Grantee;

(iv) Prior to the excavation of previously undisturbed areas, topsoil and overburden shall be stripped, stockpiled

separately, and used for reclamation of mined areas. These stockpiles shall be seeded to establish a vegetative cover within 30 days, or as soon as practicable following their construction. Sufficient quantities of topsoil must be retained on the site for use in reclamation;

- (v) Stormwater runoff shall be retained within the pit area to the maximum extent practicable. All other appropriate measures shall be employed to prevent any silt, sediment, or other contaminants from leaving the mine site;
- (vi) There shall be no natural swales or channels or constructed features, such as ditches or pipes, that are capable of discharging waters to any offsite areas or to any areas outside the limits of the mine. All silt laden water and stormwater generated on, or running across, the site shall be retained within the mine area;
- (vii) The total area of the Protected Property impacted at any one time by mining, including any area not re-graded and reclaimed and any area occupied by waste piles, shall not exceed one percent (1%) of the total acres of a "Parcel," defined as the property corresponding to an individual NYC Property ID No. on the attached Schedule A. Grantor shall not use, or allow the use of, area exceeding one percent (1%) of the total acres of a Parcel unless and until reclamation, as defined in subdivision viii. below, of areas previously subject to mining which would result in such exceedance, has been completed;
- (viii) Reclamation shall consist of permanently stabilizing the area impacted by the mining pit through grading and re-vegetation. Grading shall create site conditions that are conducive to natural regeneration of vegetation or planting of trees;
- (ix) Reclamation shall be undertaken sequentially as the mining

area expands. Reclamation shall be an ongoing, continuous process to the extent practical and shall commence immediately upon completion of mining. The site shall be satisfactorily revegetated no later than two years after the mining ceases;

- (x) All areas affected by mining shall be revegetated in accordance with the document, entitled "Standards and Specifications for Vegetative Stabilization of Sand and Gravel Pits," Pages 3.37 and 3.38, New York Guidelines for Urban Erosion and Sediment Control, April 1997 - Fourth Printing, or its successor, or a similar standard or guide approved by the Grantee;
- (xi) There shall be no backfilling and/or deposition of overburden and/or waste rock above the original, naturally occurring grades that existed prior to the mining activities;
- (xii) No mining or mining-related activities shall occur within 100 feet of a New York State-regulated wetland without obtaining a permit pursuant to ECL Article 24; and
- (xiii) All mining must be conducted at least 5 feet above the mean annual high groundwater table. Test holes should be dug in the mine floor at least five feet deep in order to verify compliance with this requirement.

Nothing contained in this Easement shall be construed to prohibit or restrict the Grantee's jurisdiction over mining operations within the Watershed.

(g) The right in accordance with the Watershed MOA and the Water Supply Permit to allow, prohibit, or otherwise control all manner of recreational use of the Protected Property(ies) by the public, subject to rules and regulations adopted or permits issued by the City, and to construct and/or maintain, as may be allowed by the City at its sole discretion, trails, parking areas, boardwalks, boat racks, signs, markers, improvements to facilitate accessibility for the disabled, and other like structures accessory to such recreational uses of the Protected Property(ies); Article II, § 72 of the MOA provides that "historic recreational uses, including fishing, hiking, and hunting, will be allowed to continue on newly acquired fee property,

subject to rules and regulations adopted, or permits issued, by the City, provided that they neither threaten public safety nor threaten to have an adverse impact on water quality. The Parties to the Watershed MOA agree that the following recreational uses are more likely to be allowed on the Protected Property, if appropriate, subject to rules and regulations adopted, or permits issued, by the City: fishing (including fishing by boat) under regulation; hiking, especially where parcels intersect State trails; snowshoeing; cross-country skiing; bird watching; educational programs, nature study and interpretation; and hunting (only in certain areas under certain conditions). The following activities are not likely to be allowed on City property even if the property was historically utilized for these purposes: boating (other than for permitted fishing by boat); snowmobiling; camping; motorcycling; mountain bicycling; and horseback riding.” Grantor reserves any and all rights it has under the MOA to approve and allow recreational uses;

(h) The right to grant, sell, mortgage, transfer, lease, or subdivide the Protected Property(ies) or any part parcel or portion thereof in accordance with and subject to the limitations set forth in paragraph 8 herein;

(i) If the Protected Property is owned by the City, the right to construct and maintain temporary buildings and structures pertaining to the monitoring of weather, fire, vegetation, wildlife, and other biotic or abiotic features and processes, and to construct and maintain other like improvements pursuant to the conduct of scientific research, subject to the terms and conditions set forth in this Easement. If the Protected Property is owned by any person or entity other than the City, all such activities must be approved in writing by the Grantee;

(j) If the Protected Property is owned by the City, the right to construct and maintain or, in its sole discretion, authorize construction and maintenance of, roadways, parking areas, landings and other such areas necessary to service any activities allowed by this Easement, provided that such construction and maintenance is conducted in accordance with the recommendations and guidelines described in the most recent edition of the “New York Standards and Specifications for Erosion and Sediment Control”, prepared and published by the New York State Department of Environmental Conservation, or its successor, or a similar standard or guide approved by Grantee, as they pertain to road construction and maintenance, and that impervious surfaces will be constructed or authorized only if Grantor determines that the impervious surface poses no greater risk to water quality than a pervious surface. If the Protected Property is owned by any person or entity other than the City, all such activities must be approved in writing by the Grantee;

(k) The right to operate, maintain, repair and/or remove any and all structures, facilities, roads, trails and parking areas existing as of the date of this Easement;

(l) The right to construct or install gates, fencing, signs, and/or access controls on roads or parking areas;

(m) If the Protected Property is owned by the City, the right to construct, maintain and operate or, in its sole discretion, authorize construction, maintenance and operation of, the following infrastructure on the Protected Property(ies) provided any such infrastructure is in conformance with any and all applicable laws and regulations and designed to avoid adverse impacts to water quality:

- i. Utility infrastructure, including water, sewer, electrical, telecommunication and broadband lines and telecommunications tower structures;
- ii. Utility crossings for access to utility services;
- iii. Infrastructure to reduce greenhouse gas emissions from the electricity sector by replacing fossil-fuel fired electricity with renewable energy and/or the storage thereof;
- iv. Infrastructure to reduce greenhouse gas emissions from motor vehicles, including vehicle charging stations;
- v. Where necessary to facilitate municipal services, maintenance of existing or the construction of new roads, bridges and turnaround areas; and
- vi. Where the City determines that such use of the Protected Property is the only practicable engineering option, municipally-owned wastewater treatment facilities, including community septic systems and private septic systems designed to replace an existing failing septic systems on adjoining non-City owned property.

With respect to land clearing related to the construction, maintenance, and operation of infrastructure set forth in (iii) and (iv) above, Grantee must approve, in writing, such clearing greater than two acres on a Parcel, and the following land clearing is prohibited: such clearing greater than 10 acres on a Parcel, unless the Parcel is contiguous to other City-owned Parcels subject to a Grantee-held conservation easement, and in which case, such clearing greater than 10 acres for all contiguous Parcels. In addition to any necessary permits, if the Protected Property is owned by any person or entity other than the City, all construction, maintenance, and operation of

such infrastructure must be approved in writing by the Grantee.

(n) The right to engage in the production of crops, livestock, and livestock products as defined in § 301(2) of the Agriculture and Markets Law or, in its sole discretion, to authorize such activities, in accordance with a whole farm plan approved by the Watershed Agricultural Council, or its successor, or by a New York State Agricultural Environmental Management Plan or a similar plan under subsequently amended New York State law, regulations or guidance. If the Protected Property is owned by the City, another federal, state, or other conservation plan may be deemed acceptable if determined by the City to provide water quality protection equivalent to whole farm plans approved by the Watershed Agricultural Council, or its successor; and

(o) Any and all other rights accruing from the Grantor's ownership of the Protected Property(ies) not expressly prohibited by this Easement.

5. Enforcement.

(a) In the event that Grantee determines that there is an alleged breach or violation of the terms of this Easement or that such a breach or violation is threatened, Grantee shall provide written notice to Grantor describing the alleged violation, and any measures reasonably calculated to cure the alleged violation; and providing a reasonable time from the date of such notice to implement corrective measures or cure the alleged violation;

(b) At the expiration of the time period provided for in the preceding subparagraph, Grantee shall notify Grantor of any failure to cure the alleged violation or breach set forth in the initial notice, whereupon Grantor shall then have an additional fifteen (15) days from the date of receipt of such notice to implement corrective measures or to cure the violation or breach;

(c) In the event the Grantor fails to implement corrective measures to cure the violation or breach at the expiration of said fifteen-day period, Grantee shall have the right to bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, to recover damages for the loss of environmental benefits or natural resources of the Protected Property(ies) and/or to require restoration of the Protected Property(ies) to a stable condition consistent with any uses permitted on the Protected Property pursuant to this Easement.

(d) As used herein with reference to the Protected Property(ies), the

term “stable condition” shall mean the approximate general, natural, and undeveloped condition of the Protected Property(ies) as of the date of this Easement, and giving due consideration to the following:

- i. The normal effects of the passage of time; or
- ii. the results of natural forces (including but not limited to fires, explosions, earthquakes, landslides, lightning, flooding, or other Acts of God);
- iii. any measures necessary to protect and preserve the quality of the New York City Drinking Water Supply.

(e) Where this Easement requires or permits the restoration of the Protected Property(ies) to a stable condition following a violation or breach of this Easement, this Easement shall not be construed to allow or require the use of extraordinary means to effect such restoration unless the circumstances reasonably require the use of such extraordinary means. The Parties agree that the following means will ordinarily be used to restore the Protected Property(ies) to a stable condition following a violation or breach of this Easement:

- i. removal of items and material not allowed by this Easement;
- ii. closure, filling, grading and planting with appropriate vegetative cover, of areas adversely affected by activities not allowed by this Easement;
- iii. correction, through reasonably practicable measures, of conditions which adversely affect drainage, flood control, water conservation, fish or wildlife habitat, erosion control or soil conservation.

(f) If a court determines that the Grantor has violated the terms of this Easement, then Grantor shall reimburse the Grantee for all expenses incurred, including court costs and attorney’s fees, in enforcing the terms of this Easement. If Grantor prevails in any court action to enforce the terms of this Easement, Grantor’s costs of suit, including attorney’s fees, shall be borne by Grantee.

(g) Enforcement of the terms of this Easement shall be at Grantee’s discretion, and any forbearance or failure of Grantee to exercise its rights under this Easement shall not be deemed a waiver and shall not prevent or bar Grantee from enforcing any of the terms, conditions, covenants or restrictions of this Easement.

(h) In the event that Grantee conducts regularly scheduled inspections of the Protected Property(ies), Grantee shall provide written notice to Grantor at least three (3)

days in advance whereupon Grantor shall have the right to accompany Grantee on such inspections. Grantee shall prepare a report detailing its findings resulting from such inspections of the Protected Property(ies) and shall provide Grantor with a copy of said inspection reports within thirty (30) days of the inspection.

(i) The Parties agree to cooperate in the enforcement of the terms of this Easement. In the event that either party determines that legal proceedings are necessary against some party other than Grantor or Grantee, or their successors, heirs, assigns, agents, or employees then either party may agree to join the other in such legal proceeding, provided that nothing herein shall obligate Grantor or Grantee to expend any funds, other than for review and execution of related papers.

6. **Third Party Enforcement Rights.** In accordance with Article 49 of the ECL, and Article II, §82 of the Watershed MOA, this Easement may be enforced by the United States Environmental Protection Agency or the New York State Department of Health, whichever agency has primary enforcement responsibility at the time that enforcement of the Easement is sought, for implementation of the Surface Water Treatment Rule (40 C.F.R. § 141.70 et seq.) with respect to the water supply system in which the Protected Property(ies) is situated.

7. **Acts Beyond the Grantor's Control.** The Grantor shall not be liable for any damage or change to the Protected Property(ies) resulting or arising from acts beyond the Grantor's control, including, Acts of God, natural disasters, war, judicial order, strike, insurrection, unlawful, or unpermitted acts of the public or from acts of Grantee or its agents and representatives.

8. **Mortgage, Encumbrance, Transfer or Subdivision.**

(a) Pursuant to the Watershed MOA and Special Condition 21 of the Water Supply Permit, the Grantor may grant, sell, convey, deed, subdivide, mortgage, lease, transfer or assign any part of the Protected Property(ies) at its discretion and subject to the requirements of the New York City Charter, with 60 days written notice prior to any such conveyance (including the names and addresses of any such grantee, transferee, buyer, assignee, mortgagor or lessee) to Grantee, provided that any such deed mortgage, assignment, or lease or any other instrument of conveyance specifically states that the interest thereby conveyed is subject, without limitation, to the terms of this Easement and any amendments hereto.

(b) Pursuant to the Watershed MOA and Special Condition 20 of the Water Supply Permit, the Grantor may not grant, sell, convey, deed, subdivide, mortgage, lease,

transfer or assign any part of the Protected Property(ies) to a tax-exempt entity unless the entity enters into a written agreement acceptable to and with the tax assessing unit to make payments in lieu of full real property taxes and ad valorem levies to each applicable taxing entity.

(c) Notwithstanding the preceding subparagraphs (a) and (b), if the Protected Property(ies) is owned by the City, the City may grant, sell, or convey the Protected Property(ies) in fee simple, either encumbered by or free of this Easement, in order to purchase higher priority lands in the New York City Watershed provided the following requirements are met: (i) the Protected Property(ies) must be located in Priority Areas 3 or 4 of the Catskill/Delaware System or C of the Croton System as set forth in Special Condition 6 of the Water Supply Permit and so identified in Schedule A attached; (ii) the United States Environmental Protection Agency and the New York State Department of Health must approve such grant, sale or conveyance; (iii) the City is under contract to purchase the replacement lands of higher priority sale of the Protected Property(ies); and (iv) if acquired by the City in fee, the replacement lands acquired by the City are made subject to a conservation easement in favor of Grantee as provided by the Watershed MOA and the Water Supply Permit, in substantially the same form of this Easement; if acquired by the City as a conservation easement, the replacement easement includes third party enforcement rights in favor of the New York State Attorney General;

(d) In the event that the City satisfied the conditions set forth in the preceding subparagraph (c) and provided the City requests extinguishment of this Easement pursuant to the terms herein, the Parties shall promptly enter into and execute a written Agreement, providing for the extinguishment of this Easement, for filing in the County Clerk's Office(s).

9. **Compliance Certificates.** Upon request by the Grantor, Grantee shall execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any of its obligations contained in this Easement.

10. **Real Property Taxes.** In accordance with and subject to the limitations and conditions set forth in the Watershed MOA and Special Condition 18 of the Water Supply Permit, Grantor, its heirs, successors and assigns, shall be responsible for appropriate payment of all taxes (including any taxes Grantee would otherwise be subject to pursuant to Real Property Tax Law § 533), assessments, levies, fees and charges on the Protected Property(ies) levied or assessed by any competent governmental authority, and shall furnish Grantee with tax receipts or other evidence of such payment upon Grantee's request.

11. **Condemnation.** In the event that the Protected Property(ies) is taken in whole or in part for any purpose pursuant to the Eminent Domain Procedure Law, then this Easement will be extinguished only as to the portion of the Protected Property(ies) taken. The

Grantee shall not be entitled to any portion of the compensation paid for the taking.

12. **Extinguishment of Development Rights.** The Grantor agrees that all development rights specifically restricted by this Easement shall be held by Grantee for so long as this Easement shall remain in effect and may not be transferred to any other land or used to calculate permissible density or lot yield for any other land not restricted by this Easement.

13. **Covenants, Warrantees and Representations.** The City hereby warrants, represents and covenants that as of the date of the Easement:

- (a) the Protected Property(ies) is free from any mortgages or tax liens of any kind or nature whatsoever;
- (b) the City is seized of the premises in fee simple and has full right and title to convey this Easement.

14. **Subject to Conditions of Records.** Except as otherwise specified herein, the grant of this Easement is made subject to all rights, covenants, conditions, easements, and other restrictions of record and shall not impair, abrogate, or otherwise affect any rights that persons other than the Grantor may have to use the Property(ies) pursuant to such rights, covenants, easements, or other matters of record.

15. **Notices.**

- (a) All notices, requests, and/or approvals required by this Easement shall be in writing and shall be delivered by registered mail to the following addresses:

If to the Grantor:

NYC DEP
Section Chief, Natural Resources Management
71 Smith Avenue
Kingston, New York 12401

If to the Grantee:

New York State Department of Environmental Conservation
Director, Lands and Forests
625 Broadway
Albany, New York 12233

- (b) In any event that approving party fails to respond within sixty (60) days of receipt of such notice, the requestor shall make notice of that failure by means of certified

mail, return receipt requested, addressed to the party designee herein. Such notice must contain the requestor's name, and a copy of any materials sent with the initial request. If the request is not subject to a process promulgated in a rule, regulation, or applicable law and the approving party fails to provide a definite answer within 10 business days of the receipt of such notice, its approval shall be deemed given. If the request is subject to a process promulgated in a rule, regulation, or applicable law, as determined by the approving party, the approving party shall provide a response within ten (10) business days of the receipt of such notice.

(c) Either party may change the address to which notice to such party shall be sent by sending written notice of such change to the other party.

16. **Miscellaneous.**

(a) This Easement may not be modified, altered, amended, or extinguished except:

- i. by written instrument signed and executed by both parties hereto and recorded in the appropriate County Clerk's Office; or
- ii. in accordance with the requirements of paragraph 8, subparagraphs (c) and (d) of this Easement; or
- iii. in accordance with applicable provisions of Article 49 of the Environmental Conservation Law;
- iv. If the property is outside the Catskill Park, as defined in section 9-0101 of the Environmental Conservation Law, in a proceeding pursuant to § 1951 of the New York State Real Property Actions and Proceedings Law or its successor; or
- v. upon the exercise of the power of eminent domain.

(b) The City shall provide Grantee with a survey of the Protected Property(ies) certified to New York State.

(c) This Easement shall be perpetual, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assigns, agents and representatives forever.

(d) This Easement shall be governed by and construed in accordance with all applicable laws and regulations of the State of New York.

(e) The City's rights and obligations pursuant hereto shall terminate

upon any transfer, sale or conveyance of the Protected Property(ies) in fee simple to a third party.

(f) The provisions of this Easement are severable and if any court of competent jurisdiction shall render a judgement that any provision hereof is null or void, the effect of said judgement shall be limited to the nullified or voided provision of this Easement and the remaining provisions shall continue in full force of the effect.

(g) This Easement is not transferable without the consent of the Grantor.

(h) This Easement shall not be deemed to create a private right of action on the part of any person or entity, other than the State of New York, or the United States Environmental Protection Agency pursuant to paragraph 6 herein, to enforce the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

The City of New York

By: _____
Deputy Mayor for Operations

Attested to By: _____

Title: _____

ACCEPTED
THE PEOPLE OF THE STATE OF NEW YORK
acting by and through the Department of Environmental Conservation

By: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF NEW YORK)
ss.:
COUNTY OF _____)

On the __ day of _____, in the year 20 __, before me, the undersigned,

personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
ss.:
COUNTY OF _____)

On the ___ day of _____, in the year 20___, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
ss.:
COUNTY OF _____)

On the ___ day of _____, in the year 20___, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals or the person upon behalf of which the individuals acted, executed the instrument.

Notary Public

APPROVAL AS TO FORM OF AGREEMENT BY STANDARD TYPE OF CLASS

Agency: Department of Environmental Protection

Agreement: Conservation Easement to State of New York

Pursuant to section 394 of the New York City Charter, I hereby approve as to form the annexed easement by standard type of class. This approval is valid for a period of three years from the date hereof and for a maximum of fifty (50) agreements.

The above approval is made on the express, understanding that the substantive language of the agreement will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the agreement requiring names, dates, dollar amounts, or other similar details may be completed.

APPROVED AS TO FORM

ACTING CORPORATION COUNSEL

DATE: _____

Appendix B

