

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 4

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Peter M. Iwanowicz
Acting Commissioner

December 24, 2010

Honorable Caswell F. Holloway
Commissioner
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

Re: DEC ID# 0-9999-00051/00001
Water Supply Permit WSA#11,352
NYC Watershed Land Acquisition Program

Dear Commissioner Holloway:

Please find enclosed a Water Supply Permit issued pursuant to Article 15, Title 15 and Article 70 (Uniform Procedures) of the Environmental Conservation Law (ECL), authorizing land and easement acquisition within New York City's water supply watersheds.

The Department appreciates the cooperative efforts of your agency to fully address all concerns raised and work to achieve the agreement among the many parties to this process. We believe the outcome is protective of this vital water supply for 9 million of New York State's inhabitants while being fair and equitable to the watershed communities.

If you have any questions, please feel free to contact Martha A. Bellinger, Project Manager/Environmental Analyst of our Region 4 Division of Environmental Permits Stamford Office, or myself.

Sincerely Yours,

William J. Clarke
Regional Permit Administrator
Region 4

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC PERMIT NUMBER 0-9999-00051/00001
FACILITY/PROGRAM NUMBER(S) WSA #11,352 Date Filed: January 20, 2010 Ext. No.



PERMIT
Under the Environmental
Conservation Law (ECL)

EFFECTIVE DATE December 24, 2010
EXPIRATION DATE(S) As per Special Condition 3

TYPE OF PERMIT (Check All Appropriate Boxes)

NEW RENEWAL MODIFICATION PERMIT TO CONSTRUCT PERMIT TO OPERATE

<input type="checkbox"/> ARTICLE 15, TITLE 5: PROTECTION OF WATER	<input type="checkbox"/> ARTICLE 17, TITLES 7, 8: SPDES	<input type="checkbox"/> ARTICLE 27, TITLE 9; 6NYCRR 373: HAZARDOUS WASTE MGMT.
<input checked="" type="checkbox"/> ARTICLE 15, TITLE 15: WATER SUPPLY	<input type="checkbox"/> ARTICLE 19: AIR POLLUTION CONTROL	<input type="checkbox"/> ARTICLE 34: COASTAL EROSION MANAGEMENT
<input type="checkbox"/> ARTICLE 15, TITLE 15: WATER TRANSPORT	<input type="checkbox"/> ARTICLE 23, TITLE 27: MINED LAND RECLAMATION	<input type="checkbox"/> ARTICLE 36: FLOODPLAIN MANAGEMENT
<input type="checkbox"/> ARTICLE 15, TITLE 15: LONG ISLAND WELLS	<input type="checkbox"/> ARTICLE 24: FRESHWATER WETLANDS	<input type="checkbox"/> ARTICLES 1, 3, 17, 19, 27, 37; 6NYCRR 380: RADIATION CONTROL
<input type="checkbox"/> ARTICLE 15, TITLE 27: WILD, SCENIC & RECREATIONAL RIVERS	<input type="checkbox"/> ARTICLE 25: TIDAL WETLANDS	<input type="checkbox"/> ARTICLE 27, TITLE 3, 6NYCRR 364: WASTE TRANSPORTER
<input type="checkbox"/> 6NYCRR 608: WATER QUALITY CERTIFICATION	<input type="checkbox"/> ARTICLE 27, TITLE 7: 6NYCRR 360: SOLID WASTE MANAGEMENT	<input type="checkbox"/> OTHER:

PERMIT ISSUED TO New York City Department of Environmental Protection		TELEPHONE NUMBER 718-595-6586	
ADDRESS OF PERMITTEE 59-17 Junction Boulevard, Flushing, NY 11373			
CONTACT PERSON FOR PERMITTED WORK Caswell F. Holloway, Commissioner		TELEPHONE NUMBER	
NAME AND ADDRESS OF PROJECT/FACILITY N/A			
LOCATION OF PROJECT/FACILITY Counties of Putnam, Westchester, Dutchess, Greene, Sullivan, Schoharie, Ulster, Delaware			
COUNTY Multiple	TOWN/CITY/VILLAGE Multiple	WATERCOURSE/WETLAND NO. N/A	NYTM COORDINATES E: N:
DESCRIPTION OF AUTHORIZED ACTIVITY: Land and easement acquisition and management program (Land Acquisition Program or LAP) within the New York City water supply watershed for the purpose of water quality protection.			

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified (see page 2) and any Special Conditions included as part of this permit.

REGIONAL PERMIT ADMINISTRATOR: William J. Clarke	ADDRESS NYSDEC, Region 4 Headquarters 1130 North Westcott Road, Schenectady, NY 12306
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<i>William J. Clarke</i>	DATE 12/24/2010	Page 1 of 30
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Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

GENERAL CONDITIONS

1. Facility Inspection by the Department

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations

Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications for Permit Renewals or Modifications

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

The permittee must submit a renewal application at least:

- a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities (HWMF), major Air Pollution Control (APC) and Solid Waste Management Facilities (SWMF); and
- b) 30 days before expiration of all other permit types.

Submission of applications for permit renewal or modification are to be submitted to:

NYSDEC Regional Permit Administrator, Region 4		NYSDEC Deputy Regional Permit Administrator, Region 4
1150 North Westcott Road, Schenectady, NY 12306		Stamford Field Office, 65561 SH 10, Stamford, NY 12167
(for Albany, Columbia, Greene, Rensselaer, Montgomery, & Schenectady Counties)		(for Delaware, Otsego, & Schoharie Counties)

4. Permit Modifications, Suspensions and Revocations by the Department

The Department reserves the right to modify, suspend or revoke this permit in accordance with 6 NYCRR Part 621.

The grounds for modification, suspension or revocation include:

- a) materially false or inaccurate statements in the permit application or supporting papers;
- b) failure by the permittee to comply with any terms or conditions of the permit;
- c) exceeding the scope of the project as described in the permit application;
- d) newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e) noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

Special Conditions
Table of Contents

1. Authorization	4
2. Scope.....	4
3. Permit Duration.....	4
4. Definitions.....	4
5. Willing Sellers/No Eminent Domain.....	7
6. Mapping of Priority Areas.....	8
7. Eligibility and Authorization for Acquisition.....	8
8. Vacant Lands Defined.....	9
9. Size and Natural Features Criteria.....	9
10. Exclusions from Acquisition (Designated Hamlet and Village Areas).....	11
11. Acquisition Procedures.....	12
12. Local Consultation.....	12
13. Fair Market Value.....	13
14. Schedule.....	15
15. Recreational Uses: City Property Owned in Fee Simple for Watershed Protection	15
16. Uses: LAP Fee and Easement Property under the City’s Land Acquisition Program.....	16
17. Watershed Conservation Easements.....	17
18. Real Property Taxes: Newly Acquired In Fee Under the City’s Land Acquisition Program.....	18
19. Real Property Taxes: Watershed Conservation Easements.....	18
20. Limitation on Transfers to Tax Exempt Entities.....	19
21. Land Held in Perpetuity for Watershed Protection.....	19
22. Acquisition Reports.....	20
23. Water Conservation Program Updates and Approval.....	20
24. Water Conservation Program Implementation.....	20
25. Programs to Foster Cooperation and Requirement to Fund Watershed Protection and Partnership Programs.....	20
26. Restriction on Acquisition of Title.....	25
27 Primacy Agency Determination	26
28. Notices and Submittals.....	26
29. Riparian Buffers Program.....	27
30. Revocable Permits for use of Watershed Property Owned In Fee by NYCDEP.....	28
31. Watershed Forest Conservation Easement Program.....	28
32. Forest Management Plans.....	28
33. Enhanced Land Trust Program.....	29
34. East of Hudson Non-Point Source Stormwater Program.....	29
 Listing of Exhibits.....	 30

1. **Authorization.** As authorized by and pursuant to all the terms and conditions of this permit, including attached exhibits, the City of New York (“City”), through the New York City Department of Environmental Protection (“NYCDEP”), may acquire fee title to, or Watershed Conservation Easements (which also include Watershed Agricultural Easements, Watershed Forest Easements, and Riparian Buffer Easements) on, parcels of land located within the Watershed of the New York City water supply system (Watershed). The terms and conditions of this permit draw their statutory authorization from and are designed to ensure that the project is consistent with, section 15-1503(2) and 15-1503(4) of the Environmental Conservation Law and implementing regulations 6NYCRR601. Nothing herein shall be construed to diminish any obligation of the City arising out of the prior approvals or permits issued by NYSDEC, or its predecessors, including the Water Supply Commission, Conservation Commission and Water Power and Control Commission. This authorization shall not exceed 106,712 acres in total City acquisitions in fee title and Watershed Conservation Easements across the entire Watershed which are acquired (i.e. executed contract to purchase) from January 1, 2010 forward of which no more than 105,043 acres shall be located in the West of Hudson watershed.

2. **Scope.** The 2007 USEPA filtration avoidance determination requires the City to commit Two Hundred Forty One Million Dollars (\$241,000,000) in funding a Land Acquisition Program (“LAP”) to acquire fee title to, or Watershed Conservation Easements on, parcels of land in the Catskill and Delaware Watershed. This follows upon an earlier filtration avoidance determination embodied in the 1997 Water Supply Permit and the intergovernmental 1997 New York City Watershed Memorandum of Agreement or MOA that required the City to allocate Two Hundred Fifty Million Dollars (\$250,000,000) to the LAP and an additional Fifty Million Dollars (\$50,000,000) to the LAP between 2002 and 2008. The City’s LAP, the City’s Watershed Regulations, and the other programs and conditions contained in the Watershed MOA, when implemented in conjunction with one another, are intended to protect water quality while allowing 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. The City’s land acquisition goals recognize the importance of ensuring that the availability of developable land in the Watershed will remain sufficient to accommodate projected growth without adverse effects on water quality and without substantially changing future population patterns in the Watershed communities.

3. **Permit Duration.** The following special conditions shall expire 15 years from the effective date of this permit: Special Conditions 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 22, 25, 26, 27, 29, 30, 31, 33, and 34. All other special conditions shall remain in effect unless modified pursuant to 6NYCRR621. Operational non expiring permit conditions shall consist of:
 3. Permit Duration
 4. Definitions
 15. Recreational Uses: City Property Owned in Fee Simple for Watershed Protection.
 16. Uses: LAP Fee and Easement Property
 18. Real Property Taxes: Newly Acquired In Fee
 19. Real Property Taxes: Watershed Conservation Easements
 20. Limitation on Transfers to Tax Exempt Entities
 21. Land Held in Perpetuity for Watershed Protection
 23. Water Conservation Program Updates and Approval
 24. Water Conservation Program Implementation
 28. Notices and Submittals
 32. Forest Management Plan

4. **Definitions.** The following terms, as used in this permit, shall have the meaning set forth below:
 - a. “CAPA” means the City Administrative Procedure Act, chapter 45 of the New York City Charter.

- b. "Catskill and Delaware System" means the Ashokan, Cannonsville, Kensico, Neversink, Pepacton, Rondout, Schoharie, and West Branch/Boyd's Corner Reservoirs, and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs.
- c. "Catskill and Delaware Watershed" means the drainage basins of the Catskill and Delaware System. A map of this watershed is set forth in Exhibit 1.
- d. "Catskill Watershed Corporation" or "CWC" means an independent locally-based and locally administered not-for-profit corporation, organized under Section 1411 of the Not For Profit Corporation Law (the "CW Corporation") established in order to foster a working partnership between the City and the WOH Communities, and to manage certain programs more fully described in Special Condition 25 and Exhibit 14 required by this permit under contract to New York City.
- e. "City" means the City of New York, a municipal corporation with its principal office at City Hall, New York, New York 10007. The City is subject to all the terms and conditions in this Water Supply Permit through its implementing agency the NYC Department of Environmental Protection and is responsible for assuring all of its contractors adhere to the same.
- f. "Cluster Development" means the concentrated grouping of residential or commercial development so as to protect water quality and preserve the open space of the development parcel. Cluster Development is also defined within NYS Town Law Section 278 as follows: cluster development shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.
- g. "Coalition of Watershed Towns" or "Coalition" means the inter-municipal body composed of the municipalities located wholly or partially within that portion of the New York City Watershed that lies west of the Hudson river, which have duly entered into a cooperative agreement, pursuant to § 119-o of the New York General Municipal Law, having its principal office at Tannersville, New York.
- h. "Croton System" means the Amawalk, Bog Brook, Cross River, Croton Falls, Diverting, East Branch, Middle Branch, Muscoot, New Croton, and Titicus Reservoirs, Kirk Lake, Lake Gleneida and Lake Gilead, and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs and controlled lakes.
- i. "Croton Watershed" means the drainage basins of the Croton System. A map of this watershed is set forth in Exhibit 1.
- j. "Drainage Basin" or "Reservoir Basin" means, for purposes of defining the boundaries of the drainage basin of each reservoir or controlled lake, the area of land that drains surface water into, or into tributaries of, a reservoir or controlled lake of the Catskill and Delaware or Croton Systems.
- k. "East of Hudson" or "EOH" means the drainage basins of the specific reservoirs and controlled lakes of the New York City Watershed located east of the Hudson River in the New York counties of Dutchess, Putnam, and Westchester.
- l. "Effective Date" means the date as shown on Page 1 of the issued permit.
- m. "Executive Committee" means the Executive Committee of the WPPC.
- n. "Individual Landowner Forest Management Plan" means a document prepared by a professional forester that is based upon the goals and objectives that individual owners have for their forested properties and updated on a ten year basis. It is a document which shows by maps, tables and written text, the boundaries and size of the forest, what kind and sizes of trees it contains, what needs to be done to produce and harvest forest products or to achieve other non-timber related objectives and how such activities should be designed in order to minimize negative impacts to water quality.

- o. "Filtration Avoidance Determination or "FAD" means the written determination of the United States Environmental Protection Agency, or the New York State Department of Health, determining that surface source waters may be used as a public water supply without filtration.
- p. "Land" means fee title in real property or Watershed Conservation easements on real property, unless a different meaning is clearly intended by the context.
- q. "NYCDEP" means the New York City Department of Environmental Protection, a mayoral agency of the City of New York organized and existing pursuant to the New York City Charter and its contractors.
- r. "NYSDEC" means the New York State Department of Environmental Conservation, an executive agency of the State of New York organized and existing pursuant to the New York Environmental Conservation Law.
- s. "NYSDOH" means the New York State Department of Health, an executive agency of the State of New York organized and existing pursuant to the New York Public Health Law.
- t. "Primacy Agency" means the United States Environmental Protection Agency or the New York State Department of Health, whichever has primary enforcement responsibility for implementation of the federal Surface Water Treatment Rule (40 CFR §141.70 et seq.) pursuant to §1413 of the federal Safe Drinking Water Act (42 U.S.C. §300g-2).
- u. "Riparian Buffer Easement" means a Watershed Conservation Easement, as defined below in paragraph (cc.) on real property (including floodplains) adjacent to streams, lakes, rivers, wetlands, and/or water bodies acquired pursuant to the Riparian Buffer Program described in Special Condition 29.
- v. "Riparian Buffer in fee" means real property (including floodplains) adjacent to streams, lakes, rivers, wetlands, and/or water bodies acquired in fee pursuant to the Riparian Buffer Program described in Special Condition 29.
- w. "TMDL" means Total Daily Maximum Load. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. It is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL stipulates wasteload allocations for point source discharges, load allocations for nonpoint sources, and a margin of safety.
- x. "Uninhabitable Dwelling" means a dwelling which is deteriorated to the extent that: either the cost of rehabilitation which would prevent the continued deterioration of primary components will exceed sixty percent (60%) of the fair market value of the structure (as established by the City's appraisal) or rehabilitation will not prevent the continued deterioration of primary components of the dwelling which will result in unsafe living conditions; and it has not been occupied for one year immediately prior to the signing of an option. As used herein, the term "primary components of a dwelling" shall include: foundations, exterior wall framing, rafters, roof decks, roof coverings, porches, floor joists, sills, headers, electrical systems, heating systems, plumbing systems and septic systems.
- y. "USEPA" means the United States Environmental Protection Agency, an executive agency of the United States, organized and existing under the laws of the United States, with its principal office at 401 M Street, S.W., Washington, D.C. 20460.
- z. "Watershed" or "New York City Watershed" means the drainage basins of the Catskill and Delaware and Croton Systems.
- aa. "Watershed Agricultural Council" or "WAC" means an independent locally-based and locally administered not-for-profit corporation, organized under Section 1411 of the Not For Profit Corporation Law (the "Watershed Agricultural Council") established in order to foster a working partnership between the City and the WOH Communities, and to implement and manage certain programs under contract to New York City including but not limited to Watershed Agricultural Easements.

- bb. "Watershed Agricultural Easement" means a Watershed Conservation Easement, as defined below in paragraph (cc.), on real property in active agricultural production or designated for future agricultural production. Such easements shall allow agricultural production.
- cc. "Watershed Conservation Easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of Article 49 of the New York Environmental Conservation Law, which limits or restricts development, management or use of such real property for the purpose of maintaining the open space or natural condition or character of the real property in a manner consistent with the protection of water quality generally and the New York City drinking water supply specifically. It also includes Watershed Agricultural Easements, Watershed Forest Easements, and Riparian Buffer Easements)
- dd. "Watershed Forest Easement" means a Watershed Conservation Easement, as defined in paragraph (cc.), on real property in forest production or designated for future forest production. Such easements shall allow forest production.
- ee. "Watershed MOA" or "MOA" means the agreement, entered on January 21, 1997, among the State of New York, the City of New York, the United States Environmental Protection Agency, Catskill Watershed Corporation, the Coalition of Watershed Towns, certain watershed municipalities, and certain environmental groups which established a framework for a "partnership 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."
- ff. "Watershed Protection and Partnership Council" or "WPPC" shall mean a group formed to aid in the protection of drinking water quality and the economic vitality of the Watershed communities. The Council will represent a broad-based diverse group of interests that share the common goal of protecting and enhancing the environmental integrity of the Watershed and the social and economic vitality of the Watershed communities. The Council shall consists of twenty-seven (27) members (sixteen (16) members constituting an executive Committee and eleven (11) additional members), which shall include representatives from the State and City of New York, local governments in the Watershed, the USEPA, business, the environmental community, and water supply consumers.
- gg. "Watershed Regulations" means the watershed rules and regulations applicable to the New York City Watershed, codified as Rules of the City of New York ("RCNY"), Title 15, Chapter 18 and New York Codes, Rules and Regulations, Title 10, Part 128 pursuant to Public Health Law Section 1100.
- hh. "1997 Designated Areas" means the villages, village extensions, hamlets, and commercial or industrial areas designated in accordance with paragraph 68 of the Watershed MOA.
- ii. "1997 Water Supply Permit" means the water supply permit issued by NYSDEC on January 21, 1997, DEC Permit Number 0-9999-00051/00001.
- jj. "Water Supply System" means the system of reservoirs, controlled lakes, structures and facilities such as dams, tunnels, and aqueducts which collect source water for the New York City drinking water supply and transport it to the City of New York.
- kk. "West of Hudson" or "WOH" means the Catskill and Delaware drainage basins of the specific reservoirs of the New York City Watershed located west of the Hudson River in the New York counties of Greene, Delaware, Ulster, Schoharie, and Sullivan.
- ll. "WWTP" means wastewater treatment plant.

- 5. Willing Sellers/No Eminent Domain.** The City may acquire fee title to, or Watershed Conservation easements on, real property from willing sellers only. This permit does not authorize the use of any powers of eminent domain.

6. Mapping of Priority Areas.

- a. The Catskill and Delaware Watershed has been mapped, in descending order of priority for acquisition and protection, into Priority Areas 1A, 1B, 2, 3, and 4 by the City as shown in Exhibits 2 (West of Hudson) and 3 (East of Hudson).
 - i. Priority Area 1A is the highest priority. It consists of portions of reservoir basins that are within 60-day travel time to distribution and are in close proximity to an aqueduct intake. It consists of portions of the basins of the Kensico, West Branch, Ashokan, Rondout, Neversink, Pepacton, and Cannonsville Reservoirs. Priority Area 1B consists of portions of reservoir basins that are within 60-day travel time to distribution and not Priority Area 1A. It consists of: all of Boyd's Corners Reservoir basin; the remaining portions of the basins of Kensico, West Branch, and Rondout Reservoirs; and portions of the basins of Ashokan, Cannonsville, and Pepacton Reservoirs.
 - ii. Priority Area 2 consists of the remaining portion of the Ashokan Reservoir basin (portions of terminal reservoir basins that are not within priority areas 1A or 1B).
 - iii. Priority Area 3 consists of portions of reservoir basins with identified water quality problems that are not in priority areas 1A, 1B, or 2.
 - iv. Priority Area 4 is the lowest priority. It consists of the remaining areas within the Watershed.
- b. The Croton Watershed has been mapped by the City into Priority Areas A, B, and C; A being the highest priority.
 - i. The Croton Watershed priority areas are as follows: A (New Croton, Croton Falls, and Cross River Reservoirs); B (Muscoot and portions of Amawalk and Titicus Reservoirs within 60-day travel time to distribution); C (remaining reservoir basins and sub-basins beyond 60-day travel time to distribution).

A map of the boundaries of these Priority Areas is set forth in Exhibit 3 of this permit.

7. Eligibility and Authorization for Acquisition.

- a. To be eligible and authorized for acquisition by the City in fee, parcels of land must be vacant, as defined in Special Condition 8, and meet the size and natural features criteria, as set forth in Special Condition 9, and not fall under the acquisition exclusions (hamlet or village designations), as set forth in Special Condition 10. Acquisition eligibility and authorization for Riparian Buffer fee parcels shall be determined solely based upon their meeting the surface water features thresholds (but not steep slopes thresholds) in Special Condition 9.a.2.a - d. and falling outside the acquisition exclusion areas (hamlet or village designations) in Special Condition 10 unless such exclusion is waived in individual municipalities by the town or village boards by resolution authorizing the Riparian Buffer Program and the specific parcels described and covered by such program.
- b. Parcels of land participating in a federal or state flood buy-out program need neither be vacant, as defined in Special Condition 8, nor meet the size and natural features criteria, as set forth in Special Condition 9 nor are such parcels subject to the acquisition exclusions (hamlet or designations) in Special Condition 10.
- c. To be eligible and authorized for acquisition as Watershed Conservation Easements (except for Watershed Agricultural Easements and Riparian Buffer Easements) by the City, parcels of land must meet the size and natural features criteria set forth in Special Condition 9 and not fall under the acquisition exclusions (hamlet or village designations) in Special Condition 10. All Watershed Conservation Easements may be acquired on land regardless of whether the land is vacant, as defined in Special Condition 8. Acquisition eligibility and authorization for Watershed Agricultural Easement parcels shall be determined solely based upon falling outside the acquisition exclusion areas (hamlet or village designations) in Special Condition 10.

Acquisition eligibility and authorization for Riparian Buffer Easement parcels shall be determined solely based upon their meeting the surface water features thresholds (but not steep slopes thresholds) in Special Condition 9.a.2.a - d and falling outside the acquisition exclusion areas (hamlet or village designations) in Special Condition 10 unless such exclusion is waived in individual municipalities by the town or village boards by resolution authorizing the Riparian Buffer Program and the specific parcels described and covered by such program.

8. Vacant Lands Defined.

- a. Vacant land West of Hudson means land on which there are no structures, other than uninhabitable dwellings or accessory structures (sheds, barns, etc.). If a parcel contains a habitable dwelling, the City will acquire the parcel in fee only if the owner subdivides the parcel so that the City only takes title to the portion of the parcel without the habitable dwelling. The subdivided parcel containing the habitable dwelling must include an adequate area for septic field, reserve area and well. If a parcel acquired in fee contains an uninhabitable dwelling or accessory structure, the City will remove it within two years of acquiring title if requested to do so by the respective town or village during the local consultation period.
- b. Vacant land East of Hudson means land on which there are no inhabited structures at the time the City acquires title. If the City is interested in a parcel that contains a structure that would be inhabited at the time the City acquires title, the parcel must be subdivided so that the City only takes title to the portion of the parcel without the inhabited structure.
- c. The City shall be authorized to use land trusts operating under the Enhanced Land Trust Program established pursuant to Special Condition 33 for WOH as LAP contractors to acquire lands described in this special condition providing that the following requirements are adhered to: the subdivision of the parcels is carried out according to the criteria in 8.a above, the vacant land is conveyed to the City, the portion of the properties containing the habitable dwellings are fully maintained so as to not diminish their monetary value, all local tax (including ad valorem) payments are kept current and such subdivided habitable dwelling properties are placed for sale in the open real estate market. In order for this provision to take effect the Town or Village Board shall adopt a resolution pursuant to such procedures determined to be applicable by such Board within 180 days of the Effective Date of this Permit. Every five years, from the Effective Date of the Permit any Town or Village Board shall have a 180 day window following these five year anniversary dates (12/24/2015, 12/24/2020, 12/24/2025) to reassess and if it so chooses to implement the provisions of this paragraph or rescind any prior adopted resolution. All such resolutions shall be provided to NYSDEC, NYSDOH and NYCDEP within 21 days of their adoption.

9. Size and Natural Features Criteria.

Applicability defined herein and within Special Condition 7 above.

- a. West of Hudson:
 1. Size

All eligible and authorized parcels must:

 - a. In Priority Area 1A be at least one acre in size.
 - b. In Priority Area 1B must be at least five acres in size.
 - c. In Priority Areas 2, 3, and 4 must be at least ten acres in size
 2. Surface Water Features/Slopes:

All eligible and authorized parcels only in Priority Areas 2, 3, and 4 must either:

 - a. Be at least partially located within 1,000 feet of a reservoir; or
 - b. Be at least partially located within the 100-year flood plain; or
 - c. Be at least partially located within 300 feet of a watercourse, as defined in the Watershed Regulations; or

- d. Contain in whole or in part a federal jurisdiction wetland greater than five (5) acres or NYSDEC mapped wetland; or
- e. Contain ground slopes greater than fifteen percent (15%).

3. Special Criteria:

All eligible and authorized parcels only in Priority Areas 2, 3 and 4 must either:

- a. Be no less than seven percent (7%) Surface Water Features, as set forth in 9.a.2.a - d above, or
 - b. Be no less than fifty percent (50%) slopes of 15% or greater as set forth in 9.a.2.e above.
- b. Parcels which meet the natural features criteria, as set forth in subparagraph a.2, adjoining to lands owned in fee by the City or owned in fee by the State and which would otherwise not be eligible and authorized under the above Special Criteria, as defined in subparagraph a.3 of this special condition, are eligible and authorized for acquisition in fee by the City subject to the following restrictions: 1) individual acquisitions cannot exceed 25 acres, 2) total acquisitions cannot exceed 1,500 acres in West of Hudson over the life of this permit condition, 3) total acquisitions cannot exceed 300 acres in any one county over the life of this permit and 4) such acquisitions must be for one or more of the following purposes of: a) enhancing recreational access or use, b) addressing access deficiencies such as proposed or existing recreational trail interconnections or trailheads, c) State or City owned in fee parcel access, d) addressing land management issues such as preventing unauthorized uses on State or City owned lands, or e) to provide for linking City or State owned lands or to achieve consolidation by purchasing private in-holdings found within City or State owned land.
 - c. The City may acquire parcels of land West of Hudson that do not meet the above size requirements applicable to Priority Areas 1B, 2, 3 and 4 throughout a town or village or only for those parcels located, at least partially, in a 100-year floodplain, if the Town or Village Board waives the size requirements by resolution adopted pursuant to such procedures determined to be applicable by such Board within 180 days of the Effective Date of this Permit. Every five years, from the Effective Date of the Permit any Town or Village Board shall have a 180 day window following these five year anniversary dates (12/24/2015, 12/24/2020, 12/24/2025) to reassess and if it so chooses to implement the provisions of this paragraph or revoke a prior waiver if granted. All such resolutions shall be provided to NYSDEC, NYSDOH and NYCDEP within 21 days of their adoption.
 - d. There are no parcel size requirements East of Hudson.
 - e. In the Croton Watershed, the City will prioritize its acquisitions based on the Priority Area in which the parcel is located and the natural features of the parcel which could affect water quality.
 - f. The City may aggregate adjoining tax parcels being acquired at one time, or being aggregated with adjoining City-owned land, to meet the minimum acreage (size) requirements as set forth in 9.a.1 above.
 - g. The City may aggregate adjoining tax parcels being acquired at one time to meet the Natural Features Criteria as set forth in 9.a. above so long as the parcels are under related family member ownership or related corporate ownership.
 - h. The natural features criteria determinations of parcel eligibility and authorization shall be based upon information contained in the City's geographic information system, or if available site inspection information, as of the parcel appraisal order date. Where and if available, new, verified, more up to date information shall be used to govern parcel eligibility and authorization up to the conclusion of the local consultation process as set forth in Special Condition 12 including the dispute resolution process as set forth in 12.h.
 - i. Any unacquired parcels not meeting the Special Criteria in this condition but which have appraisal orders which precede the Effective Date of this Permit shall continue to be considered eligible and authorized for acquisition for up to 12 months from the effective date of this permit whereupon such eligibility ceases unless a purchase contract has been signed between the City and the seller.

10. Exclusions from Acquisition (Designated Hamlet and Village Areas).

- a. West of Hudson. The following land areas described in subparagraphs i - iv below are hereby excluded from acquisition by the City in fee and Watershed Conservation Easement only if a town or a village designates them as Designated Hamlet (or Village) Areas by Town (or Village) Board resolution within 180 days of the Effective Date of the permit. Such Town or Village Board designation resolutions shall describe the excluded (hamlet or village) land parcels within their jurisdiction covered in subparagraphs i – iv below. Towns and Villages shall have the option to remove parcels from coverage so they would not be part of the designated hamlet or village area. Towns and Villages considering such resolutions shall provide for the following: 1) written notification via regular US Postal Service mail to the affected landowners within their jurisdiction as shown in Exhibits 4 and 5 using the mailing addresses found in the most current municipal tax rolls, 2) general notice to the public via local newspapers, and 3) a public comment period of no less than 30 days following such notices. Then within 21 days following their adoption, Town or Village Board designation resolutions must be submitted by the towns or villages to NYSDEC, the City and affected landowners with a certification and documentation that all requirements of this Special Condition and all applicable laws and regulations have been followed. Thereupon the resolution will take effect and becomes binding upon the City. NYSDEC retains final authority to resolve any dispute under this special condition between the City and Town or Village using the process as set forth in Special Condition 12.h. Towns may designate hamlet areas under subparagraphs ii. and/or land areas under iii. and iv. below. The excluded land areas under this paragraph can consist of only:
- i. land within an incorporated village designated by the Village Board (Designated Village Area); and
 - ii. land parcels within a town and designated as hamlet in whole or in part by the Town Board (Designated Hamlet Area) from the list of tax parcels and maps in Exhibits 4 and 5; and
 - iii. up to 50 acres of land within a town designated by the Town Board; provided that the lands are outside Priority Area 1A, are identified as whole tax map parcels, and are identified as commercial or industrial areas and provided that any acreage previously so designated by Town Boards is set forth in Exhibits 4 and 5; and
 - iv. lands within a town designated by the Town Board; provided that the lands are designated by tax map parcel and are located within one-quarter mile of a village and abutting the roads set forth in Exhibit 6 of this permit.
- b. The 1997 Town or Village Board Designated Areas by resolution which implemented an acquisition in fee only exclusion made pursuant to the provisions of the 1997 Water Supply Permit shall continue (except for the Town of Shandaken) unless superseded by the new designations authorized in Paragraph a of this Special Condition.
- c. Commencing on the Effective Date of this Permit except for Riparian Buffers in fee or Easements, the City shall not solicit the purchase of either land in fee or Watershed Conservation Easements from any landowner in the Town of Shandaken directly. Specifically, the City will not intentionally initiate contact with any landowner concerning opportunities to sell real property interests, whether by mail, by telephone, in person, or otherwise. Notwithstanding the City's agreement not to solicit landowners directly, nothing herein shall prevent the City from receiving, responding to, or acting upon unsolicited inquiries from owners of land in the Town of Shandaken.
- d. East of Hudson, the City shall not acquire fee title to property zoned commercial or industrial as of the date of the City's solicitation, except that the City may acquire up to five percent (5%) of the total acreage of such property within any town or village unless a town or village in Westchester County agrees, by resolution, to a higher percentage in such town or village.

- e. Any unacquired parcels which become part of the area excluded from acquisition (hamlet designation) under paragraph a. of this condition and have appraisal orders that precede the Effective Date of this Permit shall continue to be considered eligible and authorized for acquisition for up to 12 months from the Effective Date of this Permit whereupon such eligibility ceases unless a purchase contract has been signed between the City and the seller.
- f. Every five years, from the Effective Date of the Permit any town or village shall have a 180 day window following these five year anniversary dates (12/24/2015, 12/24/2020, 12/24/2025) to reassess and if it so chooses to: 1) implement the provisions of Paragraph a. of this Special Condition or 2) rescind any prior designation pursuant to such procedures determined to be applicable by such Board with such resolutions provided to NYSDEC, NYSDOH and NYCDEP within 21 days of their adoption in order for them to take effect. If the Town of Shandaken exercises this option then the provisions of paragraph c. in this special condition are no longer in effect. In order to maintain eligibility and acquisition authorization for any pending parcel specific land acquisition process in those communities the City shall have three months after receiving the town or village board resolution in which to order an appraisal and 12 months for purchase contracts to be signed by the City and the seller otherwise such parcels become excluded from acquisition. The City shall not solicit additional acquisitions upon passage and subsequent submittal to NYSDEC and the City of the designation resolution.
- g. As provided for in Special Condition 7.c above, Riparian Buffer in fee or easements may be acquired by the City even if within a Designated Village or Hamlet Area if the Town or Village Board waives by resolution which may be adopted at any time pursuant to such procedures determined to be applicable by such Board thereby authorizing the Riparian Buffer Program and the specific parcels described and covered. Such resolutions must be provided to NYSDEC, NYSDOH and NYCDEP within 21 days of their adoption in order for them to take effect.
- h. For the Towns of Ashland, Delhi, Hamden, Walton and Windham, the parcels referenced in the cluster development Town Board resolutions attached as Exhibit 13 shall be eligible for coverage under this Special Condition only if such resolutions remain in force. Such resolutions shall encourage and authorize town planning boards to approve cluster development projects.

11. Acquisition Procedures.

At request of a town or village, the City shall make a presentation describing the process the City intends to use to solicit acquisitions.

- a. West of Hudson, the City may make a joint presentation to groups of up to three towns and/or villages. With the consent of the involved towns or villages, the City may also make a joint presentation to groups of more than three towns and/or villages West of Hudson, or to any number of towns and/or villages East of Hudson.
- b. Such presentation shall also include an indication of what land is eligible for acquisition in such town or village (including a map of the town or village reflecting the priority areas and applicable Natural Features Criteria) and the estimated acreage that the City expects to acquire.
- c. The City may solicit landowners directly and acquire such land except as restricted by Special Conditions (SC) 7 – Eligibility and Authorization for Acquisition, SC 8 – Vacant Lands Defined, SC 9 – Size and Natural Features Criteria and SC 10 – Exclusions from Acquisition. The City may also receive, and act upon, unsolicited inquiries from landowners at any time subject to the restrictions of Special Conditions 7, 8, 9 and 10.

12. Local Consultation.

- a. Prior to acquiring any land or Watershed Conservation Easements, the City will consult with the town or village in which the parcel is located. The consultation will ensure that the City is aware of and considers the town's or village's interests and that the terms of this permit are complied with.

- b. The City will provide a local government consultation package with copies to NYSDOH, EPA and NYSDEC that will: 1) identify for the town or village, and for the appropriate County and for NYSDEC, the parcels of any land or Watershed Conservation Easements for which the City has entered into an option or contract to purchase, any structures which may be located on the property; 2) state the City's determination of whether structures are uninhabitable or accessory; 3) include a map or maps depicting the tax parcel boundary of the acquisition property, including the location and attributes of "envelopes" within the proposed acquisition; 4) include an aerial photo of the affected property (if available); 5) identify exclusions (if any) from the acquisition; 6) describe any proposed recreational uses; 7) describe all historical uses including natural resources; 8) identify known available natural resources; 9) include the Community Review Fact Sheet; 10) include a brief summary concerning and map depicting the proposed acquisition and any adjacent proposed City acquisitions in fee or easements including rights of way or adjacent existing City or State owned land in fee or easement; 11) describe any proposed fencing and signing; 12) include the form of easement agreement (if an easement is being acquired); and 13) state that the parcel meets these acquisition criteria: a) Special Condition 9 Size and Natural Features Criteria, b) Special Condition 8 Vacant Lands Defined, c) Special Condition 7 Eligibility and Authorization for Acquisition and d) Special Condition 10 Exclusions from Acquisition.
- c. The City will diligently attempt to group together parcels for review by the town or village and to minimize the number of times it submits parcels for review, and will submit such parcels for review no more frequently than on a monthly basis. The City shall allow the town or village a total of 120 days to undertake all the following:
- review and assess the information contained in the City's submission;
 - conduct public review and interagency consultation where so desired by the town or village; and
 - submit comments to the City.
- e. The town or village review and comments (which may be supplemented with comments from the county) may include:
- consistency with the natural features criteria in Special Condition 9;
 - consistency with the size requirements in Special Condition 9;
 - consistency with the vacancy requirements in Special Condition 8;
 - consistency with local land use laws, plans and policies;
 - the City's proposed fencing and signing;
 - proposed recreational uses;
 - available natural resources and access thereto;
 - access to any development areas;
 - potable water;
 - sewage disposal;
 - consistency with set-back requirements and local land use regulation; and
 - natural resource criteria.
- f. In the event of a mortgage foreclosure, tax foreclosure or judgment sale, the City may submit a parcel for review to a town or village without obtaining an option or contract to purchase.
- g. The City will respond to local government comments and provide notice of any proposed City actions, within thirty (30) days of receipt. Unless a town or village notifies the City of its intent to file an appeal within thirty (30) days of receiving the City's response and an appeal is filed pursuant to paragraph h. below the City may proceed to acquire the parcels

identified in the local consultation process in the village or town. In the event of any dispute, the acquisition of any specific parcel involved shall not proceed except under the dispute resolution/final decision provisions of paragraph h. below.

- h. Disputes between the City and the town or village over whether a particular parcel meets the vacancy, size, or natural features criteria contained in this permit in Special Conditions 8 and 9 will be submitted by the City to NYSDEC (attention: NYSDEC Office of Hearings) prior to the City's acquisition or may be submitted by the disputing town or village no later than thirty (30) days of receiving the City's response to comments under paragraph g above. This dispute, will be resolved based upon the facts as submitted and the terms and conditions of this permit by NYSDEC through a designated Administrative Law Judge in the NYSDEC Office of Hearings. The responding party (the town or village, or the City) may make a submission to NYSDEC in response to the position advocated by the party initiating the dispute resolution process within fifteen (15) days following the City's receipt of the initial submission. NYSDEC shall resolve such dispute or issue a final binding decision within thirty (30) days of the responding party's submittal deadline. NYSDEC's decision shall be a final decision for purposes of Article 78 of the New York Civil Practice Law and Rules. Unless otherwise specified, either party (the City or the community) has sixty (60) days from the date of the NYSDEC decision to commence an Article 78 proceeding in respect of NYSDEC's decision. In the event NYSDEC does not resolve the dispute or issue a final decision within the thirty (30) day time period specified herein then the City may send a request to NYSDEC in writing by certified mail, return receipt requested with copies to the disputing town or village, to issue a final decision pursuant to this paragraph. The Petition in an Article 78 proceeding shall name the City as a Respondent. If within thirty (30) days of the receipt of this letter the dispute is not resolved or a final decision by NYSDEC is not issued then a final NYSDEC decision finding that the disputed acquisition parcels have met the vacancy, size, or natural features criteria contained in this permit in Special Conditions 8 and 9 shall be deemed to have been granted.
- i. To assist towns and villages in the Watershed in their review and comment on proposed City land acquisition in such towns and villages, and the designation of hamlets, commercial/industrial areas, and village extensions and periodic determinations with respect to such designations in Special Condition 10, the City will reimburse each town or village where the City seeks to acquire lands or Watershed Conservation Easements, for actual costs incurred, up to Thirty Thousand Dollars (\$30,000), in the West of Hudson Watershed, up to Twenty Thousand Dollars (\$20,000) in the East of Hudson portions of the Catskill and Delaware Watershed, and up to Ten Thousand Dollars (\$10,000), per town or village in the Croton Watershed and not in the Catskill/Delaware Watershed, Such funding has previously been allocated pursuant to MOA ¶ 148 and the 2007 FAD.

13. Fair Market Value.

- a. The purchase price of all land and Watershed Conservation Easements acquired shall reflect fair market value, as determined by an independent appraisal obtained at the direction of the City and performed by an independent, New York State certified appraiser.
- b. Notwithstanding (a) above, the City may acquire property at less than the fair market value at public auction or at a directly negotiated sale from a bank, other financial institution, or taxing authority in the context of a mortgage foreclosure, tax foreclosure, or legal judgment.
- c. Fair market value shall be determined in accordance with the following definition from the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation, or in accordance with relevant successor language.

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this

definition is the consummation of the sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
 2. Both parties are well informed or well advised, and acting in what they consider their best interest;
 3. A reasonable time is allowed for exposure in the open market;
 4. Payment is made in terms of cash in U.S. dollars, or in terms of financial arrangements comparable thereto; and
 5. The price represents the normal consideration for the property, sold unaffected by special or creative financing sales concessions granted by anyone associated with the sale.
- d. For purposes of determining fair market value if all other required governmental permits and approvals have been granted, the appraiser shall assume that any necessary City approvals have also been granted.
- e. In determining the fair market value, the independent appraisers hired by the City will consider information from a second appraisal, provided by the landowner and made at the landowner's or a third party's expense, provided the second appraisal is made by a New York State certified appraiser and was completed no earlier than one year prior to the City's appraisal and no later than six (6) months after the owner received the City's appraisal. Upon request by the landowner or a third party, the City may extend the time period for completion of a second appraisal.

14. Schedule. The City will solicit acquisitions in accordance with the applicable solicitation plan prepared and submitted to NYSDEC, NYSDOH and USEPA pursuant to the 2007 FAD or its successor (Exhibits 7: 2007, Exhibit 8: 2008-10. The City may, at any time, respond to direct inquiries from property owners anywhere in the Watershed, subject to all applicable Special Conditions in this permit.

15. Recreational Uses: City Property Owned in Fee Simple for Watershed Protection.

- a. The City will consult during the 120-day review period specified in Special Condition 12 with NYSDEC, NYSDOH, USEPA local governments, and the appropriate regional Sporting Advisory Subcommittee, if any, regarding the recreational uses the City deems appropriate on newly acquired parcels in fee.
- b. The City shall allow historic recreational uses, including fishing, trapping, hiking, and hunting, to continue on newly acquired parcels in fee, subject to rules and regulations adopted or permits issued by NYCDEP, unless NYCDEP determines, on a rational basis, that such uses threaten public safety or threaten to have an adverse impact on water quality or NYCDEP operations related to water supply.
- c. The following recreational uses are more likely to be allowed on City land, if appropriate, subject to rules and regulations adopted, or permits issued, by NYCDEP: 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).
- d. 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 and the pilot boating program in paragraph g. of this condition); snowmobiling (except as per paragraph f. of this condition); camping; motorcycling; mountain bicycling; and horseback riding.
- e. Seven (7) years from the Effective Date of the Permit the City shall consult pursuant to paragraph 15.a above regarding recreational uses on City owned property owned in fee simple using the procedures in this special condition and based upon such consultation evaluate if there should be any changes in the allowable recreational uses specified herein. A report shall be prepared and submitted to NYSDEC within 6 months after such consultation. Thereafter, upon

request from NYSDEC, the City shall follow the consultation procedures described in 15.a above and prepare and submit a report to NYSDEC within twelve (12) months after receiving such request. Such requests will be made in writing, will include specific recommendations concerning changes in the allowable recreational uses for the City to consider, and may be made no more often than once every ten (10) years.

- f. Snowmobile Trails. The City will continue to allow snowmobile access on specific City-owned parcels under the following conditions:
 - i. A qualified organization must obtain a land use permit for trails that are part of a regional NYSDEC-sanctioned network to cross City property;
 - ii. Use of the trails must not pose a threat to water quality or NYCDEP operations related to water supply; and
 - iii. A qualified organization must take responsibility for establishment and maintenance of trails.
- g. Expanded Boating Program. The City will continue the Cannonsville Pilot Boating Program (for the purposes of this paragraph, the "Boating Program") including cooperating with CWC to complete the evaluation study to gather data from the Boating Program regarding its impact, if any, upon water quality, and providing recreational opportunities as well as establishing criteria for evaluating the Program. With this study in hand, NYCDEP shall consult with NYSDEC and NYSDOH prior to making any determination if the Boating Program should be continued and/or expanded to other City owned reservoirs.

16. Uses: LAP Fee and Easement Property.

- a. Permitted uses on land acquired in fee by the Land Acquisition Program (LAP): As described in Special Condition 15.b and c.
- b. Uses not likely to be allowed on LAP-acquired fee land: As described in Special Condition 15.d. above.
- c. Prohibited Uses on LAP-acquired fee land: as described in the declaration of restrictions contained in the grant of conservation easement to NYSDEC as shown in Exhibit 9 or as revised by NYSDEC in consultation with NYCDEP.
- d. Reserved Uses/Reserved Rights:
 - 1. The Reserved Uses/Reserved Rights that may be available on LAP Fee and Easement Property include, but are not limited to: communication towers, wind turbines, Farm Support Housing and other buildings used for rural enterprises (Watershed Agricultural Easements only), Commercial Forestry, Commercial Bluestone Mining, and public or private rights of way and utility easements.
 - 2. Watershed Conservation Easements Acquired after the Effective Date of this Permit.
 - a. The City will incorporate into NYCDEP Watershed Conservation Easements appraised on or after the Effective Date of this Permit provisions for the reserved uses/reserved rights listed in subparagraph d.1. above and also provide that the City must review such applications to exercise reserved uses/reserved rights on a case by case basis subject to the terms of the Easement and a determination that the proposed use will not pose a threat to water quality or NYCDEP operations related to water supply.
 - b. The City will ensure that Watershed Agricultural Easements appraised on or after the Effective Date of the Permit shall conform to the WAC model easement found in Exhibit 10, and shall provide the rights provided in paragraphs 2.s, 3, 8, 19, 20, and 24 of the model easement dated September 2, 2010.
 - c. Any unacquired easement parcels shall not be subject to paragraphs d.2.a. and b. of this condition if their appraisal orders precede the Effective Date of this

Permit and the landowner has declined the opportunity to convert the easement to the versions of the NYCDEP and WAC model easements described in paragraphs 16.d.2.a and 16.d.2.b above and a purchase contract has been signed between the City and the landowner/seller within 12 months from the Effective Date of this Permit. Otherwise paragraphs 16.d.2.a. and b. apply.

3. Watershed Conservation Easements Executed Prior to the Effective Date of this Permit.
 - a. Upon request from a grantor of an easement acquired prior to the Effective Date of this Permit, based on a specific proposal to undertake a use that would be a Reserved Use under this Permit but is not included in the existing easement, the City shall make (or shall ensure that its contractor makes) diligent efforts to execute and record amendments to the easement, or otherwise to allow the use if it is permissible without such an amendment, subject to reasonable conditions, so long as:
 - i. The grantor provides the following information about the proposed use:
 1. A project description;
 2. A map depicting the proposed area for the activity and approximate area(s) of disturbance;
 3. A list of all required regulatory approvals associated with the proposed use; and
 4. Information demonstrating that the proposed use will not pose a threat to water quality or NYCDEP operations related to water supply.
 - ii. Any modification to the easement is made subject to all applicable laws and requirements.
 - b. The City shall ensure the following actions: 1) within 180 days of the Effective Date of this Permit, WAC will send a letter to grantors of Agricultural Easements offering to amend existing Agricultural Easements; 2) the letter will specifically propose to add new language to the existing Easement, including but not necessarily limited to sections 2.s, 3, 8, 19, 20, and 24 of the updated model Agricultural Easement, attached as Exhibit 10; 3) the letter will state that WAC will pay for all costs associated with such amendments where grantors agree to amend; and 4) implementation of these provisions.
4. The NYS Conservation Easement for new fee parcels may include the reserved uses/rights as defined in 16.d.1 above. Such NYS Conservation Easements shall provide for the review and approval by the NYSDEC of each proposed wind energy tower/structure or communications tower/structure in accordance with the model NYS Conservation Easement attached as Exhibit 9 unless the NYSDEC waives such individual project review and approval in writing. The City may request on a case by case basis for specific project proposals that NYSDEC amend specific NYS Conservation Easements in order to provide for the wind energy or communications tower reserved uses enumerated in d.1 above. Any modification to such an easement or to the model easement shall be subject to all applicable laws and requirements.

17. Watershed Conservation Easements. In addition to acquisition in fee, the City may acquire Watershed Conservation Easements in accordance with Article 49 of the New York State Environmental Conservation Law and any implementing regulations. The Watershed Conservation Easements will be acquired at fair market value in accordance with Special Condition 13. Watershed Conservation Easements shall consist of Watershed Conservation Easements, Watershed Agricultural Easements, Watershed Forest Easements and Riparian Buffer Easements acquired by either the City or on behalf of the City as part of a contractual agreement between the

City and organizations or governmental agencies, individuals or companies pursuant to all the provisions of this permit.

18. Real Property Taxes: Newly Acquired in Fee under the City's Land Acquisition Program.

- a. The City will not challenge the initial assessed value or adjustments to the assessed value of parcels to be acquired pursuant to the land acquisition program set forth in this permit provided the initial assessed 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 paragraph, fair market value equals the parcel's appraised value as finally determined by the City's independent appraiser.
- b. The City will not challenge future assessments on any parcel acquired pursuant to the land acquisition program set forth in this permit or the 1997 Water Supply Permit, provided that in any Town or Village both of the following two conditions are met: (1) the rate of increase of the total assessed value of all parcels purchased by the City under the land acquisition program, 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 the total assessed value of all parcels purchased by the City under the land acquisition program 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). With respect to each parcel purchased by the City, since the beginning of the LAP in 1997 as well as after the Effective Date of this Permit, this commitment with respect to challenges of future assessments shall last for thirty (30) years from the date of each purchase.
- c. The City will not seek to have any parcels acquired pursuant to this land acquisition program consolidated for purposes of reducing the City's property taxes.
- d. The City shall retain its right as a property owner to challenge in court, or otherwise, assessments of parcels purchased under the land acquisition program if the provisions of paragraphs (a) and (b) are not satisfied. In any such challenge, the City will not seek to have the assessed value of the parcel reduced below the highest value which would result in the assessed value of the parcel satisfying the limitation set forth in paragraph (a) or in the total assessed value of all parcels purchased by the City under the land acquisition program in the town satisfying the limitations set forth in paragraph (b) above.
- e. Except as provided in paragraph (c), the City retains all legal rights held by property owners with respect to any town-wide or county wide revaluation or update (as those terms are defined in Section 102, subdivisions (12-a) and (22) of the RPTL) currently being undertaken or which may be undertaken in the future.
- f. The City shall also make payment for real property tax and ad valorem levies upon properties covered by this Special Condition.
- g. The City shall assure the provisions of this special condition are incorporated into an instrument binding upon the recipient and if successors or assignees in the event of any property transfer or sale.

19. Real Property Taxes: Watershed Conservation Easements. The City shall support the enactment by the State Legislature of amendments as set forth in Exhibit 11 or its equivalent. Among other changes such amendments in Exhibit 11 would extend this statute so its provisions do not expire on 12/31/2016 and also expand property tax payment obligations by the City to include agriculturally exempt Watershed Agricultural Easements pursuant to Article 25-AA Agricultural and Markets Law acquired after 12/31/2010.

- a. Article 5, Title 4-a of the New York Real Property Tax Law is the applicable state law which applies to Watershed Conservation Easements and Watershed Agricultural Easements. After December 31, 2010 the City shall also be bound by the proposed amended provisions in Exhibit 11 unless it or its equivalent has been enacted into law. Should the current statute expire then the

City shall be bound by the provisions of Exhibit 11 in its entirety. Unless Exhibit 11 or its equivalent is enacted into statute the City may not enter into purchase contracts to acquire Watershed Conservation Easements (WCE) or Watershed Agricultural Easements (WAE) except in those towns or villages where the City has entered into agreements with each applicable local property tax and assessing authority or jurisdiction (Local Authority[ies]) to implement the proposed amended provisions of Exhibit 11 on the following schedule: 1) WAEs proposed for acquisition after 12/31/2010, 2) WCEs (including continuation for WAEs) proposed for acquisition after 12/31/2016. In the event the Local Authority[ies] does/do not execute within ninety (90) days a signed agreement provided by the City then the City may execute purchase contracts within that town or village. Exhibit 11 includes the City paying local property tax levies for agriculturally exempt Watershed Agricultural Easements pursuant to Article 25-AA Agricultural and Markets Law which are acquired after December 31, 2010 as well as the continuation past December 31, 2016 of the City's obligation to pay local property taxes for Watershed Conservation Easements and Watershed Agricultural Easements acquired by the City under the LAP. Such agreements shall expire only if Exhibit 11 or its equivalent is enacted into law.

- a. The City will provide to the respective Towns and Villages, as part of the local consultation process, and to the respective sellers, a generic description in plain language of the real property tax consequences to a seller arising from the City's purchase of a Watershed Conservation Easement.
- b. The City shall assure the provisions of this special condition are incorporated into an instrument binding upon the recipient and if successors or assignees in the event of any property transfer or sale.

20. Limitation on Transfers to Tax Exempt Entities. The City will not transfer land including Watershed Conservation Easements, acquired pursuant to this land acquisition program to a tax exempt entity unless the entity executes a binding agreement with the City to comply with the provisions of Special Conditions 18 and 19.a plus 19.c which includes payments in place of property taxes and ad valorem levies as well as with any agreements and requirements that run with the land. This binding agreement shall also provide for the tax exempt entity to enter into its own written agreements acceptable to and with each applicable local property tax and assessing authority or jurisdiction to make payments equal to real property tax and ad valorem levies to satisfy the provisions of this special condition and the binding agreement. The City shall also in each such binding agreement entered into pursuant to this Special Condition make each such local property tax and assessing authority or jurisdiction in which the land subject to transfer to a tax exempt entity is situated, a third party beneficiary. Such agreement will grant each such third party beneficiary the right to enforce against the tax exempt entity and obtain specific performance as a remedy as well as shall run with the land and apply to future grantees or assignees.

21. Land Held in Perpetuity for Watershed Protection. (a) The City will grant a conservation easement that shall run with the land on all land acquired in fee under the land acquisition program to NYSDEC to ensure that such land is held in perpetuity in an undeveloped state in order to protect the Watershed and the New York City drinking water supply. Such easement shall also provide that the Primacy Agency shall have enforcement rights or be specified as a third-party beneficiary with a right to enforce the easement. With respect to lands in Priority Areas 3, 4 or C, such easements will provide that, with the prior agreement of USEPA and NYSDOH, the City may sell such lands free of the easement restriction, in order to purchase already identified replacement lands located in a higher Priority Area. In addition, any lands to be sold shall be offered in the first instance to NYSDEC for the option to acquire pursuant to applicable New York State and NYC laws at fair market value or a mutually agreed upon acquisition price. If so, the replacement lands thus acquired will similarly be subject to conservation easements. The City will not use the granting of conservation easements to reduce property tax liability on the property it acquires. In order to acquire any replacement lands during the term of the land acquisition program, the City shall comply with all of the requirements of this permit. Replacement LAP land

acquisition shall be governed by the provisions of this permit which shall survive expiration for this express LAP purpose.

(b) Watershed Conservation Easements acquired by the City shall be held in perpetuity in order to protect the Watershed and the New York City drinking water supply.

22. Acquisition Reports. The City shall submit acquisition reports every six months from the Effective Date of the Permit to the Primacy Agency (USEPA or NYSDOH), NYSDEC, and the Watershed Protection and Partnership Council. Such reports will include the following information for all parcels and easements acquired during the reporting period: address; description of the property, including any easement; county and town where property is located; tax map number; acreage; closing date; and map of property. The acquisition report shall also contain cumulative totals of acreage solicited and acreage acquired identified by town and Priority Area. Such Reports may be consolidated with reports required to be submitted under a Filtration Avoidance Determination.

23. Water Conservation Program Updates and Approval. The City shall update its current Water Conservation Program dated December, 2006 (Exhibit 13) ("Program") every 5 years thereafter and submit four (4) copies and one electronic copy in PDF, or similar form, of the updated Program to the NYSDEC for approval by no later than six (6) months prior to the end of the five year period. The written Water Conservation Program must be submitted to NYSDEC with sufficient detail and analysis to explain any data, objectives, proposals, estimated savings, measurements, milestones, methods of documentation, results or conclusions contained therein.

24. Water Conservation Program Implementation. The City shall continue to carry out all elements of its approved Water Conservation Program ("Program"). Within one year after the approval of the latest Program by the NYSDEC, and annually thereafter, the permittee must submit to the NYSDEC four (4) copies and one electronic copy in PDF, or similar form, of a Water Conservation Report ("Report"). The Report must address each element of the approved Program and any additional water conservation measures planned or being carried out by the permittee. The Report must be in the same format as the Program and must also include an update on the progress of implementation of all elements of the Program to date, an identification of accomplishments over the previous year; and an explanation for any failure to accomplish an element of the Program. The Report shall also specifically include, but not be limited to, a table that includes the number of meters installed; leaks repaired; miles of water main repaired and replaced; miles of water main leak surveyed; hydrants repaired or replaced; water fixtures rebated and water conservation surveys completed for the City's five boroughs. Each category shall also include the estimated daily gallons of water saved by each action.

25. Programs to Foster Cooperation and Requirement to Fund Watershed Protection and Partnership Programs.

- a. Pursuant to Section 15-1503(4) of the Environmental Conservation Law, in addition to the foregoing conditions, NYSDEC has determined that the implementation, by the City, of the following programs, originally established by the 1997 Watershed MOA, incorporated as conditions in the 1997, 2002 and 2007 FADs and made a condition of the 1997 Water Supply Permit, as well as those programs identified below will foster cooperation with persons affected by the land acquisition program and assure the LAP is just and equitable to all affected municipalities and their inhabitants and in particular with regard to their present and future needs for sources of water supply. Except as otherwise provided in this permit, the City is required to execute and maintain Valid and Enforceable Program Contracts which implement the programs set forth below and as further described in the following provisions of the MOA which are incorporated by reference as Exhibit 14, and the following Watershed Protection and Partnership Programs: Septic Remediation and Replacement Program; Septic Maintenance Program; Community Wastewater Management Program; Stormwater Retrofit Program; Local Consultation Program; Education and Outreach Program; Tax Litigation Avoidance Program; CWC Operating Funds; Watershed Agricultural Program; Stream Management Program; and East of Hudson Non-Point Source

Pollution Control Program. The City's obligation to execute and maintain Valid and Enforceable Program Contracts for such programs is an independent requirement of this permit and shall continue whether or not the Watershed MOA is valid and enforceable. Nothing in this Permit limits the City's obligations under the MOA.

<u>Exhibit 14 Paragraph</u>	<u>Description</u>
120	Funding of the Catskill Watershed Corporation.
121	SPDES Upgrades.
122	New Sewage Treatment Infrastructure Facilities for Towns, Villages and Hamlets and Community Wastewater Management Program
125	Stormwater Retrofits, including continuation thereof.
126	Sand and Salt Storage Facilities, including continuation thereof.
131	Public Education, including continuation thereof
136	Tax Consulting Fund, which is hereby replaced by the Tax Litigation Avoidance Program
141	Upgrades to Existing WWTPs to comply with Watershed Regulations.
144	Phosphorus Controls in Cannonsville.
148	Local Consultation on Land Acquisition Program., including continuation thereof.

For purposes of this Special Condition, a Valid and Enforceable Program Contract shall mean a contract: (i) for which the City has appropriated sufficient funds to fulfill its obligations under this special condition and to make payments as they become due and owing; (ii) which has been registered pursuant to section 328 of the City Charter; and (iii) which remains in full force and effect and enforceable under applicable law during the term required by this permit. A failure by the City to comply with the condition requiring a valid and enforceable program contract for a program shall not be a violation of this permit if (i) the City continues to make timely payments for the program in accordance with the terms of the relevant paragraph of the MOA and the applicable program contract or (ii) the City has properly terminated the contract pursuant to the terms thereof and the City complies with its obligations to continue to fund or complete the subject program. For purposes of this Special Condition, a payment to be made by the City shall not be considered made to the extent such payments are required to be refunded to the City. In order to ensure the continuity of the programs in paragraph "b" below, the City shall meet annually with CWC prior to the end of CWC's fiscal year (December 31) to evaluate and confirm the availability of adequate and sufficient funding to meet the City's obligations.

b. Watershed Protection and Partnership Programs. In order to continue watershed protection and partnership programs, the City shall provide adequate levels of funding for continuation of all of the Watershed Protection and Partnership Programs required in this permit and in the 2007 FAD and any subsequent FAD or FAD amendment including adequate funding to the CWC and WAC, as described and set forth below:

1. Septic Remediation and Replacement Program:
 - i. Through October 2013, consistent with the terms of the 2007 FAD and pursuant to the City's Program Agreement with CWC, the City shall continue to pay CWC One Million, Three Hundred Thousand Dollars (\$1,300,000) each quarter to fund the Septic Remediation and Replacement Program as established pursuant to Watershed MOA paragraph 124 and as subsequently modified under the 2002 and 2007 FADs. These funds include funds available

for the Small Business Program and the Cluster System Program as set forth below. For the duration of this Permit, the City will continue to fund the Septic Remediation and Replacement Program at a level to allow a minimum of three hundred (300) septic systems per year to be remediated or replaced, provided that CWC demonstrates that the need for such funding continues. In addition, conditions of any subsequent FAD or FAD amendment requiring the City to fund the Septic Remediation and Replacement Program (including the Small Business Program and the Cluster System Program) shall be incorporated herein and made enforceable conditions of this Permit.

- ii. The City shall support the continued use of the Four Million Dollars (\$4,000,000) allocated under the 2007 FAD for the Small Business Program for the duration of this Permit for the purposes described in the 2007 FAD, as refined through the development of the Program Rules. For the duration of this Permit, the City will provide comparable and adequate funding for the Small Business Program, provided that CWC demonstrates that the need for such funding continues.
 - iii. The City shall support the continued use of the Two Million Dollars (\$2,000,000) allocated under the 2007 FAD for the Cluster System Program for the duration of this Permit for the purposes described in the 2007 FAD, as refined through the development of the Program Rules. The City agrees that cluster systems may be an effective solution to address certain problematic septic systems on lots with inadequate space and/or soils to accommodate individual systems in compliance with applicable regulations, and that rather than simple cooperative agreements among common users to a proposed cluster system that are only subject to private enforcement, municipal management and sewer district formation will be needed. Pursuant to the 2007 FAD, the City has identified thirteen areas/small hamlets that may be candidates for or in need of cluster systems. To determine the feasibility of such cluster systems, the City shall, in cooperation with CWC, consider the following issues: determining whether an individual town agrees that there is a need for a collective engineered intervention in a specific identified hamlet; identifying a willing host site for a collective system; establishing a sewer use ordinance; and overseeing project management by CWC or its agents. NYCDEP shall work with CWC to explore implementation of projects under these terms and to continue to examine the program terms to facilitate the advancement of cluster systems. In the event that CWC determines that it is not feasible to further pursue this program, the City shall allow CWC to allocate any remaining funds to either or both the Septic Remediation and Replacement Program or the Small Business Program.
2. Septic Maintenance Program: The City shall support the continued use of the One Million, Five Hundred Thousand Dollars (\$1,500,000) allocated and paid to CWC under the 2002 FAD for the Septic Maintenance Program. For the duration of this Permit, the City will provide additional funding, if necessary, to allow maintenance each year of 20% of the total number of septic systems eligible for maintenance under CWC's Septic Maintenance Program Rules, as revised February 28, 2008, provided that CWC demonstrates that the need for such funding continues. In addition, conditions of any subsequent FAD or FAD amendment requiring the City to fund the Septic Maintenance Program shall be incorporated herein and made enforceable conditions of this Permit.
 3. Community Wastewater Management Program: As set forth in the 2007 FAD and as a continuation of the New Infrastructure Program established pursuant to Paragraph 122 of the Watershed MOA, the City shall provide sufficient funding to design and complete Community Wastewater Management Program projects for the remaining communities as set forth in the list contained in MOA Paragraph 122. This includes the hamlets of Trout Creek, Lexington, South Kortright, Shandaken, West Conesville, Claryville, Halcottsville, and New Kingston. Consistent with the City's Program Agreement with CWC, the City shall make payment based on invoices from CWC as needed for project design and implementation costs. In addition, conditions of any subsequent FAD or FAD amendment requiring the City to fund the Community Wastewater

Management Program shall be incorporated herein and made enforceable conditions of this Permit.

4. Stormwater Retrofit Program: Through October 2013, the City shall support the continued use of the Four Million, Six Hundred Fifty Thousand Dollars (\$4,650,000) allocated under the 2007 FAD for the Stormwater Retrofit Program established pursuant to Paragraph 125 of the Watershed MOA. For the duration of the Permit, the City shall continue to fund the Stormwater Retrofit Program to allow the Program to continue at a level of activity that has been maintained since the inception of the Program, consistent with the processes set forth in CWC's Stormwater Retrofit Program Rules, as revised October 6, 2009, provided CWC demonstrates that the need for such funding continues. In addition, conditions of any subsequent FAD or FAD amendment requiring the City to fund the Stormwater Retrofit Program shall be incorporated herein and made enforceable conditions of this Permit.
5. Local Consultation on Land Acquisition Program: The City shall continue to make available up to Thirty Thousand Dollars (\$30,000) per town or village in the West of Hudson Watershed allocated pursuant to Paragraph 148 of the Watershed MOA and the 2007 FAD for the Local Consultation Program, for purposes described in MOA Paragraph 148 and the 2007 FAD, for the duration of this Permit. The City shall also continue to make available up to Twenty Thousand Dollars (\$20,000) per town or village in the East of Hudson portions of the Catskill/Delaware Watershed allocated pursuant to MOA Paragraph 148 for the Local Consultation Program, for purposes described in the 1997 MOA, for the duration of this Permit. The City shall also continue to make available up to Ten Thousand Dollars (\$10,000) per town or village in the Croton Watershed and not in the Catskill/Delaware Watershed, for purposes described in the 1997 MOA, for the duration of this Permit.
6. Education and Outreach Program: As set forth in the 2007 FAD, the City shall continue to make available up to Eight Hundred Thousand Dollars (\$800,000) to fund the Education and Outreach Program as established pursuant to Paragraph 125 of the Watershed MOA. Consistent with the City's Program Agreement with CWC, the City shall make payment based on invoices from CWC as needed for eligible projects. For the duration of the Permit, the City will continue to fund the Education and Outreach Program at a minimum level of Two Hundred Three Thousand, Seven Hundred Thirty Four Dollars (\$203,734) per year, provided that CWC demonstrates that the need for such funding continues. In addition, conditions of any subsequent FAD or FAD amendment requiring the City to fund the Education and Outreach Program shall be incorporated herein and made enforceable conditions of this Permit.
7. Catskill Watershed Corporation General Operating Expenses:
 - i. General Operating Expenses: For the duration of this permit, 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 estimates that the total funding will be approximately Four Million, Three Hundred Seventy-Three Thousand, Six Hundred Twenty-Five Dollars (\$4,373,625) over the duration of this Permit. The City shall be bound to provide no less than this amount to fulfill such CWC funding requests.
 - ii. Stormwater Coordination Position: Through 2013, consistent with the terms of the 2007 FAD and pursuant to the City's Stormwater Technical Assistance contract with CWC, the City shall continue to pay CWC Forty-Eight Thousand Dollars (\$48,000) each year to fund a position at CWC to assist the regulated community in complying with the stormwater provisions of the City's Watershed Regulations. For the duration of this Permit, the City will ensure adequate funding and continue to fund an appropriate engineering position at CWC (salary plus cost of standard fringe benefits) to assist applicants undertaking regulated activities to comply with the stormwater provisions of the City's Watershed Regulations. In addition, conditions of any subsequent FAD or FAD amendment requiring the City to fund such an engineering position at the Catskill Watershed Corporation, including annual salary

- plus cost of standard fringe benefits, shall be incorporated herein and made enforceable conditions of this Permit.
8. Tax Litigation Avoidance Program: For the duration of this Permit, the City will fund the Tax Litigation Avoidance Program (TLAP) pursuant to which the City will provide funds in an initial amount of Five Hundred Thousand Dollars (\$500,000), and continued funding up to a cap of Two Million Dollars (\$2,000,000) plus a one time additional reasonable amount for any individual Assessing Authority to be used for the purposes of the TLAP to be administered by the CWC, for use by the jurisdictional local property tax assessing authorities (Assessing Authority[ies]) for the purpose of seeking to avoid the costs and risks of litigation over taxes assessed on dams, reservoirs, wastewater treatment plants and, to the extent applicable, sewer lines (Unique Properties) owned by the City. The City will seek to enter into a Program Agreement with CWC within nine months of the date of this Permit, setting forth the terms and conditions under which TLAP funds may be used by CWC to retain an expert to assist the Assessing Authority in (i) applying and updating templates for assessing Unique Properties owned by the City; (ii) evaluating a Valuation Report provided by the City to an Assessing Authority; and (iii) valuing Unique Properties where the Assessing Authority has undertaken a town-wide revaluation. In addition, under certain limited circumstances, the City will provide limited reimbursement for costs of litigation. The City will not challenge future assessments of Unique Properties, where templates have been established and the Assessing Authorities have used those templates, provided that the City does not dispute the manner in which the Assessing Authority has applied the template. Disputes will be resolved in accordance with the TLAP Program Agreement. The City shall provide a copy of the program agreement to NYSDEC when executed.
 9. Gap Funding: The City will provide reimbursement to CWC of any funds transferred from CWC's Future Stormwater Program to the CWC Septic Program and/or the CWC Stormwater Retrofit Program for the purpose of ensuring continuation of those programs and from the Catskill Fund for the Future to CWC Operating accounts and/or the TLAP pending final funding agreements under the terms of the Second Five Years of the 2007 Filtration Avoidance Determination ("2012 FAD Reauthorization") or of a subsequent Filtration Avoidance Determination, if such a Determination is issued ("2017 FAD" and/or 2022 FAD"). Such reimbursement from the City, including interest foregone by CWC by virtue of having temporarily allocated money from the Future Stormwater Program and/or the Catskill Fund for the Future, shall be provided for in agreements or change orders. The City shall not oppose such agreements and/or change orders being included as conditions of the 2012 FAD Reauthorization or the 2017 FAD.
 10. Geographic Information System: As set forth in the 2007 FAD, the City shall continue to disseminate data to stakeholders and the public as appropriate, including notification of data availability to communities and responses to requests for data.
 11. Watershed Agricultural Program: Through October 2012, consistent with the terms of the 2007 FAD and pursuant to the City's Program Agreement with WAC, the City shall continue to make available up to Thirty-Two Million Dollars (\$32,000,000) to fund the Watershed Agricultural Program. Consistent with the City's Program Agreement with WAC, the City shall make payment based on quarterly invoices from WAC, subject to the terms of the Program Agreement, for farm plans and associated best management practices (BMPs), forest plans and forest BMPs, and other eligible costs relating to WAC's farm and forestry programs. For the duration of this Permit, the City's commitments to fund the Watershed Agricultural Program pursuant to any subsequent FAD or FAD amendment shall be incorporated herein and made enforceable conditions of this Permit.
 12. Stream Management Program: Consistent with the terms of the 2007 FAD and pursuant to the City's contracts with Soil and Water Contract Districts in Delaware County (\$8,251,000), Greene County (\$10,748,506), Ulster County (\$4,460,000), and Sullivan County (\$3,292,684) and with

Ulster County Cornell Cooperative Extension (\$3,647,570), the City shall provide funding for the continuation of each of the existing Stream Corridor Management Program contracts. For the duration of this Permit, the City commits to fund the Stream Corridor Management Program pursuant to any subsequent FAD or FAD amendment which shall be incorporated herein and made an enforceable condition of this permit.

26. Restriction on Acquisition of Title.

a. The City shall not acquire title to land or Watershed Conservation Easements on land (hereinafter referred to as "Restrictions") as described below in subparagraph (c) if (1) the City has not appropriated funds for one or more of the programs listed in subparagraph (c) below and thereafter the City fails to make a payment that would otherwise be due and owing under a contract for such unappropriated program and (2) the City has not cured the failure to make such payment within thirty (30) days of the date the payment was due and owing. For purposes of this paragraph only, a failure to make a payment shall be deemed cured if the City makes such payment, with interest at 9% compounded annually from the date such payment was due and owing.

b. Except as provided in paragraph (a) above, the City shall not acquire title to land or Watershed Conservation Easements on land (hereinafter referred to as "Restrictions") as described below in subparagraph (c) if (1) for one or more of the programs listed below, the City does not have a valid and enforceable program contract during the term set forth in Exhibit 14 and thereafter the City fails to make a payment that would otherwise be due and owing under such invalid or unenforceable contract and (2) the City had not cured the failure to make such payment within 8 months of the date the payment would otherwise have been due and owing. The 8 month period is intended to provide the City with time to attempt to resolve the matter which caused the program contract to become invalid and unenforceable without interruption to the land acquisition program. For purposes of this paragraph only, a failure to make a payment shall be deemed cured if the City makes such payment, with interest at 6.5% compounded annually from the date such payment was due and owing.

c. The programs for which such failure to make payment and to timely cure late payment shall lead to Restrictions to the water supply permit under this subpart are: (1) with respect to acquisitions in West of Hudson: Catskill Watershed Corporation Funding, SPDES Upgrades; New Sewage Treatment Infrastructure Facilities; Sand and Salt Storage; Septic Remediation and Replacement Program; Septic Maintenance Program; Community Wastewater Management Program; Stormwater Retrofit Program; Education and Outreach Program; Tax Litigation Avoidance Program; Stream Management Program, (2) with respect to acquisitions in East of Hudson: Non-Point Source Control Program, and (3) with respect to acquisitions in the entire Watershed: Upgrades to Existing WWTPs to Comply with Watershed Regulations; Watershed Agricultural Program and Local Consultation on Land Acquisition.

d. If the water supply permit is Restricted under this Special Condition, the City shall not acquire title to land or Watershed Conservation Easements on land under this permit until, with respect to the program for which the failure to pay led to the Restrictions, the City has made all missed payments which the City failed to pay and which would otherwise be due and owing except that the City failed to maintain a valid and enforceable contract, as provided in paragraphs (a) and (b), as well as interest on such missed payments at the rate set forth in paragraphs (a) or (b), whichever is applicable.

e. The following process shall govern Restrictions on the City's acquisition of an interest in land or Watershed Conservation Easements on land pursuant to this water supply permit under this paragraph:

(i) The City shall notify in writing NYSDEC (Attention: Chief Permit Administrator) the individual members of the Executive Committee, and the CW Corporation as soon as practicable of the commencement of any litigation seeking to invalidate one or more program contracts. The

purpose of the notice is to provide the Parties at the earliest possible point in the litigation an opportunity to discuss such dispute. Additionally, the City will keep such parties advised of the status of the litigation.

(ii) If the conditions set forth in paragraphs (a) or (b) are met, the party to whom the City would otherwise have owed the missed payment ("Contracting Party") may notify the City, the Executive Committee, and NYSDEC in writing that the condition of this permit requiring a valid and enforceable program contract has been violated and that thereafter the City missed a payment under such contract, and that the City has not cured the failure to make such missed payment. The City shall have 10 days from its receipt of the notice to respond in writing to the Contracting Party, the Executive Committee and NYSDEC. If the City agrees with the notice or does not respond within 10 days, the City's permit shall be restricted without further proceedings and the City will not acquire title to land or Watershed Conservation Easements on land under this permit. If the City disputes the notice, NYSDEC shall have 15 days from its receipt of the City's response to determine, after consulting with the City, Executive Committee and Contracting Party, whether the condition requiring a valid and enforceable program contract has been violated and whether thereafter the City has missed a payment under such contract and whether the City has not cured the failure to make such missed payment. If NYSDEC determines that these criteria exist, it shall notify the City, the Executive Committee and the Contracting party of its determination within 5 days and the City will not acquire title to land or Watershed Conservation Easements on land under this permit.

(iii) If the water supply permit has been Restricted pursuant to subparagraph (d)(ii) above, and the City believes it has met the conditions set forth in paragraph (c) above so that the Restrictions should be lifted, the City may notify the Executive Committee, NYSDEC and the Contracting Party in writing. The Contracting Party shall have 10 days from its receipt of the City's notice to respond in writing to the City, the Executive Committee and NYSDEC. If the Contracting Party agrees with the City's notice or does not respond within 10 days, the City may resume land acquisition without further proceedings. If the Contracting Party disputes the notice, NYSDEC shall have 15 days from its receipt of the Contracting Party's response to determine, after consulting with the City, Executive Committee and Contracting Party, whether the missed payments have been paid with interest at the applicable rate. If NYSDEC determines that such missed payments have been paid with interest, it shall notify the City, the Executive Committee and the Contracting Party of its determination in writing within 5 days, and the City may thereafter resume land acquisition under this permit.

27. Primacy Agency Determination. The Primacy Agency has regulatory authority under the federal Safe Drinking Water Act and Surface Water Treatment Rule to review and approve any request by the City for a filtration waiver for the Catskill and Delaware portions of the Watershed and to incorporate and enforce conditions to any such Filtration Avoidance Determination it may issue. The Primacy Agency's authority is undiminished by this Water Supply Permit. If the Primacy Agency determines, as part of its review and approval process for such a request that the Natural Features Criteria as contained in Special Condition 9 and/or acquisition exclusions (hamlet or village designations) contained in SC 10 are having or have had a detrimental impact on the ability of the City to protect water quality by unduly restricting the acquisition of land in fee and Watershed Conservation Easements, the Primacy Agency may notify NYSDEC in writing (with copies to the MOA signatories and others upon request) to request the Natural Features Criteria be modified through the formal modification process as a new permit application as set forth in 6 NYCRR621.

28. Notices and Submittals. Except to the extent that any other paragraph specifically requires or authorizes a different form of notice, any notice required or permitted to be given hereunder shall be in writing, and shall be delivered by certified mail, postage prepaid, or by hand, or by overnight courier, or by telecopy confirmed by any of the previous methods, addressed to the receiving party at its address as shown on Exhibit 15 or at such

other or further address as the receiving party shall provide to the other parties in writing from time to time. If any organizations which are to receive any notice, material or information from the City under the terms of this permit are not established or cease to exist, such notice, material or information shall be submitted by the City to NYSDEC.

29. Riparian Buffers Program.

- a. The City shall allocate initially Five Million Dollars (\$5,000,000) of the LAP funds for a program for acquiring Riparian Buffers -in easement or fee as part of a Riparian Buffers Program (RBP) which shall be implemented within 18 months of the Effective Date of this permit and run for no less than 3 years thereafter.
- b. The goals, acquisition criteria, procedures (including implementing entity), and evaluation criteria for the RBP will be developed into a Report (PDI Report) with full City participation through an intergovernmental cooperative effort (RBP Program Development Initiative [PDI] between the City, Coalition of Watershed Towns (CWT), the Town of Hunter and Greene Land Trust (lead implementing organization) funded by a grant from the Catskill Watershed Corporation (CWC) Local Technical Assistance Program ("LTAP Grant") with the input of a consultative working group including but not limited to NYCDEP, NYSDEC, NYSDOH, CWC, CWT, Delaware County, Greene County, Schoharie County, NRDC, Riverkeeper and NYPIRG.
- c. The City shall submit to NYSDEC a written recommendation regarding the implementation of the Program no less than 3 months before the implementation deadline in paragraph a. of this special condition. If the City's recommendation identifies a need to modify this permit then such recommendation shall be accompanied by a permit modification application. NYSDEC will, after consultation with NYSDOH, NYCDEP, and other agencies or local governments, make a written determination on whether or not it should be implemented and/or expanded beyond the Schoharie Reservoir Basin. Such written determination shall include addressing NYCDEP recommendations.
- d. Pursuant to Special Condition 7 above RBP acquisitions in fee or easement shall be subject only to the eligibility criteria of surface water features in Special Condition 9 Natural Features Criteria and the acquisition excluded areas (hamlet designations) in Special Condition 10. The acquisition exclusion areas (hamlets) may be waived in individual municipalities by the town or village boards by resolution which shall cover the Riparian Buffer Program and the specific parcels described and covered by such program.
- e. The RBP will be implemented in conjunction with one or more Stream Management Plans developed under the City's Stream Management Program, and will be carried out in partnership with one or more land trusts which shall be bound by contract to the City to implement and comply with the provisions of this permit. Consistent with the PDI Report, the land trust(s) will be responsible for coordinating with NYCDEP on tasks that may include but are not limited to: landowner outreach and contact, establishing eligibility and criteria; drafting legal documents; coordinating with NYCDEP to minimize multiple program solicitations; obtaining local approval to pursue acquisitions under the RBP that do not comply with the terms and conditions otherwise applicable to the LAP pursuant to this Permit; ordering appraisals and making purchase offers; acquiring eligible property interests; managing the Local Consultation process; identifying and implementing management practices linked to the goals of riparian buffer protection; stewarding, administering, monitoring, and enforcing the terms of riparian buffer easements or fee acquisitions; and allowing for public access on land acquired in fee simple where applicable. In the event a qualified land trust is not found then the City shall fully implement the program itself.
- f. An evaluation report on the effectiveness of the RBP meeting the requirements of this permit and Filtration Avoidance Determination as well as the goals and evaluation criteria to emerge from the PDI, including recommendations on any proposed changes, if necessary, to improve the program, shall be submitted by NYCDEP to NYSDEC within 6 months before the end of the initial 3 year program period in paragraph a. of this special condition. NYSDEC will evaluate

this program and, after consultation with NYSDOH, NYCDEP, as well as other agencies or local governments, make a written determination on whether or not it should be continued and/or expanded beyond the Schoharie Reservoir Basin. Such written determination shall include addressing NYCDEP recommendations.

30. Revocable Permits for Use of Watershed Property Owned In Fee by NYCDEP.

The City shall amend its revocable permit regulation Title 15, Chapter 17 (Issuance of Temporary Permits for the Occupation of City Property), Section 17-06 (Fees and Charges) of the Rules of the City of New York (RCNY) permit fee schedule to provide for a waiver or reduction for certain municipal and recreational uses.

31. Watershed Forest Conservation Easement Program.

- a. The City shall develop and implement a Watershed Forest Conservation Easement Program within 12 months from the Effective Date of the permit. The Watershed Forest Conservation Easement Program shall be implemented by the City and through WAC or another qualified local and/or regional land trust or by the City on its own. This program shall include the acquisition of Watershed Conservation Easements on eligible lands. The City shall initially commit Six Million Dollars (\$6,000,000) to support this program. Eligible lands shall include the following:
 - i. Land enrolled in WAC's Forest Management Program for which an Individual Landowner Forest Management Plan has been developed; or
 - ii. Land enrolled in NYSDEC's Forest Stewardship Program or Section 480A Forest Tax Law for which an Individual Landowner Forest Management Plan has been developed; or
 - iii. Other land important for watershed, water quality and/or forestry protection.
- b. This program shall be implemented for an initial period of (5) five years. NYCDEP shall submit a written evaluation on the effectiveness of the Watershed Forest Conservation Easement Program in meeting the requirements of this permit and Filtration Avoidance Determination and include recommendations concerning continuation and funding of this Program as well as on any proposed changes, if necessary, to improve the Program. This written evaluation is to be submitted to NYSDEC and NYSDOH (4) four years and (3) three months from the date on which the Watershed Forest Conservation Easement Program commences. NYSDEC will evaluate this Program and, after consultation with NYSDOH, NYCDEP, as well as other agencies or local governments, make a written determination on whether or not it should be continued and/or expanded. Such written determination shall include addressing the recommendations of NYCDEP. If the Program is implemented by WAC or another qualified local and/or regional land trust and a determination is made not to continue the program, all unused funds, including earnings thereon, shall be returned to the City and shall remain available for land acquisition.

- 32. Forest Management Plan.** The City is preparing a forest management plan for its watershed lands, pursuant to Section 4.3 of the 2007 FAD, which is due in November 2011. The plan will include a comprehensive forestry inventory on all lands owned by the City. The NYCDEP Forest Management Plan will include a discussion of fire risk management. The City will conduct a consultation process commencing no less than three months prior to the completion of the plan that will at a minimum include NYSDEC and Delaware County, as well as other Counties and any other interested stakeholders, to cover fire risk management aspects of the plan, forestry practices (including those of NYSDEC) and forest health. The plan shall contain an implementation schedule that shall go into effect once the plan has been submitted to and accepted by the Primacy Agency. The implementation schedule shall also provide for updating the plan 7 years from the Effective Date of the Permit and every 10 years thereafter when

requested in writing by either the Primacy Agency or NYSDEC. Such plan updates shall be in accordance with the provisions and process specified in this special condition.

33. Enhanced Land Trust Program. The City shall develop and implement a program to collaborate with land trusts to acquire properties including but not limited to land with habitable dwellings, in accordance with the provisions of Special Condition 8. Through this Program, in municipalities that have adopted resolutions allowing one or more specified land trusts to work with NYCDEP on acquisitions under this Program, land trusts may acquire property on behalf of the City in accordance with this permit. The City shall continue to participate in the Land Trust Working Group, with representatives of land trusts, the Coalition of Watershed Towns, CWC, and Delaware County, which has developed a number of terms and conditions for the Enhanced Land Trust Program and which will continue to provide guidance as the Program is implemented.

34. East of Hudson Non-Point Source Stormwater Program.

a. In order to foster continued partnership and cooperation in the protection of the City's water supply watershed, the City shall provide a total of Fifteen Million, Five Hundred Thousand Dollars (\$15,500,000) ("EOH NPS Fund") to the EOH Watershed Communities to help fund the first five year plan for the stormwater retrofit program to be implemented under the heightened requirements for phosphorus reduction applicable to the EOH Watershed Communities. The City shall make Ten Million Dollars (\$10,000,000) of the EOH NPS Fund available within 12 months of the Effective Date of this Permit. Provided that no East of Hudson Community brings a legal challenge to this Special Condition of this Permit within 120 days of the Effective Date of this Permit, the City shall make the remaining Five Million, Five Hundred Thousand Dollars (\$5,500,000) of the EOH NPS Fund available within 6 months of receiving written notification that the first Ten Million Dollars (\$10,000,000) have been committed via binding agreements.

b. Up to Two Hundred Thousand Dollars (\$200,000) of the EOH NPS Fund will be available to the EOH Watershed Communities to prepare a report analyzing the potential opportunities for phosphorus reduction in stormwater runoff on lands owned by the City in the EOH Watershed, including a calculation of the total possible phosphorus reduction, the drainage area captured and treated, the estimated cost of such reduction, a description of the retrofit projects on City lands and a timetable for possible implementation of such projects.

c. Up to Fifty Thousand Dollars (\$50,000) of the EOH NPS Fund will be available for the establishment of a Regional Stormwater Entity to administer and coordinate compliance with the MS4 Program.

d. On or before December 31, 2013, the City shall enter into discussions with the NYSDEC and the EOH Watershed Communities regarding requirements for future EOH phosphorus reductions in stormwater as required under the heightened requirements for phosphorus reduction applicable to the EOH Watershed Communities. In these discussions, the City will consider, among other things, any projects on City lands in the EOH Watershed that would be appropriate for the EOH Communities' Stormwater Management Programs identified in the report prepared pursuant to Paragraph b. above. The City shall make lands available for such projects so long as it determines that the projects will not pose a threat to water quality or NYCDEP operations related to water supply.

e. On or before December 31, 2014, if the City agrees to provide additional assistance to the EOH Communities to achieve the heightened requirements for phosphorus reductions applicable in the EOH Watershed, including but not limited to additional funding, the City shall request that this special condition be modified to incorporate such commitments. If City lands are identified as appropriate for stormwater management projects pursuant to Paragraphs b. and d. above, the City's making such lands

available shall constitute all or a portion of any additional assistance it agrees to provide. Any such required amendment of this special condition shall not require or constitute a reopening of any other provision of this permit. For the duration of this Permit, any City agreement to provide additional funding for the East of Hudson Non-Point Source Stormwater Program as described in this subparagraph shall be incorporated herein and made enforceable conditions of this Permit.

f. Consistent with the terms of the 2007 FAD, the City shall make available Four Million, Five Hundred Thousand Dollars (\$4,500,000) to the EOH Watershed Communities to help fund the first five year plan for the stormwater retrofit program implemented under the heightened requirements for phosphorus reduction in stormwater applicable to the EOH Watershed Communities in the Croton Falls and Cross River basins within the East of Hudson Watershed and any upstream/hydrologically connected basins and shall be made available on the same expedited basis as the funding set forth in subsection "a" hereof.

g. For the duration of this Permit, the City's commitment to fund the heightened requirements of the East of Hudson Non-Point Source Program (which encompasses the stormwater retrofit program and related projects) pursuant to any subsequent FAD or FAD amendment shall be incorporated herein and made enforceable conditions of this Permit. Consistent with the terms of the 2007 FAD, and as set forth in the MS4 SPDES General Permit No. GP-0-10-002 issued by NYSDEC on April 29, 2010 ("the MS4 Permit") (which contains the NYSDEC TMDL reduction requirements, including the heightened requirements applicable to the EOH Watershed Communities), the MS4 requirements are requirements of federal and State law. As stated in the MS4 permit, meeting those requirements is the responsibility of the EOH Watershed Communities.

h. On or before June 30, 2011, the City shall work with the NYSDEC and the EOH Watershed Communities to develop program rules that assure that the funds provided by the City pursuant to this special condition will be easily accessible by the EOH Watershed Communities and will be fully allocated for the implementation of the pending five-year plans for the stormwater retrofit program to be implemented under the heightened requirements for phosphorus reduction applicable to the EOH Watershed Communities, consistent with all applicable legal requirements and the City's fiduciary obligations.

Exhibits:[Corresponding Special Condition]

1. Map of Catskill and Delaware Water Supply and Watershed and Map of Croton Water Supply and Watershed [4c]
2. Catskill and Delaware Watershed Priority Areas West-of-Hudson [6.a]
3. Catskill, Delaware and Croton Watershed Priority Areas East-of-Hudson [6.a, 6.b]
4. List of Tax Parcels in West of Hudson Hamlet Areas [10.a.ii]
5. Maps of West of Hudson Hamlet Areas [10.a.ii]
6. Defined West of Hudson Roads Eligible for Land Acquisition Exemption [10.a.iv]
7. 2007 Solicitation Schedule [14]
8. 2008-2010 Solicitation Plan [14]
9. Model Conservation Easement to be Held by NYSDEC on City Fee Lands [16.c]
10. Model WAC Conservation Easement [16.d.2.b]
11. Draft Legislation to Amend Article 5, Title 4-a of the RPTL for Taxation of Watershed Conservation Easements [19]
12. City's Water Conservation Program dated December 2006 [23]
13. Cluster Development Resolutions [10.h]
14. Watershed Memorandum of Agreement [25 & 26] [incorporated by reference]
15. Notice Addresses